

THE STATE OF SOUTH CAROLINA
In the 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

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S.C. SUPREME COURT

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.

**RECORD ON APPEAL
VOLUME I**

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FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP3700202

South Carolina Public Interest Foundation, et al
PLAINTIFF(S)

Oconee County et
DEFENDANT(S)

Submitted by: **R. Lawton McIntosh**

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

PLAINTIFF DID NOT MEET THE REQUIREMENTS OF RULE 65 BUT HAS SUBSEQUENTLY DONE SO. THE ISSUE IN THIS CASE IS OF SUCH IMPORTANCE THAT THE COURT PROCEEDS TO MAKE A DETERMINATION. BASED UPON OUR STATE CONSTITUTION, SC CODE ANN SECTION 11-15-30, AND OUR CASE LAW, THE COUNTY MAY NOT USE BOND REVENUES FOR SEWER PROJECT(S) THAT WILL ONLY BENEFIT THE SOUTHERN PART OF THE COUNTY WHILE TAXING THE ENTIRE COUNTY. TO MEET OUR CONSTITUTION'S MANDATE, THE COUNTY MUST CREATE A SPECIAL TAX DISTRICT SPECIFIC TO THE AREA THAT STANDS TO BENEFIT.

THIS CASE IS NOT ABOUT THE" ISSUANCE" OF BONDS WHICH WOULD BE BARRED BY § 11-15-30, BUT RATHER CONCERNS THE ISSUE OF THE" USE" OF BOND MONEY FOR UNCONSTITUTIONAL PURPOSES AFTER THE ISSUANCE OF THE BOND. THEREFORE, PLAINTIFFS REQUEST FOR A TEMPORARY INJUNCTION IS GRANTED PENDING FURTHER ORDER OF THE COURT. FURTHER, THIS MATTER NEEDS TO BE EXPEDITED FOR TRIAL. THE PARTIES HAVE STIPULATED AND AGREED THAT THIS MATTER WITH PROCEED AS A NON-JURY MATTER.

PLAINTIFF SHALL PUT UP A BOND IN THE AMOUNT OF \$1,000 WITH THE CLERK OF COURT SUBJECT TO THE RIGHT OF THE COUNTY TO DEMAND PAYMENT OF, AND ESTABLISH ENTITLEMENT TO, A HIGHER BOND AMOUNT. PLAINTIFF'S HAVE BOTH TAXPAYER AND IMPORTANT ISSUE STANDING.

MR. CARPENTER IS TO PREPARE A FORMAL ORDER THAT IS CONSISTENT WITH THIS ORDER, BRIEFS, AND ARGUMENTS MADE. HE IS TO PROVIDE THE ORDER TO OPPOSING COUNSEL PRIOR TO SUBMITTING IT TO THE COURT.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount

should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2155	
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Oconee Common Pleas

Case Caption: South Carolina Public Interest Foundation , plaintiff, et al VS Oconee County
Case Number: 2024CP3700202
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-07-29 09:18:22 page 4 of 4

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

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,
Plaintiffs,

v.)

Oconee County,
Defendant.

IN THE COURT OF COMMON PLEAS

IN THE 10TH CIRCUIT

CASE NO: 2024-CP-37-00202

**ORDER GRANTING
TEMPORARY INJUNCTION**

This matter comes before the Court on the Defendant's Motion to Dismiss, Plaintiffs' Motion for Temporary Injunction, and Plaintiffs' Motion to Compel. The Court heard arguments on July 17, 2024. James G. Carpenter represented the Plaintiffs. William W. Wilkins and Lane Davis represented the Defendant.

Based on the pleadings, filings, arguments of counsel, and the authorities cited, the Court makes the following rulings:

1. The Court grants Plaintiffs' Motion for Temporary Injunction, pending further Order of the Court.
2. The Court grants Plaintiffs' Motion to Compel, and grants Defendant 30 days from the entry of this Order to respond to the Plaintiffs' Interrogatories, Requests for Production, and Requests for Admission.
3. The Court denies Defendant's Motion to Dismiss.

STATEMENT OF THE CASE

Plaintiffs filed a Complaint March 18, 2024. Defendant served an Answer April 19, 2024. Defendant filed a Motion to Dismiss April 24, 2024. Plaintiffs filed a Motion to Compel on June

29, 2024. Plaintiffs filed a Motion for Temporary, Preliminary, and Permanent Injunctions on July 3, 2024. The Court held a hearing and took the motions under advisement. The Court issued a Form 4 Order July 29, 2024.

At the hearing, the Court noted that the Plaintiffs had failed to file an affidavit in support of their motion for injunctive relief, as required by SCRCP 65(f)(1). On July 22, 2024, Plaintiffs filed the Affidavit of Plaintiff Jim Mann verifying the allegations of the Complaint. Plaintiffs submitted the Affidavit in support of the motion for injunctive relief.

The Court finds that despite Plaintiffs' failure to file the affidavit earlier, this case raises issues of great public importance, including the upholding of the Constitution, unlawful actions of public officials, and the misuse of public monies. Accordingly, the Court will proceed to make a determination on the issues.

STATEMENT OF THE FACTS

For purposes of the Plaintiffs' motion for injunctive relief, the Court finds the following facts from the verified Complaint. Oconee County has implemented two phases of a three-phase sewer project in the Southern part of the County. Phases one and two were paid for primarily through state and federal grants and appropriations from general County funds. This case addresses improvements or expansion of wastewater treatment beyond phase two funded by County General Obligation bonds.

On November 2, 2023, the County issued \$25,000,000 of General Obligation Bonds, Series 2023 (the "2023 Bonds") 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.” *See* Official Statement for 2023 Bonds, Cover.¹

The South Carolina Constitution, Article X, Section 14 provides that counties “shall have the power to incur indebtedness in the following categories and in no others: (a) General obligation debt; and (b) Indebtedness payable only from a revenue-producing project or from a special source as provided in subsection (10) of this section.” Section 14(2) further provides that such bonds may be issued only “upon such terms and conditions as the General Assembly shall prescribe by general law within the limitations set forth in this section and Section 12 of this article.”

Article X, Section 12 of the State Constitution provides:

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.

Id.

This section recognized the counties’ enhanced powers and the restriction on the creation of new special purpose districts, all of which arose from the Home Rule amendments to the State Constitution in the 1970s. Following the Home Rule amendments on March 7, 1973, the General Assembly was bound by Article VIII, Section 7, which prohibited laws applicable only to a specific county. The same section empowered the Legislature to enact general laws granting counties “the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided.”

¹ Available at <https://emma.msrb.org/P21737547-P21334508-P21768579.pdf>

Should a county want to provide sewer services, funded by bonds, and support such activities with a tax or special assessment, the county is required to create a special taxing district under S.C. Code Ann. § 4-9-30(5)(a). Thereafter, the County may impose a uniform rate of taxation within the special taxing district. *See Ex Parte Yeargin*, 295 S.C. 521, 523, 369 S.E.2d 844 (1988) (upholding Anderson County’s special tax district for sewer service).

Article X, Section 12 expressly prohibits “bonded indebtedness by any county for sewage disposal . . . 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.” *Id.*

The municipalities of Seneca, Walhalla, and Westminster have the exclusive right to provide sewer services within their municipal limits. The citizens of those cities will not benefit from the new sewer services.

The rural, mountainous, Northern part of the County is served primarily by private septic tanks, septic fields, and septic systems. The rural, mountainous, Northern part of the County will not benefit from the new sewer services in the Southern part of the County.

The upscale neighborhoods around Lake Keowee and Lake Jocassee are served primarily by privately owned sewer systems. Those neighborhoods will not benefit from the new sewer services in the Southern part of the County.

Accordingly, the proposed new sewer services will only benefit a “particular geographical section of the [C]ounty.” The County may not use the bond revenues for sewer projects that will benefit only the Southern part of the county while taxing the entire County.

To meet our Constitution’s mandate, the County must create a special tax district specific to the area that stands to benefit.

“Article X, § 12 of the Constitution *requires* the charge be assessed only on those who benefit from the new facilities.” *Robinson v. Richland Cnty. Council*, 293 S.C. 27, 32, 358 S.E.2d 392 (S.C. 1987) (emphasis in original).

Ordinance 2023-13, enacted September 5, 2023, (the “Bond Ordinance”) recites that “[t]he full faith, credit and taxing power of the County are irrevocably pledged to the payment of the principal and interest of the [2023 Bonds] as they mature and to create a sinking fund to aid in the retirement and payment thereof. There shall be levied and collected annually upon all taxable property in the County . . . an ad valorem tax, without limit as to rate or amount, sufficient for such purposes.” Bond Ordinance, § 11.

The County could possibly use the bond proceeds for other lawful purposes that benefit the whole county, but not the planned sewer or wastewater services benefiting only the Southern part of the County.

The County’s stated intent to use the 2023 Bond proceeds for wastewater improvements, and pledge the full faith, credit, and taxing power of the entire County, violates the State Constitution, Article X, Section 12, unless the County imposes and pledges “a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]” in an area of the County that benefits from the new sewer service, and that does not encompass the municipal boundaries of Seneca, Walhalla, and Westminster, the rural, mountainous Northern part of the County, or the neighborhoods around Lake Keowee and Lake Jocassee served by private sewer systems.

LEGAL DISCUSSION

I. Plaintiffs Possess Public Importance Standing and Taxpayer Standing.

The individual Plaintiffs 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. Plaintiffs have asserted both taxpayer standing and public importance standing in this action.

A. Plaintiffs Possess Public Importance Standing.

When a plaintiff raises an issue of great public importance, particularly a Constitutional violation, a court may grant a plaintiff standing to address the issue. South Carolina courts 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. Richland 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 public officials and the misuse of taxpayer 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).

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*, the Supreme 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).

The Supreme Court rendered a similar holding in *City of Columbia v. Sanders*, 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.

97 S.E.2d 213 (emphasis added). The Supreme Court repeated this holding in *State ex rel McLeod v. McGinnis*, 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.” 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 the 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).

B. Plaintiffs Possess Public Importance Standing to Challenge an *Ultra Vires* Act.

Plaintiffs possess standing as citizens and taxpayers to seek declaratory and injunctive relief for an *ultra vires* act. One clear statement of this rule of standing is Justice Toal's dissenting opinion in *Newman v. Richland County Historic Preservation Comm'n.*, 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*, 16 Ohio App. 3d 30, 16 Ohio B. Rep. 32, 474 N.E.2d 336 (Oh. App. 1983). "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. 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.

* * *

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).

An authoritative case on this kind of standing is *Baird v. Charleston County*, 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.” 333 S.C. 519, 531, 511 S.E.2d 69, 75.

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.

333 S.C. 519, 531, 511 S.E.2d 69, 75-76.

The issue Plaintiff’s raise in this case—allegations of an unconstitutional act—is also an important public issue, which calls for judicial intervention.

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.

The individual Plaintiffs allege standing as citizens and taxpayers. They allege that the County engaged in an *ultra vires* acts, in violation of the Constitution. 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, these Plaintiffs should be granted standing to contest the unconstitutional act in this case; there is a profound public interest involved. A judicial decision is necessary for future guidance, "and any further determination of imminent prejudice is unnecessary." *Id.*

In the case at bar, Plaintiffs 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). The County's alleged constitutional violation makes this an issue of great public importance.

C. Plaintiffs 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*, the Supreme Court recognized taxpayers' standing to contest allegedly illegal or *ultra vires* actions of a city. 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. 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.

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).

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). For 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, the individual Plaintiffs possess standing to seek an injunction against illegal acts affecting public funds and public assets.

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..

The 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. Thus, under *Shillito*, the individual Plaintiffs, as taxpayers, have standing to seek declaratory and injunctive relief against an illegal collection and expenditure of public funds.

In *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985), 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. 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.” 285 S.C. at 480.

Myers v. Patterson, 315 S.C. 248, 433 S.E.2d 841 (1993) has a similar holding. A plaintiff had standing as a taxpayer to contest the allegedly unlawful transfer of money collected for one purpose to a fund set up to address another purpose. The 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 nevertheless 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*, 342 S.C. 515, 520, 537 S.E.2d 299, 301 (Ct. App. 2000). Appellants have standing, under the common law, as taxpayers and citizens to seek declaratory and injunctive relief against an unconstitutional act of the County.

Plaintiffs do not need a statutory right of action to challenge an *ultra vires* act. Plaintiffs’ 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. Plaintiffs 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).

The Defendant County has decreed that the full faith and credit of the County will be pledged in repayment of the bonds. Accordingly, the tax proceeds of the County will be applied to the bonds, which means that all the individual Plaintiffs, 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. Accordingly, the individual Plaintiffs possess standing as taxpayers, citizens and residents of Oconee County, and based upon the great public importance of the issues this action raises.

D. Defendant's Cases Are Distinguishable.

Against this long list of cases, Defendant relied primarily on two cases: *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 198 (2008), and *Fremantle v. Preston*, 398 S.C. 186, 193, 728 SE2d 40, 44 (2002). The two cases on which the Defendant 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 Constitution. This case involves the direct misuse of taxpayer money.

ATC South involved a citizen objecting to a regulatory decision by a local government, a zoning issue for the placement of a cell phone tower. It did not involve 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 *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 a 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.*, 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.

Fremantle v. Preston is also distinguishable. 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 on which the Defendant relies are distinguishable.

The individual Plaintiffs in the case at bar 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). (All Plaintiffs also possess public importance standing.)

E. Plaintiffs have Stated a Valid Cause of Action.

The Home Rule Act of 1975 is the source of authority for county government. Prior to 1975, county government was an arm of the state government at the county level. Each year the state legislature passed a supply bill, which was the county budget. Home Rule played an important role in “eliminat[ing] archaic provisions” of the Constitution by strengthening “proper safeguards for sound State, County, and Local governments. *South Carolina in Hosp. Ass’n of S.C., Inc. v. Cty. of Charleston* 320 S.C. 219, 225, 464 S.E.2d 113, 117 (1995). The “West Committee” held hearings and conferences in the late 1960s to early 1970s seeking to place control of management

of county and municipal affairs in the hands of local officials. *Hosp. Ass'n of S.C.*, 320 S.C. at 225, 464 S.E.2d at 117. The Committee unanimously recommended amendments to the Constitution in favor of Home Rule. *Id.*

The S.C. Constitution, as amended, provides:

The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided.

Id., Article VIII, Sec. 7

Oconee County has implemented two of three phases of sewer projects in the Southern part of the County. Phases one and two were paid for primarily through state and federal grants and appropriations from general County funds. This case addresses wastewater improvements or expansion beyond phase two and the financing for any additional phases through bonds. The proposed new sewer services will only benefit a “particular geographical section of the [C]ounty.” The Plaintiffs will be immediately and irreparably impaired by the Defendant’s Constitutional violations.

Defendant relies on *Casey v. Richland County Council*, 282 S.C. 387, 320 S.E.2d 443 (1984), for the proposition that funding a sewer system for only part of the county benefits the whole county. *Casey* is distinguishable from the case at bar in that the constitutional provision at issue in this case was not a part of *Casey*. Second, the sewer services at issue in *Casey* were not being funded by bonds, but rather by taxes. The Court ruled that the funding was a tax and not an assessment; however, it was an unconstitutional tax because it was charged to only certain parts of the county and not other parts, in contravention of the constitutional provision that required taxation to be uniform across the county. In short, *Casey* has no application to the case at bar.

II. S.C. Code Ann. § 11-15-30 Does Not Bar Plaintiffs' Claims.

Defendant contends that S.C. Code Ann. § 11-15-30 bars Plaintiffs' claims. The Court disagrees. S.C. Code Ann. § 11-15-30 limits civil actions that are commenced on the account of issuance of bonds.

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).

This case is not about the “issuance” of bonds, which would be barred by § 11-15-30, but rather it concerns the “use” of bond money for unconstitutional purposes after the issuance of the bond. Plaintiffs do not contest the issuance of the bonds, nor the power or authority of the Defendant County to issue such bonds. Plaintiffs are not challenging the bonds, which are already sold in the public marketplace, and they are in the stream of commerce. Plaintiffs' claims do not imperil the rights of “a bona fide purchaser for value.” Nothing this Court does can affect the bonds themselves, or the accumulation of interest. That is already established. Plaintiffs challenge the proper uses of the bond proceeds, which, under the Constitution, cannot be used for creating facilities for the treatment of sewer or wastewater disposal that benefits a only portion of the County, without a special tax district and special assessment in that district to pay for the sewer services that benefit that special tax district. This case does not address the issuance of the bonds.

The Constitution prohibits the expenditure the proceeds of the bonds 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. Section 11-15-30 does not impact this court's power and jurisdiction to address the Constitutional violation.

III. Plaintiff's Claims Are Not Barred by Ripeness or Mootness.

A. Plaintiff's Claims Are Ripe.

Plaintiff's claims are ripe. The Defendant County has already sold \$25 million with the bonds. The stated plan of the County is to use proceeds of the bonds to pay for sewer system in the lower part of the County in violation of the Constitution. They have committed the \$25 million of bonds, or the vast majority of it, to pay for this installation of the sewer services in the lower part of the County. The action is ripe for action by this Court because the County has already committed to spend the money in violation of the Constitution. News accounts report that Phase Two (funded by other sources) is nearly complete, and Phase Three (to be funded by the bond proceeds) is imminent.

B. Plaintiff's 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 actually spent. Accordingly, this matter is not moot. However, if the Court were to determine that matter were moot, Plaintiffs 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 is very much similar 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 unlawful 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 ruling on this action.

C. This Court Possesses Subject Matter Jurisdiction.

Plaintiffs have alleged a violation of the South Carolina Constitution by public officials of Oconee County. The courts are the institutions in which address issues of constitutionality. Accordingly, this Court possesses subject matter jurisdiction.

D. Plaintiffs’ Claims Have Sufficient Particularity.

Plaintiffs quoted the provision of the Constitution which the County is violating. Plaintiffs alleged with some specificity the \$25 million in bonds which have been issued and the purposes for which the bonds of been issued, in violation of the Constitution. Accordingly, plaintiff’s claims are pled with sufficient particularity for the Defendant understand them, and for the Court to rule upon them.

Defendant contends that the Plaintiffs 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 Constitution. Accordingly, Plaintiffs’ allegations that the actions of the Defendant are unconstitutional constitute a justiciable controversy.

IV. Plaintiffs Are Entitled to a Temporary Injunction.

The courts of this State have explained the requirements for the issuance of a Temporary Injunction:

A temporary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law. *E.g., AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct.App.2009) (internal citation omitted).

Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010).

The purpose of a temporary restraining order or preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it. *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002). In evaluating whether a plaintiff is entitled to a preliminary injunction, the court must examine the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief. *Compton v. S.C. Dept. of Corrections*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011).

The plaintiff is not required to prove an absolute legal right when seeking a preliminary injunction, but the plaintiff must present a reasonable question as to the existence of such a right. *AJG Holdings LLC v. Dunn*, 382 S.C. 43, 50, 674 S.E.2d 505, 508 (Ct. App. 2009). When a court is requested to issue a temporary injunction, it may consider the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate. *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992). In evaluating whether a plaintiff is entitled

to a preliminary injunction, the court must examine the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a sufficient *prima facie* showing of entitlement to relief. *Compton v. S.C. Dept. of Corrections*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011). Once a *prima facie* showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate determination of the case on the merits. *Helsel*, 307 S.C. at 32, 413 S.E.2d at 826.

A. Plaintiffs Will Suffer Irreparable Harm if the Injunction is not Granted.

In this case, Plaintiffs meet this standard. A temporary injunction is necessary to preserve the *status quo ante*. Without the issuance of such an injunction, even if the Plaintiffs prevail ultimately, the County will wrongfully collect and spend months and probably years' worth of taxes that would be next to impossible to refund to the taxpayers. In that case, any victory of the Plaintiffs would be a hollow, Pyrrhic victory. A government's unlawful conduct causes irreparable harm. *Adams v. McMaster*, 432 S.C. 225, 851 S.E.2d 703 (2020). "[T]he taxpayers of [Oconee] County would suffer irreparable harm if the County is not required to follow the law." *Richland County v. South Carolina Department of Revenue*, 422 S.C. 292, 311, 811 S.E.2d 758, 768 (2018).

Because it would be practically impossible to refund the wrongful taxation to the taxpayers, Plaintiffs need a temporary injunction to preserve the *status quo ante* while the legal issues are decided in this case. Otherwise, any remedy may be illusory. Furthermore, Defendant will not suffer any material damages if they are not allowed to collect an unconstitutional tax.

B. Plaintiffs Will Likely Succeed on the Merits.

Plaintiffs have alleged a viable, persuasive cause of action. Defendant violated the clear, plain language of the South Carolina Constitution. Plaintiffs are likely to succeed on the merits, based on the clear violation of the South Carolina Constitution, Article X, § 12:

Defendant contends that the whole county will “receive the benefit” if the sewer line is constructed in the Southern part of the county. Accordingly, they attempt to justify imposing taxes on the whole county. The South Carolina Supreme Court has ruled that such a vague, intangible benefit is not sufficient to impose a tax on the whole county to pay for sewer system that is installed in one distinct portion of the county.

In *Robinson v. Richland County Council*, two citizens “individually and as taxpayers,” brought a declaratory judgment action that challenged certain statutes and ordinances that provided for the creation and installation of public sewer systems in parts of Richland County. 293 S.C. 27, 358 S.E.2d 392 (1987). The case was appealed to the South Carolina Supreme Court.

The Supreme Court addressed Article X, § 12 of the South Carolina Constitution at some length. *Robinson* addresses this Constitutional provision.

Article X, § 12 of the Constitution prohibits counties from incurring bonded indebtedness for sewage disposal or treatment which benefits only a particular area unless a special assessment, tax or service charge, adequate to provide debt service on the bonds, is imposed on those persons who will benefit from the service.

* * *

In addition, Article X, § 12 of the Constitution *requires* the charge be assessed only on those who will benefit from the new facilities. 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.

Id., 293 S.C. 27, 31-33, 358 S.E.2d 392, 395-396. This analysis is controlling for the case at bar. The vague, general benefit to the middle and northern parts of Oconee County is not sufficient to justify taxing those portions to pay for bonds that fund sewer and wastewater projects distinctly in the Southern part of the county. It is unconstitutional for Oconee County to tax the entire County to pay for bonds that will fund sewer and wastewater facilities in only one small area in the Southern part of the County. Accordingly, Plaintiffs are likely to succeed on the merits.

C. Plaintiffs Have no Adequate Remedy at Law.

As discussed above, if the taxes are collected, it would be extremely difficult to reestablish the *status quo ante*. No adequate remedy would be available to the Plaintiffs once the money is taken. This Court should issue a temporary injunction until this Court can fully and fairly address the legal issues pending in this case.

WHEREFORE the Court grants temporary injunctive relief against the Defendant's unconstitutional conduct, pending further Order of this Court. Based upon our State Constitution, and our state case law, the County may not use bond revenues for sewer projects that will benefit only the Southern part of the County while taxing the entire County. To meet our Constitution's mandate, the County must create a special tax district specific to the area that stands to benefit.

Furthermore, the Court Orders that this matter should be expedited for trial and notes that the parties have stipulated and agreed that this matter will proceed as a nonjury matter.

Plaintiffs shall post a bond in the amount of \$1,000 with the Clerk of Court subject to the right of the County to demand payment of, and establish entitlement to, a higher bond amount.

SO ORDERED this _____ day of _____, 2024.

R. Lawton McIntosh
Circuit Judge Presiding



Oconee Common Pleas

Case Caption: South Carolina Public Interest Foundation , plaintiff, et al VS Oconee County
Case Number: 2024CP3700202
Type: Order/Temporary Injunction

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

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,

Plaintiffs,

v.

Oconee County,

Defendant.

IN THE COURT OF COMMON PLEAS

TENTH JUDICIAL CIRCUIT

C.A. No. 2024-CP-37-00202**ORDER**

This matter came before the Court upon Defendant Oconee County's ("Defendant" or "Oconee County" or "the County") Motion for Alteration and Amendment ("Motion") of the Court's prior July 29, 2024 Order, along with its superseding Order dated August 12, 2024 (together as, "Order"). The County brought its Motion pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure ("SCRCP"), and the Court's inherent authority to alter, amend, and reconsider its own Orders. The Court held a hearing on Defendant's Motion on January 30, 2025. James G. Carpenter of the Carpenter Law Firm, PC appeared on behalf of Plaintiffs. William W. Wilkins of Billy Wilkins Law, LLC and Lane W. Davis of Maynard Nexsen, PC appeared on behalf of the County.

Based upon the pleadings, filings, arguments of counsel, and the authorities cited by the Parties, the Court makes the following rulings:

1. The Court **GRANTS** Oconee County's Motion for Alteration and Amendment of the Court's prior Order.
2. The Court **VACATES** its prior Order in its entirety.

3. The Court **DENIES** Plaintiffs' Motion for Preliminary Injunction.
4. The Court **GRANTS** Defendant's Motion to Dismiss.

STATEMENT OF THE FACTS

On November 2, 2023, the County issued \$25,000,000 in General Obligation Bonds (the "2023 Bonds"). As part of their issuance, Oconee County Council authorized the 2023 Bonds after unanimously enacting Oconee County Ordinance 2023-13 ("Bond Ordinance").¹ The 2023 Bonds were issued 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 same," and "(ii) paying costs of issuance of the Bonds." *See* Official Statement for 2023 Bonds.²

On March 17, 2024, Plaintiffs filed this action seeking declaratory judgment and injunctive relief against Oconee County relating to the 2023 Bonds. In their Complaint, Plaintiffs allege Defendant has violated the South Carolina Constitution because the County intends to allocate the bond proceeds ("Bond Allocations") for capital projects ("Bond Capital Projects") involving the construction of sewer infrastructure, which Plaintiffs claim will only benefit citizens residing in southern Oconee County. *See* Compl., ¶¶ 16, 25, 29-31. Based upon such premise, Plaintiffs maintain 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." *Id.*, ¶ 29.

¹ Unanimous enactment of the Bond Ordinance followed three public hearings respectively held on July 18, 2023, August 15, 2023, and September 5, 2023. *See* Answer, Attach. Ex. B, Meeting Minutes.

² The County filed the records from the bond proceedings with the Office of the Clerk of Court of Oconee County on November 8, 2023, which were then indexed in a special book kept for that purpose. *See* Answer, Attach. Ex. A, Certificate of Clerk.

Specifically, Plaintiffs assert the County has violated Article X, § 12 of the South Carolina Constitution (“Article X, § 12”), which states:

No law shall be enacted permitting the incurring of bond 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 bond indebtedness or revenue bonds incurred for such purposes shall be imposed upon the area or persons receiving the benefit therefrom.

Id., ¶¶ 18, 30. According to Plaintiffs’ reasoning, because the Bond Capital Projects would benefit only certain citizens in a “particular geographical section of the county,” if Oconee County “want[ed] to provide sewer services and support such activities with a tax or special assessment, the [C]ounty [was] required to create a special taxing district ... [and] may thereafter impose a uniform rate of taxation within the special taxing district.” *Id.*, ¶ 20.

In response to Plaintiffs’ Complaint, Oconee County filed its Answer on April 19, 2024 with various attachments. On April 24, 2024, the County filed a Motion for Judgment on the Pleadings raising various issues including *inter alia*: standing, statutory time limitations, and failure to state claims capable of supporting relief. Plaintiffs then filed a Motion for Temporary, Preliminary, and Permanent Injunction on July 3, 2024.

Oconee County disputes that Plaintiffs possess standing to bring their lawsuit and also argues their legal action is otherwise statutorily time-barred under S.C. Code §11-15-30. However, even if Plaintiffs had standing to bring their lawsuit and had timely done so, Oconee County denies the Bond Capital Projects would confer benefits only upon citizens in the southern portion of the County. According to Defendant’s reasoning, Plaintiffs take an overly narrow view of the benefits the Bond Capital Projects will confer upon all County citizens.

In this regard, Defendant points, in part, to Oconee County Resolution 2024-18. *See* Def. Memo. in Supp. (Nov. 8, 2024), Attach. Ex. F (Cnty. Res. 2024-18, p. 2, ¶1) (cited hereinafter only as, “Bond Resolution”). As confirmed and reflected by the Bond Resolution, Defendant argues the Bond Capital Projects will, in fact, confer substantial benefits on all Oconee County citizens. Moreover, Defendant argues the authority to make such determinations falls squarely within Oconee County Council’s legislative discretion and its legislative enactments are presumed both constitutional and lawful absent a showing beyond a reasonable doubt to the contrary. *See* Def. Memo. in Supp. at 16-19; Bond Resolution at 2, ¶1.

