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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM OCONEE COUNTY

Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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Appellate Case No. 2025-000790
Case No. 2024-CP-37-00202

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South Carolina Public Interest Foundation, Jim Mann, David Dial, Rachel Moore, Terri Meyerring, Carl Meyerring, Doug Muzik, Bruce Burrell, India Lancaster, John Wagner, Gwen McPhail, Lillian Lusk, and Linda Love,
on behalf of all others similarly situated, Appellants-Respondents,

v.

Oconee County, Respondent-Appellant,

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# INITIAL RESPONSIVE BRIEF OF APPELLANTS-RESPONDENTS

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## I. TAXPAYERS POSSESS STANDING.

The Circuit Court properly found that the Appellant-Respondents ("Taxpayers") possess standing, both public importance standing and taxpayer standing (Order entered August 12, 2024, pp. 6-20; Order entered March 11, 2025, pp. 6-7). Oconee County ("County") has appealed those decisions.

Taxpayers are citizens, residents, taxpayers, and registered electors of Oconee County, South Carolina. They bring this action on behalf of themselves and all other citizens, residents, taxpayers, and registered electors of Oconee County (Complaint, par. 2).

The County has violated the South Carolina Constitution, Article X, Section 12:

> **No law** shall be enacted permitting the incurring of **bonded indebtedness** by any county for **sewage disposal or treatment**, fire protection, street lighting, garbage collection and disposal, water service **or any other service** or facility **benefitting only a particular geographical section of the county** unless a special assessment, **tax or service charge** in an amount designed to provide **debt service** on **bonded indebtedness** or revenue bonds incurred for such purposes shall be imposed **upon the area or persons receiving the benefit therefrom**.

S.C. Const. art. X, § 12 (emphasis added).

### A. Taxpayers Possess Public Importance Standing.

The Circuit Court properly ruled that when a plaintiff raises an issue of great public importance, particularly a Constitutional violation, a court may grant the plaintiff standing to address the issue. Taxpayers have asserted both taxpayer standing and public importance standing in this action (Complaint, par. 2, 5-7). The appellate courts of this State have endorsed public importance and taxpayer standing on many occasions. *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 119, 804 S.E.2d 854, 859 (2017) ("Petitioners have public importance standing" to address spending public money for

private purposes); *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016) (original jurisdiction to address unconstitutional proviso in Appropriations Act); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013) (original jurisdiction to address constitutionality of State Transportation Infrastructure Bank), *American Petroleum Institute v. S.C. Dep't. of Revenue,* 382 S.C. 572, 677 S.E.2d 16 (2009) (original jurisdiction to address claim that an Act violates the Constitution's one subject rule), *South Carolina Public Interest Foundation v. Harrell,* 378 S.C. 441, 663 S.E.2d 52 (2008) (original jurisdiction to address violations of Constitution's one subject rule), *Sloan v. Department of Transportation,* 379 S.C. 160, 170-71, 666 S.E.2d 236, 241 (2008) ("Sloan has standing because he has alleged a misuse of the statutory emergency procurement provision and therefore an unlawful expenditure by public officials"); *Sloan v. Hardee,* 357 S.C. 495, 640 S.E.2d 457 (2007) (original jurisdiction and public importance standing to address claims that DOT Commissioners were serving successive terms in violation of the authorizing statute); *Sloan v. Department of Transportation,* 365 S.C. 299, 305, 618 S.E.2d 876, 879 (2005) ("Sloan has standing to raise this issue [DOT violation of competitive bidding laws]"); *Sloan v. Wilkins,* 362 S.C. 430, 437, 608 S.E.2d 579 (2005) ("In light of the great public importance of this matter, we find Sloan has standing to maintain this action" to challenge a violation of the Constitutional one subject rule); *Sloan v. Sanford,* 357 S.C. 431, 593 S.E.2d 470, 583 (2004) (Sloan was granted standing to challenge governor's commission as an officer in the Air Force reserve); *Sloan v. Greenville County,* 356 S.C. 531, 548, 590 S.E.2d 338, 347 (Ct. App. 2003) (Sloan was granted standing to bring declaratory judgment action alleging county failed to comply with ordinances governing procurement of construction services on design-build public works projects); *Sloan v. School District of Greenville County,* 342 S.C. 515, 520,537 S.E.2d

299, 301 (Ct. App. 2000) ("[a] taxpayer's standing to challenge unauthorized or illegal governmental acts has been repeatedly recognized in South Carolina"); *Baird v. Charleston County,* 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999) (Standing may be conferred upon a party "when an issue is of such public importance as to require its resolution for future guidance").

This action raises issues of great public importance, namely the unconstitutional actions of Oconee County public officials and the misuse of county taxpayer money for bonds to build a sewer system that serves only a small fraction of the county (Complaint, Par. 22-25). "A resolution for future guidance is needed here because this case involves the conduct of government entities and the expenditure of public funds, a prompt decision is necessary, and it is likely the situation will occur in the future." *Adams v. McMaster,* 432 S.C. 225, 236, 851 S.E.2d 703, 708 (2020).

