THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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

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.

INITIAL RESPONDENT'S BRIEF OF RESPONDENT-APPELLANT

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COUNTER-STATEMENT OF ISSUES ON APPEAL

I. Did the Circuit Court properly afford a presumption of validity to the Oconee County Council's determination that the intended use of the bond proceeds confers benefits upon all County citizens?

II. Did the Circuit Court properly consider Oconee County Resolution 2024-18?

III. Did the Circuit Court properly dismiss Plaintiffs' lawsuit with prejudice?

INTRODUCTION

This appeal implicates serious public policy and separation of powers issues. The case arises out of Respondent-Appellant Oconee County's (the "County" or "Oconee County") issuing bonds to raise funds for capital projects to benefit its constituents. Appellants-Respondents, consisting of the South Carolina Public Interest Foundation ("SCPIF") and individual plaintiffs (collectively, "Plaintiffs"), subsequently filed a lawsuit challenging the constitutionality of those bonds. Plaintiffs' case boils down to one question: whether the County may use the bond proceeds for planned sewer infrastructure improvements without first creating a special taxing district.

After initially granting Plaintiffs' requested temporary injunction, the Circuit Court reconsidered the parties' arguments. Ultimately, the Circuit Court properly vacated its prior order, dismissed Plaintiffs' lawsuit, and denied their request for injunctive relief, finding the County's bond ordinance did not violate the South Carolina Constitution, and therefore, the lawsuit failed to state a claim capable of supporting Plaintiffs' requested relief. Plaintiffs appealed the order issuing those rulings. Despite the Circuit Court reaching the correct conclusion regarding those issues, the County also cross-appealed two issues arising from the same order: the Circuit Court's failure to apply a statutory time-bar on Plaintiffs' lawsuit, and Plaintiffs' lack of standing to maintain their lawsuit.[1]

Even if Plaintiffs' lawsuit were not time-barred and they had standing to bring suit, which the County denies as set forth in its cross-appeal briefing, the Circuit Court properly dismissed the

[1] The County addresses the merits of each of these issues on cross-appeal in its Initial Appellant's Brief. The standing and statutory time-bar issues are threshold, dispositive issues in this lawsuit, and the Court may affirm the Circuit Court's dismissal of Plaintiffs' lawsuit without addressing the issues raised by Plaintiffs in this appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999).

lawsuit because it found that the County's intended use of the bond proceeds would confer benefits upon all citizens of Oconee County, which forecloses a constitutional violation with respect to the bond ordinance. Plaintiffs now take issue with the Circuit Court's finding, in part, because the Circuit Court considered the Oconee County Council's adoption of a bond resolution amending the bond ordinance's capital project descriptions and specifically confirming the Oconee County Council's legislative intent to confer benefits upon the County's citizens as a whole in relation to the intended allocation of the bond proceeds. When adopting the resolution, Oconee County Council considered sworn declarations before the legislative body detailing a long history of prior evidence considered by County Council showing the bond proceeds' intended use was required to generate needed County-wide development, to promote positive economic impacts, to safeguard ground water aquifers, and to protect Lake Hartwell from increasing pollution. As required by well-established South Carolina case law, the Circuit Court properly refrained from second-guessing legislative decisions made by public officials who were duly elected to make such decisions. This Court should affirm the Circuit Court's order dismissing Plaintiffs' lawsuit.

COUNTER-STATEMENT OF THE CASE AND THE FACTS[2]

The Oconee County Council unanimously enacted Oconee County Ordinance 2023-13 ("Bond Ordinance") in duly called meetings respectively held on: July 18, 2023, August 15, 2023, and September 5, 2023. (R. p. __ (Answer, Ex. B; Def.'s New & Revised Mot. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. D).) As authorized by the Bond Ordinance, on November 2, 2023, the County issued $25,000,000.00 in General Obligation Bonds, Series 2023

[2] The facts of this case are also set forth in the Statement of the Case and the Facts in the County's Initial Appellant's Brief, which is specifically incorporated herein by reference. The Counter-Statement of the Case and the Facts herein sets forth additional facts and procedural background specifically relevant to Plaintiffs' appeal.

(the "2023 Bonds"), (*see* R. p. __ (Answer, Ex. C)), for the purpose of "(i) designing, acquiring, constructing, installing, equipping or rehabilitating various capital projects, including wastewater improvements and related equipment, and other capital projects, together with all appurtenances necessary, useful or convenient for the maintenance and operation of the same, and (ii) paying the costs of issuance of the Bonds." (R. p. __ (Compl. ¶ 15, n.1).) The County filed a true, correct, and full record of the bond issuance proceedings with the Office of the Clerk of Court for Oconee County on November 8, 2023, where it was indexed in a special book kept for that purpose. (R. p. __ (Answer, Ex. A).)

More than four months later, on March 17, 2024, SCPIF, a non-profit entity, and the individual plaintiffs filed the underlying action seeking declaratory and injunctive relief (the "Action"). (R. p. __ (Compl. ¶¶ 1–2).) According to Plaintiffs, the County violated the South Carolina Constitution because the sewer infrastructure contemplated for funding under the Bond Ordinance would, in their estimation, only benefit a particular geographical section of Oconee County. As a result, Plaintiffs claim the County "cannot lawfully use the proceeds of the 2023 Bonds for wastewater improvements, and pledge the full faith, credit, and taxing power of the entire County." (R. p. __ (Compl. ¶¶ 16, 25, 29–31).) Should the County desire to provide the sewer services contemplated by the Bond Ordinance, Plaintiffs contend the County must first "create a special taxing district … [and] thereafter impose a uniform rate of taxation within the special taxing district." (R. p. __ (Compl. ¶ 20).)