Oconee County indicates the Bond Capital Projects, as authorized by the Bond Ordinance, confer substantial benefits upon all County citizens, including but not limited to: a countywide reduction of groundwater contamination preserving drinking water sources for all citizens; a countywide reduction in effluent in Lake Hartwell preserving the County’s natural water sources for recreation, irrigation, water supply, and redundant water supply sources for all citizens; a countywide improvement of economies of scale reducing costs per user for utilities (including but not limited to sewer) for all citizens; an increase in commercial and industrial users conferring various economic benefits for all citizens; a countywide fulfillment of economic growth needs discerned from several decades of economic studies needed to grow the County’s economy for all citizens; and relatedly a countywide increase in economic growth attracting job opportunities, increasing the tax base, increasing property values, retaining local talent, and promotion of secondary markets for all citizens. Bond Resolution at 3-8.

Based upon such factors, as discerned by Defendant, in part, from multiple economic studies that it historically conducted over the course of several decades and then reaffirmed through sworn declarations, County Council, exercising its legislative discretion, determined the Bond

Capital Projects conferred substantial benefits upon all County citizens when enacting the Bond Ordinance and reaffirming the same in the Bond Resolution. *See* Bond Resolution at 2, ¶1.³ And, so long as the exercise of such legislative discretion proves fairly debatable, the County, in turn, argues South Carolina law constrains the Court from substituting its judgment for that of County Council’s legislative decision-making, which must remain undisturbed. *See, e.g.,* Def. Memo. in Supp. (Nov. 8, 2024) at 17, n.22.

The Court held an initial hearing on the Parties’ initial motions (*i.e.*, Defendant’s Motion to dismiss and Plaintiffs’ Motion for Preliminary Injunction) on July 17, 2024. On July 29, 2024, the Court issued a Form 4 Order, which concluded: (1) the County may not use bond revenues for sewer projects that will only benefit the southern part of the County while taxing the entire County; (2) the County must create a special tax district specific to the area that stands to benefit; and (3) the case is not on “account of the issuance” of bonds which would be barred by S.C. Code Ann. § 11-15-30, but rather concerns the “use” of bond money for unconstitutional purposes. Form 4 Order (July 29, 2024), at 1. The Court’s Form 4 Order also asked Plaintiffs’ counsel to prepare a formal order. *Id.* On August 9, 2024, the Court signed Plaintiffs’ proposed Order Granting a Temporary Injunction and Denying Defendant’s Motion for Judgment on the Pleadings.

The County’s instant Motion followed and was filed on August 22, 2024. The Court then held a hearing on Defendant’s Motion on January 30, 2025. In its Motion for Alteration and Amendment of the Court’s previous Order, Oconee County moved the Court to vacate its Order and enter judgment in its favor as a matter of law based upon the record before it. For the reasons set forth below, the Court **GRANTS** Defendant’s Motion.

³ Oconee County Council considered sworn declarations from a professional engineer, a long-time Director of Economic Development in Oconee County, and the Oconee County Administrator.

CONCLUSIONS OF LAW

Oconee County's Motion raises several issues. Below, the Court addresses the Parties' positions as to those arguments and sets forth its rulings upon the same:

I. The Common Law Public Importance Exception Confers Standing Upon Plaintiffs.

Oconee County first refutes Plaintiffs' standing to maintain the instant lawsuit. According to Oconee County, the South Carolina Supreme Court's decision in *ATC South, Inc. v. Charleston County* held only three paths exist for a litigant to establish standing. 380 S.C. 191, 198, 669 S.E.2d 337, 340-41 (2008). They include: (a) by pleading and thereafter proving particularized harms sufficient to show constitutional standing; (b) by invoking a statute conferring standing; or (c) by fulfilling the rigorous showing needed to meet the public importance exception. *Id.*; see also Def. Mot. at. 2 (citing *Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40 (2012)). Thus, the County first cites both the *ATC* and *Freemantle* decisions as authority for rejecting Plaintiffs' attempt to invoke taxpayer standing as a fourth basis to bring the instant lawsuit. Def. Mot. at 2.⁴

Based upon the foregoing reasoning and because Plaintiffs otherwise invoke neither constitutional nor statutory standing, Oconee County next focuses upon the public importance exception to standing, a common law doctrine. *Id.* at 3-4. Citing S.C. Code § 11-15-30 ("Section 11-15-30"), Oconee County argues Plaintiffs cannot invoke the public importance exception where, as here, the General Assembly has legislatively determined the need for finality in the context of bonds outweighs any potential benefit achieved by way of future judicial guidance after twenty days have lapsed following the indexing of the bond transcript records. *Id.* (citing Section 11-15-30 ("No action shall be commenced on account of the issuance of any such bonds after the

⁴ Even if taxpayer standing exists in South Carolina, which Defendant denies, Oconee County still contests the South Carolina Public Interest Foundation ("SCPIF"), a nonprofit entity that does not pay taxes, could somehow invoke it.

expiration of twenty days from the date of the filing and indexing of such records....”). However, as discussed below, the Court disagrees Section 11-15-30 applies to this lawsuit and further agrees with Plaintiffs that their action raises an issue of such public importance as to necessitate its resolution for future guidance. *See, e.g., Baird v. Charleston County*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999); *see also* Pl. Opp. Memo. (Jan. 28, 2025) at 8-9. Accordingly, the Court finds Plaintiffs have standing to maintain this action pursuant to the public importance exception.

II. Section 11-15-30 Does Not Apply to Plaintiffs’ Lawsuit, Which Challenges the Use of Bond Proceeds, Not the Issuance of the Bonds Themselves.

As noted, one of Defendant’s principal arguments is that the twenty-day time limitation set forth in Section 11-15-30 bars Plaintiffs’ lawsuit. Section 11-15-30 states:

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.

Plaintiffs do not and cannot contest they brought this action well after expiration of the time period specified by Section 11-15-30. According to Plaintiffs, however, their lawsuit falls outside of the scope of Section 11-15-30 because they challenge the County’s use of bond proceeds, not the issuance of the bonds as contemplated by the statute. Pl. Opp. Memo. (Jan. 28, 2025) at 4-5. As a result, Plaintiffs argue their lawsuit was timely, as the time limitation of Section 11-15-30 does not apply. *Id.*

By contrast, the County argues the time limitation in Section 11-15-30 applies for two reasons. First, the Bond Ordinance specifically authorizes the County’s intended uses of the bond proceeds (*i.e.*, for use on the Bond Capital Projects) as challenged by Plaintiffs and, thus, a constitutional challenge to those Bond Capital Projects necessarily challenges the Bond

Ordinance's constitutionality. In turn, a challenge to the Bond Ordinance's constitutionality necessarily challenges the 2023 Bonds' issuance, since those bonds could not legally issue but for the Bond Ordinance's enactment. *See* Def. Memo. in Supp. (Nov. 8, 2024) at 14-16.

In this regard and during the hearing, the County distinguished the situation where a plaintiff challenges the constitutionality of a local government's use of bond proceeds for purposes falling outside the ambit of the enabling bond ordinance's authorization. In such a scenario, according to the County, a plaintiff's challenge to such unauthorized uses would not challenge the enabling ordinance and, therefore, would not implicate the legality of the bonds' "issuance." But, here, the County argues that is not the case since Plaintiffs constitutionally challenge the County's intended use of the Bond Proceeds, as *authorized* by the enabling Bond Ordinance. In this scenario, the County contends Plaintiffs' lawsuit necessarily also challenges the Bond Ordinance's constitutionality, which in turn, necessarily challenges the legality of the 2023 Bonds' issuance, which could not legally occur absent the Bond Ordinance's enactment. *Id.* Thus, the County maintains that Plaintiffs' instant challenge to the "use" of Bond Proceeds inextricably intertwines with the issuance of the 2023 Bonds and falls beneath Section 11-15-30 and its time limitation.

Second, Oconee County contends the South Carolina Supreme Court considered and rejected an almost identical argument to that of Plaintiffs in the decision of *S.C. Pub. Interest Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 854 S.E.2d 836 (2021). *See* Def. Mot. at 5; Def. Memo. in Supp. (Nov. 8, 2024) at 15, n.16; Def. Supp. Memo. (Jan. 24, 2025) at 1-8. In *Calhoun County*, as it similarly does here, SCPIF attempted to distinguish between a challenge to the issuance of tax and the use of tax proceeds. Under the facts of that case, which have similarities to this case but are not identical, the *Calhoun County* Court rejected the distinction urged, here, by Plaintiffs.

The Court finds Plaintiffs' construction of Section 11-15-30 more persuasive than that of Defendant. While the statute itself does not define the terms, a plain reading of Section 11-15-30 indicates the provision only applies to actions brought "on account of the issuance" of bonds and not the "use" of bond proceeds. The remaining language in Section 11-15-30 states, "such bonds so issued, when in the hands of a *bona fide* purchaser for value, shall be incontestable..." and validates such a construction, as does the holding of *Morgan v. Feagin*, 230 S.C. 315, 317, 95 S.E.2d 621, 622 (1956) (finding "[p]urchasers of bonds could hardly be found if the bonds in their hands were subject to attack for alleged illegality in the proceedings" and "that sales of bonds are frequently timed to take advantage of a favorable market, which might well be hindered by long delay"). As a result, the Court adopts Plaintiffs' construction of Section 11-15-30 over that urged by Defendant.

III. Oconee County's Intended Use of the Bond Proceeds Confers Benefits Upon All County Citizens.

As referenced above, Plaintiffs allege Oconee County violated Article X, § 12. *See* Compl.,

¶ 18. Article X, § 12 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.

According to Plaintiffs, Oconee County's plans to expend Bond Proceeds on sewer infrastructure in the southern part of the County will not benefit all County citizens but only those residing nearby.

In this regard, Plaintiffs cite various examples of County citizens whom they contend will receive no benefit from the County's plans to expend the Bond Proceeds on the new sewer

infrastructure. *See* Compl., ¶¶ 22-25. They include: citizens residing within the municipalities of Seneca, Walhalla, and Westminster where sewer infrastructure already exists; citizens residing in the mountainous part of the County and primarily served by septic tanks; and upscale neighborhoods around Lake Keowee that are served by privately owned sewer systems. *Id.* Based upon this premise, Plaintiffs conclude the County’s stated intent to use the Bond Proceeds for the new sewer infrastructure violates Article X, § 12. *See* Compl., ¶¶ 29-30. To support such conclusion, Plaintiffs cite the decision of *Robinson v. Richland County Council*, 293 S.C. 27, 358 S.E.2d 392 (1987) (finding a downstream increase in property values in adjoining areas due to new sewer lines as insufficient benefit to satisfy Article X, § 12).

Oconee County, by contrast, does not dispute its intent to use bond proceeds to build sewer infrastructure in the southern portion of the County (*i.e.*, the Bond Capital Projects). However, Oconee County *does* dispute that such infrastructure would not directly confer substantial benefits upon all County citizens, the actualization of which it cites as its intent from inception. *See* Def. Memo. in Supp. (Nov. 8, 2024) at 16-19. As an initial matter, the County cites the decision of *Casey v. Richland County Council*, 282 S.C. 387, 390, 320 S.E.2d 443, 444 (1984)⁵ for the proposition that construction of sewer infrastructure in a specific location within a county can, in fact, confer benefits upon all county citizens, despite Plaintiffs’ contrary arguments. *Compare* Def. Memo. in Supp. (Nov. 8, 2024) at 18-19, *with* Pl. Memo. in Opp. (January 28, 2025) at 7.⁶

⁵ *Id.* (holding “[t]he benefit of improved sanitary conditions would inure to all 269,735 residents of Richland County,” including those residing in Columbia, East Richland, and those with private wells and septic tanks).

⁶ At bottom, the fundamental tension between the parties’ respective positions, as illustrated by the respective holdings of *Robinson* and *Casey*, turns upon whether the County’s citizens as a whole accrue “benefits” such that Article X, § 12 is satisfied.

And, here, Oconee County Council has made specific findings about the benefits conferred upon its citizenry.

The Oconee County Bond Ordinance, which Plaintiffs integrally rely upon when pressing their claims for relief, *see, e.g.*, Compl., ¶¶ 27, authorized revisions to the Bond Capital Project descriptions set forth in the Bond Ordinance by subsequent resolution of County Council so long as such updates did not somehow alter the fixed face value or “par amount” of the Bonds (*i.e.*, \$25,000,000.00). *See* Ordinance 2023-13, § 20. On November 4, 2024, Oconee County Council adopted Resolution 2024-18 (previously designated as, “Bond Resolution”), updating the Bond Capital Project descriptions from the Bond Ordinance and providing more detailed descriptors for the Bond Capital Projects for which the County intended to use Bond Proceeds. *See, e.g.*, Bond Resolution, at 2, ¶ 1.⁷

When adopting the Bond Resolution, 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.” *Id.* at 3, ¶ 3. In this regard, County Council specifically found the intended capital projects would confer upon all County citizens the following substantial benefits (“Bond Benefits”):

- Countywide reduction of groundwater contamination:

Decreased reliance upon septic tanks resulting in a reduction of groundwater and surface water contamination and their impact upon drinking water sources for “all Oconee County residents, not just those residing in the southern part of the County.” *Id.* at 4.

⁷ While unnecessary in relation to the legislative acts of a constituted public body, Oconee County has asked the Court to take judicial notice of Oconee County Resolution 2024-18, along with the content and legislative findings set forth therein, pursuant to SCRE 201(a) & (d), which the Court has done. *See* Def. Suppl. Memo. (January 24, 2025) at 3, n.2.

- Countywide reduction of effluent into Lake Hartwell:

Preservation of the County's natural water sources by reducing the "discharge [of] sewer effluent into Lake Hartwell." *Id.* Such benefit reaches all Oconee County citizens who use the lake for recreation, irrigation, and a source of water. *Id.* Such projects will continue to make such resources available to all County citizens, "both directly and by way of redundant water supply sources in the event of the intermittent unavailability of other sources." *Id.*

- Countywide improved economies of scale:

Installation of additional public sewer infrastructure will increase the number of users of existing utilities, including but not limited to public sewer systems, thereby decreasing the costs per user to deliver such services, thereby conferring countywide benefits to Oconee citizens. *Id.* at 5.

- Countywide attraction of commercial or industrial utility users:

The intended capital projects will likely increase the number of commercial utility users, thereby spreading the economic burden, benefitting residential users, and decreasing default risks, which confers benefits upon all County citizens. *Id.* at 6.

- Countywide fulfillment of long-recognized economic growth needs:

For several decades, historical studies have all indicated that the intended capital projects are required to promote economic growth in Oconee County. Without such projects, the County has lost serial economic development opportunities, which would have economically benefited citizens countywide. *Id.* at 7.

- Countywide increased economic activity:

The intended capital projects will result in economic growth resulting in job opportunities, increased property values, increased revenues to the County thereby resulting in the availability of enhanced public services needed by County citizens throughout Oconee County. *Id.* Enhanced economic growth, in turn, will allow all County citizens to benefit from an ability to retain local talent, increased tax base, and promotion of secondary markets. As Governor McMaster noted, "[t]he right water and sewer systems can transform a tax base. That means jobs, good schools, strong families, and a safe and vibrant community." *Id.* at 7-8. Based upon those items, County Council concluded the Bond Allocations for the intended capital projects would accomplish such goals and benefit all County citizens. *Id.*⁸

⁸ In this regard, County Council considered three sworn declarations: one from a licensed engineer, one from the former Director of the Oconee County Economic Alliance Director, and one from the Oconee County Administrator.

Under South Carolina law, Oconee County argues that the exercise of its legislative authority, particularly when related to its police power, garners a presumption of validity and is only subject to judicial correction when arbitrary and without reasonable relation to a lawful purpose. *See* Def. Memo. in Supp. (Nov. 8, 2024) at 17, n.22; *Bear Enters. v. County of Greenville*, 319 S.C. 137, 141, 459 S.E.2d 883, 886 (Ct. App. 1995) (“[t]he decision of [a] legislative body is presumptively valid and [Plaintiffs shoulder] the burden of proving otherwise.”); *Lenardis v. City of Greenville*, 316 S.C. 471, 471, 450 S.E.2d 597, 597 (Ct. App. 1994); *see also* *G. Curtis Martin Inv. Tr. v. Clay*, 274 S.C. 608, 612, 266 S.E.2d 82, 85 (1980) (decisions relating to sewer service implicate local government’s police power); *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 554, 397 S.E.2d 662, 664 (1990). According to Defendant, “If the propriety of [Oconee County] Council's decision is even ‘fairly debatable,’ [this Court] cannot inject [its] judgment into a review of [the Council’s] decision, but must leave that decision undisturbed.” *Bear Enters.*, 319 S.C. at 140, 459 S.E.2d at 885 (citing *Lenardis*, 316 S.C. at 472, 450 S.E.2d at 598). Moreover, “[a] legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt.” *Joytime Distributors & Amusement Co., Inc. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999). In relation to the Bond Benefits, the Court agrees with Oconee County.

The Court finds that in its capacity as a legislative body, Oconee County Council enacted the Bond Ordinance in connection with the issuance of the 2023 Bonds. In so doing, County Council determined such course of conduct would, in fact, confer substantial benefits upon all County citizens in the form of the Bond Benefits. The Court further agrees with the County that the legislative acts of local government bodies are presumed both valid and constitutional.

Based upon the record before it, the Court finds that the Bond Ordinance, the Bond Resolution, and the Bond Capital Projects operate to confer substantial benefits upon Oconee County's citizens as a whole, such that no violation of Article 10, § 12 has occurred. The Court further finds Oconee County Council determined that its citizens, as a whole, would obtain such substantial benefits from the Bond Capital Projects based upon a series of economic studies conducted over several decades, along with the sworn declarations of a professional engineer, a former economic development director, and the County Administrator. On that backdrop, the Court finds the legislative decision-making of the County Council was, at a minimum, "fairly debatable," and, therefore, declines to second-guess the legislative decisions and acts made by public officials, duly elected to make such decisions, while sitting on a constituted public body during successive public meetings. Accordingly, the Court finds Plaintiffs' Complaint fails to state claims capable of supporting the relief they request.

1. The Court **GRANTS** Oconee County's Motion for Alteration and Amendment of the Court's prior Order.
2. The Court **VACATES** its prior Order in its entirety.
3. The Court **DENIES** Plaintiffs' Motion for Preliminary Injunction.
4. The Court **GRANTS** Defendant's Motion to Dismiss.

SO ORDERED this ____ day of _____, 2025.

R. Lawton McIntosh
Circuit Judge Presiding



Oconee Common Pleas

Case Caption: South Carolina Public Interest Foundation , plaintiff, et al VS Oconee County
Case Number: 2024CP3700202
Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP3700202

South Carolina Public Interest Foundation et al
PLAINTIFF(S)

Oconee County
DEFENDANT(S)

Submitted by: R. Lawton McIntosh

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

PLAINTIFF'S MOTION IS DENIED WITHOUT THE NECESSITY OF A FORMAL HEARING. NO FORMAL ORDER REQUESTED. HOWEVER, IF A FORMAL ORDER IS REQUESTED, COUNSEL FOR THE DEFENDANT IS TO PREPARE THE ORDER.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2155	
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Oconee Common Pleas

Case Caption: South Carolina Public Interest Foundation , plaintiff, et al VS Oconee County
Case Number: 2024CP3700202
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
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,)
Plaintiffs,)
v.)
Oconee County,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
IN THE 10TH CIRCUIT

CASE NO: 2024-CP-37-00_____

SUMMONS

TO: DEFENDANTS:

You are hereby summoned and required to serve upon the attorney at the address below an Answer to the attached Complaint within 30 days of the date of service hereof. If you fail to do so, judgment by default will be entered against you for the relief demanded in the Complaint.

THE CARPENTER LAW FIRM, PC
s/ James G. Carpenter
S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
(864) 235-1269
jim@carpenterlawfirm.net
Attorney for the Plaintiffs

March 17, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	IN THE 10 TH CIRCUIT
	)	
South Carolina Public Interest Foundation, Jim	)	
Mann, David Dial, Rachel Moore, Terri	)	CASE NO: 2024-CP-37-00_____
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,	)	
Plaintiffs,	)	COMPLAINT FOR
	)	DECLARATORY JUDGMENT
	)	AND INJUNCTIVE RELIEF
v.	)	
	)	
Oconee County,	)	
Defendants.	)	
_____	)	

NOW COME the Plaintiffs, by their undersigned attorney, and as a Complaint against the Defendants, would show unto the Court:

1. Plaintiff South Carolina Public Interest Foundation is a not-for-profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including the proper application and enforcement of South Carolina law and Constitution.
2. Plaintiffs 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 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.
3. The Defendant Oconee County ("County") is a political subdivision of the State of South Carolina.

4. This Court has jurisdiction pursuant to the South Carolina Constitution, the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 *et seq*, and the South Carolina Rules of Civil Procedure.
5. This Court possesses jurisdiction under the following decisions, which address public interest standing and taxpayer standing: *South Carolina Public Interest Foundation v. Wilson*, 437 S.C. 334, 878 S.E.2d 891 (2022); *Adams v. McMaster*, 432 S.C. 225, 851 S.E.2d 703 (2020); *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017); *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), *Sloan v. Friends of the Hunley*, 393 S.C. 152, 711 S.E.2d 895 (2011), *American Petroleum Institute v. S.C. Dept. of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v. Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Richland County*, 333 S.C. 519, 511 S.E.2d 69 (1999), and *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

6. This action raises issues of great public importance, namely the unlawful, unconstitutional actions of public officials and the misuse of taxpayer 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).
7. Plaintiffs 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.
8. Venue is properly placed in Oconee County.
9. The Home Rule Act of 1975 is the source of authority for County Government. Prior to 1975, county government was an arm of the state government at the county level. Each year the state legislature passed a supply bill, which was the county budget.
10. Home Rule played an important role in “eliminat[ing] archaic provisions” of the Constitution by strengthening “proper safeguards for sound State, County, and Local governments. *South Carolina in Hosp. Ass’n of S.C., Inc. v. Cty. of Charleston* 320 S.C. 219, 225, 464 S.E.2d 113, 117 (1995).
11. The “West Committee” held hearings and conferences in the late 1960s to early 1970s seeking to place control of management of county and municipal affairs in the hands of local officials. *Hosp. Ass’n of S.C.*, 320 S.C. at 225, 464 S.E.2d at 117. The Committee unanimously recommended amendments to the Constitution in favor of Home Rule. *Id.*
12. The S.C. Constitution, as amended, provides:

The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided.

Id., Article VIII, Sec. 7

13. Oconee County has implemented two of three phases of sewer projects in the Southern part of the County. Phases one and two were paid for primarily through state and federal grants and appropriations from general County funds.
14. This case addresses wastewater improvements or expansion beyond phase two and the financing for any additional phases through bonds.
15. On November 2, 2023, the County issued \$25,000,000 General Obligation Bonds, Series 2023 (the “2023 Bonds”) 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.” *See* Official Statement for 2023 Bonds, Cover.¹
16. As set forth below, the Defendants violated the Constitution.
17. The South Carolina Constitution Article X, Section 14 provides that counties “shall have the power to incur indebtedness in the following categories and in no others: (a) General obligation debt; and (b) Indebtedness payable only from a revenue-producing project or from a special source as provided in subsection (10) of this section.” Section 14(2) further provides that such bonds may only be issued “upon such terms and conditions as the General Assembly shall prescribe by general law within the limitations set forth in this section and Section 12 of this article.”
18. Article X, Section 12 of the State Constitution provides:

No law shall be enacted permitting the incurring of **bonded indebtedness** by any county for **sewage disposal or treatment**, fire

¹ Available at <https://emma.msrb.org/P21737547-P21334508-P21768579.pdf>

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).

19. This section recognized the counties' enhanced powers and the restriction on the creation of new special purpose districts, all of which arose from the Home Rule amendments to the State Constitution in the 1970's. Following the Home Rule amendments on March 7, 1973, the General Assembly was bound by Article VIII, Section 7, which prohibited laws applicable only to a specific county. The same section empowered the Legislature to enact general laws granting counties "the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided."
20. Should a county want to provide sewer services and support such activities with a tax or special assessment, the county is required to create a special taxing district under S.C. Code Ann. § 4-9-30(5)(a) may thereafter impose a uniform rate of taxation within the special taxing district. *See Ex parte Yeargin*, 295 S.C. 521, 523 (1988) (upholding Anderson County's special tax district for sewer service).
21. Section 12 expressly prohibits "bonded indebtedness by any county for sewage disposal . . . 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." *Id.*

22. The municipalities of Seneca, Walhalla, and Westminster have the exclusive right to provide sewer services within their municipal limits. The citizens of those cities will not benefit from the new sewer services.
23. The rural, mountainous, Northern part of the County is served primarily by private septic tanks, septic fields, and septic systems. The rural, mountainous, Northern part of the County will not benefit from the new sewer services in the Southern part of the County.
24. The upscale neighborhoods around Lake Keowee and Lake Jocassee are served by primarily by privately owned sewer systems. Those neighborhoods will not benefit from the new sewer services in the Southern part of the County.
25. Accordingly, the proposed new sewer services will only benefit a “particular geographical section of the [C]ounty.”
26. “Article X, § 12 of the Constitution *requires* the charge be assessed only on those who benefit from the new facilities.” *Robinson v. Richland Cnty. Council*, 293 S.C. 27, 32, (S.C. 1987) (emphasis in original).
27. Ordinance 2023-13, enacted September 5, 2023, (the “Bond Ordinance”) recites that “[t]he full faith, credit and **taxing power of the County** are irrevocably pledged to the payment of the principal and interest of the [2023 Bonds] as they mature and to create a sinking fund to aid in the retirement and payment thereof. There shall be levied and collected annually upon **all taxable property in the County** . . . an ad valorem tax, without limit as to rate or amount, sufficient for such purposes.” Bond Ordinance, § 11 (emphasis added).
28. The County could possibly use the bond proceeds for other lawful purposes that benefit the whole county, but not the planned sewer or wastewater services benefiting only the Southern part of the County.

29. 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. Rather it must impose and pledge “a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]” in an area of the County that benefits from the new sewer service and does not encompass the municipal boundaries of Seneca, Walhalla, and Westminster.
30. The County’s stated intent to use the 2023 Bond proceeds for wastewater improvements, and pledge the full faith, credit, and taxing power of the entire County, without first imposing and pledging “a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]” in an area of the County that benefits from the new sewer service and that does not encompass the municipal boundaries of Seneca, Walhalla, and Westminster, the rural, mountainous Northern part of the County, or the neighborhoods around Lake Keowee and Lake Jocassee served by private sewer systems, violates the State Constitution, Article X, Section 12.
31. The Plaintiffs will be immediately and irreparably impaired by the Defendants’ Constitutional violations.

WHEREFORE, having fully pled, the Plaintiffs pray the Court for the following:

1. That the Court declare that County’s stated intent to use the 2023 Bond proceeds for wastewater improvements, and pledge the full faith, credit, and taxing power of the entire County, without first imposing and pledging “a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]” in an area of the County that benefits from the new sewer service and that does not encompass the municipal boundaries of Seneca, Walhalla, and Westminster, the rural,

mountainous Northern part of the County, or the neighborhoods around Lake Keowee and Lake Jocassee served by private sewer systems, violates the State Constitution, Article X, Section;

2. That the Court grant temporary, preliminary, and permanent restraining orders/injunctive relief against the Defendants' unconstitutional conduct;
3. That the Court grant Plaintiffs their costs and attorneys' fees of this action, pursuant to S.C. Code Ann. § 15-77-300 and Rule 54 SCRPC; and
4. For such other and further relief as the court deems just and proper.

Respectfully submitted,

THE CARPENTER LAW FIRM, PC

s/ James G. Carpenter

S.C. Bar No. 1136

819 East North Street

Greenville, SC 29601

(864) 235-1269

jim@carpenterlawfirm.net

Attorney for the Plaintiffs

March 17, 2024

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

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,

Plaintiffs,

v.

Oconee County,

Defendant.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C/A No. 2024-CP-37-00202

**DEFENDANT OCONEE COUNTY'S
ANSWER TO PLAINTIFFS'
COMPLAINT**

Responding to the Complaint of Plaintiffs, Oconee County ("the County"), would respectfully show the Court as follows:

1. All allegations set forth in the Complaint that are not specifically admitted by the County are denied. In response to the allegations set forth in Paragraph 1, the County admits, upon information and belief, that the South Carolina Public Interest Foundation ("SCPIF") is a not-for-profit corporation organized and existing under South Carolina law that does not pay taxes. All remaining allegations in Paragraph 1 are denied.

2. In response to the allegations set forth in Paragraph 2, the County lacks sufficient information to respond to the allegations and, therefore, denies the same.

3. The County admits the allegations set forth in Paragraph 3.

4. The County denies the allegations set forth in Paragraph 4.

5. The County denies the allegations set forth in Paragraph 5.

6. The County denies the allegations set forth in Paragraph 6.

7. The County denies the allegations set forth in Paragraph 7.

8. As no valid lawsuit exists before this Court, the County denies the allegations set forth in Paragraph 8.

9. In response to the allegations set forth in Paragraph 9, the County admits the Home Rule Act of 1975 is “a” source of authority for County Government. The remaining allegations set forth in Paragraph 9 are denied as ambiguously formulated legal conclusions.