The doctrine of public importance standing has a long history in South Carolina. In 1873, the Supreme Court addressed an indictment for practicing law without a license. The Court ruled that defects in the indictment disposed of the case, but then reasoned:

> This view is sufficient to dispose of the whole case, but as both the defendant and the Attorney General have pressed this Court for a decision on the question whether the Legislature had constitutional authority to enact a tax law imposing taxes of the character imposed by the license law, and **as the question is of public importance, we will consider and decide it**.

*State v. Hayne*, 4 S.C. 403, 411, 4 Rich. 403 (1873) (emphasis added). The Court addressed the question and found several aspects of the statute unconstitutional.

Similarly, in *Ashmore v Greater Greenville Sewer District*, this Court ruled that the board established to govern the Greenville Memorial Auditorium District was unconstitutionally composed. That ruling was sufficient to dispose of the case, but the Supreme Court continued:

> If this were an ordinary case, our opinion might well stop here. The Board of Trustees of the projected Auditorium District has been held invalid in toto. The district is a headless body and cannot function under the present legislation. But the case is not an ordinary one; it is not a private controversy between individuals, as such. On the contrary, it is defended by an intended governmental agency which

> the legislature undertook to create by their enactments; and raised on the record are earnestly argued **public questions of importance**. The last stated factor brings into play the principle, **now generally established, that questions of public interest originally encompassed in an action should be decided for future guidance**, however abstract or moot they may have become in the immediate contest. 3 Am.Jur. 310, Annotation, 132 A.L.R. 1185.

*Id.* 211 S. C. 77, 95, 44 S.E.2d 88, 96-97 (1947) (emphasis added).

Likewise, in *City of Columbia v. Sanders,* the Supreme Court rendered a similar holding to *Ashmore*. *Id.* at 231 S.C. 61, 97 S.E.2d 210 (1957). *Sanders* was a declaratory judgment action addressing the municipal merger of Columbia and Eau Claire and their water systems. The case raised questions about Columbia's revenue bonds issued to fund further expansion of the water system. At the conclusion of the opinion, the Supreme Court stated:

> We have been in considerable doubt as to whether the pleadings present a proper case for any kind of declaratory relief. But since **the rule requiring the existence of a justiciable controversy is somewhat relaxed where the public interest is involved,** Anderson, Declaratory Judgments, Second Edition, Volume I, Section 63, and Volume II, Sections 686, 707, 709 and 714, we have decided to make the foregoing limited declaration with respect to the issuance of further revenue bonds.

*Id.* at 97 S.E.2d 213 (emphasis added). The Supreme Court repeated this holding in *State ex rel McLeod v. McGinnis*. *Id.* at 278 S.C. 307, 311, 295 S.E.2d 633, 635 (1982). "We held that where the public interest is involved, the rule requiring the existence of a justiciable controversy is somewhat relaxed." *Id*. *See also*, *Palmer v. Dunn,* 216 S.C. 558, 559, 59 S.E.2d 158, 159 (1950) ("This Court took original jurisdiction of the controversy because of its urgency and public importance"); *Thompson v. South Carolina Commission on Alcohol and Drug Abuse*, 267 S.C. 463, 467, 229 S.E.2d 718, 719, 85 A.L.R.3d 692 (1976) ("the rule [of standing] is not an inflexible one, and we are of the opinion that the questions involved are of such wide concern, both to law enforcement personnel and to the public, that the court should determine the issues in this declaratory judgment action"); *Gilstrap v. South Carolina Budget & Control Bd.,* 310 S.C. 210,

213, 423 S.E.2d 101, 103 (1992) ("[T]he questions involved here are of such wide concern that the rules on standing will not be inflexibly applied").

The doctrine that this Court should decide questions of public importance has been recognized at least as far back as 1873. By 1947 the principle was "generally established," and since 1947, South Carolina Courts have repeatedly applied the doctrine, particularly when a civil action alleges the **unconstitutionality** of an Act or governmental action. *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d. 854 (2017) (unconstitutional inspection of private bridges at public expense); *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016) (an Act of the General Assembly violated the Constitution by relating to more than one subject); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013) (unconstitutionality of the governance of the State Transportation Infrastructure Bank); *American Petroleum Institute v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009) (an Act of the General Assembly violated the Constitution by relating to more than one subject); *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008) (an Act of the General Assembly violated the Constitution by relating to more than one subject); *Sloan v. Wilkins,* 362 S.C. 430, 608 S.E.2d 579 (2005) (an Act of the General Assembly violated the Constitution by relating to than one subject); *Sloan v. Sanford,* 357 S.C. 431, 593 S.E.2d 470 (2004) (allegation that the Governor violated the Constitution by possession of a commission from another power).