On April 19, 2024, the County filed its answer, followed by a motion to dismiss on April 24, 2024. (R. p. __ (Answer; Def.'s Mot. to Dismiss).) Relevant to Plaintiffs' appeal, the County sought dismissal of the Action because, among other reasons, the use of the bond proceeds would benefit all County citizens, and thus Plaintiffs failed to state a viable claim. (R. p. __ (Def.'s Mot.

to Dismiss; Def.'s Mem. in Supp. of Mot. to Dismiss).)

Plaintiffs filed a motion for injunctive relief on July 3, 2024. (R. p. __ (Pls.' Mot. for Temp., Prelim., & Permanent Inj.).) However, Plaintiffs failed to support their motion with an affidavit (or any evidence, competent or otherwise), nor had Plaintiffs previously verified their Complaint.

The Honorable R. Lawton McIntosh held a hearing on July 17, 2024, and took the pending motions under advisement. (R. p. __ (Tr., July 17, 2024 Hearing).) Five days after the hearing, on July 22, 2024, over the County's objections (as set forth in its briefing and during the hearing) and without ever moving to submit an out-of-time affidavit, a single Plaintiff of the thirteen submitted an affidavit in support of Plaintiffs' motion for injunctive relief. (R. p. __ (Mann Aff.).)

On July 29, 2024, the Circuit Court issued a Form 4 Order on the requested injunctions in Plaintiffs' favor (R. p. __ (Form 4 Order, July 29, 2024)), and on August 9, 2024, issued a more detailed order granting a temporary injunction (R. p. __ (Order, August 9, 2024)). The County then moved for alteration or amendment of the Circuit Court's July 29 Form 4 Order and August 9 Order pursuant to Rules 52(b) and 59(e), SCRCP, specifically requesting that the Circuit Court vacate its orders and enter judgment in the County's favor as a matter of law. (R. p. __ (Def.'s Mot. for Alteration & Amendment of the Ct.'s Order; Def.'s New & Revised Mot. for Alteration & Amendment of the Ct.'s Prior Orders).)

On November 4, 2024, the Oconee County Council adopted Oconee County Resolution 2024-18 (the "Bond Resolution") amending the Bond Ordinance to enhance the specificity of its capital project descriptions while also reaffirming its prior legislative intent and findings concerning the Bond Ordinance's enactment. (R. p. __ (Def.'s Mem. in Support of its Mots. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. F).) In the Bond Resolution, the Oconee

County Council specifically confirmed its legislative intent that allocation of the bond proceeds "benefit[s] the County's citizens as a whole." Further, the Council "[r]esolve[d] to reaffirm its prior legislative intent and findings, when enacting Ordinance No. 2023-13, Council determined the Bond Ordinance, Bond Proceeds, and Bond Allocations as originally contemplated and adopted, would confer substantial benefits upon the County's citizenry as a whole." (R. p. __ (Def.'s Mem. in Support of its Mots. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. F at ¶¶ 1, 3).) After considering multiple sworn declarations in the record before Oconee County Council, the Bond Resolution specifically found: "[t]he Bond Allocations will confer benefits upon all County citizens in relation to engineering benefits" (including environmental benefits and improved economies of scale for utility recipients countywide, which are intended to attract commercial and/or industrial utility users) and other economic benefits. (R. p. __ (Def.'s Mem. in Support of its Mots. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. F at ¶ 3).)

On November 8, 2024, the County submitted the Bond Resolution amending the Bond Ordinance as an exhibit to its memorandum in support of its motions for alteration and amendment. (R. p. __ (Def.'s Mem. in Support of its Mots. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. F).)

A hearing was held on the County's motions for alteration or amendment before Judge McIntosh on January 30, 2025. (R. p. __ (Tr., January 30, 2025 Hearing).) Following the hearing, the Circuit Court sent counsel for the parties an email informing them that it erred in granting Plaintiffs' request for a temporary injunction, including that Plaintiffs did not have a likelihood of success on the merits, and was, therefore, granting the County's motion for reconsideration. (R. p. __ (February 3, 2025 Email from Judge McIntosh).)

On March 11, 2025, the Circuit Court entered an order granting the County's motion for

alteration and amendment, vacating its prior orders, denying Plaintiffs' motion for injunctive relief, and granting the County's motion to dismiss (the "March 11 Order"). (R. p. __ (March 11 Order).) Plaintiffs filed a motion to alter or amend on March 21, 2025, (R. p. __ (Pls.' Mot. to Alter or Amend)), which the Circuit Court denied in a Form 4 Order issued on March 25, 2025 (the "March 25 Order"). (R. p. __ (Form 4 Order, March 25, 2025).)

On April 24, 2025, Plaintiffs appealed the March 11 Order and the March 25 Order. On April 25, 2025, the County filed a cross-appeal with respect to the Circuit Court's rejection of two grounds for dismissal raised by the County: (1) the application of a statutory time-bar on Plaintiffs' lawsuit; and (2) Plaintiffs' lack of standing.[3]

STANDARD OF REVIEW

I. Dismissal of Plaintiffs' Lawsuit

Plaintiffs' appeal centers on the Circuit Court's dismissal of their lawsuit due to Plaintiffs' failure to allege facts sufficient to state a claim for relief. In reviewing a motion to dismiss, this Court applies the same standard of review as the trial court. *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876, 878 (2012) (citing *Doe v. Marion,* 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)). "A ruling dismissing a complaint for failure to state facts sufficient to constitute a cause of action must be based solely on allegations set forth in the complaint." *Id.* Dismissal is

[3] Although the County addressed Plaintiffs' lack of standing in its cross-appeal, Plaintiffs' assertion that the "Circuit Court properly ruled that Taxpayers possess both public importance standing and taxpayer standing" is misleading. (Pls.' Initial Apps.' Br., p. 26.) The Circuit Court made no such a ruling in either of the orders on appeal. To the contrary, in the March 11 Order, the Circuit Court expressly ***rejected*** Plaintiffs' attempt to invoke taxpayer standing. (R. p. __ (March 11 Order, p. 6).) While the Circuit Court previously ruled in its August 9, 2024 order granting a temporary injunction that Plaintiffs possessed so-called taxpayer standing, the Circuit Court vacated the August 9, 2024 order in its March 11 Order. (R. p. __ (March 11 Order, p. 14).) Plaintiffs did not move to reconsider the Circuit Court's ruling on taxpayer standing and did not raise it as an issue on appeal before this Court.

