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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2022-001469

South Carolina Public Interest Foundation and John Crangle.,
Individually, and on behalf of all others similarly situated, Respondents,

v.

Richland County and Richland County Council, Appellants.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

When County Council members repeatedly failed to vote on issues presented to them, as required, and failed to state a reason for their non-votes, as required:

- I. Does the repeated violation state an issue of great public importance?
- II. Does the repeated violation state a justiciable controversy?
- III. Did Council members violate Council Rule 5.21?
- IV. Did Council members violate their common law duty?

STATEMENT OF THE CASE

Respondents accept the Appellants' Statement of the Case.

STATEMENT OF THE FACTS

Respondents accept the Appellants' Statement of the Facts.

STANDARD OF REVIEW

Respondents accept the Appellants' Statement of the Standard of Review.

ARGUMENT

I. THE CIRCUIT COURT PROPERLY GRANTED PLAINTIFFS PUBLIC IMPORTANCE STANDING.

Defendants contend Plaintiffs lack standing. The Circuit Court properly granted Plaintiffs public importance standing to enable the Court to address an issue of great public importance: Defendants' failure to comply with the Council Rules, the common law, and the policies enacted in South Carolina statutes. Our Supreme Court recently ruled:

This Court has consistently acknowledged that even without an allegation of particularized injury, "standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance." *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004); *see S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013); *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008); *Baird v. Charleston Cnty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999); *Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741-42 (2007); *S.C. Pub. Interest Found. v. S.C. Dep't. of Transp. (SCDOT)*, 421 S.C. 110, 118-19, 804 S.E.2d 854, 859 (2017).

South Carolina Public Interest Foundation v. Wilson, 437 S.C. 334, 341, 878 S.E.2d 891, 895 (2022). The Court in *Wilson* continued.

By claiming *Wilson* improperly disbursed state settlement funds, Appellants indisputably allege an issue of public importance. *See, e.g., SCDOT*, 421 S.C. at 119, 804 S.E.2d at 859; *Sloan v. Sch. Dist. of Greenville Cnty.*, 342 S.C. 515, 524, 537 S.E.2d 299, 303 (Ct. App. 2000). Therefore, the linchpin of our analysis is whether a need for future guidance exists.

Id., 437 S.C. 334, 342, 878 S.E.2d 891, 895 (2022).

A judicial ruling on the issues in this case is necessary for future guidance. The research of the Respondents has disclosed no South Carolina case addressing the duty of members of city or county counsel to vote on each matter presented to them, as stated in Council's own rules, in the common law, and in the policies articulated in State statutes. Accordingly, this issue "transcends a purely private matter and rise[s] to the level of public importance." *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008). A decision on this matter is

necessary “for future guidance.” *Wilson*, 437 S.C. 334, 341, 878 S.E.2d 891, 895 (2022). The Circuit Court properly granted public interest standing to address these issues of great public importance.

The county contends that the two Council members who most often refused to vote on the issues without stating a reason are no longer on County Council. Accordingly, Council contends that this issue is no longer of any public importance. However, a careful review of the stipulated facts demonstrates that the violation is not limited to two persons. Nearly all of the members of the Richland County Council have engaged in this practice of failing to vote without articulating a reason for the non-vote or abstention.

Paragraph 7 of the Statement of Facts states that on February 11, 2020, in addition to Councilman Manning’s non-votes, “On four other occasions Council Members did not declare a vote without stating a reason” (R. p. 57).

Paragraph 8 of the Statement of Facts states that on February 25, 2020, not including Councilman Manning, “Five other times Council members did not declare a vote without stating a reason” (R. p. 57).

Paragraph 9 of the Statement of Facts states that on March 3, 2020, other than Councilman Manning, “On four other occasions, Council members did not declare a vote without stating a reason” (R. p. 57).

Paragraph 10 of the Statement of Facts states that on March 17, 2020, not counting Councilman Manning, “Other Council members did not declare a vote five times without stating a reason” (R. p. 57).

Paragraph 11 of the Statement of Facts states that on March 31, 2020, not counting Councilman Manning, “On six other occasions, Council members did not declare a vote without stating a reason” (R. p. 58).

Paragraph 12 of the Statement of Facts states that on April 7, 2020, not counting Council members Manning or Kennedy, “Other Council members did not declare a vote twice without stating a reason” (R. p. 58).

Paragraph 13 of the Statement of Facts states that on April 21, 2020, not counting Councilman Manning, “On nine occasions other Council members did not declare a vote without stating a reason” (R. p. 58).

Paragraph 14 of the Statement of Facts states that on the May 5, 2020 meeting, not counting Councilman Manning, “On 22 other occasions various council members did not declare a vote without stating a reason” (R. p. 58).