### 1. Taxpayers Challenge an *Ultra Vires* Act.

The Circuit Court properly ruled that Taxpayers possess standing as citizens and taxpayers to seek declaratory and injunctive relief for an *ultra vires* act (Order entered August 12, 2024, pp. 10-13). One clear statement of this rule of standing is Justice Toal's dissenting opinion in *Newman*

*v. Richland County Historic Preservation Comm'n. Id.* at 325 S.C. 79, 480 S.E.2d 72 (1997). The majority ruled that because the plaintiff was a member of the Commission whose actions she was attacking in court, she had no standing. If she had not been a member of the Commission whose decision she was attacking, the Supreme Court would likely have found that she had standing. The majority reasoned that other citizens' right to sue would protect the public and denied standing to Ms. Newman. The court quoted from *Control Data Corporation v. Controlling Board,* "Sufficient representation of the public's interest could be provided by a citizen affected by the decision of the Controlling Board and not by allowing a member of the Board to take a partisan position and challenge the outcome." *Newman,* at 83 (quoting *Control Data Corporation v. Controlling Board,* 16 Ohio App. 3d 30, 16 Ohio B. Rep. 32, 474 N.E.2d 336 (Oh. App. 1983)). The dissent would have granted plaintiff standing even though she was a member of the Commission.

Apart from this issue of Commission membership, Justice Toal's dissent provides a clarifying discussion of the history of citizen standing to seek declaratory and injunctive relief for *ultra vires* acts:

> Generally, a private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in danger of sustaining, prejudice therefrom. *Florence Morning News, Inc. v. Building Comm'n,* 265 S.C. 389, 218 S.E.2d 881 (1975). . . . **However, an exception to this rule exists for *ultra vires* acts by government officials**. For example, we have said that a court will not . . . interfere, by means of a taxpayer suit, to restrain the authorities of a county board from the exercise of their discretionary power . . . in the absence of illegality, fraud, or clear abuse of authority. *Owens v. Magill*, 308 S.C. 556, 419 S.E.2d 786 (1992) (emphasis added); *see also Ex Parte Hart*, 190 S.C. 473, 477, 2 S.E.2d 52, 53-54.
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> * * *
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> As with most things, moderation is required. A moderate balance is achieved by granting citizens standing when they bring actions **alleging *ultra vires* acts by a governmental agency**, while denying citizens standing to challenge discretionary actions. Thus, I would find that an individual has standing to contest a governmental action if he alleges particularized *ultra vires* acts by the governmental entity. The complaint cannot be a general assertion of *ultra vires* action on the part

> of the governmental actor, but must identify (1) the specific act or acts that have exceeded the actor's authority, and (2) the specific constitutional, statutory, or other law that has been exceeded.

*Newman v. Richland County Historic Preservation Comm'n.*, 325 S.C. 79, 84-85, 480 S.E.2d 72, 75-76 (1997) (emphasis added).

**2. Taxpayers Require Judicial Guidance.**

The Court addressed this kind of standing in *Baird v. Charleston County. Id.* at 333 S.C. 519, 511 S.E.2d 69 (1999). Several doctors sued Charleston County alleging that the manner in which Charleston County had voted to fund the acquisition and renovation of a hospital for the Medical University of South Carolina was *ultra vires*. The doctors alleged that to use **tax exempt bonds** for this purpose would violate the authorizing statutes. Charleston County moved to dismiss, arguing among other things, that the doctors lacked standing to bring the action. The trial court granted the County's motion, and the doctors appealed.

The Supreme Court, in a unanimous decision, reversed the ruling on standing. Justice Toal, writing for the court, ruled that when an issue was "of such public importance as to require its resolution for **future guidance**," then "a court may confer standing upon a party." *I d* . a t 333 S.C. 519, 531, 511 S.E.2d 69, 75 (emphasis added).

> In this case, Doctors have specifically alleged that **County committed an *ultra vires* act** by exceeding its statutory authority to issue the hospital bonds. Moreover, the issuance of the hospital bonds clearly impacts a profound public interest--the public health and welfare. In fact, the express purpose of the Act is to promote the public health and welfare. *See* S.C. Code Ann. § 44-7-1420 (1985). It is hard to conceive of any greater societal interest [*16] than this one. Thus, **as citizens of Charleston County, Doctors have a significant interest in ensuring that their county acts within the legal parameters established by the legislature** for funding hospital development. Thus, by virtue of the immense public interest at stake here, Doctors have standing to bring the present action, and any further determination of imminent prejudice is unnecessary.

*Id* at 333 S.C. 519, 531, 511 S.E.2d 69, 75-76 (emphasis added).

The issue Taxpayers raise in this case—allegations of an unconstitutional building of a sewer system serving a small fraction of the county and taxing all county taxpayers to fund the bonds that paid for this project—is also an important public issue, which calls for judicial intervention (Complaint, par. 5-7).

In *Baird v. Charleston County*, the doctors were granted standing, not because they were physicians in competition with the clinic, but rather because they were citizens of Charleston County, they challenged an *ultra vires* act, and the matter was of profound public interest that required judicial guidance. "Thus, as citizens of Charleston County, Doctors have a significant interest in ensuring that their county acts within the legal parameters established by the legislature for funding hospital development." *Id.*

In the language cited by the Court's opinion in *Newman*, each individual plaintiff is "a citizen affected by the decision of the [County]." Lawsuits by such "citizens" provide "sufficient representation of the public's interest." *Newman, quoting Control Data Corporation v. Controlling Board,* 16 Ohio App. 3d 30, 16 Ohio B. Rep. 32, 474 N.E.2d 336 (Oh. App. 1983). Hence, each plaintiff has standing as a citizen to represent the public's interest and to contest the *ultra vires* acts alleged in the Complaint.