proper if the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to Plaintiffs, do not entitle Plaintiffs to relief on any theory. *See id.*

II. Denial of Plaintiffs' Motion for Injunctive Relief

The Court need not reach the merits of Plaintiffs' motion for injunctive relief because the Circuit Court's proper dismissal of Plaintiffs' lawsuit is dispositive. Nevertheless, to the extent Plaintiffs' appeal challenges the Circuit Court's denial of a temporary injunction, the County addresses the standard for reviewing that decision. Whether to grant temporary injunctive relief "is within the sound discretion of the trial court and will not be overturned absent an abuse of that discretion." *City of Columbia v. Pic–A–Flick Video, Inc.*, 340 S.C. 278, 282, 531 S.E.2d 518, 520 (2000). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Cnty. of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002).

ARGUMENT

I. The Circuit Court Properly Afforded a Presumption of Validity to the Oconee County Council's Determination that the Intended Use of the Bond Proceeds Confers Benefits Upon All County Citizens.

A. Because the Bond Ordinance Confers Substantial Benefits on All County Citizens, It Does Not Violate the South Carolina Constitution.

The crux of Plaintiffs' lawsuit is that the County violated Article X, § 12 of the South Carolina Constitution when it planned to expend bond proceeds on sewer infrastructure in the southern part of the County while pledging the full faith, credit, and taxing power of the entire County. (R. p. __ (Compl. ¶¶ 16, 25, 29–31).) In other words, Plaintiffs claim the planned projects will solely benefit citizens in the southern part of the County, and because the County did not create a special taxing district to provide and support such sewer services, the County has violated

Article X, § 12.[4] Section 12 provides as follows:

> No law shall be enacted permitting the incurring of bonded indebtedness by any county for sewage disposal or treatment . . . 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). Plaintiffs now contend the Circuit Court erred in finding that the entire County—not just the citizens in the southern part of the County—would benefit from the planned sewer infrastructure thereby rendering the Bond Ordinance constitutional. (Pls.' Initial Apps.' Br., pp. 12–15.)

The Circuit Court properly found the capital projects planned by the County would confer substantial benefits upon all County citizens, despite construction of the sewer infrastructure in only in the southern part of the County. (R. p. __ (March 11 Order, p. 14).) The decision of *Casey v. Richland County Council*, 282 S.C. 387, 390, 320 S.E.2d 443, 444 (1984) supports the Circuit Court's ruling. In *Casey*, this Court found that services provided in a particular area of a county, *e.g.*, the construction of sewer infrastructure in a specific location within a county, ***can*** confer benefits on ***all*** citizens of the county, even those residing outside the specific area where the services are provided. More specifically, the *Casey* Court found the sewer infrastructure in

[4] To avoid confusion due to misleading statements in Plaintiffs' Initial Appellants' Brief, the County is ***not*** required to create a special taxing district if the bond proceeds benefit all County citizens. (*See* Pls.' Initial Apps.' Br., p. 10.) The statute cited by Plaintiffs in connection with such suggestion merely provides the means for a county to create a special taxing district, if needed. *See* S.C. Code Ann. § 4-9-30(5). Plaintiffs also cite a case involving the creation of a special taxing district pursuant to Section 4-9-30(5). *See Ex parte Yeargin*, 295 S.C. 521 369 S.E.2d 844 (1988). Of interest, in *Yeargin*, the Court found an ordinance enacted for the purpose of providing sewer service to the unincorporated area of a county constitutional where it imposed a tax on all taxable property within the unincorporated area, even though not all citizens in the area would actually use the sewer service. *Id.* at 525, 369 S.E.2d at 846.

dispute, which was only built in a discrete unincorporated section of the county (as Plaintiffs also contend here) and where certain citizens already received sewer service elsewhere (as Plaintiffs contend here), conferred a benefit (improved sanitary conditions) upon all of Richland County's citizens. *Id.* at 390, 320 S.E.2d at 444;[5] *see also N. Carolina Elec. Membership Corp. v. White*, 722 F. Supp. 1314, 1337 (D.S.C. 1989) (finding that a tax was no less constitutional because the benefit conferred on plaintiffs' property from water and sewer improvements at issue was indirect and intangible).

In fact, as recognized by the Circuit Court, the County articulated in the Bond Resolution the specific benefits to be provided to all citizens of the County, including economic development studied and pursued by Oconee County for decades, countywide reduction of groundwater contamination, reduction of effluent into Lake Hartwell, improved economies of scale, attraction of commercial or industrial utility users, and fulfillment of long-recognized economic growth needs. (R. p. __ (March 11 Order, pp. 11–12).) Thus, while Plaintiffs assert the benefits received by the middle and northern parts of the County are "vague" or "general," such arguments prove simply untrue. (Pls.' Initial Apps.' Br., p. 13.) Plaintiffs also incorrectly refer to the county-wide benefits as "incidental" only to downplay the concept of intangible benefits throughout their initial brief. (*See* Pls.' Initial Apps.' Br., pp. 7, 10, 12–13.) While the County rejects the portrayal of the benefits motivating the Bond Ordinance's enactment as incidental or intangible, Plaintiffs'

[5] Plaintiffs attempt to distinguish *Casey* from the instant case on immaterial bases by noting that *Casey* did not implicate the constitutional provision at issue in this case, and that it involved the use of tax proceeds to build sewer infrastructure, not funds generated from the sale of bonds. (Pls.' Initial Apps.' Br., p. 14.) Neither distinction matters. Plaintiffs' block quote from *Casey* is misleading, as the language quoted addresses whether a surcharge constituted a "tax" or an "assessment," an inquiry that is inapplicable to this appeal. *See Casey*, 282 S.C. at 389–90, 320 S.E.2d at 444.

challenges based upon such reasoning are not rooted in actual precedent.