10. In response to the allegations set forth in Paragraph 10, the County references the entire legal opinion cited in the Paragraph and such other decisional law as relied upon by the cited decision or thereafter explicating such decision. To the extent the allegations set forth in Paragraph 10 differ from the same, they are denied.

11. In response to the allegations set forth in Paragraph 11, the County references: the entire legal opinion cited in the Paragraph, all precedent relied upon by the cited legal opinion, all subsequent case law interpreting such opinion, and the full transcripts of the hearings referenced in the Paragraph. To the extent the allegations set forth in Paragraph 11 differ from the same, they are denied.

12. In response to the allegations set forth in Paragraph 12, the County references Article VIII, §7 of the South Carolina Constitution in its entirety, along with the decisional law interpreting the same. To the extent the allegations set forth in Paragraph 12 differ from the same, they are denied.

13. In response to the allegations set forth in Paragraph 13, the County admits having undertaken various sewer-related projects in the recent past. However, absent additional specificity, the County cannot admit or deny the allegations set forth in Paragraph 13 without

further particularity as to specific funding modalities. Accordingly, all remaining allegations set forth in Paragraph 13 are denied.

14. The County denies the allegations set forth in Paragraph 14.

15. In response to the allegations set forth in Paragraph 15, the County references the entire document cited in the Paragraph, along with any other related enactments, which are incorporated herein. To the extent the allegations set forth in Paragraph 15 differ from the same, they are denied.

16. The County denies the allegations set forth in Paragraph 16.

17. Responding to the allegations set forth in Paragraph 17, the County references the entire text of Article X, §14 of the South Carolina Constitution along with any decisional law interpreting the same. To the extent the allegations set forth in Paragraph 17 differ from the same, they are denied.

18. Responding to the allegations set forth in Paragraph 18, the County references the entire text of Article X, §12 of the South Carolina Constitution along with any decisional law interpreting the same. To the extent the allegations set forth in Paragraph 18 differ from the same, they are denied.

19. Responding to the allegations set forth in Paragraph 19, the County references the entire text of Article X, §12 of the South Carolina Constitution, which speaks for itself, along with any decisional law interpreting the same. To the extent the allegations set forth in Paragraph 19 differ from the same, they are denied.

20. The allegations set forth in Paragraph 20 purport to formulate an inartfully stated legal conclusion by using ambiguous terms. Accordingly, the County denies the allegations set forth in Paragraph 20.

21. Responding to the allegations set forth in Paragraph 21, the County references the entire text of Article X, §12 of the South Carolina Constitution, along with any decisional law interpreting the same. To the extent the allegations set forth in Paragraph 21 differ from the same, they are denied.

22. The allegations set forth in Paragraph 22 purport to set forth inartfully stated legal conclusions, which the County denies. The County further denies that a general benefit would not be conferred upon County citizens from the referenced services.

23. The County denies the allegations set forth in Paragraph 23.

24. The County denies the allegations set forth in Paragraph 24.

25. The County denies the allegations set forth in Paragraph 25.

26. Responding to the allegations set forth in Paragraph 26, the County references: the entire decision cited in the Paragraph, the precedent cited in the decision, all subsequent precedent interpreting the decision, the entire text of Article X, §12, and the precedent interpreting Article X, §12. To the extent the allegations set forth in Paragraph 26 differ from the same, they are denied.

27. Responding to the allegations set forth in Paragraph 27, the County references the entire text of Ordinance 2023-13, which is incorporated herein. To the extent the allegations set forth in Paragraph 27 differ from the same, they are denied.

28. The County denies the allegations set forth in Paragraph 28 as inartfully stated legal conclusions.

29. The County denies the allegations set forth in Paragraph 29 as inartfully stated legal conclusions.

30. The County denies the allegations set forth in Paragraph 30 as inartfully stated legal conclusions.

31. The County denies the allegations set forth in Paragraph 31.

32. Answering the unnumbered paragraph beginning with “WHEREFORE,” including all subparts, the County denies all allegations set forth in the Prayer for Relief.

FOR A FIRST DEFENSE
(Failure to State a Claim)

33. The County’s prior responses, to the extent not inconsistent, are incorporated herein by reference.

34. Plaintiffs’ Complaint fails to support a claim for which the Court is capable of issuing relief.

FOR A SECOND DEFENSE
(Standing)

35. The County’s prior responses, to the extent not inconsistent, are incorporated herein by reference.

36. Plaintiffs’ Complaint fails to allege sufficient facts to support constitutional standing.

37. South Carolina law disallows taxpayer standing absent allegations of particularized harms; Plaintiffs fail to allege any particularized harms.

38. SCPIF fails to allege any facts sufficient to support associational standing.

39. SCPIF otherwise does not pay taxes.

40. Plaintiffs’ Complaint fails to allege sufficient facts to support the Court’s invocation of the Public Importance Exception to Standing. This is particularly true in light of the other facial defects afflicting the Complaint, as set forth herein.

FOR A THIRD DEFENSE
(Statutory Bar)

41. The County's prior responses, to the extent not inconsistent, are incorporated herein by reference.

42. Plaintiffs' claims are foreclosed by S.C. Code §11-15-30, which renders Ordinance 2023-13 as uncontestable. *See* Certificate of Clerk of Court for Oconee County, South Carolina, filed November 8, 2023, attached as **Exhibit A**; Oconee County Council Minutes for July 18, 2023, August 15, 2023, and September 5, 2023, attached as **Exhibit B**.

43. In furtherance of its Third Defense, the County references the attached **Exhibits A & B** and incorporates the same herein pursuant to Rule 10(c), SCRCP.

FOR A FOURTH DEFENSE
(Lack of Justiciability)

44. The County's prior responses, to the extent not inconsistent, are incorporated herein by reference.

45. Plaintiffs' Complaint fails to allege facts of the existence of a justiciable controversy.

46. Both the doctrines of ripeness and mootness, in different ways, foreclose the justiciability of the matters set forth in Plaintiffs' Complaint. *See* Receipt for Bonds and Receipt for Proceeds, attached as **Exhibit C**.

47. In furtherance of its Fourth Defense, the County references the attached **Exhibit C** and incorporates the same herein pursuant to Rule 10(c), SCRCP.

FOR A FIFTH DEFENSE
(Separation of Powers)

48. The County's prior responses, to the extent not inconsistent, are incorporated herein by reference.

49. The relief sought by Plaintiffs in relation to the purported factual allegations advanced by Plaintiffs would violate the Separation of Powers Doctrine as stated by Article I, §9 of the South Carolina Constitution.

FOR A SIXTH DEFENSE
(Reservation of Rights)

50. The County's prior responses, to the extent not inconsistent, are incorporated herein by reference.

51. The County reserves the right to amend or supplement its defenses, as further information becomes available to it.

WHEREFORE, having fully answered Plaintiffs' Complaint, the County prays for the following relief:

- a. An order dismissing Plaintiffs' Complaint with prejudice;
- b. An award of fees and costs to the County of amounts expended in defending this lawsuit;
- c. Such other relief as the Court deems just and proper.

/s/ WW Wilkins
William W. Wilkins (SC Bar No. 6112)
Lane W. Davis (SC Bar No. 68796)
MAYNARD NEXSEN PC
104 S. Main Street, Suite 900 (29601)
Greenville, SC 29603-0648
Phone: 864.370.2211
BWilkins@maynardnexsen.com
LDavis@maynardnexsen.com

April 19, 2024
Greenville, South Carolina

Attorneys for Oconee County

EXHIBIT A

FILED OCONEE COUNTY, SC
MELISSA C. BURTON
CLERK OF COURT

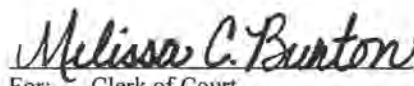
2023 NOV -8 P 4: 02

**\$25,000,000
OCONEE COUNTY, SOUTH CAROLINA
GENERAL OBLIGATION BONDS
SERIES 2023**

CERTIFICATE OF CLERK OF COURT FOR OCONEE COUNTY, SOUTH CAROLINA

I, the undersigned Clerk of Court of Oconee County, South Carolina, certify a true, correct, and full record of proceedings in connection with the referenced transaction, was filed in this office and indexed in a special book kept for that purpose on the date shown below.

IN WITNESS WHEREOF, I have set my hand and the official seal of my office, effective November 08, 2023.



For: Clerk of Court
Oconee County, South Carolina

ELECTRONICALLY FILED - 2024 Apr 19 12:43 PM - OCONEE - COMMON PLEAS - CASE#2024CP3700202

EXHIBIT B



MINUTES

OCONEE COUNTY COUNCIL

Regular Meeting

July 18, 2023

MEMBERS, OCONEE COUNTY COUNCIL

Mr. John Elliott, District I
 Mr. Matthew Durham, Chairman, District II
 Mr. Don Mize, Vice Chairman, District III
 Mr. Julian Davis III, District IV
 Mr. Glenn Hart, Chairman Pro Tem, District V

Oconee County Council met at 6:00 PM in Council Chambers, 415 South Pine Street, Walhalla, SC with all Council Members, County Administrator Amanda F. Brock, County Attorney David Root, & Jennifer C. Adams, Clerk to Council present.

Press: Pursuant to the Freedom of Information Act, notice of the meeting, date, time, place of meeting and agenda were posted on the bulletin board at the County Administrative Offices, 415 South Pine Street, Walhalla, SC, and the County Council website [www.oconeesc.com/council]. In addition, it was made available [*upon request*] to the newspapers, radio stations, television stations and concerned citizens.

Members of the press present: Riley Morningstar / The Journal

Call to Order

Mr. Durham called the meeting to order at 6:15 p.m.

Moment of Silence

Mr. Durham asked for a moment of silence prior to the Invocation by County Council Chaplain.

Invocation by County Council Chaplain

Mr. Root, County Council Chaplain, gave the invocation.

Pledge of Allegiance

Mr. Scott Krein led the Pledge of Allegiance to the Flag of the United States of America.

Approval of Minutes

Mr. Hart made a motion, seconded by Mr. Elliott, approved 5 - 0, to approve the June 20, 2023 regular meeting minutes as presented.

Mr. Mize made a motion, seconded by Mr. Elliott, approved 5- 0, to approve the June 23, 2023 special meeting minutes as presented.

Council's meetings shall be conducted pursuant to the South Carolina Freedom of Information Act, Council's Rules and the Model Rules of Parliamentary Procedure for South Carolina Counties, latest edition. This agenda may not be inclusive of all issues which Council may bring up for discussion at this meeting. Items are listed on Council's agenda to give public notice of the subjects and issues to be discussed, acted upon, received as information and/or disposed of during the meeting. Items listed on Council's agenda may be taken up, tabled, postponed, reconsidered, removed or otherwise disposed of as provided for under Council's Rules, and Model Rules of Parliamentary Procedure for South Carolina Counties, latest edition, if not specified under Council's rules.

A video recording of this meeting is available at www.oconeesc.com. Meetings have been live-streamed beginning January 17, 2017. Brought to you by Your Oconee.

Attorney's Comments

Mr. Root informed Council and the public that a questionnaire for the District I seat on the Aeronautics Commission was received today and will be in consideration of appointment this evening, then went on to provide details related to **Ordinance 2023-12**, noting that Project Iron Man was revealed to be Itron.

Administrator's Comments

Ms. Brock noted to Council that at the last meeting she was mistaken as to the age of the grinder at the landfill when she stated it was eight years old, and that it is actually fifteen years old.

Public Comment Session

If you are not able to attend in person and you have a comment, you may submit it by contacting our Clerk to Council, Jennifer C. Adams at jennifercadams@oconeesc.com or 864-718-1023, so that she may receive your comment and read it into the record.

1. Mr. Roger Norwood addressed Council with his opinion that Oconee County does not offer adequate services for special needs children, then went on to express his opinions related to the budget, Council member conduct, County employee raises and social media accounts.
2. Ms. Terri Baumann addressed Council with her concerns related to the water lines, sewer lines and road conditions in the neighborhood of Port Santorini.
3. Ms. Katey Whitesel addressed Council with her concerns related to the water lines, sewer lines and road conditions in the neighborhood of Port Santorini.

Council Members Comments

Mr. Elliott made a motion, seconded by Mr. Davis, to instruct County Administration include first reading of a budget amendment, increasing the budget by \$2.5 million dollars as a separate line item labeled "Salary Study Implementation", on the next Council meeting agenda in August.

Ms. Brock noted that Administration is about 80% complete with the budget amendment, stating that budget review has been gone through department by department to address any contractual matters, including those that will not renew until later in the year, are included so that only one budget amendment is needed.

Ms. Brock stated to Council that she will have first reading of the budget amendment on the August 15, 2023 Council meeting agenda.

Mr. Durham made a motion, seconded by Mr. Elliott, to amend the originally stated motion to remove the monetary amount requirement until Finance and Administration have completed the amendment.

Ms. Brock informed Council that the Salary and Wage Study has gone out to bid.

Mrs. Tronda Popham, Procurement Director, provided a timeline to Council regarding the Salary and Wage Study bid process.

Motion to amend the original motion approved 5 – 0.

Amended motion approved 5 – 0.

Council's meetings shall be conducted pursuant to the South Carolina Freedom of Information Act, Council's Rules and the Model Rules of Parliamentary Procedure for South Carolina Counties, latest edition. This agenda may not be inclusive of all issues which Council may bring up for discussion at this meeting. Items are listed on Council's agenda to give public notice of the subjects and issues to be discussed, acted upon, received as information and/or disposed of during the meeting. Items listed on Council's agenda may be taken up, tabled, postponed, reconsidered, removed or otherwise disposed of as provided for under Council's Rules, and Model Rules of Parliamentary Procedure for South Carolina Counties, latest edition, if not specified under Council's rules.

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Mr. Hart inquired about the progression of the pay scale for those employees whose salaries are less than \$45,000.00.

Ms. Brock noted the pay scale will be included in the budget amendment to be presented at the August 15, 2023 Council meeting.

Mr. Davis addressed the citizen concerns related to conditions of the water/sewer lines and roads in Port Santorini.

Mr. Hart acknowledged that he received the email related to problems in Port Santorini and noted he forwarded these emails to The Journal.

Mr. Durham addressed the citizen concerns related to condition of the water/sewer lines and roads in Port Santorini and asked Ms. Brock to reach out to City of Seneca Administrator, Mr. Scott Moulder, to start discussion related to Port Santorini concerns and report back to Council or Transportation Committee.

Mr Durham then encouraged Ms. Baumann to reach out to State Delegation with her concerns.

Ms. Baumann then approached the podium and noted to Council that she was advised by State Delegation to reach out to County Council and the City of Seneca with her concerns because there was no funding available for her request from the state.

Public Hearings for the Following Ordinances *If you would like to be heard during either of the public hearings, please contact Clerk to Council Jennifer C. Adams at jennifercadams@oconeesc.com or 864-718-1023 so that your participation by may be coordinated.*

ORDINANCE 2023-12 AN ORDINANCE AUTHORIZING, PURSUANT TO TITLE 12, CHAPTER 44 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF AD VALOREM TAXES AND SPECIAL SOURCE REVENUE CREDIT AGREEMENT BY AND BETWEEN OCONEE COUNTY, SOUTH CAROLINA, AND PROJECT IRON MAN, ACTING FOR ITSELF, ONE OR MORE CURRENT OR FUTURE AFFILIATES AND OTHER PROJECT COMPANIES (COLLECTIVELY, "COMPANY"); PROVIDING FOR A FEE-IN-LIEU OF AD VALOREM TAXES INCENTIVE; PROVIDING FOR A SPECIAL SOURCE REVENUE CREDIT; DEVELOPING A JOINT COUNTY INDUSTRIAL AND BUSINESS PARK BETWEEN OCONEE COUNTY AND PICKENS COUNTY SO AS TO DESIGNATE THE PROPERTY OF THE PROJECT AS PART OF THE PARK; AND OTHER RELATED MATTERS.

Mr. Durham opened the floor for Public Comment.

Noting that no citizens signed up to address Council; Mr. Durham opened the floor for any citizen wishing to address Council regarding this ordinance. No citizen addressed Council and no citizen submitted or presented any written comments for the record.

Mr. Durham closed the Public Hearing regarding **Ordinance 2023-12**.

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ORDINANCE 2023-13 AN ORDINANCE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS, IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, IN AN AMOUNT NOT TO EXCEED \$25,000,000 FOR THE PURPOSE OF DESIGNING, ACQUIRING, CONSTRUCTING, INSTALLING, EQUIPPING, OR REHABILITATING VARIOUS CAPITAL PROJECTS, INCLUDING WASTEWATER IMPROVEMENTS AND RELATED EQUIPMENT; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE THE FORM AND DETAILS OF THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND THE DISPOSITION OF THE PROCEEDS OF THE BONDS; PROVIDING FOR BORROWING IN ANTICIPATION OF THE ISSUANCE OF THE BONDS; AND OTHER RELATED MATTERS.

(This is a preliminary public hearing for the above-captioned ordinance. The statutorily-required public hearing will be held at a future date, the notice of which will be published in advance of that hearing.)

Mr. Durham opened the floor for Public Comment.

Noting that no citizens signed up to address Council; Mr. Durham opened the floor for any citizen wishing to address Council regarding this ordinance.

Mr. Tom Markovich addressed Council and expressed his full support of sewer expansion but voiced his concern that the County has no voice or vote on the Sewer Commission.

Mr. Durham closed the Public Hearing regarding **Ordinance 2023-13**.

Third Reading of the Following Ordinances

ORDINANCE 2023-12 [see caption above]

Mr. Elliott made a motion, seconded by Mr. Davis, to approve **Ordinance 2023-12** on third and final reading.

Council members then extended thanks to Itron for choosing Oconee County for their plant expansion.

Motion approved 5 – 0.

Second Reading of the Following Ordinances

None for this meeting.

First Reading of the Following Ordinances

ORDINANCE 2023-13 AN ORDINANCE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS, IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, IN AN AMOUNT NOT TO EXCEED \$25,000,000 FOR THE PURPOSE OF DESIGNING, ACQUIRING, CONSTRUCTING, INSTALLING, EQUIPPING, OR REHABILITATING VARIOUS CAPITAL PROJECTS, INCLUDING WASTEWATER IMPROVEMENTS AND RELATED EQUIPMENT; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE THE FORM AND DETAILS OF THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND THE

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DISPOSITION OF THE PROCEEDS OF THE BONDS; PROVIDING FOR BORROWING IN ANTICIPATION OF THE ISSUANCE OF THE BONDS; AND OTHER RELATED MATTERS.

Mr. Hart made a motion, seconded by Mr. Mize, approved 5 – 0, to approve **Ordinance 2023-13** on first reading.

First and Final Reading for the Following Resolutions

None for this meeting.

Discussion Regarding Action Items

Discussion and consideration of Brush Grinding Options at the C&D Landfill.

Ms. Brock provided details regarding the brush grinder at the landfill, noting they have yet to receive the needed part to make repairs and went on to request Council permission to solicit invitation for third party grinder services, to include a stand-by contract in the event grinding services should be needed in the future.

Mr. Davis made a motion, seconded by Mr. Elliott, to approve invitation of a third party to perform grinding services at the landfill, to include a stand-by contract in the event grinding services should be needed in the future, as requested.

Ms. Brock informed Council that the cost for third party grinder services could range anywhere from \$3000.00 to \$10,000.00 per day but noted requests for grinding would be specific to current needs at the landfill.

Mr. Swain Still, Solid Waste Director, noted to Council that Solid Waste is currently under compliance with DHEC by moving excess brush into the landfill, which is allowable.

Motion approved 5 – 0.

Discuss Grant and Performance Agreements (“Agreements”) benefiting Akasol, Inc. / Project EVPack-Oconee, and authorize the County Administrator and County Council Chair to execute and deliver the Agreements on behalf of Oconee County.

Mr. Jamie Gilbert, Oconee Economic Alliance Director, provided background information to Council for the reasoning behind the above request, noting these grant and performance agreements are for the Borg Warner facility expansion in Seneca and noted that no County funds are involved.

Mr. Durham made a motion, seconded by Mr. Hart, approved 5 – 0, to approve Grant and Performance Agreements (“Agreements”) benefiting Akasol, Inc. / Project EVPack-Oconee, and authorize the County Administrator and County Council Chair to execute and deliver the Agreements on behalf of Oconee County.

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Discussion and consideration of lifting a portion of the hiring freeze to meet demands and address critical needs in Oconee County.

Mr. Durham made note of the late submission of data related to this request and for future requests related to the hiring freeze, all data would need to be submitted by the time the agenda is finalized or the request would not be included.

Ms. Brock expressed to Council her opinion that all submitted data from PRT, Solid Waste, Building Codes, Vehicle Maintenance, Roads and Bridges and the Library system supports their requests to lift the hiring freeze for their specific department.

Mr. Durham expressed his support of Ms. Brock's recommendation to lift the hiring freeze for the above listed departments.

Mr. Durham made a motion, seconded by Mr. Elliott, to lift the hiring freeze as requested by the Oconee County Library System, PRT, Solid Waste Department, Building Codes, Vehicle Maintenance Department and Roads and Bridges Department, as well as any departmental vacancies that occurred after June 6, 2023.

Ms. Brock provided additional details to Council regarding their questions related to the above request.

Mr. Davis shared his opinion related to the issuance of the hiring freeze but noted he is in support of the above motion and extended his thanks to all employees that continue to perform their jobs.

Motion approved 5 – 0.

Consideration of approval to place the Walhalla Middle School Resource Officer under the supervision of the Sheriff as an employee of Oconee County.

There are currently eighteen (18) school resource officers in Oconee County, seventeen (17) currently work for the Sheriff's Office, while one (1) works for the Walhalla Police Department. The Walhalla City Officer is retiring. The Walhalla City Police Chief, the Sheriff and the School District have been in agreement that when the Walhalla City officer retires, the replacement would be a Sheriff's Deputy.

Salary and fringe benefits for this position are compensated by the School District. The only cost to Oconee County will be the needed equipment for the Deputy, along with a vehicle. In addition to the salary and fringe benefits, the School District has agreed to reimburse the Sheriff's Office up to \$20,000 to go toward the first-year cost for equipment and a vehicle.

The Sheriff's Office will need \$17,150.00 to pay for the remainder of the first-year cost associated with this position.

It is staff's recommendation replace the Walhalla Middle School Resource Officer position with a Sheriff's Deputy. This will ensure continuity with policies, procedures and training with all school resource officers in Oconee County.

Ms. Brock provide Council with background information related to the above request.

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Mr. Hart made a motion, seconded by Mr. Mize, approved 5 – 0, to replace the Walhalla Middle School Resource Officer position with an Oconee County Sheriff's Deputy.

Request for Council's consideration to support the Oconee County application for the South Carolina Parks, Recreation and Tourism "Undiscovered SC" grant and approval to commit matching funds, not to exceed \$50,000, for the further development of the Foothills Farmstead.

Amount: Not to exceed \$50,000

- On October 10, 2019, Oconee County entered into a Ground Lease Agreement with the Foothills Farmstead for property designated as "Lease Parcel 2" on the survey by Stephen R. Edwards. On June 06, 2023, Oconee County Council voted to add Tract I as additional property to allow for further expansion of the historical farmstead and related facilities.
- The Foothills Farmstead is requesting funds for further development of the Foothills Farmstead site, including the assembly of a 1920s schoolhouse, the rebuilding of three large, working fireplaces and chimneys on the main farmhouse, the installation of a pre-fabricated restroom facility and clearing/paving for the development of an access area and parking.
- South Carolina Parks, Recreation and Tourism "Undiscovered SC" is accepting grant applications until July 23, 2023.
- A "Letter of Intent" has been submitted and approved by SCPRT for a request from the Foothills Farmstead in the amount of \$50,000.
- It is a 1:1 matching grant.
- If approved, the grant money would be financially managed/lead applicant by Oconee County, with Foothills Farmstead as the Project Management. Bring the recipient of SCPRT funds.
- The SCPRT grant is a reimbursing grant, if award, Oconee County would be reimbursed for spent funds as often as monthly, up to \$50,000 total with required reimbursable documentation to SCPRT.

The balance of funding needed for the grant would come from the Capital Projects Fund and would not exceed \$50,000.

The allocation of funds is contingent on the award from the SCPRT "Undiscovered SC" grant.

It is the staff's recommendation that Council support Undiscovered SC grant application for the purpose of further developing the Foothills Farmstead historical site, and approve the commitment for matching funds, if awarded.

Mr. Davis made a motion, seconded by Mr. Elliott, to approve Council support of the Undiscovered SC grant application for the purpose of further developing the Foothills Farmstead historical site, and approve the commitment for matching funds, if awarded.

Mr. Nick Gambrell, Foothills Farmstead Director, addressed Council and provided details related to the grant and the development of Foothills Farmstead.

Short discussion between Mr. Gambrell, Ms. Brock and Council followed.

Motion approved 5 – 0.

Council Committee Reports

None for this meeting.

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Board & Commission Appointments

Aeronautics Commission

District I: One questionnaire on file for this seat

Mr. Elliott made a nomination, approved 5 – 0, to appoint Mr. Albert Brightwell, whose questionnaire was received today, as the District I representative on the Aeronautics Commission.

Agricultural Advisory Board

District IV: No questionnaires on file for this seat

Board of Zoning Appeals

District IV: 1 questionnaire on file for this seat

Mr. Davis made a nomination, approved 5 – 0, to appoint Mr. Thomas James as the District IV representative on the Board of Zoning Appeals.

Executive Session:

Mr. Hart made a motion, seconded by Mr. Elliott, approved 5 – 0, to enter into Executive Sessions for the following purposes, as allowed for § 30-4-70(a) of the South Carolina Code of Laws:

1. *Discuss personnel matter – County Attorney.*
2. *Receive legal advice and discuss ongoing litigation – King v. Oconee County, et al.*
3. *Discussion regarding an Economic Development matter, Project Galt.*

Council entered into Executive Session at 7:22 p.m.

Council returned from Executive Session at 8:02 p.m. on a motion made by Mr. Hart, seconded by Mr. Davis, approved 5 – 0.

No action was taken in Executive Session.

Adjourn:

Mr. Hart made a motion, approved unanimously, to adjourn at 8:02 p.m.

Respectfully Submitted:

Jennifer C. Adams
Clerk to Council

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MINUTES

OCONEE COUNTY COUNCIL

Regular Meeting

August 15, 2023

MEMBERS, OCONEE COUNTY COUNCIL

Mr. John Elliott, District I
 Mr. Matthew Durham, Chairman, District II
 Mr. Don Mize, Vice Chairman, District III
 Mr. Julian Davis III, District IV
 Mr. Glenn Hart, Chairman Pro Tem, District V

Oconee County Council met at 6:00 PM in Council Chambers, 415 South Pine Street, Walhalla, SC with all Council Members [Mr. Davis Absent], County Administrator Amanda F. Brock, County Attorney David Root, & Jennifer C. Adams, Clerk to Council present.

Press: Pursuant to the Freedom of Information Act, notice of the meeting, date, time, place of meeting and agenda were posted on the bulletin board at the County Administrative Offices, 415 South Pine Street, Walhalla, SC, and the County Council website [www.oconeesc.com/council]. In addition, it was made available [*upon request*] to the newspapers, radio stations, television stations and concerned citizens.

Members of the press present: Riley Morningstar / The Journal, Dick Mangrum / 101.7 WGOG

Call to Order

Mr. Durham called the meeting to order at 6:00 p.m.

Moment of Silence

Mr. Durham asked for a moment of silence prior to the Invocation by County Council Chaplain.

Invocation by County Council Chaplain

Mr. Root, County Council Chaplain, gave the invocation.

Pledge of Allegiance

Mr. Raul Cruz led the Pledge of Allegiance to the Flag of the United States of America.

Mr. Durham made a motion, seconded by Mr. Elliott, approved 4 – 0, to approve amending the agenda to postpone the reading of **Proclamation 2023-05** until the family of Mr. Bailes can be in attendance to accept.

Approval of Minutes

Mr. Hart made a motion, seconded by Mr. Elliott, approved 4 - 0, to approve the July 18, 2023 regular meeting minutes as presented.

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Proclamations

~~PROCLAMATION 2023-05 A PROCLAMATION HONORING MR. ELBERT LAMAR BAILES, JR.~~

Presentation to Council

Christ Central Ministries Oconee - OARS Update – Mr. Ashley Williams / Director

Mr. Ashley Williams, Director of Christ Central Ministries Oconee, addressed Council utilizing a power point presentation entitled, “Christ Central Ministries Oconee and Oconee Addiction Recovery and Solutions Program 2023 Year Update”, and provided details regarding the services they provide, along with highlighting the success of the program.

Members of Council extended their thanks to Mr. Williams and Christ Central Ministries for the services they provide to the community.

Attorney’s Comments

Mr. Root provided background information and an overview of the document revisions related to **Ordinance 2023-15** and **Resolution 2023-13**.

Mr. Jamie Gilbert, Director of Oconee Economic Alliance, provided further details to Council regarding the revisions that have been made to the above referenced documents that involve Oconee County and Meyn America, LLC.