The Statement of Facts covers only four months, from February to May, 2020. Nevertheless, the Statement of Facts demonstrates that this practice of not voting, and not stating a reason for the non-vote is not limited to the council members who are no longer on Council; it is pervasive among all the Council members. Accordingly, “this issue will inevitably arise again in the future.” *Wilson*, 437 S.C. 334, 342, 878 S.E.2d 891, 895 (2022).

The Courts of this State have granted plaintiffs public importance standing many times to enable the Court to address issues of great public importance: *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017) (one subject rule); *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016) (one subject rule); *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), *American Petroleum Institute v. S.C. Dep't. of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009) (one subject rule), *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008) (one subject rule), *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. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005) (one subject rule); *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. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999) (issuance of tax exempt bonds), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997) (Commission's transfer of ownership of historic homes).

This action raises issues of great public importance including whether the members of Richland County Council follow their own council rules, their common law duties, and the policies in the State statutes. Accordingly, the Circuit Court properly granted Plaintiffs public importance standing based upon the great public importance of the legal issues this action raises.

II. THE CIRCUIT COURT PROPERLY RULED THAT PLAINTIFFS STATED A JUSTICIABLE CONTROVERSY.

The Circuit Court properly found that the Plaintiffs had raised a justiciable controversy.

The Circuit Court reasoned as follows:

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 the 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** and making decisions that affect their constituencies.

(R. p. 5) (*emphasis added*).

In addition, the Court reasoned,

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 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.*

(R. p. 7) (*emphasis added*). The Circuit Court concluded, “Here, the Court is ordering that Defendants follow their own rules as written and follow their common law duty.”

Accordingly, the Circuit Court properly found that the Plaintiffs had raised a justiciable controversy.

III. COUNCIL MEMBERS VIOLATED COUNCIL RULE 5.21.

The Council Rules for Richland County § 5.21 Voting states the following.

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.**

(R. p. 11) (*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 without stating a reason. (R. pp. 57-59)

Furthermore, Council has failed to require a non-voting member to state a reason for the failure to vote. (R. p. 94). Council has failed to record the reasons for each failure to vote in the County Council minutes, and Council has failed to record the non-vote as a vote for the prevailing side. These failures are unlawful. The Circuit Court properly issued declaratory judgment and injunctive relief compelling compliance with the law and rules.

IV. COUNCIL MEMBERS VIOLATED THE COMMON LAW.

On March 17, 2020, 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." (R. p. 94). Defendants thereby acknowledged the duty of Council Members to vote on each question presented or provide a reason for the abstention. However, the minutes of subsequent meetings demonstrate that Council took no action regarding the failures to vote, and failures to state a reason.

County Council's duty to vote on issues presented to them also arises from the common law.

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.

Gaskin v. Jones, 198 S.C. 508, 18 S.E.2d 454, 456 (1942) (quoting Dillon on Municipal Corporations, 5th Edition, Section 527) (emphasis added). See also, *State ex rel. Walden v. Vanosdal*, 131 Ind. 388, 31 N.E. 79, 15 L.R.A. 832. (“Being present, **it was their duty to act.**”) *Id.*, quoted in *Gaskin v. Jones*, 198 S.C. 508, 18 S.E.2d 454, 457 (1942) (emphasis added),

Other courts have held similarly.

If a quorum is present, **municipal legislators cannot avoid their voting responsibilities by refusing to vote when present at a meeting.** (See *Launtz v. People ex rel. Sullivan* (1885), 113 Ill. 137; see also *People ex rel. Anderson v. Chicago & North Western Ry. Co.* (1947), 396 Ill. 466, 71 N.E.2d 701.) **A legal significance or effect must be given to each failure to vote** by a municipal legislator who is present at a board meeting in order to prevent frustration or abuse of the legislative process. (*State ex rel. Young v. Yates* (1897), 19 Mont. 239, 47 P. 1004.) **He should not be allowed** to have his physical presence counted toward the constitution of a quorum and at the same time be allowed **to deny, in effect, his official presence by a failure to vote.** Thus, a municipal legislator’s failure to vote either “yea” or “nay” on a proposed ordinance must be interpreted to have the same effect as either a “yea” or a “nay” vote.

Prosser v. Village of Fox Lake, 91 Ill.2d 389, 397-98, 438 N.E.2d 134, 135-136, 63 Ill.Dec. 396 (1982) (emphasis added).

The policies behind this rule are sound and necessary. By requiring that the nonvoter’s vote be recorded with the prevailing side, the rule motivates Council members to either vote or articulate a reason for their abstention.

If the member has a conflict of interest, but if he fails to disclose it and simply fails to vote, his vote is recorded with the prevailing side. His conflict of interest remains, but it is undisclosed. That creates an ethical issue for the Council member.

If a member has a conflict of interest requiring an abstention, and he offers an explanation or reason, that vote does not count for either side. The problem arises when a member fails to vote and fails to explain his non-vote. When he fails to articulate a reason, when there is a real conflict,

the non-vote should be counted with the prevailing side, which is improper when there is a conflict of interest.