Taxpayers allege standing as citizens and taxpayers of Oconee County. They allege that the County engaged in an *ultra vires* act, spending taxpayer money of all taxpayers of the entire county to pay for bonds on a sewer district serving a small fraction of the county in violation of the S.C. Constitution. (Complaint, par 21-25). Just as the doctors in Charleston possessed standing to argue that the funding of the hospital acquisition was *ultra vires*, because of the profound public interest involved, Taxpayers should be granted standing to contest the unconstitutional act in this

case; there is a profound public interest involved. Accordingly, a judicial decision is necessary for future guidance, "and any further determination of imminent prejudice is unnecessary." *Id.*

In the case at bar, Taxpayers have met the burden set out in the *Newman* dissent and in *Baird.* They have identified the specific act that is unconstitutional and the nature of the constitutional violation that requires judicial guidance. They have stated a valid case.

The South Carolina Supreme Court has ruled many times that public interest standing should be granted to address issues of great public importance. *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013). Accordingly, the County's alleged constitutional violation constitutes an issue of great public importance.

**B. Taxpayers Possess Taxpayer Standing.**

The Circuit Court properly ruled that Taxpayers possess taxpayer standing. Taxpayer standing has a long history in South Carolina, and an even longer history in other states and in federal courts. More than 130 years ago, in *Mauldin v City Council of Greenville*, this Court recognized taxpayers' standing to contest allegedly illegal or *ultra vires* actions of a city. *Id. at* 33 S.C. 1, 11 S.E. 434 (1890). The City argued against taxpayer standing: "The individual tax-payer, as such merely, can obtain a standing in court only by alleging and proving that the illegal act complained of will inflict damage special and peculiar to himself." *Id.,* 33 S.C. 1, 11 S.E. 434, 435 (1890). The Supreme Court rejected the city's argument and reasoned:

> Can it be that, in such case, a number of citizens, tax-payers of a city, cannot be heard against the corporate authorities in a court of equity asking for an injunction against the consummation of the contemplated wrongs, without alleging special damages to themselves individually? There is a certain relation in the nature of agency between the municipal authorities and all tax-payers of the corporation.
>
> * * *

> Here **the tax-paying citizens** of Greenville **are not the whole public**, but comparatively a small part of it. They are not strangers to the municipality. **They, and they alone, are affected by their acts**. As to them this is more in the nature of "a private" than "public" matter.

*Id.* 33 S.C. 1, 11 S.E. 434, 435 (emphasis added). The Court ruled, "We think the plaintiffs had a standing in court, and were entitled to have their case heard on its merits." *Id.* 11 S.E. at 436.

In *Mauldin*, the Court cited older South Carolina cases, and cases from Maryland, Connecticut, New Hampshire, Iowa, and Missouri, all acknowledging taxpayer standing. Finally, the Court cited Dillon on Municipal Corporations in support of taxpayer standing. The Court, quoting a case from Maryland, stated,

> [T]he plaintiffs "as **tax-payers of the city**, and others similarly situated, *** **constitute a class especially damaged** by the alleged unlawful act of the corporation, in the alleged **increase of the burden of taxation** upon their property situated within the city. The complainants have therefore a **special interest** in the subject-matter of the suit, **distinct from that of the general public**;"

*Id.*, *quoting Mayor, etc., v. Gill*, 31 Md. 375-394 (emphasis added).

The United States Supreme Court has also recognized taxpayer standing:

> [R]esident taxpayers may sue to enjoin an illegal use of the moneys of a municipal corporation. *Roberts v. Bradfield*, 12 App. D. C. 453, 459, 460. **The interest of a taxpayer of a municipality in the application of its moneys is direct and immediate** and the remedy by injunction to prevent their misuse is not inappropriate. **It is upheld by a large number of state cases and is the rule of this court.** *Crampton v. Zabriskie*, 101 U. S. 601, 609, 25 L. Ed. 1070. Nevertheless, there are decisions to the contrary. See, for example, *Miller v. Grandy*, 13 Mich. 540, 550. The reasons which support the extension of the equitable remedy to a single taxpayer in such cases are based upon the **peculiar relation of the corporate taxpayer to the corporation**, which is not without some resemblance to that subsisting between stockholder and private corporation. 4 Dillon, Municipal Corporations (5th Ed.) § 1580 et seq.

*Commonwealth of Massachusetts v. Mellon*, 262 U.S. 447, 486-87, 43 S.Ct. 597, 601, 67 L.Ed. 1078 (1923) (emphasis added).

Nearly 50 years before *Mellon*, the U.S. Supreme Court recognized taxpayer standing as a question so settled that there was "no serious question:"

> Of the **right of resident tax-payers** to invoke the interposition of a court of equity **to prevent an illegal disposition of the moneys of the county** or the illegal creation of a debt which they in common with other property-holders of the **county** may otherwise be compelled to pay, **there is at this day no serious question**. The right has been **recognized by the State courts in numerous cases**; and from the nature of the powers exercised by municipal corporations, the **great danger of their abuse** and the **necessity of prompt action to prevent irremediable injuries**, it would seem **eminently proper for courts of equity to interfere** upon the application of the tax-payers of a county to prevent the consummation of a wrong, when the officers of those corporations assume, in **excess of their powers**, to create burdens upon property-holders. Certainly, in the absence of legislation restricting the right to interfere in such cases to public officers of the State or county, there would seem to be no substantial reason why a bill by or **on behalf of individual tax-payers** should not be entertained to prevent the **misuse of corporate powers**. The courts may be safely trusted to prevent the abuse of their process in such cases. Those who desire to consult the leading authorities on this subject will find them stated or referred to in Mr. Dillon's excellent treatise on the Law of Municipal Corporations.