B. Plaintiffs Overstate the Holding of *Robinson v. Richland County Council*.

In support of their argument about the benefits provided by the intended use of the bond proceeds, Plaintiffs rely heavily on *Robinson v. Richland County Council*, 293 S.C. 27, 358 S.E.2d 392 (1987). They tout *Robinson* as the "only" case to address Article X, § 12 in a substantive manner and contend the *Robinson* Court "specifically rejected the argument of incidental benefit to the surrounding portions of the county." (Pls.' Initial Apps.' Br., p. 13.) Plaintiffs are incorrect, both in their suggestion that *Robinson* broadly addresses the extent to which benefits could be provided to all county citizens, and also with respect to the level of importance Plaintiffs place on *Robinson*.

The only reasoning from *Robinson* relevant to this appeal is that *taken alone*: "[an] increase in property values in the adjoining area because of the new sewer lines is not sufficient to bring adjacent landowners within the class of those who 'benefit' from the project." 293 S.C. at 32, 358 S.E.2d at 396. But, by contrast to *Robinson*, the Bond Ordinance extends benefits to all County citizens far beyond an incremental increase in property values, as evidenced by the Bond Resolution. (R. p. __ (Def.'s Mem. in Support of its Mots. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. F).) Here, the benefits to be provided by the proceeds of the Bond Ordinance are intentional, direct, and multi-faceted, unlike the unintended, indirect, and after-the-fact increase in property values examined in *Robinson* where the sewer infrastructure at issue singularly aimed to improve discrete sewer problems. *See* 293 S.C. at 29, 358 S.E.2d at 394.

C. The Oconee County Council's Acts Were Presumptively Valid and Plaintiffs Do Not Prove Otherwise.

Plaintiffs' arguments suffer a fatal flaw: they refuse to acknowledge the presumption of

validity and constitutionality afforded to the Bond Ordinance and the Oconee County Council's adoption of the Bond Resolution. Indeed, the decision of a legislative body is "presumptively valid," and it "is not the prerogative of the courts to pass upon the wisdom of County Council's decision." *Bear Enters. v. Cnty. of Greenville,* 319 S.C. 137, 140, 459 S.E.2d 883, 885 (Ct. App. 1995) (citing *Lenardis v. City of Greenville*, 316 S.C. 471, 472, 450 S.E.2d 597, 598 (Ct. App. 1994));[6] *see also S. Bell Tel. & Tel. Co. v. City of Spartanburg*, 285 S.C. 495, 497, 331 S.E.2d 333, 334 (1985) ("An ordinance is a legislative enactment and is presumed to be constitutional."); *Harper v. Schooler*, 258 S.C. 486, 496, 189 S.E.2d 284, 289 (1972) ("The question of public purpose is primarily for the legislature, and the court will not interfere unless the determination by that body is clearly wrong."). The burden is on taxpayers to prove unconstitutionality of a legislative enactment beyond a reasonable doubt. *S. Bell*, 285 S.C. at 497, 331 S.E.2d at 334 (citing *North Charleston Land Corp. v. City of North Charleston,* 281 S.C. at 497, 316 S.E.2d 137 (1984)).

To the extent Plaintiffs challenge the adoption of the Bond Resolution, the "controlling inquiry" is whether the Oconee County Council's determination that the intended use of the bond proceeds would confer substantial benefits on all County citizens "is so unreasonable as to impair or destroy [Plaintiffs'] constitutional rights." *Bear Enters.*, 319 S.C. at 140, 459 S.E.2d at 885. If the propriety of the Oconee County Council's legislative decision is even "fairly debatable," this Court cannot inject its judgment into a review of the decision but must leave that decision undisturbed. *Id.* Thus, the burden of proving the invalidity of the Bond Resolution is on Plaintiffs.

[6] Plaintiffs do not challenge the proposition of *Bear Enterprises* relied upon by the County. Instead, they take the position that the Bond Resolution (discussed below) is different from the zoning decision at issue in *Bear Enterprises*. (Pls.' Initial Apps.' Br., pp. 20–21.) Notably, another decision from this Court has refuted any notion that the standard set forth in *Bear Enterprises* applies only to zoning decisions. *See Baird v. Charleston Cnty.*, 333 S.C. 519, 511 S.E.2d 69 (1999).

See id. at 140, 459 S.E.2d at 886. To satisfy their burden, Plaintiffs must show the arbitrary and capricious nature of the County's acts. *See id.*; *Town of Scranton v. Willoughby*, 306 S.C. 421, 412 S.E.2d 424 (1991) (per curiam) ("The exercise of police power under a municipal ordinance is subject to judicial correction only if the action is arbitrary and has no reasonable relation to a lawful purpose." (citations omitted)).

Plaintiffs presented ***no evidence***, much less evidence beyond a reasonable doubt, that the County acted unconstitutionally when enacting the Bond Ordinance and its subsequent amendment *via* the Bond Resolution. Plaintiffs have presented no credible evidence contradicting the three declarations attached to the Bond Resolution, which confirm Oconee County's decision was based on historical studies and analysis of needs over "several decades" and articulate an array of specific benefits conferred upon all County citizens. (R. p. __ (Def.'s Mem. in Support of its Mots. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. F).) At best, Plaintiffs imply that they personally do not find the benefits articulated by the County sufficient to satisfy the South Carolina Constitution.