Administrator’s Comments

None at this meeting.

Public Comment Session

If you are not able to attend in person and you have a comment, you may submit it by contacting our Clerk to Council, Jennifer C. Adams at jennifercadams@oconeesc.com or 864-718-1023, so that she may receive your comment and read it into the record.

1. Mr. David Dial addressed Council with his concerns related to the Town Hall Invite that was extended to all members of Council.
2. Mr. Chuck Pinion addressed Council with his opinion that the Oconee County Building Codes Department is understaffed and underpaid.
3. Mr. Art Petit addressed Council in opposition to the ban on billboards in Oconee County and noted he believes this ban should be rescinded.

Mr. Durham, Council Chair, offered a reminder that Council member comments will follow the public comment session.

4. Mr. Tony Adams offered his compliments to Council and County staff regarding Budget Amendment **Ordinance 2023-16**.
5. Mr. Roger Norwood addressed Council regarding the topics of free speech, FY2023-2024 budget and **Ordinance 2023-13**.
6. Mr. Luke Moore addressed Council with his concerns related to the Town Hall Invitation to Council, **Ordinance 2023-13** and the lack of email response from Council.

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Mr. Root outlined the legal procedures that would need to be followed if three or more members of Council accept the Town Hall Invitation.

7. Mr. Kris Childress extended an invitation to Council to attend the Keowee Fire Department 30th Anniversary Celebration to be held on Sunday, October 15, 2023 at 2 p.m.

Mr. Durham read into the record a public comment that was sent via email from Ms. Nanette Alexander related to local organized petitions.

Council Members Comments

Mr. Hart addressed Mr. Petit's concerns related to billboards in Oconee County and stated he supports doing away with this ordinance and would like this topic placed on the September 5, 2023 Council agenda.

Mr. Durham asked Mr. Root if he was contacted by the Republican Party related to the Town Hall Invite.

Mr. Root noted that he is not aware of the members of the Republican Party and that his only correspondence was with Ms. Brock, Mr. Durham and Council as a whole related to this matter.

Mr. Durham addressed Mr. Pinion related to his concerns with the Oconee County Building Codes Department.

Ms. Brock added additional comments related to Mr. Pinion's concerns with the lack of adequate staff in the Building Codes department.

Mr. Durham and Mr. Root addressed Mr. Petit's concerns related to the ordinance that outlines restrictions related to billboards in Oconee County.

As instructed by Mr. Durham, Ms. Brock offered details related to the process of obtaining general obligation bonds.

Third Reading of the Following Ordinances

None for this meeting.

Second Reading of the Following Ordinances

ORDINANCE 2023-13 AN ORDINANCE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS, IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, IN AN AMOUNT NOT TO EXCEED \$25,000,000 FOR THE PURPOSE OF DESIGNING, ACQUIRING, CONSTRUCTING, INSTALLING, EQUIPPING, OR REHABILITATING VARIOUS CAPITAL PROJECTS, INCLUDING WASTEWATER IMPROVEMENTS AND RELATED EQUIPMENT; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE THE FORM AND DETAILS OF THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND THE DISPOSITION OF THE PROCEEDS OF THE BONDS; PROVIDING FOR BORROWING IN ANTICIPATION OF THE ISSUANCE OF THE BONDS; AND OTHER RELATED MATTERS.

Mr. Hart made a motion, seconded by Mr. Mize, approved 4 – 0, to approve **Ordinance 2023-13** on second reading.

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First Reading of the Following Ordinances

ORDINANCE 2023-14 AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF ADDENDA TO THE LEASE AGREEMENTS BETWEEN OCONEE COUNTY AND (1) THE FOOTHILLS FARMSTEAD ("FARMSTEAD") AND (2) THE FAIR-OAK YOUTH CENTER, INC. ("FOYC"), IN ORDER TO EFFECT THE TRANSFER OF CERTAIN PROPERTY FROM THE FOYC LEASE PREMISES TO THE FARMSTEAD LEASE PREMISES; AND OTHER MATTERS RELATED THERETO.

Mr. Elliott made a motion, seconded by Mr. Hart, approved 4 – 0, to approve **Ordinance 2023-14** on first reading.

ORDINANCE 2023-15 AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO PURCHASE AND SALE AGREEMENT BY AND BETWEEN OCONEE COUNTY, SOUTH CAROLINA, AND MEYN AMERICA, LLC; AND OTHER RELATED MATTERS.

Mr. Elliott made a motion, seconded by Mr. Mize, approved 4 – 0, to approve **Ordinance 2023-15** on first reading.

ORDINANCE 2023-16 AN ORDINANCE TO AMEND AND SUPPLEMENT ORDINANCE 2023-01, WHICH ESTABLISHED THE BUDGET FOR OCONEE COUNTY AND PROVIDED FOR THE LEVY OF TAXES FOR ORDINARY COUNTY PURPOSES, FOR THE TRI-COUNTY TECHNICAL COLLEGE SPECIAL REVENUE FUND, FOR THE EMERGENCY SERVICES PROTECTION SPECIAL REVENUE FUND, FOR THE ROAD MAINTENANCE SPECIAL REVENUE FUND, FOR THE BRIDGE AND CULVERT CAPITAL PROJECT FUND, FOR THE ECONOMIC DEVELOPMENT CAPITAL PROJECT FUND, FOR THE PARKS, RECREATION, AND TOURISM CAPITAL PROJECTS FUND, FOR THE DEBT SERVICE FUND, FOR THE VICTIM SERVICES SPECIAL REVENUE FUNDS, FOR THE CAPITAL VEHICLE / EQUIPMENT FUND, AND FOR THE CREATION OF THE EMERGENCY SERVICES CAPITAL VEHICLE / EQUIPMENT FUND, ALL IN OCONEE COUNTY FOR THE FISCAL YEAR BEGINNING JULY 1, 2023 AND ENDING JUNE 30, 2024, IN ORDER TO EFFECT A SUPPLEMENTAL APPROPRIATION; AND OTHER MATTERS RELATED THERETO.

Mr. Elliott made a motion, seconded by Mr. Hart, to approve **Ordinance 2023-16** on first reading.

Mr. Durham expressed to staff his appreciation for all the hard work that went into preparing the FY2023-2024 budget.

Motion approved 4 – 0.

First and Final Reading for the Following Resolutions

RESOLUTION 2023-12 A RESOLUTION CONSENTING TO THE ASSIGNMENT AND ASSUMPTION OF A FEE AGREEMENT BY AND AMONG EPOCH CLEMSON, LLC, EPOCH CLEMSON ST, LLC, 8110 JACOBS RD GROUND OWNER LLC AND OCONEE COUNTY,

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SOUTH CAROLINA; AND OTHER RELATED MATTERS.

Mr. Hart made a motion, seconded by Mr. Elliott, approved 4 – 0, to approve **Resolution 2023-12** on first and final reading.

RESOLUTION 2023-13 A RESOLUTION AUTHORIZING THE EXECUTION AND APPROVAL OF A LICENSE AND INDEMNIFICATION AGREEMENT BY AND BETWEEN OCONEE COUNTY AND MEYN AMERICA, LLC, ALLOWING MEYN AMERICA, LLC ACCESS TO CERTAIN REAL PROPERTY IN THE OCONEE INDUSTRY AND TECHNOLOGY PARK TO PERFORM CERTAIN WORK; AND OTHER RELATED MATTERS.

Mr. Mize made a motion, seconded by Mr. Elliott, to approve **Resolution 2023-13** on first and final reading.

Mr. Elliott welcomed Meyn America to Oconee County.

Motion approved 4 – 0.

Ms. Brock offered a note of correction to the title of **Ordinance 2023-16** as it is stated on the agenda, noting the actual ordinance wording is correct.

Discussion Regarding Action Items

Discuss and provide opinion on request to name an unnamed tributary of the Tugaloo River as "Cherokee Creek" for federal use, as forwarded by the U.S. Bureau of Geographic Names at the request of the Cherokee Creek Boys School.

Mr. Hart offered details as to the location of this portion of the Tugaloo River.

Mr. Elliott made a motion, seconded by Mr. Hart, approved 4 – 0, to support the requested name change and forward a notification of Council support on to the U.S. Bureau of Geographic Names.

**PO 55251, LS3P Associates Phase 2
Alexander-Cannon-Hill House
Renovation, Change Order # 1**

Department(s): Oconee PRT – High Falls

Amount: Original Purchase Order: \$28,800.00

Phase 2 (Change Order # 1): \$67,500.00

Total: \$96,300.00

Procurement was approved by Council in Fiscal Year 2022-2023 & 2023-2024 budget process.

Budget \$96,300.00

Project Cost: \$96,300.00

Balance: \$0.00

(Funding from Local ATAX Fund \$28,800.00 FY 2022-2023 & Parks, Recreation & Tourism Capital Project Fund \$67,500.00 FY 2023-2024)

Pleasant Alexander built the Alexander-Cannon-Hill (ACH) House in 1831. In 1971, Duke Power gave the house to High Falls County Park. On July 24, 1972, the ACH House was added to the National Register of Historic Places and retains much of the original construction. Currently, the first floor is being used as office

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space / gift shop and the second floor has only been used for storage. Park Staff wants to utilize the second floor of the house to include office space, conference room, bathroom, etc. Procurement and Park Staff began creating specifications for an electrical upgrade. During a visit to the site, structural issues were found that require correcting before any renovations could be started. With this being a structure from 1831 and being listed on the National Register of Historic Places, staff decided it was in the best interest of the County and the Structure to have a firm that is well versed in this type of project to assist with the renovation.

On January 18, 2023, staff contracted with LS3P Associates, LTD., On-Call Architectural Consultant Firm (RFP 20-02), to assist with the Renovation Project.

Procurement issued Purchase Order Number 55251 to LS3P Associates, LTD., in the amount of \$28,800.00 for Phase 1 – Preliminary Design and Schematic Design Phase for the Alexander-Cannon-Hill House at High Falls County Park.

This Change Order request is for Phase 2 of the Alexander-Cannon-Hill House Renovation. This Phase includes Design Development, Construction Documents, Negotiations and Construction Observation.

Staff requests approval for Change Order #1 to PO 55251 for Architectural Services, in the amount of \$67,500.00; which is an addition to the original scope of work. If approved, the new total for the purchase order is \$96,300.00.

It is the staff's recommendation that Council:

- 1. Approve Change Order # 1 to PO 55251, for project Phase 2, in the amount of \$67,500.00 for a total purchase order amount of \$96,300.00.***
- 2. Authorize the County Administrator to execute documents for change order #1, PO 55251 (Phase 2).***

Mr. Elliott made a motion, seconded by Mr. Hart, to approve Change Order # 1 to PO 55251, for project Phase 2, in the amount of \$67,500.00 for a total purchase order amount of \$96,300.00 and authorize the County Administrator to execute documents for change order #1, PO 55251 (Phase 2).

Mr. Hart expressed his concerns related to the cost associated with the above request.

Mr. Steven Schutt, Project Manager, addressed the concerns of Mr. Hart and provided Council with background information related to the above request.

Mr. Schutt then provided the historical significance of the Alexander-Cannon-Hill House to Council as requested by Mr. Mize.

Mr. Durham made a motion, seconded by Mr. Hart, to postpone the above request until further review and site visits by Council are complete.

Mr. Hart inquired if additional construction costs were going to be requested after the architectural services are complete.

Mr. Schutt informed Council that the renovations on the Alexander-Cannon-Hill House would be completed by an outside source due to the historical nature of the construction.

Motion to postpone the approval of Change Order # 1 to PO 55251, for project Phase 2, in the amount of \$67,500.00 for a total purchase order amount of \$96,300.00 and authorize the County Administrator to execute documents for change order #1, PO 55251 (Phase 2) approved 4 – 0.

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Maintenance Building for Chau Ram County Park**Department: PRT****Amount: \$364,259.27****Contingency (10%): \$ 36,425.93****Total Amount: \$400,685.20****Procurement was approved by Council in Fiscal Year 2023-2024 budget process.****Budget: \$ 400,685.20****Project Cost: \$ 400,685.20 Balance: \$ 0.00*****(Funding for this project is from Parks, Recreation & Tourism Capital Project Fund)***

This request is for the purchase, installation and construction of a new turnkey maintenance building at Chau Ram County Park. Chau Ram currently houses their large equipment outside, contributing to additional maintenance issues and a shorter life span. The new maintenance building will also provide space for bulk purchasing, proper OSHA compliance as well as a staff workspace, currently not available.

The turnkey shelter project includes: a post frame building with metal siding, three (3) 12'x12 bay doors, two (2) exterior walk thru doors, spray foam insulation, HVAC system, plumbing and concrete, any site preparations that will be required, permits, electrical, concrete, and installation. The Oconee Roads and Bridges department completed the site work for the project.

The County is utilizing the H-GAC (Houston-Galveston Area Council of Governments) contract through a cooperative purchasing agreement. H-GAC cooperative purchasing allows government agencies to purchase directly from the manufacturer or authorized dealers. H-GAC contracts are bid and awarded on a national level and purchases may be fulfilled by the manufacturer and / or authorized local or state dealers.

Cedar Forest Products, LLC was awarded an HGAC contract under contract number PR11-20A08.

It is the staff's recommendation that Council:

- 1. Award the purchase and construction of the maintenance building for Chau Ram County Park to Cedar Forest Products, LLC., located in West Olive, MI, in the amount of \$364,259.27 plus 10% contingency in the amount of \$36,425.93, for a total award of \$400,685.20.***
- 2. Authorize the County Administrator to execute documents for this project and sign any change orders within the contingency amount.***
- 3. Approve waiving the County Permit and Plan Review fees for this project.***

Mr. Elliott made a motion, seconded by Mr. Durham, to (1) approve awarding the purchase and construction of the maintenance building for Chau Ram County Park to Cedar Forest Products, LLC., located in West Olive, MI, in the amount of \$364,259.27 plus 10% contingency in the amount of \$36,425.93, for a total award of \$400,685.20, (2) authorize the County Administrator to execute documents for this project and sign any change orders within the contingency amount and (3) approve waiving the County Permit and Plan Review fees for this project.

Mr. Hart and Mr. Durham expressed their concerns related to the cost associated with the above request.

Mr. Schutt and Ms. Tronda Popham, Procurement Director, provided Council with details related to the cost, construction and bid process associated with the request for a maintenance building for Chau Ram Park.

Short discussion between Council, Mr. Schutt and Ms. Popham followed.

Motion failed 1 – 3 [Mr. Durham, Mr. Mize and Mr. Hart opposed].

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RFP 23-03 Electronic Monitoring Services**Department(s): Sheriff's Office / Detention Center****There is no dollar amount associated with this approval. When offender monitoring is required, by court order, the offender representative is required to pay any upfront and monthly fees.**

Request for Proposals, RFP 23-03, for Electronic Monitoring Services. The Sheriff's Office and Detention Center requested firms to provide Full Service Electronic Monitoring (EM) for court-ordered individuals and management of the accompanying equipment. The Awarded Company will:

1. Provide and install all equipment and accessories required, to include, but not limited to, transmitters, base stations, receivers, tracking devices, recorders and bracelets.
2. Provide service(s) in full, between the subject to be monitored and the company themselves as directed by the Court.
3. Install and remove monitoring devices seven (7) days per week. Installation will be within 1.5 hours of sentencing or court order, providing the inmate is in compliance.
4. Maintain the equipment as necessary so monitoring is not interrupted.
5. Provide bi-weekly, standard reports, including list of names and violations of offenders being monitored.
6. Submit violation reports within 24hrs from the time of the violation.
7. Collect all fees associated with the Court Ordered monitoring.

RFP 23-03 was issued on June 12, 2023, and eighteen (18) Companies downloaded the solicitation, four (4) proposals were received. An Evaluation Committee consisting of County Staff, reviewed and scored the proposals and recommended the award to DCT Detection, LLC of Seneca, SC.

It is the staff's recommendation that Council approve:

- 1. Approve the award of RFP 23-03 for Electronic Monitoring Services to DCT Detection, LLC of Seneca, SC.***
- 2. Authorize the County Administrator to execute the contract documents and to renew this contract for up to four (4) one-year renewals, providing the services provided are satisfactory.***

Mr. Hart made a motion, seconded by Mr. Elliott, approved 4 – 0, to approve the award of RFP 23-03 for Electronic Monitoring Services to DCT Detection, LLC of Seneca, SC and authorize the County Administrator to execute the contract documents and to renew this contract for up to four (4) one-year renewals, providing the services provided are satisfactory.

Request for Council's approval to commit matching funds, not to exceed \$18,382.00 toward the Federal Aviation Administration (FAA) Grant Offer for the Airport Improvement Program (AIP) Taxiway Pavement Rehabilitation (Design/Bid) Project No. 3-45-0016-035-2023 and the Airport Bipartisan Law (BIL) / Airport Infrastructure Grant (AIG) Project No. 3-45-0016-036-2023 and to authorize the County Administrator to accept and execute the corresponding FAA Grant Offers.

The total amount for the Taxiway Pavement Rehabilitation (Design/Bid) Project will be \$367,639.00. The FAA offers and agrees to pay ninety (90) percent of the allowable costs incurred accomplishing this Project, up to \$330,875.00. Oconee County's matching share is five (5) percent of the costs for the Taxiway Pavement Rehabilitation (Design/Bid) Project, or approximately \$18,382.00. The South Carolina Aeronautics Commission (SCAC) will also match \$18,382.00 for the remaining five (5) percent.

- On February 1, 2022, Council approved the award of RFP 21-08 for Professional Engineer and Consulting Services for the Oconee County Airport to W.K. Dickson & Company, Inc., of Columbia

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SC for a five-year term for services, as need.

- On May 5, 2023, Oconee County submitted a Taxiway Pavement Rehabilitation (Design/Bid) Project Application to the Federal Aviation Administration (FAA) for funding consideration under the Airport Improvement Program (AIP) and the Airport Bipartisan Law (BIL) / Airport Infrastructure Grant (AIG) programs.
- On July 31, 2023, Oconee County received Federal Aviation Administration (FAA) Grant Offer under the Airport Improvement Program Grant (AIP) Project No. 3-45-0016-035-2023 and the Airport Bipartisan Law (BIL) / Airport Infrastructure Grant (AIG) Project No. 3-45-0016-036-2023 for the Taxiway Pavement Rehabilitation (Design/Bid) Project.

The Oconee County Airport now wishes to accept the Federal Aviation Administration Airport Improvement Grant Project No. 3-45-0016-035-2023 and Airport Infrastructure Grant Project No. 3-45-0016-036-2023 for the Taxiway Pavement Rehabilitation (Design/Bid) Project.

Timely acceptance of these Grants are crucial of ensuring the Taxiway Pavement Rehabilitation Project begins as soon as practical as the offer must be accepted and submitted to the Federal Aviation Administration no later than August 25, 2023.

It is the staff's recommendation that Council authorize County Administrator Amanda Brock to accept and execute the Federal Aviation Administration Airport Improvement Program Grant Offer Project No. 3-45-0016-035-2023 and the Airport Infrastructure Grant Offer Project No. 3-45-0016-036-2023 for the Taxiway Pavement Rehabilitation (Design/Bid) Project and commit \$18,382.00 in matching funds.

Mr. Elliott made a motion, seconded by Mr. Mize, to authorize County Administrator Amanda Brock to accept and execute the Federal Aviation Administration Airport Improvement Program Grant Offer Project No. 3-45-0016-035-2023 and the Airport Infrastructure Grant Offer Project No. 3-45-0016-036-2023 for the Taxiway Pavement Rehabilitation (Design/Bid) Project and commit \$18,382.00 in matching funds.

Mr. Hart inquired if this request qualified for a public hearing.

Ms. Brock informed Council that a public notice will be posted on the County website.

Mr. Root noted that if this was a taxiway relocation or new construction, then a public hearing would be required.

Motion approved 4 – 0.

Council Committee Reports

Law Enforcement, Public Safety, Health and Welfare / Mr. Mize July 18, 2023

Mr. Mize provided information outlining discussions held at the July 18, 2023 Law Enforcement, Public Safety, Health and Welfare Committee meeting.

Mr. Root informed Council that the Junkyard Ordinance would come back before the Law Enforcement, Public Safety, Health and Welfare Committee with the recommendation from the Planning Commission that no further action be taken with this proposed ordinance.

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Board & Commission Appointments

Agricultural Advisory Board

District IV: No questionnaires on file for this seat

Mr. Durham noted there are no questionnaires on file for the District IV vacant seat on the Agricultural Advisory Board.

Executive Session:

Mr. Hart made a motion, seconded by Mr. Elliott, approved 4 – 0, to enter into Executive Sessions for the following purposes, as allowed for § 30-4-70(a) of the South Carolina Code of Laws:

1. *Receive legal advice and discuss resolution of King v. Oconee County, et al.*
2. *Discussion regarding an Economic Development matter, Utica Mill Project.*
3. *Council discussion regarding a contractual matter related to the Town of Salem, City of Seneca, City of Walhalla and the City of Westminster.*

Council entered into Executive Session at 7:51 p.m.

Council returned from Executive Session at 8:47 p.m. on a motion made by Mr. Elliott, seconded by Mr. Hart, approved 4 – 0.

Mr. Hart made a motion, seconded by Mr. Elliott, approved 4 – 0, to approve a settlement in the amount of \$10,000.00 related to the matter of King v. Oconee County.

Adjourn:

Mr. Hart made a motion, approved unanimously, to adjourn at 8:48 p.m.

Respectfully Submitted:

Jennifer C. Adams
Clerk to Council

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MINUTES

OCONEE COUNTY COUNCIL

Regular Meeting

September 05, 2023

MEMBERS, OCONEE COUNTY COUNCIL

Mr. John Elliott, District I
 Mr. Matthew Durham, Chairman, District II
 Mr. Don Mize, Vice Chairman, District III
 Mr. Julian Davis III, District IV
 Mr. Glenn Hart, Chairman Pro Tem, District V

Oconee County Council met at 6:00 PM in Council Chambers, 415 South Pine Street, Walhalla, SC with all Council Members, County Administrator Amanda F. Brock, County Attorney David Root, & Jennifer C. Adams, Clerk to Council present.

Press: Pursuant to the Freedom of Information Act, notice of the meeting, date, time, place of meeting and agenda were posted on the bulletin board at the County Administrative Offices, 415 South Pine Street, Walhalla, SC, and the County Council website [www.oconeesc.com/council]. In addition, it was made available [*upon request*] to the newspapers, radio stations, television stations and concerned citizens.

Members of the press present: Norm Cannada / The Journal, Dick Mangrum / 101.7 WGOG

Call to Order

Mr. Durham called the meeting to order at 6:00 p.m.

Moment of Silence

Mr. Durham asked for a moment of silence prior to the Invocation by County Council Chaplain.

Invocation by County Council Chaplain

Mr. Root, County Council Chaplain, gave the invocation.

Pledge of Allegiance

Mr. Luther Lyle led the Pledge of Allegiance to the Flag of the United States of America.

Approval of Minutes

Mr. Hart made a motion, seconded by Mr. Elliott, approved 4 – 0 [Mr. Davis abstained; copy filed with minutes], to approve the August 15, 2023 regular meeting minutes as presented.

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Proclamations

PROCLAMATION 2023-05 A PROCLAMATION HONORING MR. ELBERT LAMAR BAILES, JR.

Mr. Davis made a motion, seconded by Mr. Hart, to approve **Proclamation 2023-05** on first and final reading.

Mr. Davis addressed the family of Mr. Bailes who were in attendance to accept the proclamation.

Motion approved 5 – 0.

PROCLAMATION 2023-06 A PROCLAMATION RECOGNIZING THE 50TH ANNIVERSARY OF OCONEE NUCLEAR STATION

Mr. Elliott made a motion, seconded by Mr. Davis, to approve **Proclamation 2023-06** on first and final reading.

Mr. Davis extended his thanks to Oconee Nuclear Station.

Mr. Durham noted he would be recusing himself from the vote due to avoid any conflict.

Motion approved 4 – 0 [Mr. Durham abstained; copy filed with minutes].

Attorney's Comments

Mr. Root noted that he would need a motion to remove **Ordinance 2023-17** from first reading due to a delay with receiving the final documents.

Mr. Elliott made a motion, seconded by Mr. Mize, approved 5 – 0, to remove **Ordinance 2023-17** from first reading.

Administrator's Comments

Ms. Brock introduced County Treasurer, Mr. Greg Nowell, noting that he was in attendance to provide information to Council regarding the numerous County bank accounts and balances as of June 30, 2023.

Mr. Nowell addressed Council utilizing three handouts [copies filed in backup] displaying detailed account information and provided a brief explanation of these accounts.

Lengthy discussion followed between Council, Ms. Brock and Mr. Nowell related to County bank accounts and the funds they contain.

Public Comment Session

If you are not able to attend in person and you have a comment, you may submit it by contacting our Clerk to Council, Jennifer C. Adams at jennifercadams@oconeesc.com or 864-718-1023, so that she may receive your comment and read it into the record.

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1. Mr. Roy Stone addressed Council with his concerns related to the deteriorating condition of Chauga Valley Road.
2. Mr. William Bahder addressed Council with his concerns related to the deteriorating condition of Chauga Valley Road.
3. Mr. Luke Moore addressed Council with his concerns regarding the State Gas Tax and FY2023-2024 budget.
4. Mr. Randy Moore addressed Council with his opinion that the Oconee County Building Codes department is understaffed and underpaid, therefore causing construction delays and increasing costs to home builders.

Mr. Davis made a motion, seconded by Mr. Elliott, approved 5 – 0, to allow two extra speaking minutes to Mr. Randy Moore.

5. Mr. Jim Mann addressed Council related to the Oconee County Republican Party Town Hall invitation to Council to discuss FY2023-2024 budget, questions related to the Oconee County Conservatives group and offered comments regarding the proposed FY2023-2024 budget and amendments.
6. Mr. Art Petit addressed Council in opposition to Sign Control **Ordinance 2020-09**.

Council Members Comments

Mr. Mize addressed Mr. Mann regarding his comments related to the Town Hall invitation to Council to discuss FY2023-2024 budget.

Mr. Davis made a motion, seconded by Mr. Elliott, approved 5 – 0, to allow Mr. Mann to respond to the questions posed by Mr. Mize.

Mr. Mann provided answers to Mr. Mize's questions.

Short discussion followed between Mr. Mann, Council and County Attorney, Mr. David Root.

Mr. Durham addressed the citizens who spoke regarding the deteriorating condition of Chauga Valley Road.

Mr. Davis addressed Mr. Petit's concerns related to Sign Control **Ordinance 2020-09** and citizen concerns related to the deteriorating condition of Chauga Valley Road.

Mr. Davis went on to address Mr. Randy Moore's concerns related to the Oconee County Building Codes departments.

Mr. Davis made a motion, seconded by Mr. Elliott, approved 5 – 0, to allow Mr. Randy Moore to converse with Council related to his concerns about the Building Codes department.

Lengthy discussion followed between Council, Ms. Brock and Mr. Moore related to the Building Codes department.

Mr. Hart offered comments related to Mr. Luke Moore's statement that he emailed Mr. Durham three times with no response.

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Mr. Durham responded to Mr. Mann's comments related to the Town Hall invitation.

Mr. Durham and Ms. Brock responded to Mr. Luke Moore's questions regarding the State Gas Tax.

Mr. Durham offered further responses to Mr. Luke Moore's concerns regarding the FY2023-2024 budget and provided Mr. Moore with an explanation as to why he [Mr. Durham] has not responded to any his [Mr. Luke Moore] emails.

Mr. Mize and Ms. Brock discussed the option of contracting certified building inspectors from surrounding counties and municipalities to aid Oconee County with building inspections.

Short discussion by Council and Ms. Brock followed related to building codes and inspector salaries.

Mr. Davis added comments related to actions allowed by Council outside of Council meetings.

Mr. Root offered clarification to Council regarding what constitutes a quorum and what is and is not allowed when a quorum of Council is present outside Council meetings.

Public Hearings for the Following Ordinances *If you would like to be heard during either of the public hearings, please contact Clerk to Council Jennifer C. Adams at jennifercadams@oconeesc.com or 864-718-1023 so that your participation by may be coordinated.*

ORDINANCE 2023-13 AN ORDINANCE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS, IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, IN AN AMOUNT NOT TO EXCEED \$25,000,000 FOR THE PURPOSE OF DESIGNING, ACQUIRING, CONSTRUCTING, INSTALLING, EQUIPPING, OR REHABILITATING VARIOUS CAPITAL PROJECTS, INCLUDING WASTEWATER IMPROVEMENTS AND RELATED EQUIPMENT; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE THE FORM AND DETAILS OF THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND THE DISPOSITION OF THE PROCEEDS OF THE BONDS; PROVIDING FOR BORROWING IN ANTICIPATION OF THE ISSUANCE OF THE BONDS; AND OTHER RELATED MATTERS.

Mr. Durham opened the floor for Public Comment.