*Crampton v. Zabriskie*, 101 S.Ct. 601, 609, 11 Otto 601, 25 L.Ed. 1070 (1879) (*emphasis added*). For more than 145 years, there has been "no serious question" concerning a taxpayer's standing to bring a civil action to prevent unlawful use of taxpayer funds.

Accordingly, Taxpayers possess standing to seek an injunction against illegal acts affecting public funds and public assets: using funds from all county taxpayers to pay for bonds to build a sewer .system serving a small fraction of the county (Complaint, par. 21-25).

> The principle is **firmly settled in this State** that a taxpayer may maintain an action in equity, on behalf of himself and all other taxpayers, to restrain public officers from **paying out public money for purposes unauthorized by law**. *Sligh v. Bowers*, 62 S.C. 409, 40 S.E. 885; *Mauldin v. City Council of Greenville*, 33 S.C. 1, 11 S.E. 434, 8 L.R.A. 291; *McCullough v. Brown*, 41 S.C. 220, 19 S.E. 458, 23 L.R.A. 410; Pom.Eq.Jur., Page 277, Sec. 260; 2 Dill.Mun.Corp., Sec. 736.

*Kirk v. Clark*, 191 S.C. 205, 4 S.E.2d 13, 15 (1939). The court in *Kirk v. Clark* also noted:

> "Perhaps the most frequent ground of application for relief by injunction against municipal corporations is for the prevention of an illegal or unlawful diversion of public funds. . . . [Courts] will . . . relieve in behalf of citizens and taxpayers against such official acts on the part of such bodies, **when they move without authority or warrant of law** and in excess of the corporate powers. High on Injunctions, Vol. 2, Sec. 1237."

*Id.* (emphasis added).

The S.C. Supreme Court has repeatedly acknowledged that a private citizen has standing to contest an illegal action by a governmental body. *Shillito v. City of Spartanburg*, 214 S.C. 11, 51 S.E.2d 95 (1948). In *Shillito*, the plaintiff sued for declaratory and injunctive relief when a tax was illegally collected. Shillito's action was aimed "(a) against the illegality of the tax; (b) against the levying of subsequent assessments under the alleged unlawful tax; and (c) against the disbursement of funds collected from such tax." The Court found that the plaintiff had standing for all three purposes.

> As a rule, private citizens may not restrain official acts when they fail to allege and prove damage to themselves different in character from that sustained by the public generally. An apparent exception to this rule exists when the Act sought to be enjoined is an unlawful diversion of public funds. 52 Am. Jur., Sec. 3, Page 3. **In such cases, a taxpayer who may be compelled to pay the assessment, or who has contributed to the sum jeopardized, is considered to have sufficient interest to enjoin the illegal Act**. The decided preponderance of authority holds that **a taxpayer** singly or in a class suit, may maintain a suit in equity to **restrain unlawful municipal action** which leads, directly or indirectly, to taxation, and that **a taxpayer**, as specially damaged by the increase of the burden of taxation on his property, **has a special interest**, distinct from the general public, in the subject matter of such a suit **which entitles him to relief**. 52 Am. Jur., Sec. 3, Page 3.
>
> **A citizen and taxpayer has standing as such to contest the expenditure of public funds** under an alleged unconstitutional statute. 52 Am. Jur., Sec. 15, Page 11. Under the foregoing authorities, we are satisfied that the action as brought can be maintained to challenge the validity of this special law **and the alleged unlawful diversion of public funds** to the designated beneficiary.

*Id.* at 22 (emphasis added). Thus, under *Shillito*, the Taxpayers, as taxpayers, have standing to seek declaratory and injunctive relief against an illegal collection and expenditure of public funds.

In *Brown v. Wingard*, two taxpayers sued the Mayor and the City Council of Greenwood because they had spent public money for expenses incurred by spouses of the Council members on a trip to the National League of Cities Convention. *Id.* at 285 S.C. 478, 330 S.E.2d 301

(1985), The taxpayers sought declaratory relief. Council members argued that the taxpayers lacked standing. The court found that the taxpayers had standing to contest the unlawful expenditure.

> As in *Lee* [*v. Clark*, 224 S.C. 138, 77 S.E.2d 485 (1953)], respondents, as taxpayers, have an interest in seeing that city officials disburse funds in a lawful manner. They have presented a justiciable controversy under the [Declaratory Judgment] Act, and the demurrer was properly overruled."

*Id.* at 285 S.C. at 480.