The Circuit Court properly found that "the legislative decision-making of the County Council was, at a minimum, 'fairly debatable,'" and therefore—as required by South Carolina law—refused to substitute its judgment for the Oconee County Council with respect to the County Council's decisions about the Bond Ordinance.[7]

[7] While Plaintiffs do not specifically raise an issue on appeal regarding the denial of their requested injunction, and thus, the Court should not consider the issue, Plaintiffs nonetheless claim they "will suffer irreparable harm without the injunction." (Pls.' Initial Apps.' Br., p. 15.) As noted above, the Court need not address the merits of Plaintiffs' requested injunctive relief because the Circuit Court's proper dismissal of Plaintiffs' lawsuit is dispositive. However, to the extent the Court considers this argument, the Circuit Court properly vacated the order initially granting a preliminary injunction because Plaintiffs failed to satisfy their burden to obtain an injunction. *See, e.g.*, *Cnty. of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002)

II. The Circuit Court Properly Considered Oconee County Resolution 2024-18.

For the first time on appeal,[8] Plaintiffs argue that the Circuit Court improperly considered and relied upon the Bond Resolution. (Pls.' Initial Apps.' Br., pp. 15–25.) Plaintiffs' attempt to paint the Bond Resolution as an after-the-fact justification for the Bond Ordinance, or alternatively stated, a belated attempt by the County to create legislative history. (Pls.' Initial Apps.' Br., pp. 15–25.) Plaintiffs' argument is not preserved for appellate review, but even if it were, the argument still fails. Plaintiffs rely on inapplicable decisional law while ignoring the Oconee County Council's ability to act and speak as a duly constituted legislative body in a manner expressly anticipated and authorized by the Bond Ordinance. Plaintiffs also overlook how their own procedural missteps explain the timing of the Bond Resolution's adoption.

A. Plaintiffs' Bond Resolution Arguments Are Not Preserved for Appeal.

Plaintiffs argue that it was "improper" for the Circuit Court to consider the Bond Resolution when issuing a decision about the Bond Ordinance, and further, that the Circuit Court "erred in allowing the admissibility of and granting credence to" the Bond Resolution and its

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("Generally, to obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and an inadequate remedy at law."). Plaintiffs are unable to establish a likelihood of success on the merits for all of the same reasons that Plaintiffs' lawsuit is subject to dismissal, as discussed in this brief and in the County's Initial Respondent's Brief in its cross-appeal. Plaintiffs also did not present evidence of any legally viable irreparable harm justifying the issuance of preliminary injunctive relief. Plaintiffs' argument that it would be "practically impossible to refund the wrongful taxation" is meritless for multiple reasons. For one, this non-specific allegation of ***potential*** harm is insufficient. *See Winter v. Nat. Res. Def. Council, Inc.,* 555 U.S. 7, 22 (2008) (requiring a demonstration that irreparable injury is likely in the absence of an injunction, not merely possible). Also, there is no evidence that the County could not easily issue refunds or credits for any overpayment of taxes, as counties do regularly. Therefore, the Circuit Court properly vacated the order granting Plaintiffs a temporary injunction and denied Plaintiffs' motion for preliminary injunction. (R. p. __, March 11 Order, p. 14).)

[8] *See* Section II.A, *infra*, which discusses why Plaintiffs' challenge to the Bond Resolution is not preserved for appellate review. To the extent the Court decides to consider the issue, Section II.B, *infra*, explains why the Circuit Court appropriately considered the Bond Resolution.

attached declarations. (Pls.' Initial Apps.' Br., pp. 24, 25.) Having never raised such issues below, Plaintiffs failed to preserve such arguments for appeal and cannot now raise them for the first time.

Four basic requirements exist to preserve an issue for appellate review. "The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 302–03, 641 S.E.2d 903, 907 (2007) (quoting Jean Hoefer Toal, *et al.*, *Appellate Practice in South Carolina* 57 (2d ed. 2002)).

Prior to this appeal, Plaintiffs never presented any argument concerning whether the Circuit Court could properly consider or rely upon the Bond Resolution, *i.e.,* Plaintiffs' second issue on appeal. While both sides referenced the Bond Resolution to the Circuit Court and while Plaintiffs had every opportunity to object to the Circuit Court's consideration of or reliance upon the Bond Resolution, whether in briefing filed with the Circuit Court or by raising an objection during oral argument on January 30, 2025, they failed to do so. (R. p. __ (Pls.' Mem. in Opp. to Def.'s Mot. to Alter or Amend p. 6; Tr., Jan. 30, 2025 Hearing).) In fact, as evidenced by Plaintiffs' March 21, 2025 Motion to Alter or Amend, Plaintiffs themselves relied upon the Bond Resolution in an attempt to craft certain allegations about the County's understanding of the applicable constitutional provision. (R. p. __ (Pls.' Mot. to Alter or Amend, p. 5).) While Plaintiffs apparently disagreed with the underlying evidence set forth by the Bond Resolution, they certainly did not object to the Circuit Court's reliance on the Bond Resolution itself. (R. p. __ (Pls.' Mot. to Alter or Amend, pp. 7–8).) Nor had they objected to reliance on the Bond Resolution prior to that motion.

Because they failed to present the Bond Resolution issue to the Circuit Court, Plaintiffs have not preserved the issue for this Court's review. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76,

497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." (citation omitted).

B. Even if Plaintiffs' Bond Resolution Arguments Were Preserved for Appellate Review, the Circuit Court Properly Considered the Bond Resolution.

1. The Bond Resolution Was a Valid Legislative Act.

The Oconee County Council, as a constituted legislative body, adopted the Bond Resolution to amend the Bond Ordinance's capital project descriptions and also to express Council's collective view about the Bond Ordinance's purposes. Resolutions are an acceptable means by which a legislative body can formally express its opinion or will. *See, e.g.*, 5 McQuillin Mun. Corp. § 15:2 (3d ed.) ("[A] resolution, generally speaking, is simply an expression of opinion or mind or policy concerning some particular item of business coming within the legislative body's official cognizance, ordinarily ministerial in character and relating to the administrative business of the municipality…."); 56 Am. Jur. 2d Municipal Corporations, Etc. § 280 ("[A resolution] is usually viewed as a formal expression of the opinion or will of an official body or a public assembly, adopted by vote."); 62 C.J.S. Municipal Corporations § 309 (describing resolutions as "declaratory of the will or opinion of a municipal corporation in a given matter").

