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THE STATE OF SOUTH CAROLINA

In the Supreme Court

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 Merring, 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,

PROPOSED AMICUS BRIEF OF THE SOUTH CAROLINA WATER QUALITY ASSOCIATION IN SUPPORT OF RESPONDENT-APPELLANT

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I. Interest of Amicus Curiae

The South Carolina Water Quality Association (SCWQA) is an association of 46 local governments, wastewater authorities, and water utilities that operate public water and sewer utilities in South Carolina. The SCWQA members are dedicated to affordably and cost-effectively protecting public health and the environment.

The provision of water and sewer service statewide is a complex undertaking. Few public utilities operate in complete isolation. The norm is a comprehensive arrangement of interconnected water and sewer systems because the drivers of water and sewer service (especially topography) do not respect political jurisdictional boundaries. The time-bar in S.C. Code Ann. § 11-15-30 affects bonds issued by local governments statewide. The constitutional question at issue directly affects counties and every other public water and sewer utility through our interconnections with county water and sewer systems. Thus, all of the SCWQA members have an interest in the ability of counties to continue to be necessary partners in the provision of critical water and sewer services statewide.

Without the ability of counties to use debt funding to contribute to the interwoven and complex statewide water and sewer infrastructure, the rest of the state's public water and sewer utilities will be hindered in their ability to provide service and, in many instances where service is still possible, it will be at greater cost and/or lower reliability.

For these reasons, the SCWQA has an interest in the above captioned case and requests the Court to consider its brief.

II. Summary of Argument

The time-bar created in S.C. Code Ann. § 11-15-30 bars actions challenging the use of local government bonds more than 20 days after the record of the bond's issuance is filed with the county clerk. The statute was designed to provide certainty and stability in the public bond market and, in the process, lower borrowing costs for South Carolina's local governments and citizens statewide. The challenge at issue in this case is clearly time-barred and must be dismissed. A decision to the contrary will undermine the public bond market in the state to the detriment of South Carolinians.

A ruling upholding the statutory time bar obviates the need for the Court to address the constitutional question presented. However, if the Court elects to address the constitutional question, it should hold that Article X, Section 12 of the South Carolina Constitution does not prohibit counties from using general bonds to fund water and wastewater projects when, as the lower court determined, the county developed a factual record demonstrating widespread benefits to the county from the projects in question.

III. Argument

- A. The time bar created in section 11-15-30 is essential to allow public utilities to timely and cost-effectively undertake public water and sewer projects that are critical to protect public health and the environment and support community growth and development.**

Public water and wastewater utilities in South Carolina face historic demands to modernize water and sewer facilities, replace lead and galvanized water lines, install extraordinarily expensive controls for emerging contaminants, as well as to provide treatment capacity for the unprecedented growth South Carolina is experiencing.

These historic public infrastructure upgrades and system expansions statewide will require debt financing given the speed that the regulatory requirements demand as well as the historic rate of growth in South Carolina.

We cannot overemphasize the need for debt financing for water and sewer infrastructure needs statewide.

The General Assembly established certainty for bondholders providing financing for local government projects in South Carolina through S.C. Code Ann. § 11-15-30. Section 11-15-30 provides:

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 Sections 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.

This section articulates a policy decision that challenges “be commenced on account of the issuance” of local bonds within twenty days of the date of the filing and indexing of the bond proceedings with the office of the clerk of the respective county. *Id.* Section 11-15-30 therefore provides finality to challenges “on account of the issuance of bonds” to local governments in the State. This Court has held that this bar to challenges includes “the underlying factual basis for the bond or the procedure employed for its passage.” *Berry v. McLeod*, 329 S.C. 435, 444 (1997).

The finality established by the section makes bonds with local governments in South Carolina safe financial investments for bondholders as any challenges associated with the legality of their structure must be raised within twenty days. The statutory section states that bonds “in the hands of a bona fide purchaser for value, shall be incontestable.” S.C. Code Ann. § 11-15-30. Bondholders understand and agree to the nature of the water and sewer project they are financing

and the risks associated with the project and, accordingly, the return on their investment. For local governments, the record of proceedings on whether to issue bonds memorialize these terms, and the General Assembly provided a cause of action to challenge them for twenty days after they are filed with the county clerk. As a result, the use of bond proceeds is clear at the time of their issuance and in the record filed before the county clerk. Allowing an outside party to challenge the agreed-upon use of the bond outside the window the General Assembly provided, undermines the General Assembly's goal of providing bondholders security in their investment in local governments across the State.

Likewise, the finality the statute provides creates certainty and lowers risk for local governments making large but essential public investments. Water and wastewater projects take years to plan, design, finance, and construct. When bonds are necessary for these projects to proceed, local governments create extensive public records detailing the need and cost of the project. For example, the bonds at issue in this case went through public debate before the Oconee County Council before a bond ordinance was passed. Section 11-15-30 grants local governments certainty to rely on the funding needed to carry out these projects over years, if not decades, by limiting challenges to the bonds to a discrete window shortly after the public record is filed with the county clerk.

Interpreting section 11-15-30 to authorize the challenge of the publicly-noticed use of bond proceeds outside the window authorized by the General Assembly undermines the General Assembly's policy choice and the general ability for local governments in the state to sell bonds. Such a ruling would undermine the ability of public utilities in the State to issue debt to keep up with water and sewer regulatory and capacity demands. This interpretation will destabilize and

inject risk into the municipal bond market. Higher risk in the bond market will cause bond yields to rise and make public infrastructure investments more expensive.