*Myers v. Patterson* has a similar holding. *Id. at* 315 S.C. 248, 433 S.E.2d 841 (1993). A plaintiff had standing as a taxpayer to contest the allegedly unlawful transfer of money collected for one purpose and set up to address another purpose. The S.C. Supreme Court ruled, "A taxpayer who . . . has contributed to the sum jeopardized, is considered to have sufficient interest to enjoin the illegal act." The Court ruled against the plaintiffs on the merits but found that they had standing as taxpayers to contest the illegal diversion of funds.

Not only does such a taxpayer have standing; such civil actions are commended by the Court: "It is very commendable that public-spirited citizens should endeavor to protect the taxpayers of a county from the efforts of an accommodating fiscal court to make unauthorized and unlawful appropriations of public funds." *Shillito v. City of Spartanburg*, 214 S.C. 11, 26, 51 S.E.2d 95 (1948), *quoting Fox v. Lantrip*, 169 Ky. 759, 185 S.W. 136, 139.

"A taxpayer's standing to challenge unauthorized or illegal governmental acts has been repeatedly recognized in South Carolina." *Sloan v. School District of Greenville County*, 13, S.C. 515, 520, 537 S.E.2d 299, 301 (Ct. App. 2000). Accordingly, Taxpayers possess standing, under the common law, as taxpayers and citizens to seek declaratory and injunctive relief against an unconstitutional act of the County.

Taxpayers do not need a statutory right of action to challenge an *ultra vires* act. Taxpayers' standing does not originate in a statute; it arises from the equitable principles of the common law.

*Shillito v. City of Spartanburg* ruled that the action was equitable, and analogous to a shareholders' derivative action. *Id.* at 214 S.C. 11, 51 S.E.2d 95 (1948).

> Suits by **tax-payers** against towns and their officers to prevent or remedy misapplication of town funds, are not only allowed by statute, but it is the prevailing doctrine in America that **tax-payers** may maintain them in the absence of a statute. Their relations to the municipality are analogous to those of stockholders to a private corporation.

*Id.* at 28, (quoting *Russell v. Tate,* 52 Ark. 541, 13 S.W. 130, 132, 7 R.L.A. 180, 20 Am. St. Rep. 193) (emphasis added). Taxpayers need not assert a statutory right of action; they may rely on the foregoing cases, and they should be granted standing.

Many times, South Carolina courts have recognized taxpayer standing on behalf of municipal or county taxpayers. *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000); (taxpayer of County school district granted taxpayer standing); *Sloan v. Greenville County,* 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003) (County taxpayer granted taxpayer standing); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006) (County taxpayer).

County has decreed that the full faith and credit of the County will be pledged in repayment of the bonds (Complaint, par. 27). Accordingly, the tax proceeds of the County will be applied to the bonds, which means that all the Taxpayers who are taxpayers to the County, will have their money applied toward the payment of the bonds, and the use of the proceeds of the bonds is unconstitutional (Complaint, par. 29-30). Accordingly, Taxpayers ask the Court to grant them standing as taxpayers, citizens and residents of Oconee County, and based upon the great public importance of the issues this action raises.

**C. The County's Cited Authority Is Distinguishable from the Present Case.**

Against this long history of cases, County relies primarily on two opinions. *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 198 (2008); and *Freemantle v. Preston*, 398 S.C. 186,

193, 728 SE2d 40, 44 (2002). The two opinions on which the Appellant relies are distinguishable. The case at bar involves the expenditure and misuse of taxpayer money, which will be necessary to repay $25 million in bonds for expenditures contrary to the S.C. Constitution (Complaint, par 29-30). In other words, this case involves the direct misuse of taxpayer money.

In *ATC South*, a citizen objected to a regulatory decision by a local government, a zoning issue for the placement of a cell phone tower. The citizen did not challenge the direct expenditure or misuse of taxpayer money, and therefore the doctrine of taxpayer standing did not afford that plaintiff standing. In addition, the plaintiff was not an adjoining landowner, and he did not have standing on that basis. In the case at bar, however, Taxpayers challenge the expenditure of taxpayer funds to repay bonds to build a sewer district that serves only a small fraction of the county. (Complaint par. 21-25). In *ATC South*, the plaintiff attempted to assert taxpayer standing to object to a zoning ruling, granting a favorable decision to a competitor. The Court ruled he did not have statutory standing to challenge the zoning ruling because he was not neighboring landowner. The Court further rejected his claim to standing because he was a competitor. Finally, the Court ruled he lacked standing as a county taxpayer. *Id.* At 380 S.C. 191, 198, 669 S.E.2d 337, 340-41 (2008). In *ATC*, the plaintiff raised **no issue** of unlawful taxation or of unlawful expenditure of public funds. The Court found that the plaintiff's alleged injury was

> common to all property owners in Charleston County. This feature of commonality defeats the constitutional requirement of a concrete and particularized injury. As the United States Supreme Court observed, a taxpayer lacks standing when he "suffers in some indefinite way in common with people generally." *Frothingham v. Mellon,* 262 U.S. 447, 488, 43 S.Ct. 597, 67 L.Ed. 1078 (1923). We reject ATC's claim of taxpayer standing under constitutional standing principles.

*Id.* It is the lack of a claim of unlawful taxation or unlawful spending of public funds that led to the conclusion that the plaintiff lacked a "concrete and particularized injury" and therefore lacked taxpayer standing.