In this way, the Oconee County Council in part used a resolution, a common tool for legislative bodies, to express its formal opinion about the Bond Ordinance and its will for the bond proceeds. Plaintiffs offer no statutory or decisional law that a constituted legislative body may not elaborate upon a previous legislative act. This is because no such precedent exists.

Plaintiffs instead rely upon wholly inapplicable decisional law. (Pls.' Initial Apps.' Br., pp. 21–24.) Plaintiffs' citations stand for the proposition that "courts will disregard the

subsequently expressed opinions of individual legislators as to the intent of the legislature as a whole when construing a statute." *Creswick v. Univ. of S.C.*, 434 S.C. 77, 83, 862 S.E.2d 706, 709 (2021). The County agrees that a court may not rely upon the statements of individuals interested in a legislative enactment to ascertain the purpose or scope of that legislative enactment. But that is not what occurred with the Bond Resolution, where the Oconee County Council assembled in a duly notice public hearing to speak collectively as a legislative body. Plaintiffs' case law, in fact, endorses such collective activity. In *Tallevast v. Kaminski*, the South Carolina Supreme Court instructed that courts are "bound by the language used [in the applicable law] and the reasonable interpretation of such language ***in the light of the manifest purpose of the Legislature as disclosed by the [applicable law], and other applicable statutes***." 146 S.C. 225, 228, 143 S.E. 796, 799 (1928) (emphasis added). Here, the Bond Ordinance and the Bond Resolution disclose the manifest purpose of the Oconee County Council.

Both Plaintiffs' case law and the Oconee County Council's adoption of the Bond Resolution to express itself comport with the enrolled bill doctrine. The enrolled bill doctrine provides that when a legislative act is passed, it "is not subject to impeachment by evidence outside the Act as enrolled to show it was not passed in compliance with law." *Med. Soc. of S.C. v. Med. Univ. of S.C.*, 334 S.C. 270, 278, 513 S.E.2d 352, 356 (1999); *see also Baird v. Charleston Cnty.*, 333 S.C. 519, 534, n.11, 511 S.E.2d 69, 77 (1999) ("[T]he court is not at liberty to inquire into what the journals of the two houses may show as to the successive steps which may have been taken in the passage of the original bill.") (citation omitted). As Plaintiffs' citations show, individual legislators cannot be interrogated about why or how a law passed. But also, Plaintiffs cannot challenge the Bond Resolution as improperly adopted.

Plaintiffs cannot successfully distinguish the Bond Resolution from the county council vote at issue in *Bear Enterprises v. County of Greenville*. (Pls.' Initial Apps.' Br., pp. 20–21.)[9] Plaintiffs acknowledge the *Bear Enterprises* vote to be a "legislative decision," but they suggest the Bond Resolution (specifically amending in part the Bond Ordinance as authorized) was not a legislative decision (and thus not entitled to deference) because it "was an after-the-fact justification of a decision made more than a year earlier." (*Id.*, p. 21.) But as discussed above and supported by the enrolled bill doctrine, the Bond Resolution was a validly adopted legislative decision by a constituted legislative body. Plaintiffs cite no contrary precedent or that, in any way, endorses Plaintiffs' notion that a legislative body cannot adopt resolutions articulating a County Council's reasoning, will, or planning. To find otherwise would foreclose a local government body from submitting counter evidence rebutting plainly incorrect and improper materials such as those submitted by Plaintiffs.

In sum, the Oconee County Council validly adopted the Bond Resolution as a collective expression of the constituted body's intent regarding the Bond Ordinance.

2. The Bond Ordinance Permitted the Bond Resolution.

As noted, the Bond Ordinance, which Plaintiffs integrally relied upon when pressing their claims for relief (*see, e.g.*, (R. p. __ (Compl. ¶ 27)), expressly contemplated that the Oconee County Council could make clarifications regarding the Bond Ordinance *via* subsequent resolution. The Bond Ordinance authorized revisions to the Bond Capital Project descriptions set forth in the Bond Ordinance by subsequent resolution of the Oconee County Council so long as such updates did not

[9] Section I.C, *supra*, addresses *Bear Enterprises*' declaration that so long as the exercise of legislative discretion is "fairly debatable," a court is constrained from substituting its judgment for that of the legislature's decision-making.

somehow alter the fixed face value or "*par* amount" of the Bonds (*i.e.*, $25,000,000.00). (R. p. __ (Def.'s New & Revised Mot. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. D, p. 8).) The Oconee County Council adopted the Bond Resolution to update the Bond Capital Project descriptions from the Bond Ordinance and provide more detailed descriptors for the Bond Capital Projects for which the County intended to use bond proceeds. (R. p. __ (Def.'s Mem. in Support of its Mots. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. F, p. 2, ¶ 1).)

When adopting the Bond Resolution, the Oconee County Council specifically "reaffirm[ed] its prior legislative intent and findings, when [] enacting Ordinance No. 2023-13," and again concluded "the Bond Ordinance, Bond Proceeds, and Bond Allocations, as originally contemplated and adopted, would confer substantial benefits upon the County's citizenry as a whole." (R. p. __ (Def.'s Mem. in Support of its Mots. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. F, p. 3, ¶ 3).)

With the Bond Resolution, the Oconee County Council acted pursuant to the Bond Ordinance (and specifically a provision about which Plaintiffs are silent). It also acted pursuant to Section 2–93 of Oconee County's Code of Ordinances. Section 2–93 authorizes how the Oconee County Council may act *via* ordinance and resolution. As relevant here, Section 2–93(e) provides that resolutions may contain "a statement of county policy or position concerning a single transaction or incident, and similar expressions of the will of the council concerning the day-to-day operation of county government." OCONEE CNTY, S.C., CODE OF ORDINANCES, § 2–93 (2006).