This policy is widely recognized, as stated in McQuillin on Municipal Corporations:

The public is entitled to have its representatives perform their duties free from any personal or pecuniary interest that might affect their judgment.¹ Public policy forbids the sustaining of municipal action founded upon a vote of a council member or a member of a municipal governing body in any matter before it which directly or immediately affects him or her individually.² Many charters expressly provide that the officers of the corporation shall not be directly or indirectly interested pecuniarily in contracts of any character with the corporation.³ A finding of self-interest sufficient to set aside municipal action need not be based upon actual proof of dishonesty, but may be warranted whenever a public official, by reason of personal interest in a matter, is placed in a situation of temptation to serve his or her own purposes, to the prejudice of those for whom the law authorizes that official to act.⁴ So, members of the legislative body should not be permitted to act in matters before them, as a body, in which they are either directly or indirectly pecuniarily interested.⁵ In addition, an individual member ordinarily cannot vote on a matter in which that member⁶ or his or her employer⁷ is interested. **If the member does, the action taken by the body of which he or she is a member is invalidated.**⁸ Although the contrary has also been held,⁹ the fact that the vote of the interested member is not necessary to pass an ordinance seems to be immaterial.¹⁰ Where the vote of a member interested is necessary to pass an ordinance or bylaw, such ordinance or bylaw is void,¹¹ irrespective of how beneficial the ordinance may be.¹²

4 McQuillin Mun. Corp. § 13:52 (3d ed.) *Members' interest as affecting quorum or majority* (footnotes omitted) (*emphasis added*).

These policies have also been recognized by South Carolina statutory law. S.C. Code Ann. § 4-9-110 illustrates the importance and necessity of these policies. The statute governs meetings of county councils: “all meetings shall be conducted in accordance with the general law of the State of South Carolina affecting meetings of public bodies.”

Similarly, S.C. Code Ann. § 8-13-700(B)¹ states:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual

¹ Plaintiffs are not asking this Court to make a finding of an ethics violation against any individual council member under S.C. Code Ann. § 8-13-700(B).

with whom he is associated, or a business with which he is associated has an economic interest. **A public official**, public member, or public employee who, in the discharge of his official responsibilities, **is required to take an action** or make a decision which **affects an economic interest** of himself, a family member, an individual with whom he is associated, or a business with which he is associated **shall**:

(1) **prepare a written statement** describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

* * *

(4) if he is a public official, other than a member of the General Assembly, he shall **furnish a copy of the statement to the presiding officer** of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, **who shall cause the statement to be printed in the minutes** and require that the member **be excused from any votes, deliberations, and other actions** on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

Id. (emphasis added).

Accordingly, Council must follow its own rules and the common law duty requiring a non-voting member to explain his abstention or failure to vote. Council has not been following the rules. The Circuit Court properly granted declaratory judgment that these failures violate the law, and properly issued injunctive relief requiring Council to follow their duties.

CONCLUSION

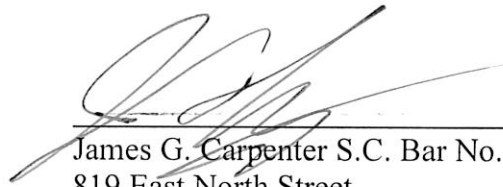
Based on the authorities and analysis set forth above, the Court should affirm the Circuit Court in its:

1. Granting the Plaintiffs public importance standing;
2. Ruling that the Plaintiff said stated a justiciable controversy;
3. Declaratory judgment that Council members have violated Richland County Council Rule 5.21;

4. Declaratory judgment that Council members have violated the common law; and
5. Granting an Injunction to Richland County to follow Council's Rule 5.21 and the common law.

Finally, Plaintiffs/Respondents requested attorneys' fees and costs under S.C. Code Ann. § 15-77-300 ff. The Circuit Court invited Plaintiffs to file such a Motion (R. p. 12), and this Court should affirm that decision.

Respectfully submitted,
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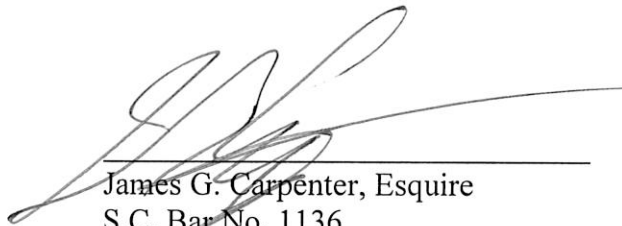
Jun 14 2023

SC Court of Appeals

CERTIFICATE OF COUNSEL

Pursuant to Appellate Rule 211(a), the undersigned hereby certifies that his Final Brief for Respondents complies with Rule 211(b).

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A handwritten signature in black ink, appearing to read 'J. G. Carpenter', is written over a horizontal line.

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