*Freemantle v. Preston* is also distinguishable from the case at bar. The plaintiff in that case sought to recover personal damages for himself from the alleged misconduct of public officials. Taxpayer standing involves plaintiffs acting for the benefit of the municipality or county and protecting the treasury of the municipality or county from unscrupulous public officials who misuse taxpayer money. That is the situation in the case at bar. Accordingly, the two cases upon which the County relies are distinguishable from the present case.

In conclusion, Taxpayers possess taxpayer standing to contest the unconstitutional expenditure of taxpayer funds. *See Shillito v. City of Spartanburg*, 214 S.C. 11, 51 S.E.2d 95 (1948); *Myers v. Patterson*, 315 S.C. 248, 433 S.E.2d 841 (1993). (Taxpayers also possess public importance standing.)

## II. THE CIRCUIT COURT PROPERLY RULED THAT TAXPAYERS STATED A VALID CLAIM.

### A. Taxpayers' claims have sufficient particularity.

Taxpayers have quoted the provision of the S.C. Constitution which the County is violating. Taxpayers have alleged with some specificity the $25 million in bonds which have been issued and the purposes for which the bonds have been issued, in violation of the S.C. Constitution. Accordingly, Taxpayers' claims are pled with sufficient particularity for the Respondent0Appellant to understand them, and for the court to rule upon them.

County contends that the Taxpayers have not stated a justiciable controversy. The cases cited above demonstrate that on many occasions the courts of this state have granted public importance standing to plaintiffs who allege that an act of a government official was unconstitutional, or the conduct of a public official violated the S.C. Constitution. Accordingly, Taxpayers' allegations that the actions of the County are unconstitutional constitute a justiciable controversy.

### B. The Circuit Court Properly Ruled that Taxpayers' claims are not barred by the statute of limitations in S.C. Code Ann. § 11-15-30.

County contends that S.C. Code Ann. § 11-15-30 bars Appellants' claims. The Circuit Court properly rejected this argument. The Circuit Court properly ruled that S.C. Ann. § 11-15-30 governs "issuance" of the bonds not public expenditures from bond proceeds.

County argues that S.C. Code Ann. § 11-15-30 required the court to apply the statute of limitations to any use of bond proceeds, not just the "issuance" of the bonds (County's Brief, pp. 8-15). However, both S.C. Code Ann. § 11-50-30 itself and the surrounding provisions demonstrate that the law governs the **issuance** of bonds rather than the use of the proceeds for projects and spending.

S.C. Code Ann. § 11-15-30 itself bars "lawsuits"... "on account of the *issuance* of any such *bonds* [and....] such *bonds* shall be incontestable *after 20 days* from filing.

> No action shall be commenced on account of the **issuance of any such bonds** after the expiration of twenty days from the date of the filing and indexing of such records as prescribed by §§ 11-15-10 and 11-15-20, and **such bonds so issued**, when in the hands of a bona fide purchaser for value, shall be incontestable, but the period within which such actions may be commenced shall not begin to run until such records have been filed as herein prescribed.

*Id.* (emphasis added).

The statute of limitations itself focuses upon "such bonds" and upon the "issuance of any [bonds]." The County focuses exclusively on only three words "on account of" and attempts to broaden this meaning of the object of this prepositional phrase from "issuance" to expenditure by selecting the most convenient of Webster's dictionary definition of the phrase "on account of" (County's Brief, pp. 11 ). However, the language of the provision bars "lawsuits" "on account of the **issuance** of any such bonds," **not** "lawsuits" "on account of" the **spending** "of any such issuance." Accordingly, the Circuit Court correctly recognized the misconstruction of County's interpretation (Form 4 Order entered July 29, 2024, p. 1; Order entered August 12, 2024, p. 22).

This Court in *Berry v. McLeod,* also recognized the focus of S.C. Code Ann. § 11-15-30 on "issuance" of bonds rather than public expenditures in applying this provision. *Id.* at 328 S.C. 435, 492 S.E.2d 794. This Court has ruled that S.C. Code Ann. § 11-15-30 limits civil actions that are commenced on the account of **issuance** of bonds, not the expenditures of bond proceeds. "Therefore, if an action is "commenced on account of the issuance" of a bond within the meaning of S.C. Code Ann. § 11-15-30, the action must be commenced within twenty days of the date that the documents related to the bond were filed pursuant to S.C. Code Ann. § 11-15-10." *Id.* at 328 S.C. 435, 492 S.E.2d 794.

Not only has this Court ruled that the statute of limitations governs the issuance itself, but the titles of Chapter 15 within which S.C. Code Ann. § 11-15-30 can be found, also demonstrate that the chapter governs **issuance** of bonds.