Plaintiffs' arguments fail to appreciate the relationship between the Bond Ordinance and Bond Resolution when they mistakenly parse the Circuit Court's February 3, 2025 email. (Pls.' Initial Apps.' Br., pp. 18–19.) Indeed, the Circuit Court's email to the parties' counsel reflected that the Bond Resolution was adopted pursuant to the Bond Ordinance amending the same and

reflected a continuation of the Oconee County Council's will for the Bond Ordinance. (R. p. __ (February 3, 2025 Email from Judge McIntosh).)

The Oconee County Council had the authority to clarify the Bond Ordinance in this way because the Bond Ordinance explicitly provided for it.

3. Plaintiffs' Conduct Created the Scenario for the Delayed Bond Resolution.

Plaintiffs attempt to discredit the Bond Resolution by attacking the timing of its adoption. (Pls.' Initial Apps.' Br., pp. 15–16.) The Oconee County Council adopted the Bond Resolution on November 4, 2024, after Plaintiffs commenced suit to challenge the Bond Ordinance, and the County quickly thereafter filed the Bond Resolution as an exhibit on November 8, 2024. (R. p. __ (Def.'s Mem. in Support of its Mots. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. F).) Plaintiffs ignore that their litigation conduct created the scenario for the Bond Resolution's delayed adoption and entry into the record.

Plaintiffs filed a motion for injunctive relief on July 3, 2024. (R. p. __ (Pls.' Mot. for Temp., Prelim., & Permanent Inj.).) However, Plaintiffs failed to submit a verification or affidavit in support of their motion. Rule 6(d), SCRCP, requires that, "[w]hen a motion is to be supported by affidavit, the affidavit shall be served with the motion." S.C. R. Civ. P. 6(d). And Rule 65(f), SCRCP, dictates that a motion for a remedial writ "shall be supported by affidavit or verified complaint." S.C. R. Civ. P. 65(f)(1). Because Plaintiffs filed their motion without a supporting affidavit and did not verify their Complaint prior to the hearing on July 17, 2024, the County had no reason to submit *before* the hearing any counter evidence into the record as Plaintiffs failed to make any evidentiary showing to rebut. (R. p. __ (Tr., July 17, 2024 Hearing).) If Plaintiffs had filed a timely affidavit, the County would adopted a counter-resolution (the only manner it could

submit such counterevidence) at that time and submitted the same no later than two days before the hearing, in compliance with Rule 6(d), SCRCP.

At the hearing on Plaintiffs' motion for injunctive relief, the County's counsel argued that the requested injunctions should be denied because, *inter alia*, Plaintiffs had submitted no competent evidence in support of their motion. (R. p. __ (Tr., July 17, 2024 Hearing, pp. 29–30, 35).) The County maintained that Plaintiffs had not met their evidentiary burden. *See Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) ("The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction."); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (describing "injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief"). This analysis was entirely correct.

During the hearing, Plaintiffs' counsel never requested to submit an out-of-time affidavit. At no point did Plaintiffs' counsel move for leave to file an out-of-time affidavit. And the Circuit Court never ruled that Plaintiffs could submit an out-of-time affidavit. Had it done so, the County would plainly have had a right to respond, which it did not receive. Nevertheless, a single Plaintiff submitted an affidavit five days after the July 17 hearing (in the absence of any motion, good cause showing, or order) over the County's twice-made standing objections, which were never overruled. (R. p. __ (Mann Aff.).) Specifically, the County objected to any untimely submittal of such evidence in its memorandum opposing Plaintiffs' motion for injunctive relief and again during the July 17 hearing. (R. p. __ (Def.'s Mem. in Opp. to Pls.' Mot. for Injunctive Relief, p. 7, n.7; Tr., July 17, 2024 Hearing, p. 54).) Plaintiffs ignored the requirement that they file a motion for enlargement of time under Rule 6(b)(2), SCRCP, showing good cause.

The one-page Affidavit and Verification by Plaintiff Jim Mann contained no evidentiary detail to support Plaintiffs' request for injunctive relief. Mr. Mann simply swore "that he is one of the Plaintiffs in this action, that he has read the Complaint and knows the contents thereof, and that the allegations in the Complaint are true to his own knowledge, except those matters therein stated on information and belief, and as to those items, he believes them to be true." (R. p. __ (Mann Aff.).) The only detail included in the complaint about Mr. Mann was his status, alongside the other individual Plaintiffs, as "citizens, residents, taxpayers, and registered electors of Oconee County." (R. p. __ (Compl. ¶ 2).) Plaintiffs offered no evidence that Mr. Mann had personal knowledge about the Bond Ordinance or how the various projects to be funded by bond proceeds would affect the County's residents. *See* S.C. R. Evid. 602.

Notwithstanding the County's express objection and in the absence of any motion on the part of Plaintiffs to supplement the record with a supporting evidentiary showing of good cause as to why the belated affidavit should be considered five days after the hearing, the Circuit Court relied upon Mr. Mann's post-hearing affidavit in granting injunctive relief. (R. p. __ (August 12 Order, p. 2).) The County moved to alter or amend, and the Circuit Court held a hearing on the County's motion on January 30, 2025. (R. p. __ (Def.'s Mots. for Alteration & Amendment of the Ct.'s Prior Orders; Tr., Jan. 30, 2025 Hearing).) Almost three months before the hearing, the County submitted the Bond Resolution as an exhibit in support of its motion. (R. p. __ (Def.'s Mem. in Support of its Mots. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. F).) Procedurally, this was the first opportunity for the County to submit counterevidence in response to Plaintiffs' out-of-time affidavit. And as discussed above, a resolution was the correct means by which the Oconee County Council could counter Mr. Mann's conclusory and incorrect affidavit. In sum, Plaintiffs' litigation tactics in this Action directly resulted in the timing of the Bond

Resolution, which they now purport to raise as a valid basis to disregard a legislative act of an elected body.