Mr. Luke Moore addressed Council with his questions and concerns regarding **Ordinance 2023-13**.

Mr. Durham closed the Public Hearing regarding **Ordinance 2023-13**.

ORDINANCE 2023-16 AN ORDINANCE TO AMEND AND SUPPLEMENT ORDINANCE 2023-01, WHICH ESTABLISHED THE BUDGET FOR OCONEE COUNTY AND PROVIDED FOR THE LEVY OF TAXES FOR ORDINARY COUNTY PURPOSES, FOR THE TRI-COUNTY TECHNICAL COLLEGE SPECIAL REVENUE FUND, FOR THE EMERGENCY SERVICES PROTECTION SPECIAL REVENUE FUND, FOR THE ROAD MAINTENANCE SPECIAL REVENUE FUND, FOR THE BRIDGE AND CULVERT CAPITAL PROJECT FUND, FOR THE ECONOMIC DEVELOPMENT CAPITAL PROJECT FUND, FOR THE PARKS, RECREATION,

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AND TOURISM CAPITAL PROJECTS FUND, FOR THE DEBT SERVICE FUND, FOR THE VICTIM SERVICES SPECIAL REVENUE FUNDS, FOR THE CAPITAL VEHICLE / EQUIPMENT FUND, AND FOR THE CREATION OF THE FIRE / EMERGENCY SERVICES CAPITAL VEHICLE AND EQUIPMENT FUND THE COMMUNITY HEALTH AND COMMUNITY SERVICES FUND, AND THE GENERAL ONE TIME CAPITAL FUND, ALL IN OCONEE COUNTY FOR THE FISCAL YEAR BEGINNING JULY 1, 2023 AND ENDING JUNE 30, 2024, IN ORDER TO EFFECT SUPPLEMENTAL APPROPRIATIONS; AND OTHER MATTERS RELATED THERETO.

Mr. Durham opened the floor for Public Comment.

Noting that no citizens signed up to address Council; Mr. Durham opened the floor for any citizen wishing to address Council regarding this ordinance. No citizen addressed Council and no citizen submitted or presented any written comments for the record.

Mr. Durham closed the Public Hearing regarding **Ordinance 2023-16**.

Third Reading of the Following Ordinances

ORDINANCE 2023-13 *[see caption above]*

Mr. Hart made a motion, seconded by Mr. Mize, to approve **Ordinance 2023-13** on third and final reading.

Mr. Davis offered comments and presented several questions related to GO Bond **Ordinance 2023-13**.

Mr. Michael Kozlarek, Bond Council for Oconee County, offered clarification to Council related to the proposed GO Bond **Ordinance 2023-13**.

Mr. Brent Robertson, Financial Advisor for Oconee County, offered further financial details related to GO Bond **Ordinance 2023-13**.

Motion approved 5 – 0.

Second Reading of the Following Ordinances

ORDINANCE 2023-14 AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF ADDENDA TO THE LEASE AGREEMENTS BETWEEN OCONEE COUNTY AND (1) THE FOOTHILLS FARMSTEAD (“FARMSTEAD”) AND (2) THE FAIR-OAK YOUTH CENTER, INC. (“FOYC”), IN ORDER TO EFFECT THE TRANSFER OF CERTAIN PROPERTY FROM THE FOYC LEASE PREMISES TO THE FARMSTEAD LEASE PREMISES; AND OTHER MATTERS RELATED THERETO.

Mr. Davis made a motion, seconded by Mr. Hart, approved 5 – 0, to approve **Ordinance 2023-14** on second reading.

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ORDINANCE 2023-15 AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO PURCHASE AND SALE AGREEMENT BY AND BETWEEN OCONEE COUNTY, SOUTH CAROLINA, AND MEYN AMERICA, LLC; AND OTHER RELATED MATTERS.

Mr. Elliott made a motion, seconded by Mr. Davis, approved 5 – 0, to approve **Ordinance 2023-15** on second reading.

ORDINANCE 2023-16 AN ORDINANCE TO AMEND AND SUPPLEMENT ORDINANCE 2023-01, WHICH ESTABLISHED THE BUDGET FOR OCONEE COUNTY AND PROVIDED FOR THE LEVY OF TAXES FOR ORDINARY COUNTY PURPOSES, FOR THE TRI-COUNTY TECHNICAL COLLEGE SPECIAL REVENUE FUND, FOR THE EMERGENCY SERVICES PROTECTION SPECIAL REVENUE FUND, FOR THE ROAD MAINTENANCE SPECIAL REVENUE FUND, FOR THE BRIDGE AND CULVERT CAPITAL PROJECT FUND, FOR THE ECONOMIC DEVELOPMENT CAPITAL PROJECT FUND, FOR THE PARKS, RECREATION, AND TOURISM CAPITAL PROJECTS FUND, FOR THE DEBT SERVICE FUND, FOR THE VICTIM SERVICES SPECIAL REVENUE FUNDS, FOR THE CAPITAL VEHICLE / EQUIPMENT FUND, AND FOR THE CREATION OF THE FIRE / EMERGENCY SERVICES CAPITAL VEHICLE AND EQUIPMENT FUND THE COMMUNITY HEALTH AND COMMUNITY SERVICES FUND, AND THE GENERAL ONE TIME CAPITAL FUND, ALL IN OCONEE COUNTY FOR THE FISCAL YEAR BEGINNING JULY 1, 2023 AND ENDING JUNE 30, 2024, IN ORDER TO EFFECT SUPPLEMENTAL APPROPRIATIONS; AND OTHER MATTERS RELATED THERETO.

Mr. Davis made a motion, seconded by Mr. Hart, to approve **Ordinance 2023-16** on second reading.

Mr. Davis offered comments related to FY2023-2024 Budget **Ordinance 2023-16**.

Mr. Durham offered comments related to FY2023-2024 Budget **Ordinance 2023-16**.

Motion approved 5 – 0.

First Reading of the Following Ordinances

~~**ORDINANCE 2023-17** AN ORDINANCE AUTHORIZING, PURSUANT TO TITLE 12, CHAPTER 44 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A SPECIAL SOURCE REVENUE CREDIT AGREEMENT BY AND BETWEEN OCONEE COUNTY, SOUTH CAROLINA, AND A COMPANY IDENTIFIED FOR THE TIME BEING AS PROJECT GALT, ACTING FOR ITSELF, ONE OR MORE CURRENT OR FUTURE AFFILIATES AND OTHER PROJECT COMPANIES (COLLECTIVELY, “COMPANY”); PROVIDING FOR A FEE IN LIEU OF AD VALOREM TAXES INCENTIVE; PROVIDING FOR A SPECIAL SOURCE REVENUE CREDIT; CREATING A, OR MODIFYING AN EXISTING, JOINT COUNTY INDUSTRIAL AND BUSINESS PARK BETWEEN OCONEE COUNTY AND PICKENS COUNTY SO AS TO DESIGNATE THE PROPERTY OF THE PROJECT AS PART OF THE PARK; AND OTHER RELATED MATTERS.~~

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First and Final Reading for the Following Resolutions

RESOLUTION 2023-14 A RESOLUTION ESTABLISHING THE OCONEE COUNTY OPIOID RESPONSE TASK FORCE.

Mr. Davis made a motion, seconded by Mr. Elliott, to approve **Resolution 2023-14** on first and final reading.

Mr. Hart inquired as to why the resolution states that Ms. Brock is to organize the forming of the Opioid Response Task Force and not the Sheriff's Department.

Ms. Brock noted that the language included in **Resolution 2023-14** came directly from the State.

Motion approved 5 – 0.

Discussion Regarding Action Items

At the request of Mr. Elliott, Mr. Davis made a motion, seconded by Mr. Durham, approved 5 – 0, to take a 5-minute recess.

Council convened at 8:32 p.m.

Council reconvened at 8:40 p.m. on a motion made by Mr. Davis, seconded by Mr. Elliott, approved 5 – 0.

Council discussion and approval of the issuance of an Request for Proposals for the renovation of the former Oconee County Courthouse.

Mr. Luther Lyle, member of St. John's Lutheran Church in Walhalla, addressed Council utilizing a handout [copy filed in backup] about the severe deterioration of the former Oconee County Courthouse.

Mr. Durham made a motion, seconded by Mr. Davis, to direct County staff to issue an RFP or RFI for renovation of the former Oconee County Courthouse.

Mr. Davis made a motion, seconded by Mr. Elliott, to amend the previously stated motion to include a RFP for demolition of the former Oconee County Courthouse.

Mrs. Tronda Popham, Procurement Director, suggested to Council that a bid be obtained from one vendor for a demolition price and asked Council if they would like bids for renovation costs as well.

Mr. Davis provided background information on previous plans for renovation to the former courthouse, noting that none of the plans came to fruition.

Mr. Davis withdrew his amendment to the motion.

Mr. Durham withdrew his original motion.

Mr. Davis made a motion, seconded by Mr. Durham, approved 5 – 0, to approve issuing a request for bids for demolition of the former Oconee County Courthouse and to seek grants that may aid in the cost of demolition.

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Council consideration and discussion regarding updating and amending Sign Control Ordinance 2020-09.

Mr. Davis noted that he has had several inquiries from citizens related to digital on-premise signs and stated that he would like County Attorney, Mr. David Root, to remove the restrictions of these signs while he is in the process of editing Sign Control **Ordinance 2020-09** that will come before Council for consideration.

RFP 23-02 Financial Auditing Services
\$60,000.00

Department: Finance Amount:

Procurement was approved by Council in Fiscal Year 2023-2024 budget process.
Budget: \$68,000.00 Project Cost: \$60,000.00 Balance: \$8,000.00

This Request for Proposal was issued to select a firm of Independent Certified Public Accountants to provide auditing and consulting services to Oconee County beginning with the audit of the 2022-2023 fiscal year. Under South Carolina law, Oconee County must provide an independent annual audit of all financial records and transactions of the County to be made by a Certified Public Accountant (or firm of such accountants) which has no personal interest, direct or indirect, in the fiscal affairs of the County or its officers.

One August 1, 2023 formal sealed proposals were opened. Thirty-six (36) firms were notified of this opportunity and one firm submitted a proposal. An evaluation committee consisting of County Staff reviewed / scored the response and unanimously voted to recommend Mauldin & Jenkins CPAs & Advisors, of Columbia, SC, for award. Mauldin and Jenkins CPAs & Advisors has been the County's auditor for the last ten (10) years.

It is the staff's recommendation that Council:

- 1. Approve the award of RFP 23-02, Financial Auditing Services, to Mauldin & Jenkins CPAs and Advisors of Columbia, SC, in the amount of \$60,000.00***
- 2. Authorize the County Administrator to renew this contract for up to four (4) one-year terms, as long as the amount does not exceed the amount budgeted for this service, and the services provided are satisfactory.***

Mr. Davis made a motion, seconded by Mr. Elliott, to approve the award of RFP 23-02, Financial Auditing Services, to Mauldin & Jenkins CPAs and Advisors of Columbia, SC, in the amount of \$60,000.00 and authorize the County Administrator to renew this contract for up to four (4) one-year terms, as long as the amount does not exceed the amount budgeted for this service, and the services provided are satisfactory.

Mr. Hart presented several questions related to the above request.

Short discussion related to the approval of the above request followed.

Motion approved 5 – 0.

PO 55251, LS3P Associates Phase 2
Alexander-Cannon-Hill House
Renovation, Change Order # 1

Department(s): Oconee PRT – High Falls

Amount: Original Purchase Order: \$28,800.00
Phase 2 (Change Order # 1): \$67,500.00
Total: \$96,300.00

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Procurement was approved by Council in Fiscal Year 2022-2023 & 2023-2024 budget process.
Budget \$96,300.00 Project Cost: \$96,300.00 Balance: \$0.00

(Funding from Local ATAX Fund \$28,800.00 FY 2022-2023 & Parks, Recreation & Tourism Capital Project Fund \$67,500.00 FY 2023-2024)

Pleasant Alexander built the Alexander-Cannon-Hill (ACH) House in 1831. In 1971, Duke Power gave the house to High Falls County Park. On July 24, 1972, the ACH House was added to the National Register of Historic Places and retains much of the original construction. Currently, the first floor is being used as office space / gift shop and the second floor has only been used for storage. Park Staff wants to utilize the second floor of the house to include office space, conference room, bathroom, etc. Procurement and Park Staff began creating specifications for an electrical upgrade. During a visit to the site, structural issues were found that require correcting before any renovations could be started. With this being a structure from 1831 and being listed on the National Register of Historic Places, staff decided it was in the best interest of the County and the Structure to have a firm that is well versed in this type of project to assist with the renovation.

On January 18, 2023, staff contracted with LS3P Associates, LTD., On-Call Architectural Consultant Firm (RFP 20-02), to assist with the Renovation Project.

Procurement issued Purchase Order Number 55251 to LS3P Associates, LTD., in the amount of \$28,800.00 for Phase 1 – Preliminary Design and Schematic Design Phase for the Alexander-Cannon-Hill House at High Falls County Park.

This Change Order request is for Phase 2 of the Alexander-Cannon-Hill House Renovation. This Phase includes Design Development, Construction Documents, Negotiations and Construction Observation.

Staff requests approval for Change Order #1 to PO 55251 for Architectural Services, in the amount of \$67,500.00; which is an addition to the original scope of work. If approved, the new total for the purchase order is \$96,300.00.

It is the staff's recommendation that Council:

- 1. Approve Change Order # 1 to PO 55251, for project Phase 2, in the amount of \$67,500.00 for a total purchase order amount of \$96,300.00.***
- 2. Authorize the County Administrator to execute documents for change order #1, PO 55251 (Phase 2).***

Mr. Elliott made a motion, seconded by Mr. Davis, to approve Change Order # 1 to PO 55251, for project Phase 2, in the amount of \$67,500.00 for a total purchase order amount of \$96,300.00 and authorize the County Administrator to execute documents for change order #1, PO 55251 (Phase 2).

Mr. Hart suggested the County have a draftsman on staff to complete requests of this manner.

Short discussion followed by Council related to the above request.

Mr. Mize noted that he would be abstaining from the vote because he has been unable to attend a site visit.

Mr. Durham made a motion, seconded by Mr. Elliott, to postpone the request until the September 19, 2023 Council meeting.

Amended motion to postpone the above request failed 2 – 3 [Mr. Davis and Mr. Elliott opposed; Mr. Mize abstained; copy filed with minutes].

Motion to approve original request failed 2 - 3 [Mr. Durham and Mr. Hart opposed; Mr. Mize abstained; copy filed with minutes].

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Council Committee Reports

Budget, Finance and Administration Committee / Mr. Elliott August 15, 2023

Mr. Elliott provided information outlining discussions held at the August 15, 2023 Budget, Finance and Administration Committee meeting.

Board & Commission Appointments

Agricultural Advisory Board

District IV: No questionnaires on file for this seat

Mr. Davis offered comments related to the vacant District IV seat on the Agricultural Advisory Board.

Executive Session:

Mr. Elliott made a motion, seconded by Mr. Hart, approved 5 – 0, to enter into Executive Sessions for the following purposes, as allowed for § 30-4-70(a) of the South Carolina Code of Laws:

1. *Council discussion regarding a contractual matter related to the Town of Salem, City of Seneca, City of Walhalla and the City of Westminster.*
2. *Discussion regarding an Economic Development matter, Utica Mill Project.*
3. *Council consideration and discussion regarding a contractual matter related to public wastewater infrastructure.*

Council entered into Executive Session at 9:13 p.m.

Council returned from Executive Session at 9:42 p.m. on a motion made by Mr. Elliott, seconded by Mr. Hart, approved 5 – 0.

At the request of County Attorney, Mr. David Root, Mr. Elliott made a motion, seconded by Mr. Hart, approved 5 – 0, to direct County Attorney to draft a resolution for approval of fire contracts as negotiated and discussed relating to the Town of Salem, City of Seneca, City of Walhalla and the City of Westminster.

Adjourn:

Mr. Hart made a motion, approved unanimously, to adjourn at 9:42 p.m.

Respectfully Submitted:

Jennifer C. Adams
Clerk to Council

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EXHIBIT C

\$25,000,000
OCONEE COUNTY, SOUTH CAROLINA
GENERAL OBLIGATION BONDS
SERIES 2023

RECEIPT FOR BONDS

I, the undersigned authorized representative of Jefferies LLC, as underwriter of the Oconee County, South Carolina General Obligation Bonds Series 2023 ("Bonds"), acknowledge receipt of the Bonds as described in the table below, in the aggregate principal amount of \$25,000,000, registered in the name of Cede & Co., by means of a credit to the participant account of the underwriter with The Depository Trust Company, New York, New York.

<u>DUE</u> <u>APRIL 1</u>	<u>PRINCIPAL</u> <u>AMOUNT</u>	<u>INTEREST</u> <u>RATE (%)</u>	<u>YIELD (%)</u>	<u>PRICE</u>	<u>CUSIP</u>
2027	\$255,000	5.000%	3.590%	104.489	675583 HM3
2028	265,000	5.000%	3.530%	105.956	675583 HN1
2029	500,000	5.000%	3.550%	107.081	675583 HP6
2030	530,000	5.000%	3.560%	108.189	675583 HQ4
2031	550,000	5.000%	3.580%	109.171	675583 HR2
2032	1,440,000	5.000%	3.610%	110.005	675583 HS0
2033	1,510,000	5.000%	3.620%	110.923	675583 HT8
2034	1,585,000	5.000%	3.650%	110.670 ^c	675583 HU5
2035	1,665,000	5.000%	3.750%	109.834 ^c	675583 HV3
2036	1,750,000	5.000%	3.900%	108.594 ^c	675583 HW1
2037	1,835,000	5.000%	4.050%	107.371 ^c	675583 HX9
2038	1,930,000	5.000%	4.200%	106.164 ^c	675583 HY7
2039	2,025,000	5.000%	4.300%	105.368 ^c	675583 HZ4
2040	2,125,000	5.000%	4.350%	104.973 ^c	675583 JA7
2041	2,230,000	5.000%	4.400%	104.580 ^c	675583 JB5
2042	2,345,000	5.000%	4.470%	104.032 ^c	675583 JC3
2043	2,460,000	5.000%	4.510%	103.721 ^c	675583 JD1

^cPriced to the call date of April 1, 2033.

[Signature Page for Receipt for Bonds follows]

November 2, 2023.

JEFFERIES LLC
AS UNDERWRITER

By: Nathan M. Baldasare

Name: Nathan M. Baldasare

Its: Vice President

I, the undersigned authorized representative of Regions Banks, as registrar/paying agent of the Bonds, hereby acknowledge receipt of the Bonds described in the table above, pursuant to Fast Automated Securities Transfer Balance Certificate Agreement "FAST" currently in effect between Regions Bank and The Depository Trust Company.

November 2, 2023.

REGIONS BANK
AS REGISTRAR/PAYING AGENT

By: _____

Name: _____

Its: _____

[Signature Page for Receipt for Bonds – Oconee County GO Bond 2023]

This November 2, 2023.

JEFFERIES LLC
AS UNDERWRITER

By: _____

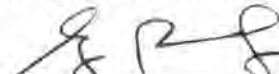
Name: _____

Its: _____

I, the undersigned authorized representative of Regions Banks, as registrar/paying agent, hereby acknowledges receipt of Oconee County, South Carolina \$25,000,000 General Obligation Bonds Series 2023, pursuant to Fast Automated Securities Transfer Balance Certificate Agreement "FAST" currently in effect between Regions Bank and The Depository Trust Company.

This November 2, 2023.

REGIONS BANK
AS REGISTRAR/PAYING AGENT

By:  _____

Name: GREGORY PULLEY

Its: VICE PRESIDENT

[Signature Page for Receipt for Bonds - Oconee County GO Bond 2023]

\$25,000,000
OCONEE COUNTY, SOUTH CAROLINA
GENERAL OBLIGATION BONDS
SERIES 2023

RECEIPT FOR PROCEEDS

I, the undersigned County Treasurer of Oconee County, South Carolina, certify that the County received from Jefferies LLC, or its agents or assigns, the amount indicated below for the \$25,000,000 General Obligation Bonds, Series 2023.

Face Amount of Bonds	\$25,000,000.00
Plus Original Issue Premium	\$1,705,559.75
Less Underwriter's Discount	(\$58,068.75)
TOTAL RECEIVED	\$26,647,491.00

[SIGNATURE PAGE FOLLOWS]

OCONEE COUNTY, SOUTH CAROLINA

By:

Name: Gregorie W. Nowell

Its: County Treasurer

[SIGNATURE PAGE FOR RECEIPT OF PROCEEDS]

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

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,

Plaintiffs,

v.

Oconee County,

Defendant.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C/A No. 2024-CP-37-00202

**DEFENDANT OCONEE COUNTY'S
MOTION TO DISMISS PURSUANT
TO RULES 12(b)(1), 12(c), and 12(h),
SCRCP**

Pursuant to Rules 12(b)(1), 12(c), 12(h), and 26 SCRCP, Defendant Oconee County (“the County”) moves for dismissal of the above-captioned lawsuit based upon the following grounds:

1. Plaintiffs failed to allege sufficient facts to establish their standing to pursue the relief identified in the Complaint;
2. In contravention of both the ripeness and mootness doctrines, Plaintiffs’ Complaint fails to allege facts stating a justiciable controversy;
3. Due to the foregoing, the Court lacks subject matter jurisdiction;
4. Plaintiffs’ Complaint lacks sufficient factual particularity to support a claim capable of sustaining relief;
5. South Carolina Code §11-15-30 bars the claims alleged by Plaintiffs, along with the relief sought thereunder;

6. Pursuant to Rule 26, SCRPC, the County further moves the Court for a protective order staying all discovery pending resolution of the instant, outcome determinative motion before the Court so as to avoid undue expense and waste of taxpayer resources.

This Motion is supported by: the South Carolina Rules of Civil Procedure; the pleadings and attachments thereto; applicable statutory law; applicable decisional law; and a memorandum of law to be filed in advance of a hearing on this Motion. Accordingly, Defendant Oconee County respectfully asks the Court to enter an Order in its favor dismissing this action with prejudice.

/s/ Lane W. Davis

William W. Wilkins (SC Bar No. 6112)

Lane W. Davis (SC Bar No. 68796)

MAYNARD NEXSEN PC

104 S. Main Street, Suite 900 (29601)

Greenville, SC 29603-0648

Phone: 864.370.2211

WWilkins@maynardnexsen.com

LDavis@maynardnexsen.com

April 24, 2024

Greenville, South Carolina

Attorneys for Oconee County

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

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,

Plaintiffs,

v.

Oconee County,

Defendant.

IN THE COURT OF COMMON PLEAS

TENTH JUDICIAL CIRCUIT

C.A. No. 2024-CP-37-00202

**DEFENDANT OCONEE COUNTY'S
MEMORANDUM SUPPORTING ITS
MOTION TO DISMISS**

Defendant Oconee County (“County”) respectfully submits the instant Memorandum Supporting its Motion to Dismiss Plaintiffs’ Complaint pursuant to SCRCP 12(b)(1), 12(c), and 12(h).

I. INTRODUCTION

Plaintiffs’ lawsuit imperils local governments throughout the State and warrants immediate dismissal with prejudice. South Carolina local governments heavily depend upon their ability to issue bonds to raise funds for public projects required by their constituents. At the risk of oversimplification, bond purchasers essentially loan money to issuing local governments in exchange for regular interest payments and ultimately the return of their original investment.

In order for this finance arrangement to work, however, *bona fide* purchasers must have confidence in the established legality of the bonds they seek to buy from local governments. Otherwise, *bona fide* purchasers will simply invest elsewhere and South Carolina’s counties and cities will lack the funding to support critical capital projects such as water systems, sewer infrastructure, and roadways. For this reason, the South Carolina General Assembly statutorily

imposed a strict twenty (20) day contestability period to challenge bonds issued by local governments after the formal filing of the transcript of bond proceedings. Yet, here, Plaintiffs nonetheless seek to contest the bonds issued by Oconee County long after the 20-day statutory window closed and at such time as the bonds have become uncontestable.

To make matters worse, Plaintiffs lack standing to assert such claims, even if they had brought them in a timely fashion. Moreover, no justiciable controversy exists and Plaintiffs' Complaint otherwise fails to assert legally cognizable claims for relief. This Court should dismiss this case with prejudice as a result.

II. FACTUAL BACKGROUND

Plaintiffs unlawfully seek to contest Oconee County Ordinance 2023-13 ("Bond Ordinance"). Oconee County Council unanimously enacted the Bond Ordinance in duly called meetings respectively held on: July 18, 2023, August 15, 2023, and September 5, 2023. (*See* Answer, Exhibit B, Meeting Minutes.) The Bond Ordinance authorized the issuance of general obligation bonds in an amount not to exceed \$25,000,000 for the purpose of designing, acquiring, constructing, installing, equipping, or rehabilitating various capital projects, including wastewater improvements and related equipment, and other related personal property.

Pursuant to the Bond Ordinance, bonds issued on or about November 2, 2023. (Answer, Exhibit C, Receipts.) A true, correct, and full record of proceedings in connection with the bond issuance was filed in the Office of the Clerk of Court for Oconee County on November 8, 2023, and indexed in a special book kept for that purpose. (Answer, Exhibit A, Certificate of Clerk.)

Plaintiffs now impermissibly ask the Court to interject itself into these completed legislative acts, reversing the unanimous County Council, and impairing the contractual rights of unnamed *bona fide* purchasers who have already acquired the bonds. According to Plaintiffs, the

bond proceeds will be utilized for a particular infrastructure project with construction activities substantially occurring in the southern portion of the County. (Compl. ¶ 13.) Plaintiffs claim bonds funding such a project may only issue following a “special assessment, tax or service charge” on all Oconee County residents who live outside of Seneca, Walhalla, Westminster, and certain neighborhoods preferred by Plaintiffs. (Compl. ¶ 29.) Because a slew of legal infirmities afflicts Plaintiffs’ lawsuit, Oconee County filed the instant Motion.

III. LEGAL STANDARD

“After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” SCRCP 12(c). “A judgment on the pleadings is proper where there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in plaintiff’s favor.” *Sapp v. Ford Motor Co.*, 386 S.C. 143, 146, 687 S.E.2d 47, 49 (2009). Allegations which are conclusory, rather than factual, and conclusions of law should be disregarded. *Fireman’s Ins. Co. v. Cincinnati Ins. Co.*, 302 S.C. 234, 235, 394 S.E.2d 855, 856 (Ct. App. 1990); *Greneker v. Sprouse*, 263 S.C. 571, 574 (1975). Similarly, inferences drawn from pled facts are not taken as true for purposes of the Motion. (*Id.*) Motions for judgment on the pleadings can embrace all species of 12(b) motions, including failure to state a claim, failure to join a party, and lack of subject matter jurisdiction. *See* SCRCP 12(h).

In turn, a motion pursuant to SCRCP 12(b)(1) raises the fundamental question of whether a court has jurisdiction to adjudicate the matter before it. “Before any action can be maintained, there must exist a justiciable controversy.” *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). “A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.” *Pee Dee Elec. Coop. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761,

762 (1983). Justiciability encompasses several doctrines, including ripeness, mootness, and standing. *Jackson v. State*, 331 S.C. 486, 489 S.E.2d 915 (1997). Application of the foregoing legal standards to the facts *sub judice* compels the dismissal of Plaintiffs’ lawsuit.

IV. ARGUMENT

The Court should grant Oconee County’s Motion with prejudice because: (A) S.C. Code §11-15-30 bars Plaintiffs’ lawsuit; (B) Plaintiffs lack standing; (C) No justiciable controversy exists; and (D) Plaintiffs failed to allege a legally cognizable claim.

A. SOUTH CAROLINA CODE EXPRESSLY BARS PLAINTIFFS’ LAWSUIT.

South Carolina Code §11-15-30 (“Section 11-15-30”) unambiguously bars all lawsuits “on account” of a local government body’s issuance of general obligation bonds *after* the expiration of: “twenty days from the date of the filing and indexing” of the underlying bond proceedings with “the office of the clerk of the county.” *Compare* S.C. Code §11-15-30 *with* S.C. Code §11-15-10. Here, Plaintiffs irrefutably failed to satisfy Section 11-15-30’s 20-day timing requirement.

As reflected by Exhibit A to its Answer, Oconee County properly indexed and filed the bond materials on November 8, 2023. (Ans., Ex. A, Certificate of Clerk.) Plaintiffs were, therefore, required--but did not--file their lawsuit by November 28, 2023. When they did eventually file their Complaint on March 17, 2024, Plaintiffs’ lawsuit had already been time-barred under Section 11-15-30 for nearly four months.¹

The “practical necessity” underlying the timing limitation imposed by Section 11-15-30 is “obvious” for two reasons. *Morgan v. Feagin*, 230 S.C. 315, 317, 95 S.E.2d 621, 622 (1956). First,

¹ In addition to the public notification requirements satisfied by the County’s proper filing and indexing of the bond materials, *see* Answer, Ex. A, Plaintiffs are likewise charged with knowledge of the Oconee County ordinance approving the bonds upon its enactment. *See Labruce v. City of N. Charleston*, 268 S.C. 465, 467, 234 S.E.2d 866, 867 (1977) (“Citizens are charged with knowledge of existing law.”)