- Article 1 of Chapter 15 is titled "Bonds of Political Subdivisions."
- The title of § 11-15-30 itself is "Bonds Incontestable from Twenty Days After Filing and Indexing."
- Section 11-15-30 is the third of five general provisions that govern bonds, not public expenditures of proceeds.
- Section 11-15-10 is titled "Records of Bond Issues to be Kept or Filed."
- Section 11-15-20"Records of Bond Issues to be Made by State Agencies; Filing and Indexing Records."
- Section 11-15-90: "Failure to Make Payment or Remit."
- Section 11-15-100: "Requirements for Incurring General Obligation Debt."
- In addition to Article I, "General Provisions," Chapter 15, titled "Bonds of Political Subdivisions," includes two other articles which also govern the issuance bonds.
- Article 3: "Protection of Sinking Funds" Article 5 is titled "Refunding Act"

Accordingly, the Circuit Court in the case at bar properly held that this case is not about the "issuance" of bonds, but rather it concerns the use of **bond proceeds** for unconstitutional purposes **after** the issuance of the bonds (Order entered August 12, 2024, p. 22). The bonds were sold long ago, and they are circulating in the public marketplace, and they have provided the capital for the sewer project serving a small fraction of the County (Complaint, par. 21-25). They are in

the stream of commerce, and they are not retrievable. This litigation does not challenge either the issuance of the bonds, the buyers of the bonds, the holders the bonds, the interest on the bonds, or the repayment of the bonds. Those actions and parties settled long ago. Accordingly, Taxpayers' claims do not imperil the rights of "a bona fide purchaser for value."

Under the S.C. Constitution, Article X, Section 12, the bond proceeds cannot be used to create infrastructure for the treatment of sewer or wastewater disposal that benefits only a portion of the County, without a special tax district and a special assessment in that specific district and portion of the County. to pay for the sewer services that benefit that special tax district, which the County did not create (Complaint par. 20).

In summary, the S.C. Constitution Article X, Section 12, prohibits the expenditure of the bonds proceeds for sewer and wastewater treatment, when the whole County is obligated to pay for the bonds, but only a small portion of the County will benefit from the sewer and wastewater treatment. Furthermore, S.C. Code Ann. § 11-15-30 does not bar Taxpayers' claims or this Court's power to address this Constitutional violation.

County also relies on *South Carolina Public Interest Foundation v. Calhoun County Council*, 432 S.C. 492, 854 S.E.2d 836 (2021). *Calhoun County* addressed and interpreted the Capital Projects Sales Tax Act, an act that has nothing to do with this case. Similarly, *Calhoun County* had nothing to do with the S.C. Constitution article X, Section 12. In fact, the word "Constitution" is not even mentioned in the *Calhoun County* case. Accordingly, the application of the bond process statute of limitations in *Calhoun County* has no bearing on the case at bar.

### C. Taxpayers' claims are not barred by ripeness or mootness.

#### 1. Taxpayers' claims are ripe.

Taxpayers' claims are ripe. The County has already sold $25 million of the bonds (Complaint, par. 25). The County's stated plan is to use bonds proceeds to pay for sewer system in the lower part of the county in violation of the S.C. Constitution (Complaint, par. 13-15). They have committed the $25 million of bonds proceeds, or the vast majority of it, to pay for this installation of the sewer services in the lower part of the County (Complaint, par. 13-15). The violation Appellants-Respondents challenge is ripe for action by this Court because County has already committed to spend the money in violation of the S.C. Constitution (Complaint, par. 13-15). News accounts report that Phase Two (funded by are the sources) is nearly complete, and Phase Three (to be funded by the bond proceeds) is imminent (Complaint, par. 13-14).

#### 2. Taxpayers' claims are not moot.

Although the County has committed and allocated money for this sewer and wastewater treatment system for the lower part of the county, the money has not been spent (Order entered August 12, 2024, p. 23). Accordingly, this matter is not moot. However, if the Court were to determine that matter were moot, Taxpayers would assert the public importance exception to the doctrine of mootness, and that this matter is capable of repetition yet evading review. The analysis for the public importance exception to the doctrine of mootness compares closely to the doctrine of public importance standing, discussed in some detail above. When a matter is of such great public importance that the Court needs to decide the matter, the Court can decide the matter of great public importance even if it is technically moot.

Two factors that make a matter one of great public importance are: first, the action of public officials is allegedly unconstitutional, and second, it involves the spending of public money. "A resolution for future guidance is needed here because this case involves the conduct of government

entities and the expenditure of public funds, a prompt decision is necessary, and it is likely the situation will occur in the future." *Adams v. McMaster,* 432 S.C. 225, 236, 851 S.E.2d 703, 708 (2020). Accordingly, the doctrine of mootness does not bar the Court from ruling on this action.

**D. The Circuit Court Properly Ruled that It Possesses Subject Matter Jurisdiction.**

Taxpayers have alleged a violation of the South Carolina Constitution by public officials of Oconee County. (Complaint, par. 6, 16, 18, 30, 31). The courts are the institutions that address issues of constitutionality. Accordingly, this Court possesses subject matter jurisdiction.

## CONCLUSION

The Circuit Court properly issued a preliminary injunction. The Circuit Court properly ruled that Taxpayers possess both public importance standing and taxpayer standing. Taxpayers have stated a valid claim for violation of the South Carolina Constitution Article X, section 12. The Circuit Court then erred in reversing itself and granting the motion to dismiss. Accordingly, this Court should reverse the Circuit Court's subsequent reversal of its earlier opinion and should again impose the preliminary injunction against the constitutional violation

Respectfully submitted,

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