Such an outcome means: (1) essential public infrastructure upgrades and improvements will take longer to design and construct because they will be more difficult and expensive to finance; and (2) ratepayers, the residents and businesses of South Carolina, will pay even more to finance the necessary infrastructure improvements and expansions. These outcomes will hamper economic development in the state and drive up costs for essential services statewide – all contrary to the General Assembly’s intention in section 11-15-30.

The SCWQA accordingly requests that the Supreme Court reverse the Circuit Court’s interpretation of section 11-15-30 and dismiss the Appellants-Respondents’ action.

B. Article X, Section 12 of the South Carolina Constitution does not bar the debt funds at issue in this case given the widespread and diverse benefits the lower Court found the County had demonstrated.

We believe that the application of the statutory time bar moots the appeal and, consequently, there is no need for the Court to consider the constitutional question presented. That said, the lower Court correctly found that the County had presented substantial evidence of the general public health and environmental benefits to the County beyond the limited area the public improvements at issue will be physically placed. This is not surprising given the many general benefits of public water and sewer service.

Article X, Section 12 of the South Carolina Constitution states:

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.

This narrow provision prevents counties in the state from providing a “service or facility benefitting *only* a particular geographical section of the county” using general debt financing. *Id.* (emphasis added). The term “only” is defined as “solely” or “exclusively.” *Only*, Merriam-Webster.com Dictionary (available at: <https://www.merriam-webster.com/dictionary/only>) (last visited Oct. 15, 2025); *see also Only*, Black’s Law Dictionary (5th ed. 1979) (defining “only” as “solely”).

Thus, this narrow prohibition does not apply where the service or facility provides benefits outside of the geographic area in which the service or facility is located. That is the case here as the lower Court determined that the County had provided substantial evidence that there were public benefits outside of the area in which the sewer facilities would be installed.

This narrow interpretation makes sense because, where there are no general public benefits to a water or sewer infrastructure project, then water and sewer infrastructure could enrich private property owners. The provision of water and sewer to one part of the county does not automatically, however, have such an implication. For example, if any provision of water and sewer only conveyed a local benefit, we would not need mandatory connection laws. The reality is that public water and sewer are often more expensive for (i.e. do not enrich) landowners such that water and sewer utilities have to be able to compel them to connect and pay the associated monthly fees (that they previously avoided by using on-site systems).

A narrow interpretation of Article X, Section 12 will preserve the essential ability for counties to timely and cost-effectively finance critical water and sewer projects that provide benefits beyond the geographical area that the service or facility is provided/installed within.

This framework is particularly appropriate for water and sewer upgrades that are designed to provide general public health and environmental benefits. The provision of wastewater services ensures that wastewater from a residence or facility is appropriately treated and prevents the proliferation of less effective and generally poorly maintained, but less expensive, septic systems which at high densities routinely contaminate groundwater and nearby surface water – which flow throughout the counties. The provision of public water services also provides countywide benefits by ensuring that residences and facilities receive water that is routinely tested and meets all regulatory requirements. This service prevents the unexpected introduction of pollutants or contaminants into the drinking water of a building or facility that serves the public, as well as jeopardizing the health of citizens who would otherwise drink water from vulnerable on-site well systems. In recognition of these public health and environmental benefits, water and wastewater utilities across the state are authorized to force mandatory connections to their systems. In such cases, the property owner may see no individual benefit but is nonetheless forced to connect to the system for the good of the wider community.

In our members' experience, like the projects proposed to be financed in this appeal, the greatest benefits associated with the provision of county public water and sewer service are the general benefits to the county rather than to the individual connecting to the system.

SCWQA agrees that public money and general bonds shouldn't be used to fund facilities or services that carry purely private benefits. Reading Article X, Section 12 narrowly, as written, will continue to prohibit the use of general bonds adopted to pay for services or facilities solely benefiting individuals or specific geographic areas. For example, the extension of a sewer line towards a tract of land that is not suitable for septic systems, e.g. because the ground will not percolate, will provide the property owner a substantial individual benefit as the sewer extension

effectively allows the development of the land. In this scenario, absent a county making a showing of general benefits to the County, Article X, Section 12 would attach and a county would need to impose a special assessment, tax, or service charge to fund such local improvements “benefitting *only* a particular geographical section of the county.” (emphasis added).

Article X, Section 12 does not attach when a county has provided evidence that a water or sewer facility or service funded with general bonds will provide general benefits to the county and not “only” benefit the area served by the facility. The Court should not disturb the lower Court’s finding that the areas in which the proposed sewer projects will be located will not solely benefit from those projects and affirm the dismissal of Appellants-Respondents’ complaint.

IV. CONCLUSION

The SCWQA requests that the Court hold that the Appellants-Respondents’ action is time-barred under S.C. Code Ann. § 11-15-30 and dismiss their complaint without reaching the constitutional question. Alternatively, if the Court elects to reach the question under Article X, Section 12 of the South Carolina Constitution, it should find that the Circuit Court was correct in its determination that the prohibition therein does not attach to the sewer project at issue because the County demonstrated general benefits beyond the area those projects will be located.

Respectfully submitted,

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