“Purchasers of bonds could hardly be found if the bonds” in their hands “were subject...to attack for alleged illegality in the proceedings upon the issuance of them.” Second, “[I]t is within common knowledge that sales of bonds are frequently timed to take advantage of a favorable market, which might well be hindered by long delay.” *Id.* Thus, allowing Plaintiffs’ lawsuit to progress any further would undermine the public policies underpinning Section 11-15-30 as expressed by the General Assembly and acknowledged by the *Morgan* Court.

The holding of *Berry v. McLeod*, 328 S.C. 435, 440 & 444, 492 S.E.2d 794, 798-99 (Ct. App. 1997) confirms Oconee County’s analysis as correct. In *Berry*, seventeen (17) town residents (“Residents”) sued the lawyers who represented New Ellenton, South Carolina (“Town”) in relation to a revenue bond issued to finance construction of a sewer system. *Id.* at 440. According to the Residents, the bond lawyers misrepresented the nature of existing sewer infrastructure, which, in turn, allowed the Town to issue the bond without first conducting a referendum they claimed was legally required. *Id.* at 441. The Residents further accused the lawyers of misrepresenting the true financial ramifications of the bond. *Id.*

Reinforcing the strong public policy considerations underpinning Section 11-15-30 as articulated in *Morgan*, the *Berry* Court dismissed the lawsuit because *inter alia* Plaintiffs failed to contest the legality of the underlying bond proceedings within twenty days, “which include[d] attacking the underlying factual basis for the bond or the procedure employed for its passage.” *Id.* at 444. Because the same analysis applies here, the same result must also obtain.

By contrast, to allow this and similar lawsuits to progress notwithstanding Section 11-15-30’s language would jeopardize the ability of Oconee County, along with local government bodies throughout the State, from viably using bonded indebtedness as a needed tool to finance the public services required by constituents. The uncertainty resulting from protracted legal battles ensuing

after closure of the twenty-day contestability period imposed by Section 11-15-30 would both chill prospective bond purchasers and also impede local governments from availing themselves of favorable bond markets in the exact manner the General Assembly unambiguously sought to foreclose. *See Morgan*, 95 S.E.2d at 622. Accordingly, this Court should dismiss Plaintiffs' time-barred lawsuit with prejudice and without further delay.

B. PLAINTIFFS LACK STANDING TO PURSUE THE CLAIMS ALLEGED.

Plaintiffs' Complaint failed to plead sufficient facts to establish standing as to each Plaintiff, thereby warranting immediate dismissal of this lawsuit. *S.C. Pub. Int. Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013) ("A party seeking to establish standing bears the burden of proving it."). "Standing to sue is a fundamental requirement in instituting an action." *Blandon v. Coleman*, 285 S.C. 472, 475, 330 S.E.2d 298, 299 (1985). "[T]o invoke the judicial power to determine the validity of executive or legislative action..." Plaintiffs must show *they* sustained or are "immediately in danger of sustaining a direct injury" and cannot merely rely upon "a general interest common to all members of the public." *Ex parte Levitt*, 302 U.S. 633 (1937). In short, "no justiciable controversy is presented unless [Plaintiffs have] standing to maintain the action." *Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 412 (Ct. App. 1994) (Internal citation omitted.) When, as here, Plaintiffs have "no standing to prosecute, the court must dismiss the action." *Id.*

In this regard, it is well-settled that *each* Plaintiff must *both* plead in his Complaint *and* thereafter prove the basis upon which he relies to maintain his civil action. *See Beaufort v. Trask*, 349 S.C. 522, 529 n. 14, 563 S.E.2d 660, 663 (Ct.App. 2002) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). A party may acquire standing in one of three ways: (1) constitutional standing; (2) operation of statute; or (3) the public importance exception. *See Freemantle v.*

Preston, 398 S.C. at 192, 728 S.E.2d at 43. This is true even where the complaint is for declaratory relief, as the Uniform Declaratory Judgments Act (S.C. Code §§15-53-10, *et seq.*) does not create standing where none otherwise exists. *See, e.g., See Beaufort v. Trask*, 349 S.C. at 523, 563 S.E.2d at 661; *see also Tourism Expenditure Review Comm. v. City of Myrtle Beach*, 403 S.C. 76, 81 (2013) (“[I]t is fundamental that the Declaratory Judgments Act does not eliminate the case-or-controversy requirement.”). Here, Plaintiffs do not claim to possess constitutional standing. They instead invoke standing predicated upon their status as “taxpayers” and the public importance exception to standing. Under South Carolina law, however, Plaintiffs have standing under neither.

1. South Carolina Law Rejects “Taxpayer Standing.”

Contrary to what Plaintiffs urge, *see, e.g.,* Complaint at ¶5, “taxpayer standing” does not exist in South Carolina.² Indeed, the idea proves antithetical to standing’s fundamental prerequisite—the existence of a concrete and particularized injury. *See Freemantle v. Preston*, 398 S.C. 186, 193, 728 S.E.2d 40, 44 (2012) (injuries “common to all citizens and taxpayers ... [would] defeat[] the constitutional requirement of a concrete and particularized injury”). The South Carolina Supreme Court squarely addressed this issue in *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 198 (2008):

ATC further relies on its status as a taxpayer to acquire standing. The injury to ATC, however, as a taxpayer is 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.

² In paragraph 5 of their Complaint, Plaintiffs incorrectly conflate the concepts of taxpayer standing and public importance standing. Such analysis is errant. The decisions cited in Paragraph 5 relate to public importance standing, not taxpayer standing, which the Supreme Court clearly rejected in *ATC*. The County addresses public importance standing below.

Id.

Under their flawed “taxpayer standing” analysis, Plaintiffs have not and cannot articulate any concrete, particularized injuries they have individually sustained. (*See* Compl. at *passim*.) Indeed, they have not articulated any injuries they have sustained, let alone injuries which, if true, would somehow differ from any other member of the public. And, while Plaintiff SCPIF, a serial litigant,³ has frequently sought recognition of the concept of taxpayer standing, its efforts have been roundly and repeatedly rejected by South Carolina’s appellate courts. *See, e.g., S.C. Pub. Int. Found. v. S.C. Dep’t of Transportation*, 421 S.C. 110, 118, 804 S.E.2d 854, 858 (2017). (“Petitioners are unable to show they suffered a concrete and particularized injury distinct from that shared by other taxpayers; therefore, we find Petitioners do not have constitutional standing). As “taxpayer standing” does not satisfy constitutional standing requirements, Plaintiffs’ Complaint should be dismissed to the extent it is reliant upon a standing theory long rejected by the South Carolina Supreme Court.

2. Plaintiffs Fail to Allege Sufficient Facts to Satisfy Public Importance Standing.

Plaintiffs similarly fail to allege sufficient facts to invoke the public importance exception to standing as articulated by the South Carolina Supreme Court. “For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance.” *ATC South*, 380 S.C. at 199. The South Carolina Supreme Court has, since *ATC South*, emphasized trial courts must cautiously invoke the

³ Plaintiff SCPIF suffers from an additional standing problem. As a non-profit entity, SCPIF does not even pay taxes. Predictably, then, the Complaint fails to allege any facts to support constitutional standing. SCPIF likewise fails to allege any facts to sustain associational standing on behalf of any of its members, as required. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 75-76 (2014) (“Here, Plaintiffs fail to allege a particularized injury either to themselves or their members. Rather, they assert only generalized grievances suffered by the public as a whole which are insufficient to establish standing.”)

doctrine lest the exception swallow the rule. *Jowers v. S.C. Dep’t of Health & Env’t Control*, 423 S.C. 343, 360, 815 S.E.2d 446, 455 (2018); *Bodman v. State*, 403 S.C. 60, 69, 742 S.E.2d 363, 367 (2013). “Standing cannot be granted to every individual who has a grievance,” the dispositive consideration is “whether a resolution is needed for future guidance.” *ATC South*, 380 S.C. at 199.⁴

According to Plaintiffs’ Complaint, Oconee County should not have issued bonds that have already been sold to investors and cannot use proceeds from such sales according to the terms agreed upon by and with such investors. In particular, Plaintiffs demand the Court prevent the County from using bond proceeds to fund the final phase of a sewer project. (Compl. ¶ 13.) Plaintiffs’ allegations altogether fail to demonstrate any need for future guidance.

The bonds about which Plaintiffs complain have already issued. Nowhere do Plaintiffs contend the County intends to pursue similar bonds for the same purpose in the future. Nor can they. Nowhere do Plaintiffs contend the alleged problems they sue over occurred before. Nor can they. To the contrary, Plaintiffs very narrowly assert—under a unique, one-time only fact pattern—that the County intends to use bond proceeds to build infrastructure in a southern portion of Oconee County presently lacking sewer service.

⁴ The United States Supreme Court likewise cautions trial courts of the need to apply the standing requirements strictly:

Few exercises of the judicial power are more likely to undermine public confidence in the neutrality and integrity of the Judiciary than one which casts the Court in the role of a Council of Revision, conferring on itself the power to invalidate laws at the behest of anyone who disagrees with them. In an era of frequent litigation, class actions, sweeping injunctions with prospective effect, and continuing jurisdiction to enforce judicial remedies, courts must be more careful to insist on the formal rules of standing, not less so.

Arizona Christian Sch. Tuition Org. v. Winn, 563 U.S. 125, 146 (2011).

Accepting Plaintiffs’ allegations as true, then, their Complaint simply articulates generalized grievances about the County’s legislative decisions absent any showing of a risk of repetition. *Ballard v. Newberry Cnty.*, 432 S.C. 526, 534, 854 S.E.2d 848, 852 (Ct. App. 2021) (finding that there was not “an urgent need for future guidance” as “[n]othing distinguishes this case from any other conceivable case a citizen could bring challenging” a type of governmental act.); *see also, e.g., Freemantle v. Preston*, 398 S.C. 186, 194, 728 S.E.2d 40, 44 (2012) (“the personnel choices of Anderson County, even in the face of a seemingly excessive severance package, do not necessitate further guidance”); *Quinn v. City of Columbia*, 303 S.C. 405, 401 S.E.2d 165 (1991) (challenge to method of annexation does not give rise to public importance standing). For these reasons, Plaintiffs failed to plead sufficient facts to invoke the public importance exception to standing. And, the Court should, therefore, dismiss Plaintiffs’ Complaint.

C. PLAINTIFFS’ COMPLAINT FAILS TO ALLEGE A JUSTICIABLE CONTROVERSY.

Courts may only consider cases where a justiciable controversy exists. “A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.” *Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 141, 796 S.E.2d 165, 174 (Ct. App. 2016). Plaintiffs’ claim fails because it is moot as to the issuance of bonds and not ripe as to the County’s use of the bond proceeds.

Plaintiffs’ claims are moot. The County has already issued the bonds contemplated by the Bond Ordinance. *Bona fide* third-party purchasers for value now hold the bonds issued by Oconee County. Plaintiffs notably failed to name any of those parties. Answer, Ex. C, Receipts; *see also, e.g.,* S.C. Code Ann. § 11-15-30 (bonds issued by county are “incontestable” once “in the hands of a *bona fide* purchaser for value); *St. Andrews Pub. Serv. Dist. v. Moseley*, 323 S.C. 389, 393,

475 S.E.2d 750, 752–53 (1996) (“When bonds are issued, there arises a contract between the purchaser and seller, which obligation may not be impaired in violation of the contract clause, S.C. Const. article 1, § 8.”). As no bonds remain to be issued and the terms of these bonds are fixed by contract, Plaintiffs’ claims are moot.

“A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.” *Sloan v. Greenville Cnty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). This issue arises routinely in the realm of government bonds. Courts throughout the country regularly deem challenges to the issuance of bonds and the use of their proceeds to be moot once the bonds have issued to third parties. *See, e.g., Cape Henlopen Taxpayers for Fair Elections v. Cape Henlopen Sch. Dist.*, 2007 WL 98486, at *1 (Del. Ch. Jan. 3, 2007) (“the bonds have been issued and are beyond the power of this, or any, court to set them aside even if issued pursuant to an irregularly conducted referendum. Thus, there is no prospective equitable relief that can be granted; in short, the Plaintiffs’ equitable claims are moot.”); *Pelkey v. City of Fargo*, 453 N.W.2d 801, 803 (N.D. 1990) (dismissing claims as moot where bonds have been issued and the taxes imposed to fund payments cannot be repealed until the bonds have been paid in full); *see also, e.g., Solares v. City of Miami*, 23 So. 3d 227, 228 (Fla. Dist. Ct. App. 2009); *Scully v. Town of W. Hartford*, 2007 WL 2200370, at *2 (Conn. Super. Ct. Apr. 17, 2007); *Carman v. Bd. of Comm’rs of McKinley Cnty.*, 1927-NMSC-069, ¶ 2, 32 N.M. 517, 259 P. 821, 822.

The reasoning undergirding this analysis is simple. The powers of the judicial branch are limited to actual controversies. *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) (explaining that South Carolina courts “will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.”) There is no longer an actionable controversy once municipal bonds have entered the marketplace. *See* 26 C.J.S. Declaratory

Judgments § 83 (“An action for declaratory relief is moot where the bonds funding the project have already been sold and distributed into the marketplace. . . .”). Thus, the Court should dismiss Plaintiffs’ lawsuit for another reason: their claims are moot.

D. PLAINTIFFS’ COMPLAINT FAILS TO STATE A CLAIM.

Last, Plaintiffs failed to allege a viable claim supportive of relief. According to Plaintiffs, the Court should issue declaratory relief in their favor because the Bond Ordinance runs afoul of Article X, Section 12 of the South Carolina Constitution. Specifically, Plaintiffs claim Oconee County impermissibly intends to use bond proceeds to build sewer infrastructure exclusively benefitting a discrete geographical portion of the County, to the exclusion of its remaining citizens. (Compl. ¶¶ 21-26.) Not so.

Assuming *in arguendo*, Oconee County, in fact, used the bond proceeds to build sewer infrastructure in an unserved geographic area, Plaintiffs err in concluding the entire County would not obtain a corresponding benefit. In fact, the South Carolina Supreme Court reached the exact opposite conclusion in the decision of *Casey v. Richland Cnty. Council*, 282 S.C. 387, 390, 320 S.E.2d 443, 444 (1984). In *Casey*, the Supreme Court found that the operation and maintenance of a sewer system in an unincorporated portion of a county benefitted all county residents – even those who already received sewer service elsewhere—because it improved sanitary conditions in the county. *Id.* Indeed, the *Casey* Court expressly found: “We hold the asserted benefit is general in nature...” *Id.* at 390.

The District of South Carolina similarly found the construction of water and sewer infrastructure provides “numerous” benefits to residents who are not directly served by such facilities as they: improve public health and safety, increase economic development, increase property values, and increase the tax base. *N. Carolina Elec. Membership Corp. v. White*, 722 F.

Supp. 1314, 1337 (D.S.C. 1989). The same holds true here. Even if the allegations of Plaintiffs' Complaint are taken as true and Oconee County only used bond proceeds to build infrastructure in an unserved area in the southern part of the County, such alleged construction of sewer infrastructure would nonetheless benefit all County residents by improving Oconee County's sanitary conditions, public health and safety, and increasing its economic development, property values, and tax base. For the foregoing reasons, then, Plaintiffs' Complaint fails to plead *prima facie* factual allegations sufficient to demonstrate Oconee County violated South Carolina Constitution Article X, Section 12 thereby warranting dismissal of its claim for declaratory and injunctive relief.⁵ See *Dantzler v. Callison*, 227 S.C. 317, 88 S.E.2d 64 (1955).

⁵ Moreover, under South Carolina law, the Court must presume Ordinance 2023-13 "is both reasonable and otherwise valid" unless the contesting party provides positive evidence that it is "palpably arbitrary, capricious or unreasonable." *U.S. Fid. & Guar. Co. v. City of Newberry*, 257 S.C. 433, 186 S.E.2d 239 (1972) (quoting *Colonial Life & Accident Ins. Co. v. South Carolina Tax Comm'n*, 233 S.C. 129, 103 S.E.2d 908, 917 (1958)). Here, Plaintiff fails to plead any factual allegations, which if proved, would overcome this presumption of reasonableness.

V. CONCLUSION

Oconee County respectfully asks the Court to enter an Order dismissing this action, with prejudice, for the reasons set forth above and grant it such other relief as this Court deems just and appropriate.

/s/ WW Wilkins

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June 6, 2024

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
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,)
Plaintiffs,)
v.)
Oconee County,)
Defendants.)

IN THE COURT OF COMMON PLEAS
IN THE 10TH CIRCUIT

CASE NO: 2024-CP-37-00202

**MEMORANDUM IN OPPOSITION TO
DEFENDANT’S MOTION TO DISMISS**

NOW COME the Plaintiffs, by their undersigned attorney, and submit this Memorandum of Law in Opposition to the Defendant’s Motion to Dismiss. Defendant alleges five grounds in support of its Motion to Dismiss:

1. Failure to state a facts sufficient to establish standing;
2. Ripeness and mootness;
3. Lack of subject matter jurisdiction;
4. Lack of particularity;
5. Plaintiffs’ claims are barred by S.C. Code Ann. §11-15-30.

I. Plaintiffs have standing and have stated a valid claim.

Plaintiffs 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.

Oconee 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. Plaintiffs Possess Public Importance Standing.

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. Plaintiffs have asserted both taxpayer standing and public importance standing in this action. 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. Richland 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 public officials and the misuse of taxpayer 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).

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).

The Supreme Court rendered a holding similar to *Ashmore* in *City of Columbia v. Sanders*, 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.

97 S.E.2d 213 (emphasis added). The Supreme Court repeated this holding in *State ex rel McLeod v. McGinnis*, 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.” 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).

B. Plaintiffs Possess Public Importance Standing to Challenge an *Ultra Vires* Act, which Requires Judicial Guidance.

Plaintiffs possess standing as citizens and taxpayers to seek declaratory and injunctive relief for an *ultra vires* act. One clear statement of this rule of standing is Justice Toal's dissenting opinion in *Newman v. Richland County Historic Preservation Comm'n.*, 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*, 16 Ohio App. 3d 30, 16 Ohio B. Rep. 32, 474 N.E.2d 336 (Oh. App. 1983). "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. 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.

* * *

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).

An authoritative case on this kind of standing is *Baird v. Charleston County*, 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." 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.

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

The issue Plaintiff's raise in this case—allegations of an unconstitutional act—is also an important public issue, which calls for judicial intervention.

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.

Plaintiffs allege standing as citizens and taxpayers. They allege that the County engaged in an *ultra vires* acts, in violation of the Constitution. 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, these Plaintiffs should be granted standing to contest the unconstitutional act in this case; there is a profound public interest involved. A judicial decision is necessary for future guidance, “and any further determination of imminent prejudice is unnecessary.” *Id.*

In the case at bar, Plaintiffs 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). The County's alleged constitutional violation makes this an issue of great public importance.

C. Plaintiffs 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. 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 135 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, Plaintiffs possess standing to seek an injunction against illegal acts affecting public funds and public assets.

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 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 Plaintiffs, as taxpayers, have standing to seek declaratory and injunctive relief against an illegal collection and expenditure of public funds.

In *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985), 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. 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.” 285 S.C. at 480.

Myers v. Patterson, 315 S.C. 248, 433 S.E.2d 841 (1993) has a similar holding. A plaintiff had standing as a taxpayer to contest the allegedly unlawful transfer of money collected for one purpose to a

fund set up to address another purpose. The 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 nevertheless 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*, 342 S.C. 515, 520, 537 S.E.2d 299, 301 (Ct. App. 2000). Appellants have standing, under the common law, as taxpayers and citizens to seek declaratory and injunctive relief against an unconstitutional act of the County.

Plaintiffs do not need a statutory right of action to challenge an *ultra vires* act. Plaintiffs’ 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). Plaintiffs 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).

The Defendant County has decreed that the full faith and credit of the County will be pledged in repayment of the bonds. Accordingly, the tax proceeds of the County will be applied to the bonds, which means that all the Plaintiffs, 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. Accordingly, Plaintiffs 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.

D. Defendant's Cases Are Distinguishable.

Against this long list of cases, Defendants relied primarily on two cases: *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 198 (2008), and *Fremantle v. Preston*, 398 S.C. 186, 193, 728 SE2d 40, 44 (2002). The two cases on which the Defendant 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 Constitution. In other words, this case involves the direct misuse of taxpayer money.

ATC South involved a citizen objecting to a regulatory decision by a local government, a zoning issue for the placement of a cell phone tower. It did not involve 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 *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.*, 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.

Fremantle v. Preston is also distinguishable. 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 on which the Defendant relies are distinguishable.

Plaintiffs in the case at bar 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). (Plaintiffs also possess public importance standing.)

E. Plaintiff has Stated a Valid Cause of Action.

The Home Rule Act of 1975 is the source of authority for County Government. Prior to 1975, county government was an arm of the state government at the county level. Each year the state legislature passed a supply bill, which was the county budget. Home Rule played an important role in “eliminat[ing] archaic provisions” of the Constitution by strengthening “proper safeguards for sound State, County, and Local governments. *South Carolina in Hosp. Ass’n of S.C., Inc. v. Cty. of Charleston* 320 S.C. 219, 225, 464 S.E.2d 113, 117 (1995). The “West Committee” held hearings and conferences in the late 1960s to early 1970s seeking to place control of management of county and municipal affairs in the hands of local officials. *Hosp. Ass’n of S.C.*, 320 S.C. at 225, 464 S.E.2d at 117. The Committee unanimously recommended amendments to the Constitution in favor of Home Rule. *Id.*

The S.C. Constitution, as amended, provides:

The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided.

Id., Article VIII, Sec. 7

Oconee County has implemented two of three phases of sewer projects in the Southern part of the County. Phases one and two were paid for primarily through state and federal grants and appropriations from general County funds. This case addresses wastewater improvements or expansion beyond phase two and the financing for any additional phases through bonds.

On November 2, 2023, the County issued \$25,000,000 General Obligation Bonds, Series 2023 (the “2023 Bonds”) 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.” (Emphasis added). *See* Official Statement for 2023 Bonds, Cover.¹

The South Carolina Constitution Article X, Section 14 provides that counties “shall have the power to incur indebtedness in the following categories and in no others: (a) General obligation debt; and (b) Indebtedness payable only from a revenue-producing project or from a special source as provided in subsection (10) of this section.” Section 14(2) further provides that such bonds may only be issued “upon such terms and conditions as the General Assembly shall prescribe by general law within the limitations set forth in this section and Section 12 of this article.”

Article X, Section 12 of the State Constitution provides:

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).

This section recognized the counties’ enhanced powers and the restriction on the creation of new special purpose districts, all of which arose from the Home Rule amendments to the State Constitution in the 1970’s. Following the Home Rule amendments on March 7, 1973, the General Assembly was bound by Article VIII, Section 7, which prohibited laws applicable only to a specific county. The same section empowered the Legislature to enact general laws granting counties “the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided.”

¹ Available at <https://emma.msrb.org/P21737547-P21334508-P21768579.pdf>

Should a county want to provide sewer services, funded by bonds, and support such activities with a tax or special assessment, the county is required to create a special taxing district under S.C. Code Ann. § 4-9-30(5)(a) may thereafter impose a uniform rate of taxation within the special taxing district. *See Ex parte Yeargin*, 295 S.C. 521, 523 (1988) (upholding Anderson County’s special tax district for sewer service).

Section 12 expressly prohibits “bonded indebtedness by any county for sewage disposal . . . 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.” *Id.*

The municipalities of Seneca, Walhalla, and Westminster have the exclusive right to provide sewer services within their municipal limits. The citizens of those cities will not benefit from the new sewer services.

The rural, mountainous, Northern part of the County is served primarily by private septic tanks, septic fields, and septic systems. The rural, mountainous, Northern part of the County will not benefit from the new sewer services in the Southern part of the County.

The upscale neighborhoods around Lake Keowee and Lake Jocassee are served by primarily by privately owned sewer systems. Those neighborhoods will not benefit from the new sewer services in the Southern part of the County.

Accordingly, the proposed new sewer services will only benefit a “particular geographical section of the [C]ounty.”

“Article X, § 12 of the Constitution *requires* the charge be assessed only on those who benefit from the new facilities.” *Robinson v. Richland Cnty. Council*, 293 S.C. 27, 32, (S.C. 1987) (emphasis in original).

Ordinance 2023-13, enacted September 5, 2023, (the “Bond Ordinance”) recites that “[t]he full faith, credit and **taxing power of the County** are irrevocably pledged to the payment of the principal and interest of the [2023 Bonds] as they mature and to create a sinking fund to aid in the retirement and payment thereof. There shall be levied and collected annually upon **all taxable property in the County** . . . an ad valorem tax, without limit as to rate or amount, sufficient for such purposes.” Bond Ordinance, § 11 (emphasis added).

The County could possibly use the bond proceeds for other lawful purposes that benefit the whole county, but not the planned sewer or wastewater services benefiting only the Southern part of the County.

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. Rather it must impose and pledge “a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]” in an area of the County that benefits from the new sewer service and does not encompass the municipal boundaries of Seneca, Walhalla, and Westminster.

The County’s stated intent to use the 2023 Bond proceeds for wastewater improvements, and pledge the full faith, credit, and taxing power of the entire County, without first imposing and pledging “a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]” in an area of the County that benefits from the new sewer service and that does not encompass the municipal boundaries of Seneca, Walhalla, and Westminster, the rural, mountainous Northern part of the County, or the neighborhoods around Lake Keowee and Lake Jocassee served by private sewer systems, violates the State Constitution, Article X, Section 12.

The Plaintiffs will be immediately and irreparably impaired by the Defendants' Constitutional violations.

Defendants rely on *Casey v. Richland County Council*, 282 S.C. 387-320 SC2d 443 (1984), for the proposition that funding a sewer system for only part of the county benefits the whole county. *Casey* is distinguishable from the case at bar in that the constitutional provision at issue in this case was not a part of *Casey*. Second, the sewer services at issue in *Casey* were not being funded by bonds, but rather by taxes. The Court ruled that the funding was a tax and not an assessment; however, it was an unconstitutional tax because it was charged to only certain parts of the county and not other parts, in contravention of the constitutional provision that required taxation to be uniform across the county. In short, *Casey* has no application to the case at bar.

II. Plaintiff's claims are not barred S.C. Code Ann. § 11-15-30.

S.C. Code Ann. § 11-15-30 limit civil actions that are commenced on the account of issuance of bonds.

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.

Plaintiffs do not contest the issuance of the bonds, nor the power or authority of the defendant County to issue such bonds. Plaintiffs are not challenging the bonds, which are already sold in the public marketplace, and they are in the stream of commerce. Nothing this court does can affect the bonds themselves or the accumulation of interest. That is already established..

Plaintiffs challenge the proper uses of the bond proceeds, which, under the Constitution, cannot be used for creating facilities for the treatment of sewer or wastewater, that benefits a portion of the County, without a special tax district and special assessment in that district to pay for the sewer services that benefit that special tax

district, as required by the Constitution. The Constitution does not address the **issuance** of the bonds. The Constitution prohibits the expenditure the **proceeds** of the bonds 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. That's exactly the situation we have in this case, and § 11-15-30 does not impact this court's power and jurisdiction to address the constitutional violation.

III. Plaintiff's claims are not barred by ripeness or mootness.

a. Plaintiff's claims are ripe.

Plaintiff's claims are ripe. The Defendant County has already sold \$25 million with the bonds. The stated plan of the County is to use proceeds of the bonds to pay for sewer system in the lower part of the county in violation of the Constitution. They have committed the \$25 million of bonds, or the vast majority of it, to pay for this installation of the sewer services in the lower part of the County. The action is ripe for action by this Court because the County has already committed to spend the money in violation of the Constitution. 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.

b. Plaintiff's 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 actually spent. Accordingly, this matter is not moot. However, if the Court were to determine that matter were moot, plaintiffs 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 is very much similar 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 ruling on this action.

IV. This Court possesses subject matter jurisdiction.

Plaintiffs have alleged a violation of the South Carolina Constitution by public officials of Oconee County. The courts are the institutions in which address issues of constitutionality. Accordingly, this Court possesses subject matter jurisdiction.

V. Plaintiff’s claims have sufficient particularity.

Plaintiff has quoted the provision of the Constitution which the County is violating. Plaintiff has alleged with some specificity the \$25 million in bonds which have been issued and the purposes for which the bonds of been issued, in violation of the Constitution. Accordingly, plaintiff’s claims are pled with sufficient particularity for the defendant understand them, and for the court to rule upon them.

Defendants contend that the Plaintiffs 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 Constitution. Accordingly, Plaintiffs’ allegations that the actions of the Defendants are unconstitutional constitute a justiciable controversy.