4. Plaintiffs Misunderstand the Declarations Attached to the Bond Resolution.

In addition to criticizing the Bond Resolution as a subsequent statement by legislators regarding their intent, Plaintiffs attack the three declarations attached to the Bond Resolution. (R. p. __ (Def.'s Mem. in Support of its Mots. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. F).) Plaintiffs incorrectly characterize the sworn declarations as belated statements by individuals about the meaning of the Bond Ordinance.

Plaintiffs cite a single case for their argument—*Kennedy v. South Carolina Retirement System*, 345 S.C. 339, 549 S.E.2d 243 (2001). *Kennedy* is inapplicable to the declarations at issue here. *Kennedy* concerns an individual testifying in court as the author of a legislative amendment about the legislature's intent. *Id.* at 353–54, 549 S.E.2d at 250–51. By contrast, the three declarations here were attached to the Bond Resolution; they were not separate exhibits prepared for the Circuit Court. The declarations were considered and accredited by the Oconee County Council when, in exercising its legislative discretion, it adopted the Bond Resolution. The declarations described the anticipated benefits of the projects to be funded by the bond proceeds authorized by the Bond Ordinance. The declarations were not made by authors of the Bond Ordinance or Bond Resolution. Instead, they were from a professional engineer, a long-time director of economic development in Oconee County, and the Oconee County Administrator. (R. p. __ (Def.'s Mem. in Support of its Mots. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. F).) The declarations considered by the Oconee County Council are analogous to witnesses' testimony at congressional hearings, to help the legislative body explore a specific topic or pending

legislation. They are entirely distinct from *Kennedy*, which reviewed judicial testimony made in court.

Thus, just as the Circuit Court properly considered the Bond Resolution, it permissibly reviewed the sworn declarations attached to the Bond Resolution. For all of the reasons discussed above, the Court should affirm the Circuit Court's consideration of the Bond Resolution and its ultimate ruling that the Bond Ordinance did not violate the South Carolina Constitution.

III. The Circuit Court Properly Dismissed Plaintiffs' Lawsuit with Prejudice.

A. Plaintiffs' Third Issue on Appeal Is Not Preserved for Appellate Review.

Plaintiffs argue that the Circuit Court erred in dismissing their lawsuit with prejudice because they should have been entitled to conduct further discovery. (Pls.' Initial Apps.' Br., pp. 25–26.) This argument is not preserved for appeal.

The Circuit Court issued its order, which dismissed Plaintiffs' lawsuit with prejudice on March 11, 2025. (R. p. __ (March 11 Order).) If Plaintiffs had wanted to object to dismissal with prejudice, they could have done so in their motion to alter or amend, which they filed on March 21, 2025. (R. p. __ (Pls.' Mot. to Alter or Amend).) However, Plaintiffs failed to do so. Therefore, because Plaintiffs did not raise the dismissal with prejudice issue to the Circuit Court and provide the Circuit Court an opportunity to rule on the issue, Plaintiffs' third issue on appeal is not preserved for this Court's review. *See Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733.

B. Even if Plaintiffs' Third Issue on Appeal Were Preserved for Appellate Review, Amendment of Plaintiffs' Complaint Would Have Been Clearly Futile.

While Plaintiffs do not explicitly state why they believe that dismissal with prejudice was erroneous, they suggest that they should be entitled to further discovery, contending that the Circuit Court erred in "denying" them a "fair chance at discovery" when the County submitted multiple

documents and exhibits. (Pls.' Initial Apps.' Br., pp. 25–26.)

Even if Plaintiffs' argument were preserved for appeal, the argument is inapt because Plaintiffs fail to recognize that dismissal without prejudice would not necessarily entitle them to further discovery. Dismissal without prejudice would simply provide Plaintiffs the opportunity to amend their Complaint to set forth a set of facts upon which relief could be granted. *See Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019) (addressing a plaintiff's opportunity to file and serve an amended complaint when a complaint is dismissed without prejudice for failure to state facts sufficient to constitute a cause of action).

In any event, dismissal of Plaintiffs' lawsuit was not erroneous because amendment of Plaintiffs' complaint would have been futile. *See Alterna Tax Asset Grp., LLC v. York Cnty.*, 434 S.C. 328, 334, 863 S.E.2d 465, 468 (Ct. App. 2021) (citing *Skydive Myrtle Beach*, 426 S.C. at 189–90, 826 S.E.2d at 592–93) (affirming dismissal of complaint with prejudice because any amendment would have been futile). Plaintiffs' lawsuit involves purely legal issues; there are no facts in dispute that require further factual framing. *See id.* Tellingly, Plaintiffs have not identified any proposed amendments or additional facts which—if added to their Complaint—would salvage their lawsuit from dismissal.[10] *See Spence v. Spence*, 368 S.C. 106, 131, 628 S.E.2d 869, 882 (2006) (explaining if the plaintiff "fails to present additional factual allegations or a different theory of recovery which may give rise to a claim upon which relief may be granted, the appellate court may in its discretion affirm the dismissal of the complaint with prejudice" (citation omitted)).

Because Plaintiffs' lawsuit involves pure questions of law, any amendment would be

[10] Likewise, Plaintiffs have not identified any discovery they propose conducting or how any such discovery would permit them to satisfy their burden at the pleadings stage. Presumably, Plaintiffs would not attempt to depose any legislators or executives given their arguments in Sections II.B and II.C of their brief. (Pls.' Initial Apps.' Br., pp. 21–25.)

clearly futile, and therefore, this Court may affirm the dismissal of Plaintiffs' Complaint with prejudice. *See Skydive Myrtle Beach*, 426 S.C. at 192, 826 S.E.2d at 594.

CONCLUSION

For the reasons set forth above, Respondent-Appellant Oconee County respectfully requests that the Court affirm the Circuit Court's dismissal of the Action with prejudice and denial of Plaintiffs' request for injunctive relief, and further hold that the County's Bond Ordinance does not violate the South Carolina Constitution.

Respectfully submitted,

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