WHEREFORE Plaintiffs pray the Court for the following:

1. That the Court declare that County's stated intent to use the 2023 Bond proceeds for wastewater improvements, and pledge the full faith, credit, and taxing power of the entire County, without first imposing and pledging "a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]" in an area of the County that benefits from the new sewer service and that does not encompass the municipal boundaries of Seneca, Walhalla, and Westminster, the rural, mountainous Northern part of the County, or the neighborhoods around Lake Keowee and Lake Jocassee served by private sewer systems, violates the State Constitution, Article X, Section 12;
2. That the Court grant temporary, preliminary, and permanent restraining orders/injunctive relief against the Defendants' unconstitutional conduct;
3. That the Court grant Plaintiffs their costs and attorneys' fees of this action, pursuant to S.C. Code Ann. § 15-77-300 and Rule 54 SCRPC; and
4. For such other and further relief as the court deems just and proper.

Respectfully submitted,

THE CARPENTER LAW FIRM, PC

s/ James G. Carpenter

S.C. Bar No. 1136

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Attorney for the Plaintiffs

June 7, 2024

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

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,
Plaintiffs,

v.

Oconee County,
Defendants.

IN THE COURT OF COMMON PLEAS

IN THE 10TH CIRCUIT

CASE NO: 2024-CP-37-00202

Plaintiff's Motion to Compel

NOW COME the Plaintiffs, by their undersigned attorney, pursuant to SCRCP 37(d) and (a), and move the Court for lawful remedies for Defendants' complete failure to respond properly to Plaintiffs' Requests for Admission, Interrogatories, and Requests for Production, and in the alternative, for an order compelling full and complete responses to Plaintiffs' Requests for Admission, Interrogatories, and Requests For Production, together with attorneys' fees and costs. Plaintiffs would show unto the Court:

1. Plaintiffs served Requests for Admission, Interrogatories, and Requests for Production on Defendants on April 24, 2024. All discovery requests related to the issues in this case.
2. May 24, 2024, Defendants responded. **Exhibit A.**
3. Defendants objected to **every** Request for Admission, **every** Interrogatory, and **every** Request for Production. They produced **no** substantive response to **any** Request for Admission or **any** Interrogatory, and they produced **no** document, nor did they promise the production of any document.

WHEREFORE, Plaintiffs pray the Court to:

1. Grant the remedies listed under Rule 37(b)(2) (A), (B), and (C) for wholesale failure to respond to Plaintiffs' Requests for Admissions, Interrogatories, and Requests for Production, pursuant to Rule 37(d), to wit:
 - a. Overrule all objections to all discovery requests;
 - b. Declare that each of the Request for Admission is deemed admitted;
 - c. Strike the Answer and declare that Defendant Oconee County violated the South Carolina Constitution;
 - d. Enjoin Oconee County to follow the Constitution;
2. In the alternative, Order full and complete responses to the Requests for Admission, Interrogatories, and Requests for Production;
3. Grant Plaintiffs their attorneys' fees and cost under Rule 37(d); and
4. Grant Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.

/S/ James G. Carpenter
S.C. Bar No. 1136
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Telephone: (864) 235-1269
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Attorney for Plaintiffs

June 29, 2024



Lane W. Davis
Shareholder

May 24, 2024

James C. Carpenter
The Carpenter Law Firm, PC
819 East North Street
Greenville, South Carolina 29601

Re: *South Carolina Public Interest Foundation, et al. v. Oconee County*
Case No. 2024-CP-37-00202

Dear Jim:

Enclosed for service upon you as counsel for the Plaintiffs please find the following documents:

1. Defendant Oconee County's Responses to Plaintiffs' Requests for Admission;
2. Defendant Oconee County's Answers to Plaintiffs' Interrogatories;
3. Defendant Oconee County's Responses to Plaintiffs' Requests for Production;
and
4. Certificate of Service.

Very truly yours,

/s/ Lane W. Davis

Lane W. Davis

LWD/laj
Enclosures

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STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

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,

Plaintiffs,

vs.

Oconee County,

Defendant.

IN THE COURT OF COMMON PLEAS
IN THE TENTH JUDICIAL CIRCUIT

Case No. 2024-CP-37-00202

**DEFENDANT OCONEE COUNTY'S
RESPONSES TO PLAINTIFFS'
REQUESTS FOR ADMISSION**

TO: JAMES C. CARPENTER, ESQ. ATTORNEY FOR THE PLAINTIFFS:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Defendant Oconee County (the "County") hereby propounds its responses to the Requests for Admission ("Requests") issued by Plaintiffs the 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's (the "Plaintiffs") as set forth below. The County expressly reserves the right to revise, amend, correct, supplement, modify, or clarify these responses. The County further reserves all rights and objections, including any objections to the admissibility of these responses. Each and every component of Plaintiffs' Requests are denied, as written, unless expressly admitted below.

GENERAL OBJECTIONS ("G.O.")

The County generally objects to Plaintiffs' Requests on the following bases, which are incorporated into the County's response to each Request as if specifically set forth therein. If the County subsequently sets forth individualized, specific objections, or if it supplies specific,

corresponding Objection numbers, the County does not intend for these further statements or explanations of its objections to waive any other Objection as set forth below.

1. Plaintiffs lack standing to bring the instant litigation. The County accordingly objects to Plaintiffs' Requests because they are not authorized to conduct discovery in the absence of an actual, justiciable controversy before a court of competent jurisdiction.

2. The County further objects as there is a pending dispositive motion that is imminently scheduled for a hearing and Plaintiffs' Requests are premature and would circumvent the limitations and protections established by South Carolina jurisprudence before the Court is able to rule on this matter. Plaintiffs are not permitted to deprive the Court of its authority.

3. The County objects to Plaintiffs' Requests to the extent they are: not proportionate to the needs of the litigation, overbroad, unreasonably tailored, exceed the facts and subject matter of the instant case, and otherwise not calculated to lead to admissible evidence and/or to the extent each Request seeks to impose obligations in excess of those required by the South Carolina Rules of Civil Procedure.

4. The Count objects to all Requests seeking information or materials for purposes other than the instant lawsuit.

5. The County objects to all Requests that would impose an undue burden or unreasonable expense.

6. The County objects to all Requests that are indefinite, vague, ambiguous, subjective, or lacking in sufficient particularity to allow the County to evaluate the request, assess its reasonability, object, or offer a definite response.

7. The County objects to all Requests predicated or bottomed on errant premises, whether legal or factual in nature, such that the resulting request cannot be accurately answered or cannot be answered without distorting the record.

8. The County objects to all Requests that seek a response based on information and/or documents not known to or possessed by the County.

9. The County objects to all Requests seeking information or materials outside the time period material to the instant dispute.

10. The County objects to all Requests seeking to elicit legal conclusions or opinions. Such requests are improper, as requests are propounded to Parties, not their attorneys.

11. The County objects to all duplicative and/or cumulative Requests seeking to require it to supply the same information, documents, or materials more than once.

12. The County objects to Plaintiffs' Requests to the extent they seek information that is protected by the attorney-client privilege, attorney work-product doctrine, common interest privilege, or any other applicable privilege. It hereby asserts all such applicable privileges, protections, and immunities. The County intends to preserve all such privileges to the fullest extent, and any disclosure of privileged information or identification or production of privileged documents in response to these Requests shall be deemed inadvertent and shall not waive those privileges, protections, or immunities as to that or any other information or document. The County objects to all Requests for information protected against disclosure by any other (previously unmentioned) applicable privilege, statute or common law doctrine.

RESPONSES TO REQUESTS FOR ADMISSION

Without waiving or limiting the foregoing general objections, the County further responds as follows:

1. Admit that Oconee County implemented phases one and two of the sewer projects in the southern part of Oconee County without using bonded indebtedness that pledged the full faith and credit and taxing power of Oconee County.

RESPONSE TO REQUEST NO. 1: See G.O. 1 – 7. To the extent a response is required

at this time, this Request is denied as written and the County expressly reserves the right to amend its response.

2. Admit that City of Seneca implemented the sewer projects in the City of Seneca without using bonded indebtedness that pledged the full faith and credit and taxing power of Oconee County.

RESPONSE TO REQUEST NO. 2: See G.O. 1 – 9. To the extent a response is required at this time, the County is unable to admit or deny the Request as written because, *inter alia*, Plaintiffs fail to identify “sewer projects” encompassed by this Request. The County expressly reserves the right to amend its response.

3. Admit that the City of Walhalla implemented the sewer projects in the City of Walhalla without using bonded indebtedness that pledged the full faith and credit and taxing power of Oconee County.

RESPONSE TO REQUEST NO. 3: See G.O. 1 – 9. To the extent a response is required at this time, the County is unable to admit or deny the Request as written because, *inter alia*, Plaintiffs fail to identify “sewer projects” encompassed by this Request. The County expressly reserves the right to amend its response.

4. Admit that the City of Westminster implemented sewer projects in the City of Westminster without using bonded indebtedness that pledged the full faith and credit and taxing power of Oconee County.

RESPONSE TO REQUEST NO. 4: See G.O. 1 – 9. To the extent a response is required at this time, the County is unable to admit or deny the Request as written because, *inter alia*, Plaintiffs fail to identify “sewer projects” encompassed by this Request. The County expressly reserves the right to amend its response.

5. Admit that the Keowee Key subdivision implemented sewer projects in the Keowee

Key subdivision without using bonded indebtedness that pledged the full faith and credit and taxing power of Oconee County.

RESPONSE TO REQUEST NO. 5: *See* G.O. 1 – 9. To the extent a response is required at this time, the County is unable to admit or deny the Request as written because, *inter alia*, Plaintiffs fail to identify “sewer projects” encompassed by this Request. The County expressly reserves the right to amend its response.

6. Admit that citizens living in the northern rural part of Oconee County will not be able to utilize the anticipated wastewater treatment plants and facilities planned for the southern part of Oconee County.

RESPONSE TO REQUEST NO. 6: *See* G.O. 1 – 8, 10. To the extent a response is required at this time, this Request is denied as written. The County expressly reserves the right to amend its response.

7. Admit that citizens living in the Town of Salem will not be able to utilize the anticipated wastewater treatment plants and facilities planned for the southern part of Oconee County.

RESPONSE TO REQUEST NO. 7: *See* G.O. 1 – 8, 10. To the extent a response is required at this time, this Request is denied as written. The County expressly reserves the right to amend its response.

8. Admit that the citizens living in Mountain Rest will not be able to utilize the anticipated wastewater treatment plants and facilities planned for the southern part of Oconee County.

RESPONSE TO REQUEST NO. 8: *See* G.O. 1 – 8, 10. To the extent a response is required at this time, this Request is denied as written. The County expressly reserves the right to amend its response.

9. Admit that the citizens living in Tamassee will not be able to utilize the anticipated wastewater treatment plants and facilities planned for the southern part of Oconee County.

RESPONSE TO REQUEST NO. 9: See G.O. 1 – 8, 10. To the extent a response is required at this time, this Request is denied as written. The County expressly reserves the right to amend its response.

10. Admit that the citizens living in Jocassee Ridge will not be able to utilize the anticipated wastewater treatment plants and facilities planned for the southern part of Oconee County.

RESPONSE TO REQUEST NO. 10: See G.O. 1 – 8, 10. To the extent a response is required at this time, this Request is denied as written. The County expressly reserves the right to amend its response.

11. Admit that the neighborhoods around Lake Jocassee in Oconee County are served by privately owned sewer systems and septic systems that were built without using the bonded indebtedness that pledge the full faith and credit taxing power of Oconee County.

RESPONSE TO REQUEST NO. 11: See G.O. 1 – 9. To the extent a response is required at this time, the County is unable to admit or deny the Request as written because, *inter alia*, Plaintiffs fail to identify the neighborhoods encompassed by this Request. The County expressly reserves the right to amend its response.

12. Admit that Oconee County has not assessed any special fee or charge on any persons or businesses in the southern part of Oconee County to pay for the 2023 Bonds or the planned wastewater treatment facilities.

RESPONSE TO REQUEST NO. 12: See G.O. 1 – 7, 9. To the extent a response is required this Request is denied at this time as the County is unable to admit or deny the Request as written. The County expressly reserves the right to amend its response.

13. Admit that Oconee County has not created a special tax district to pay for the 2023 Bonds.

RESPONSE TO REQUEST NO. 13: *See G.O. 1 – 7, 9.* To the extent a response is required this Request is denied at this time as the County is unable to admit or deny the Request as written. The County expressly reserves the right to amend its response.

14. Admit that Oconee County ran sewer to the Golden Corner Commerce Park in 2014.

RESPONSE TO REQUEST NO. 14: *See G.O. 1 – 7, 9.* The County is unable to admit or deny the Request as written. The County expressly reserves the right to amend its response.

15. Admit that Oconee County graded the Golden Corner Commerce Park in 2015.

RESPONSE TO REQUEST NO. 15: *See G.O. 1 – 7, 9.* To the extent a response is required this Request is denied at this time as the County is unable to admit or deny the Request as written. The County expressly reserves the right to amend its response.

16. Admit that Oconee County recently committed more than \$2.9 million to regrade and provide improvements to the Golden Corner Commerce Park.

RESPONSE TO REQUEST NO. 16: *See G.O. 1 – 7, 9.* To the extent a response is required this Request is denied at this time as the County is unable to admit or deny the Request as written. The County expressly reserves the right to amend its response.

17. Admit that the Golden Corner Commerce Park has no industrial tenants.

RESPONSE TO REQUEST NO. 17: *See G.O. 1 –9.* To the extent a response is required this Request is denied at this time as the County is unable to admit or deny the Request as written. The County expressly reserves the right to amend its response.

18. Admit that since 2015 the Golden Corner Commerce Park has had no industrial

tenants.

RESPONSE TO REQUEST NO. 18: *See G.O. 1 – 7, 9.* To the extent a response is required this Request is denied at this time as the County is unable to admit or deny the Request as written. The County expressly reserves the right to amend its response.

19. Admit the majority of 2023 Bond proceeds are intended to fund planned sewer or wastewater expansion projects beyond Phase II.

RESPONSE TO REQUEST NO. 19: *See G.O. 1 – 7.* To the extent a response is required this Request is denied as written at this time. The County expressly reserves the right to amend its response.

20. Admit that members of the public spoke out against moving forward with the 2023 Bond during the first, second, and third readings of the 2023-13 Bond Ordinance, and at the final hearing for the 2023 bond.

RESPONSE TO REQUEST NO. 20: *See G.O. 1 – 7.* To the extent a response is required, the County craves reference to the minutes for such public meetings and denies this Request, as written to the extent inconsistent therewith. The County expressly reserves the right to amend its response.

21. Admit that a spending plan for the 2023 Bond has not been presented to the public.

RESPONSE TO REQUEST NO. 21: *See G.O. 1 – 7.* To the extent a response is required this Request is denied as written at this time as the known details concerning such expenditures were provided in public meetings and/or bond documents. The County expressly reserves the right to amend its response.

22. Admit that some members of County Council have not been presented with a spending plan for the 2023 Bond.

RESPONSE TO REQUEST NO. 22: *See response to Request No. 21, which is*

incorporated herein by reference. *See* G.O. 1 – 7, 11. To the extent a response is required this Request is denied as written at this time. The County expressly reserves the right to amend its response.

Respectfully submitted,

/s/ Lane W. Davis

William W. Wilkins (SC Bar No. 6112)

Lane W. Davis (SC Bar No. 68796)

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Attorneys for Defendant Oconee County

May 24, 2024

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

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,

Plaintiffs,

vs.

Oconee County,

Defendant.

IN THE COURT OF COMMON PLEAS
IN THE TENTH JUDICIAL CIRCUIT

Case No. 2024-CP-37-00202

**DEFENDANT OCONEE COUNTY'S
ANSWERS TO PLAINTIFFS'
INTERROGATORIES**

TO: JAMES C. CARPENTER, ESQ. ATTORNEY FOR THE PLAINTIFFS:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Defendant Oconee County (the "County") hereby propounds its responses to the interrogatories issued by Plaintiffs the 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's (collectively, "Plaintiffs") as set forth below. The County expressly reserves the right to revise, amend, correct, supplement, modify, or clarify these responses. The County reserves all rights and objections, including any objections to the admissibility of these responses.

GENERAL OBJECTIONS ("G.O.")

The County generally objects to Plaintiffs' Interrogatories on the following bases, which are incorporated into the County's response to each Interrogatory as if specifically set forth therein. If the County subsequently sets forth individualized, specific objections, or if it supplies specific,

corresponding Objection numbers, the County does not intend for these further statements or explanations of its objections to waive any other Objection as set forth below.

1. Plaintiffs lack standing to bring the instant litigation. The County accordingly objects to Plaintiffs' Interrogatories because they are not authorized to conduct discovery in the absence of an actual, justiciable controversy before a court of competent jurisdiction.

2. The County further objects as there is a pending dispositive motion that is imminently scheduled for a hearing and Plaintiffs' Interrogatories are premature and would circumvent the limitations and protections established by South Carolina jurisprudence before the Court is able to rule on this matter. Plaintiffs are not permitted to deprive the Court of its authority.

3. The County objects to Plaintiffs' Interrogatories to the extent they are: not proportionate to the needs of the litigation, overbroad, unreasonably tailored, exceed the facts and subject matter of the instant case, and otherwise not calculated to lead to admissible evidence and/or to the extent each Interrogatory seeks to impose obligations in excess of those required by the South Carolina Rules of Civil Procedure.

4. The Count objects to all Requests seeking information or materials for purposes other than the instant lawsuit.

5. The County objects to all Interrogatories that would impose an undue burden or unreasonable expense.

6. The County objects to all Interrogatories that are indefinite, vague, ambiguous, subjective, or lacking in sufficient particularity to allow the County to evaluate the request, assess its reasonability, object, or offer a definite response.

7. The County objects to all Interrogatories predicated or bottomed on errant premises, whether legal or factual in nature, such that the resulting request cannot be accurately answered or cannot be answered without distorting the record.

8. The County objects to all Requests that seek a response based on information and/or documents not known to or possessed by the County.

9. The County objects to all Interrogatories seeking information or materials outside the time period material to the instant dispute.

10. The County objects to all Interrogatories seeking to elicit legal conclusions or opinions. Such Interrogatories are improper, as interrogatories are propounded to Parties, not their attorneys.

11. The County objects to all duplicative and/or cumulative Interrogatories seeking to require it to supply the same information, documents, or materials more than once.

12. The County objects to Plaintiffs' Interrogatories to the extent they seek information or materials that are protected by the attorney-client privilege, attorney work-product doctrine, common interest privilege, or any other applicable privilege. It hereby asserts all such applicable privileges, protections, and immunities. The County intends to preserve all such privileges to the fullest extent, and any disclosure of privileged information or identification or production of privileged documents in response to these Interrogatories shall be deemed inadvertent and shall not waive those privileges, protections, or immunities as to that or any other information or document. The County objects to all Interrogatories for information protected against disclosure by any other (previously unmentioned) applicable privilege, statute or common law doctrine.

ANSWERS TO INTERROGATORIES

Without waiving or limiting the foregoing general objections, the County further responds as follows:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from witnesses and indicate who has possession of such statements.

ANSWER TO INTERROGATORY NO. 1: See G.O. 1-5, 11-12. The County will further respond, as necessary and appropriate, following the Court's ruling on its dispositive motion.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in the possession of Defendant that relate to its claims in this case.

ANSWER TO INTERROGATORY NO. 2: See G.O. 1-5, 11-12. Notwithstanding these objections, please see the County's Response to Plaintiff's Requests for Production.

3. Identify by name, address, and telephone number:
- a. Each lay witness you intend to call at the trial of this case;
 - b. Each expert witness you intend to call at the trial of this case and the area of the witness's expertise;
 - c. Each expert consultant you or your attorneys have retained or specifically employed in anticipation of litigation or preparation for trial and whom you do not intend to call at trial; and
 - d. Briefly state the substance of the conversation, whether oral or written, with any person referred to in subparts a or b above.

ANSWER TO INTERROGATORY NO. 3: See G.O. 1-5, 8, 11-12. Notwithstanding these objections, The County states that this matter is in its initial stages and it has not yet identified any persons who it will call as an expert witness at the trial of this matter.

4. If any persons named in your answers to the previous Interrogatory have provided you written reports or written statements, identify them sufficiently to frame a Request for Production.

ANSWER TO INTERROGATORY NO. 4: Please see the County's response to Interrogatory No. 3, which is incorporated herein by reference.

5. For each person known to Defendant, or legal counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the facts

known to or observed by such witnesses, or provide a copy of any written or recorded statements, or any affidavits, taken from such witnesses, including parties to this matter.

ANSWER TO INTERROGATORY NO. 5: Please see the County's response to Interrogatory No. 1, which is incorporated herein by reference.

6. Identify all persons who provided factual information for the answers to these Interrogatories.

ANSWER TO INTERROGATORY NO. 6: See G.O. 1-6, 11-12.

7. Identify all known sewer systems in Oconee County and what geographic areas they serve.

ANSWER TO INTERROGATORY NO. 7: See G.O. 1-7, 9, 11-12.

8. Identify by name, address, and telephone number, every consultant hired by Defendant related to the issuance of the \$25 million in 2023 Bonds for wastewater improvements, or the proposed sewer services in Southern Oconee County.

ANSWER TO INTERROGATORY NO. 8: See G.O. 1-7, 9, 11-12.

Respectfully submitted,

/s/ Lane W. Davis
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Lane W. Davis (SC Bar No. 68796)
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Attorneys for Defendant Oconee County

May 24, 2024

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

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,

Plaintiffs,

vs.

Oconee County,

Defendant.

IN THE COURT OF COMMON PLEAS
IN THE TENTH JUDICIAL CIRCUIT

Case No. 2024-CP-37-00202

**DEFENDANT OCONEE COUNTY'S
RESPONSES TO PLAINTIFFS'
REQUESTS FOR PRODUCTION**

TO: JAMES C. CARPENTER, ESQ. ATTORNEY FOR THE PLAINTIFFS:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Defendant Oconee County (the "County") hereby propounds its responses to the Requests for Production issued by Plaintiffs the 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's (collectively, "Plaintiffs") as set forth below. The County expressly reserves the right to revise, amend, correct, supplement, modify, or clarify these responses. The County reserves all rights and objections, including any objections to the admissibility of these responses.

GENERAL OBJECTIONS ("G.O.")

The County generally objects to Plaintiffs' Requests on the following bases, which are incorporated into the County's response to each Request as if specifically set forth therein. If the County subsequently sets forth individualized, specific objections, or if it supplies specific, corresponding Objection numbers, the County does not intend for these further statements or explanations of its objections to waive any other Objection as set forth below.

1. Plaintiffs lack standing to bring the instant litigation. The County accordingly objects to Plaintiffs' Requests because they are not authorized to conduct discovery in the absence of an actual, justiciable controversy before a court of competent jurisdiction.

2. The County further objects as there is a pending dispositive motion that is imminently scheduled for a hearing and Plaintiffs' Requests are premature and would circumvent the limitations and protections established by South Carolina jurisprudence before the Court is able to rule on this matter. Plaintiffs are not permitted to deprive the Court of its authority.

3. The County objects to Plaintiffs' Requests to the extent they are: not proportionate to the needs of the litigation, overbroad, unreasonably tailored, exceed the facts and subject matter of the instant case, and otherwise not calculated to lead to admissible evidence and/or to the extent each Request seeks to impose obligations in excess of those required by the South Carolina Rules of Civil Procedure.

4. The Count objects to all Requests seeking information or materials for purposes other than the instant lawsuit.

5. The County objects to all Requests that would impose an undue burden or unreasonable expense.

6. The County objects to all Requests that are indefinite, vague, ambiguous, subjective, or lacking in sufficient particularity to allow the County to evaluate the request, assess its reasonability, object, or offer a definite response.

7. The County objects to all Requests predicated or bottomed on errant premises, whether legal or factual in nature, such that the resulting request cannot be accurately answered or cannot be answered without distorting the record.

8. The County objects to all Requests that seek a response based on information and/or documents not known to or possessed by the County.

9. The County objects to all Requests seeking information or materials outside the time period material to the instant dispute.

10. The County objects to all Requests seeking to elicit legal conclusions or opinions. Such requests are improper, as requests are propounded to Parties, not their attorneys.

11. The County objects to all duplicative and/or cumulative Requests seeking to require it to supply the same information, documents, or materials more than once.

12. The County objects to Plaintiffs' Requests to the extent they seek information or materials that are protected by the attorney-client privilege, attorney work-product doctrine, common interest privilege, or any other applicable privilege. It hereby asserts all such applicable privileges, protections, and immunities. The County intends to preserve all such privileges to the fullest extent, and any disclosure of privileged information or identification or production of privileged documents in response to these Requests shall be deemed inadvertent and shall not waive those privileges, protections, or immunities as to that or any other information or document. The County objects to all Requests for information protected against disclosure by any other (previously unmentioned) applicable privilege, statute or common law doctrine.

RESPONSES TO REQUESTS FOR PRODUCTION

Without waiving or limiting the foregoing general objections, the County further responds as follows:

1. Produce all maps and charts related to any bond funded sewer or wastewater expansion considerations, including those showing the location of the proposed sewer lines, including all drawings, official or unofficial, by County employees.

RESPONSE TO REQUEST NO. 1: *See G.O. 1-9, 11-12.*

2. Produce all documents related to the planning for the bond funded sewer or wastewater expansion project.

RESPONSE TO REQUEST NO. 2: *See G.O. 1-9, 11-12.*

3. Produce all documents given to members of County Council related to the bond funded sewer or wastewater sewer expansion considerations and projects.

RESPONSE TO REQUEST NO. 3: *See G.O. 1-7, 12.*

4. Produce all maps and charts related to the issuance of the 2023 bonds.

RESPONSE TO REQUEST NO. 4: *See G.O. 1-8, 11-12.*

5. Produce all documents related to the application for or the issuance of 2023 bonds.

RESPONSE TO REQUEST NO. 5: *See G.O. 1-8, 11-12.*

6. Produce all documents given to any member or members of County Council related to the issuance of 2023 bonds.

RESPONSE TO REQUEST NO. 6: *See G.O. 1-7, 11-12.*

7. Produce all documents shown in any public venue related to the bond funded sewer or wastewater expansion considerations, or projects, and/or the 2023 bonds.

RESPONSE TO REQUEST NO. 7: *See G.O. 1-9, 11-12.*

8. Produce all documents in the nature of a spending plan for the \$25 million bond proceeds.

RESPONSE TO REQUEST NO. 8: *See G.O. 1-9, 11-12.*

9. Produce all documents relating or referring to a spending plan for the \$25 million bond proceeds.

RESPONSE TO REQUEST NO. 9: *See G.O. 1-7, 11-12.*

10. Produce all engineering drawings showing an overview of the proposed sewer expansion.

RESPONSE TO REQUEST NO. 10: *See G.O. 1-7, 11-12.*

11. Produce all documents referring to the “Sewer South” project and/or any bond

funded sewer or wastewater expansion considerations and projects.

RESPONSE TO REQUEST NO. 11: *See G.O. 1-9, 11-12.*

12. Produce all documents referring or relating to the “Phase 3” sewer expansion.

RESPONSE TO REQUEST NO. 12: *See G.O. 1-9, 11-12.*

13. Produce all statements produced or issued by County Council related to the “Sewer South” project.

RESPONSE TO REQUEST NO. 13: *See G.O. 1-9, 11-12.*

14. Produce all statements produced or issued by County Council related to any bond funded sewer or wastewater expansion considerations or projects, or the \$25 million bond project.

RESPONSE TO REQUEST NO. 14: *See G.O. 1-9, 11-12.*

15. Produce all communications and documentation shared between or among County Council, County Administrator’s Office, Oconee County Office personnel, and/or the Oconee Joint Regional Sewer Authority related to the “Sewer South” project, or any bondfunded sewer, or wastewater expansion considerations or projects, or the \$25 million bond project.

RESPONSE TO REQUEST NO. 15: *See G.O. 1-9, 11-12.*

16. Produce all communications and documents between members of County Council, CountyAdministrator’s Office, or County employees, and a newspaper known as “the Journal” related to the Sewer South project, or any bond funded sewer, or wastewater expansion considerations or projects, or the \$25 million bond project.

RESPONSE TO REQUEST NO. 16: *See G.O. 1-9, 11-12.*

17. Produce all communications and documents between members of County Council, County Administrator’s Office, County Attorney’s office, County employees, and Mr. Jerry Edwards, Hal Welch, or any compensated associate or employee of the organization

known as “The Edwards Group,” with known holdings of Edwards Group Publishing, Eagle Publishing, and Edwards Land Management, related to the “Sewer South” project, or any bond funded sewer or wastewater expansion considerations or projects, or the \$25 million bond project.

RESPONSE TO REQUEST NO. 17: *See G.O. 1-9, 11-12.*

18. Produce all communications and documents between Oconee County office personnel, members of Oconee County Council, and the law firm formerly known as King KozlarekLaw LLC, now identifying as King Kozlarek Root Law, related to the “Sewer South” project, any bond funded sewer or wastewater expansion considerations of projects, or the \$25 million bond project.

RESPONSE TO REQUEST NO. 18: *See G.O. 1-9, 11-12.*

19. Produce any expert report that you have secured related to this case, the “Sewer South” project, any bond funded sewer or wastewater expansion considerations or projects, or the \$25 million bond project.

RESPONSE TO REQUEST NO. 19: *See G.O. 1-7, 9-12.*

20. Produce any statements from witnesses related to this case, related to the “Sewer South” project, the sewer or wastewater expansion considerations, or the \$25 million bond project.

RESPONSE TO REQUEST NO. 20: *See G.O. 1-7, 9, 11-12.*

21. Produce all state & federal grant related documentation for planned funding of sewer and wastewater expansion considerations or projects beyond Phase II.

RESPONSE TO REQUEST NO. 21: *See G.O. 1-9, 11-12.*

22. Produce all communications and documentation between members of County Council, County Administrator’s Office, or County employees and members of the registered agent for Hartland, LLC related to the Sewer South project, or any bond funded sewer, or wastewater expansion considerations or projects, or the \$25 million bond project.

RESPONSE TO REQUEST NO. 22: *See G.O. 1-9, 11-12.*

23. Produce all communications and documentation between members of County Council, County Administrator's Office, or County employees and members of the Oconee County Planning Commission related to the Sewer South project, or any bond funded sewer, or wastewater expansion considerations or projects, or the \$25 million bond project.

RESPONSE TO REQUEST NO. 23: *See G.O. 1-9, 11-12.*

Respectfully submitted,

/s/ Lane W. Davis

William W. Wilkins (SC Bar No. 6112)

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Attorneys for Defendant Oconee County

May 24, 2024

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

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,

Plaintiffs,

vs.

Oconee County,

Defendant.

IN THE COURT OF COMMON PLEAS
IN THE TENTH JUDICIAL CIRCUIT

Case No. 2024-CP-37-00202

CERTIFICATE OF SERVICE

The undersigned certifies that on the 24th day of May, 2024, he caused a copy of the **Defendant Oconee County's Answers to Plaintiffs' Interrogatories, Requests for Production, and Requests for Admission** to be served upon all counsel of record by U.S. Mail and electronic mail to Counsel as addressed below:

**James C. Carpenter
The Carpenter Law Firm, PC
819 East North Street
Greenville, SC 29601**

/s/Lane W. Davis
William W. Wilkins (SC Bar No. 6112)
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STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

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,

Plaintiffs,

v.

Oconee County,

Defendant.

IN THE COURT OF COMMON PLEAS

TENTH JUDICIAL CIRCUIT

C.A. No. 2024-CP-37-00202

**DEFENDANT OCONEE COUNTY'S
MEMORANDUM OPPOSING
PLAINTIFFS' MOTION
TO COMPEL**

Defendant Oconee County ("County") respectfully submits the instant Memorandum Opposing Plaintiffs' Motion to Compel.

I. INTRODUCTION

South Carolina Code § 11-15-30 expressly bars the instant lawsuit where Plaintiffs, who otherwise lack standing, seek expansive discovery at public expense. It was for this reason the County filed its pending Motion for Judgment on the Pleadings ("Dispositive Motion") wherein it not only asked the Court to dismiss this Action because it was filed *after* the twenty-day window mandated by law for commencing such challenges *but also* expressly asked the Court for a protective order staying discovery *until* the Court determined whether Plaintiffs were statutorily prohibited from prosecuting this case, an action notably otherwise bereft of merit.

Yet, notwithstanding the County's Dispositive Motion, notwithstanding the County's express request for a protective order in its motion, notwithstanding the County's actual timely service of objections and responses to Plaintiffs' expansive discovery, and notwithstanding the County's direct communication to Plaintiffs repeatedly explaining it will, in fact, supplement its

discovery requests *if* the Court disagrees they are violating South Carolina law by bringing this lawsuit and to the extent they have standing to bring suit, Plaintiffs have nonetheless doubled-down on their efforts to inflict expensive discovery on the County--all at the public's expense--now by interposing an utterly meritless motion to compel ("Discovery Motion") wherein they seek an array of nonsensical sanctions all belied by the Rules of Procedure, decisional law, and common sense. Indeed, Plaintiffs' efforts prove difficult to reconcile with what they champion, in the first instance, as their stated purpose in bringing this action—safeguarding the use of public funds.

II. PROCEDURAL BACKGROUND

Plaintiffs filed the instant lawsuit on March 17, 2024 seeking to contest certain uses of bond funds authorized by Oconee County Ordinance 2023-13 ("Bond Ordinance"). (*See* Compl.) The County filed an Answer to Plaintiffs' Complaint on April 19, 2024 attaching various public documents relating to the bond proceedings Plaintiffs seek to uproot. (*See* Ans.) The County then filed its Dispositive Motion (*i.e.*, motion for judgment on the pleadings) on April 24, 2024.

As noted, the County's Dispositive Motion asks the Court to enforce S.C. Code § 11-15-30 and dismiss this lawsuit with prejudice. (4.24.24 Mot.) Seeking to avoid the unnecessary expenditure of public funds on a lawsuit barred by South Carolina law, the County also asked the Court for an interim protective order staying discovery until the Court issued a ruling on its Dispositive Motion. (*Id.*) A hearing was originally scheduled on the County's Dispositive Motion on June 13, 2024 but the Court thereafter rescheduled the hearing until July 17, 2024, when a non-jury trial ran longer than expected.

Despite the County's requested stay of discovery pending a ruling upon its Dispositive Motion, Plaintiffs nonetheless pressed forward serving expansive written discovery. Consistent with its request for a stay in its Dispositive Motion, the County responded to Plaintiffs' written discovery requests on May 24, 2024 largely objecting to having to incur the costs of responding to

costly discovery—at the public’s expense—in a lawsuit Plaintiffs did not lawfully bring. At the same time, however, the County did expressly inform Plaintiffs that it would provide supplemental responses and objections to their written requests if the Court allowed their action to progress (which it should disallow by operation of law).

Over two weeks *after* the original hearing date (*i.e.*, June 13, 2024) and without ever consulting with the County before filing, Plaintiffs filed their Discovery Motion on June 29, 2024 (*i.e.*, motion to compel).¹ Plaintiffs’ Discovery Motion asks the Court to issue outrageous sanctions against the County even when the County did nothing wrong. Plaintiffs ask the Court to:

- Strike the County’s Answer and declare that Defendant Oconee County violated the South Carolina Constitution;²
- Enjoin Oconee County to follow the Constitution;
- Overrule all objections to all discovery requests;
- Grant Plaintiffs their attorney’s fees and cost [sic] under Rule 37(d);
- Declare that each of the Requests for Admission is deemed admitted;³
- Order full and complete responses to the Requests for Admission, Interrogatories, and Requests for Production.

¹ Then, late in the afternoon on July 3, 2024, Plaintiffs filed their motion for preliminary injunction, which is similarly meritless.

² So, by way of recap, Plaintiffs, who purportedly filed this lawsuit due to an articulated concern about the expenditure of public resources, seek to have the County sanctioned, striking its Answer and declaring them victorious, because the County did not want to waste taxpayer monies responding to costly discovery in a lawsuit forbidden by South Carolina law and Plaintiffs would also like to have their lawyer’s fees paid with public funds as well.

³ Of note, the County provided responses to Plaintiffs’ Requests to Admit. And, Plaintiffs have not moved for relief under SCRPC 36 in relation to those responses. No such relief exists under SCRPC 37.

Without so stating, it appears Plaintiffs have now realized S.C. Code § 11-15-30 statutorily forecloses their lawsuit prompting them to pursue an artificially manufactured discovery dispute in a last ditch effort to resuscitate their meritless lawsuit. Plaintiffs failed.

III. ARGUMENT

Plaintiffs' Discovery Motion lacks merit for the following reasons:

A. THE COUNTY'S DISPOSITIVE MOTION SOUGHT A PROTECTIVE ORDER STAYING DISCOVERY PENDING THE COURT'S DETERMINATION OF WHETHER PLAINTIFFS' FILING VIOLATES S.C. CODE § 11-15-30.

As noted above and as will become important below, yet omitted from the bluster of Plaintiffs' Discovery Motion (a filing replete with emphasis added in bold and underscore throughout), the County actually moved the Court for protection against interim discovery until the Court could decide its Dispositive Motion. On page 2 of its Dispositive Motion, the County requested:

6. Pursuant to Rule 26, SCRCP, the County further moves the Court for a protective order staying all discovery pending resolution of the instant, outcome determinative motion before the Court so as to avoid undue expense and waste of taxpayer resources.

(Exhibit A, 4.24.24 Mot.) It is curious why Plaintiffs did not acknowledge this fact to the Court in their Discovery Motion, particularly in light of the aggressive sanctions they ask the Court to impose such as disallowing the County from defending itself, enriching Plaintiffs with a fee award from public funds, and even somehow asking for the issuance of an injunction as a discovery sanction.⁴

⁴ The County has never even heard of a party asking a Court to invoke one of its most exceptional powers (*i.e.*, issuance of an injunction) as a sanction for an alleged (albeit unfounded) discovery infraction. Plaintiffs' filing truly betrays itself as a desperate attempt to salvage the failing enterprise that is this lawsuit.

B. THE COUNTY REMINDED PLAINTIFFS OF THE PENDING DISPOSITIVE MOTION WHEN SERVING ITS DISCOVERY RESPONSES.

Even though it had a pending protection request from discovery, the County nonetheless provided formal written responses and objections to Plaintiffs' discovery requests. And, when transmitting the same, the County *again* explained that South Carolina statutory law unambiguously prohibited Plaintiffs' attempt to upset South Carolina's public finance laws. However, if the Court for some reason disagreed (it should not), the County would, of course, revisit Plaintiffs' requests and supplement its responses to the extent appropriate. The County wrote:

From: [Lane W Davis](#)
To: james.carpenter@carpenterlawfirm.net
Cc: [William W. Wilkins](#)
Subject: South Carolina Public Interest Foundation v. Oconee County
Date: Friday, May 24, 2024 3:50:00 PM
Attachments: [2024.05.24 SVC LTR to Jim Carpenter and discovery responses.pdf](#)

Jim:

Please find attached written objections to your clients' discovery requests in the above-captioned matter.

It is our view that the pending motion raises dispositive issues that ultimately foreclose discovery in this matter.

Of course, if the Court disagrees and denies our pending motion, we are glad to revisit the attached responses and provide more fulsome responses to the extent not otherwise objectionable.

Best,
Lane Davis

(Ex. B.) Plaintiffs never expressed disagreement, never objected, and never responded orally or in writing. But again, in light of the tone of their filing, it is unclear why Plaintiffs did not disclose the above communication to the Court when filing their Discovery Motion.

C. PRIOR TO FILING THEIR DISCOVERY MOTION, PLAINTIFFS FAILED TO CONSULT WITH THE COUNTY AS REQUIRED BY SCRPC 11(a) REQUIRING THE STRIKING OF THEIR MOTION.

Prior to filing their Discovery Motion, Plaintiffs made no attempt to consult with the County about their concerns whatsoever. Because they did not do so, Plaintiffs likewise failed to include an affirmation of their required good faith attempt to consult with the County about their Discovery Motion. Nor did Plaintiffs' motion contain a certification that such consultation would serve no useful purpose or could not be timely held. Had they consulted as required, the County would have reminded Plaintiffs of its previously communicated good faith intention to supplement its responses to their discovery responses if, after hearing the pending Dispositive Motion, the Court somehow concluded South Carolina Code § 11-15-30's unambiguous twenty-day statutory mandate did not bar this action from proceeding further, which it does.⁵ Plaintiffs' decision not to consult proves fatal to their Discovery Motion.

Rule 11(a), SCRPC so requires; it states:

All motions filed shall contain an affirmation that the movant's counsel prior to filing the motion has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion, unless movant's counsel certifies that consultation would serve no useful purpose, or could not be timely held.

SCRPC 11(a). It is once again unclear why Plaintiffs did not comply with Rule 11 by consulting with the County, especially in light of the tone of their filing.⁶

⁵ As indicated to Plaintiffs from inception, the County has every intention of fully and fairly participating in discovery should this Court somehow conclude this lawsuit is not statutorily prohibited. However, as a faithful steward of public resources, the County cannot (and should not be required) to incur significant discovery costs—while a dispositive Rule 12 Motion is pending—when in its view this lawsuit cannot progress without violating South Carolina law.

⁶ For record purposes, the County notes that SCRPC 11(a) has no consultation requirement in relation the County's Rule 12 Motion by operation of Rule. In any event, to the extent Plaintiffs claim otherwise, the undersigned hereby certifies that consultation with Plaintiffs about the County's Dispositive Motion would serve no purpose. This is, in fact, proved by the record. The

Plaintiffs' failure to abide by SCRCP 11(a) makes the Court's adjudication of their Discovery Motion light work. When, as here, a motion does not "comply" with SCRCP 11(a), "it shall be stricken unless it is signed promptly after the omission is called to the attention of the...movant." Here, however, Plaintiffs cannot satisfy the consultation requirement because they never consulted. Nor can they certify consultation would serve no purpose because it would have. Due to Plaintiffs' failure to abide by SCRCP 11(a), Plaintiffs' Discovery Motion must "be stricken." SCRCP 11(a). In addition, the County would note SCRCP 11(a) likewise affords the Court discretion to require Plaintiffs to repay the public funds expended in relation to the expenses and attorney's fees incurred responding to Plaintiffs' non-compliant and otherwise meritless Discovery Motion.

D. NONE OF THE REMEDIES SOUGHT BY PLAINTIFFS ARE PROPER.

Even assuming Plaintiffs' Discovery Motion was not fatally afflicted by the foregoing arguments, which it is, the relief sought by the motion is entirely improper and unsupported by SCRCP 37. As noted above, Plaintiffs seek an array of sanctions under SCRCP 37(b)(2). None are proper. Under SCRCP 37(b)(2), the Court "may" grant discovery "sanctions" under two scenarios. *See, e.g., Downey v. Dixon*, 294 S.C. 42, 44, 362 S.E.2d 317, 318, n. 1 (Ct.App. 1987). Very plainly neither circumstance applies here.

First, under SCRCP 37(b)(2), the Court may, in its discretion, issue discovery sanctions against a party who "fails to obey an order" of the Court relating to discovery. *See* SCRCP 37(b)(2). No discovery orders exist in this case. Nor do Plaintiffs suggest otherwise. Scenario one, therefore, does not apply.

County asked for protection from discovery in the interim while its Dispositive Motion was heard and Plaintiffs pushed forward with written discovery anyway. When the County served responses, it indicated it would supplement the responses if the Court allowed the action to progress, but Plaintiffs filed their Discovery Motion seeking sanctions without consultation.

Second, under SCRCP 37(d), if a party altogether fails to “serve answers or objections” to written discovery requests, then the party propounding written discovery may move the Court for sanctions, which it may issue in its discretion. *See* SCRCP 37(d). Here, the County provided written responses and objections and, as a result, the Plaintiffs *improperly* moved for sanctions under SCRCP 37(d). Plaintiffs errantly treat the County’s objections, which include among other items the statutory bar to the action, as a failure to respond or act. But that is incorrect.

SCRCP 37(d) arises in the circumstances where a party altogether fails to respond to written discovery or, alternatively, fails to appear for a noticed deposition. This is why SCRCP 37(d) proceeds to explain that a party may not rely upon “objections” to written discovery as justification for “failure to act.” Thus, SCRCP 37(d) addresses the scenario where a party just fails to respond or no-shows a deposition and then afterwards tries to justify such inaction by arguing the written requests or deposition were somehow objectionable. Nothing of the sort occurred here.

Moreover, not only did it timely respond, the County asked for a protective order staying discovery until the statutory issues in its Dispositive Motion could be decided. This is likewise important under SCRCP 37(d) because the rule specifically provides in pertinent part: “The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).” Accordingly, Plaintiffs’ Discovery Motion is baseless. SCRCP 37(d) does not apply because the County *did* serve responses and objections and even if it had not it had otherwise requested a *protective order* as specifically contemplated by the Rule but conspicuously omitted by Plaintiffs.

CONCLUSION

Plaintiffs' attempt to manufacture a litigative "Hail Mary" to salvage their fatally afflicted lawsuit utterly fails. Plaintiffs concealed important underlying facts from the Court foreclosing the viability of their Discovery Motion. Plaintiffs then failed to satisfy SCRPC 11(a) requiring their Motion to be stricken and entitling Oconee County's taxpayers to recoup the public monies expended to defend the instant, baseless motion. Then, to make matters altogether worse, Plaintiffs sought so-called "sanctions" against the County (notably for no reason) where such sanctions are either inappropriate or unavailable or both under SCRPC 37. Accordingly, the County asks the Court to: (1) deny Plaintiffs' Discovery Motion; (2) allow the County to submit an affidavit enumerating its expenses and fees responding to Plaintiffs' Discovery Motion through the hearing; and (3) thereafter issue an Order awarding the County reasonable fees and costs, as outlined in its supplemental affidavit, for having to respond to Plaintiffs' baseless Discovery Motion.

RESPECTFULLY SUBMITTED,

/s/ Lane W. Davis

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July 15, 2024

Attorneys for Oconee County

Greenville, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

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,
Plaintiffs,

v.)

Oconee County,
Defendants.

IN THE COURT OF COMMON PLEAS

IN THE 10TH CIRCUIT

CASE NO: 2024-CP-37-00202

**PLAINTIFFS' MOTION FOR
TEMPORARY, PRELIMINARY, AND
PERMANENT INJUNCTIONS AND
MEMORANDUM OF LAW**

NOW COME the Plaintiffs, by their undersigned attorney, and move the Court for Temporary, Preliminary, and Permanent Injunctions, and submit this this Memorandum of Law in support of the Motions.

STATEMENT OF THE CASE

Oconee County has implemented two of three phases of sewer projects in the Southern part of the County. Phases one and two were paid for primarily through state and federal grants and appropriations from general County funds. This case addresses wastewater improvements or expansion beyond phase two and the financing for any additional phases through bonds.

On November 2, 2023, the County issued \$25,000,000 General Obligation Bonds, Series 2023 (the "2023 Bonds") 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.” (Emphasis added). *See* Official Statement for 2023 Bonds, Cover.¹

The South Carolina Constitution Article X, Section 14 provides that counties “shall have the power to incur indebtedness in the following categories and in no others: (a) General obligation debt; and (b) Indebtedness payable only from a revenue-producing project or from a special source as provided in subsection (10) of this section.” Section 14(2) further provides that such bonds may only be issued “upon such terms and conditions as the General Assembly shall prescribe by general law within the limitations set forth in this section and Section 12 of this article.”

Article X, Section 12 of the State Constitution provides:

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).

This section recognized the counties’ enhanced powers and the restriction on the creation of new special purpose districts, all of which arose from the Home Rule amendments to the State Constitution in the 1970’s. Following the Home Rule amendments on March 7, 1973, the General Assembly was bound by Article VIII, Section 7, which prohibited laws applicable only to a specific county. The same section empowered the Legislature to enact general laws granting counties “the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided.”

¹ Available at <https://emma.msrb.org/P21737547-P21334508-P21768579.pdf>

Should a county want to provide sewer services, funded by bonds, and support such activities with a tax or special assessment, the county is required to create a special taxing district under S.C. Code Ann. § 4-9-30(5)(a) and may thereafter impose a uniform rate of taxation within the special taxing district. *See Ex parte Yeargin*, 295 S.C. 521, 523 (1988) (upholding Anderson County’s special tax district for sewer service).

Section 12 expressly prohibits “bonded indebtedness by any county for sewage disposal . . . 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.” *Id.*

The municipalities of Seneca, Walhalla, and Westminster have the exclusive right to provide sewer services within their municipal limits. The citizens of those cities will not benefit from the new sewer services.

The rural, mountainous, Northern part of the County is served primarily by private septic tanks, septic fields, and septic systems. The rural, mountainous, Northern part of the County will not benefit from the new sewer services in the Southern part of the County.

The upscale neighborhoods around Lake Keowee and Lake Jocassee are served by primarily by privately owned sewer systems. Those neighborhoods will not benefit from the new sewer services in the Southern part of the County.

Accordingly, the proposed new sewer services will only benefit a “particular geographical section of the [C]ounty.”

“Article X, § 12 of the Constitution *requires* the charge be assessed only on those who benefit from the new facilities.” *Robinson v. Richland Cnty. Council*, 293 S.C. 27, 32, 358 S.E.2d 392 (S.C. 1987) (emphasis in original).

Ordinance 2023-13, enacted September 5, 2023, (the “Bond Ordinance”) recites that “[t]he full faith, credit and **taxing power of the County** are irrevocably pledged to the payment of the principal and interest of the [2023 Bonds] as they mature and to create a sinking fund to aid in the retirement and payment thereof. There shall be levied and collected annually upon **all taxable property in the County** . . . an ad valorem tax, without limit as to rate or amount, sufficient for such purposes.” Bond Ordinance, § 11 (emphasis added).

The County could possibly use the bond proceeds for other lawful purposes that benefit the whole county, but not the planned sewer or wastewater services benefiting only the Southern part of the County.

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. Rather it must impose and pledge “a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]” in an area of the County that benefits from the new sewer service and does not encompass the municipal boundaries of Seneca, Walhalla, and Westminster or the other parts of the County not utilizing the new sewer services.

The County’s stated intent to use the 2023 Bond proceeds for wastewater improvements, and pledge the full faith, credit, and taxing power of the entire County, without first imposing and pledging “a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]” in an area of the County that benefits from the

new sewer service and that does not encompass the municipal boundaries of Seneca, Walhalla, and Westminster, the rural, mountainous Northern part of the County, or the neighborhoods around Lake Keowee and Lake Jocassee served by private sewer systems, violates the State Constitution, Article X, Section 12.

The Plaintiffs will be immediately and irreparably harmed by the Defendants' Constitutional violations.

LEGAL DISCUSSION

The courts of this State have explained the requirements for the issuance of a Temporary Injunction:

A temporary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law. *E.g., AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct.App.2009) (internal citation omitted).

Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010).

The purpose of a temporary restraining order or preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it. *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002). In evaluating whether a plaintiff is entitled to a preliminary injunction, the court must examine the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a

sufficient prima facie showing of entitlement to relief. *Compton v. S.C. Dept. of Corrections*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011).

The plaintiff is not required to prove an absolute legal right when seeking a preliminary injunction, but the plaintiff must present a reasonable question as to the existence of such a right. *AJG Holdings LLC v. Dunn*, 382 S.C. 43, 50, 674 S.E.2d 505, 508 (Ct. App. 2009). When a court is requested to issue a temporary injunction, it may consider the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate. *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992). In evaluating whether a plaintiff is entitled to a preliminary injunction, the court must examine the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief. *Compton v. S.C. Dept. of Corrections*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011). Once a *prima facie* showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate determination of the case on the merits. *Helsel*, 307 S.C. at 32, 413 S.E.2d at 826.

In this case, Plaintiffs meet this standard. A temporary injunction is necessary to preserve the *status quo ante*. Without the issuance of such an injunction, even if the plaintiffs prevail ultimately, the County will wrongfully collect and spend months and probably years' worth of taxes that would be next to impossible to refund to the taxpayers. In that case, any victory of the Plaintiffs would be a hollow, Pyrrhic victory. A government's unlawful conduct causes irreparable harm. *Adams v. McMaster*, 432 S.C. 225, 851 S.E.2d 703 (2020). "[T]he taxpayers of [Oconee] County would suffer irreparable harm if the County is not required to follow the law." *Richland County v. South Carolina Department of Revenue*, 422 S.C. 292, 311, 811 S.E.2d 758, 768 (2018).

I. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF THE INJUNCTION IS NOT GRANTED.

Because it would be practically impossible to refund the wrongful taxation to the taxpayers, Plaintiffs need a temporary injunction to preserve the *status quo ante* while the legal issues are decided in this case. Otherwise, any remedy may be illusory. Furthermore, Defendants will not suffer any material damages if they are not allowed to collect an unconstitutional tax.

II. PLAINTIFFS WILL LIKELY SUCCEED ON THE MERITS.

Plaintiffs have alleged a viable, persuasive cause of action. Defendants violated the clear, plain language of the South Carolina Constitution. Plaintiffs are likely to succeed on the merits, based on the clear violation of the South Carolina Constitution, Article X, § 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).

Defendants contend that the whole county will “receive the benefit” if the sewer line is constructed in the Southern part of the county. Accordingly, they attempt to justify imposing taxes on the whole county. The South Carolina Supreme Court has ruled that such a vague, intangible benefit is **not sufficient** to impose a tax on the whole county to pay for sewer system that is installed in one distinct portion of the county.

In *Robinson v. Richland County Council*, two citizens, Walter Robinson and Harold Murray, “individually and as taxpayers,” brought a declaratory judgment action that challenged certain statutes and ordinances that provided for the creation and installation of public sewer

systems in parts of Richland County. 293 S.C. 27, 358 S.E.2d 392 (1987). The case was appealed to the South Carolina Supreme Court.

The Supreme Court addressed Article X, § 12 of the South Carolina Constitution at some length. Based on the research of the undersigned attorney, *Robinson* is the only case that addresses this Constitutional provision in a substantive manner.

Article X, § 12 of the Constitution prohibits counties from incurring bonded indebtedness for sewage disposal or treatment **which benefits only a particular area** unless a special assessment, tax or service charge, adequate to provide debt service on the bonds, is imposed on those persons **who will benefit** from the service.

* * *

In addition, Article X, § 12 of the Constitution *requires* the charge be assessed only on **those who will benefit** from the new facilities. **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.

* * *

Article X, § 12 **limits the power** of counties to impose **general taxes** to defray the cost of bonded indebtedness incurred to build **local improvements**.

Id., 293 S.C. 27, 31-33, 358 S.E.2d 392, 395-396 (emphasis added). This analysis is controlling for the case at bar. The vague, general benefit to the middle and northern parts of Oconee County is not sufficient to justify taxing those portions to pay for bonds that fund sewer and wastewater projects distinctly in the Southern part of the county. It is unconstitutional for Oconee County to tax the entire County to pay for bonds that will fund sewer and wastewater facilities in only one small area in the Southern part of the County. Accordingly, Plaintiffs are likely to succeed on the merits.

III. PLAINTIFFS HAVE NO ADEQUATE REMEDY AT LAW.

As discussed above, if the taxes are collected, it would be extremely difficult to reestablish the *status quo ante*. No adequate remedy would be available to the Plaintiffs once the money is taken. This Court should issue temporary and preliminary injunctions until this Court can fully and fairly address the legal issues pending in this case.

WHEREFORE Plaintiffs pray the Court for:

1. Temporary, preliminary, and permanent restraining orders/injunctive relief against the Defendants' unconstitutional conduct;
2. That the Court grant Plaintiffs their costs and attorneys' fees of this action, pursuant to S.C. Code Ann. § 15-77-300 and Rule 54 SCRPC; and
3. For such other and further relief as the court deems just and proper.

Respectfully submitted,

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Attorney for the Plaintiffs

July 3, 2024

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

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,

Plaintiffs,

v.

Oconee County,

Defendant.

IN THE COURT OF COMMON PLEAS

TENTH JUDICIAL CIRCUIT

C.A. No. 2024-CP-37-00202

**DEFENDANT OCONEE COUNTY'S
 MEMORANDUM OPPOSING
 MOTION FOR INJUNCTIVE RELIEF**

Defendant Oconee County¹ respectfully submits this Memorandum Opposing Plaintiffs' Motion for "Temporary, Preliminary, and Permanent Injunctions [sic]."²

¹ To enhance reading ease, Defendant Oconee County has adopted certain conventions in its briefing. Oconee County will be referenced merely as "The County". Citation to the South Carolina Code has been truncated to "Section or §" followed by the corresponding Code provision (e.g., "Section 11-15-30"); citation to the statutory laws of any other jurisdiction will follow traditional citation formatting. Unless specifically noted otherwise, internal citations and quotations have been omitted. Citation to the South Carolina Rules of Civil Procedure and Rules of Evidence appear as "SCRCP" and "SCRE" followed simply by the Rule cited (e.g., SCRCP 65 or SCRE 403). Citation to Plaintiffs' Motion for Preliminary Injunction, as filed on July 3, 2024, will be referenced as "Injunction Motion." The twenty-day window for challenging the issuance of bonds under Section 11-15-30 will be referenced as the "Contest Period." Oconee County Ordinance 2023-13 is referenced as "Bond Ordinance."

² According to Plaintiffs, they seek a temporary injunction, a preliminary injunction, and a permanent injunction. This makes no sense. No difference exists between a temporary and preliminary injunction. And Plaintiffs have not filed a motion for summary judgment nor has a trial on the merits occurred whereby permanent injunctive relief could issue. Accordingly, the County will simply treat Plaintiffs' Injunction Motion as a motion for preliminary injunction under SCRCP 65, the only viable interpretation.

I. INTRODUCTION

Four months after the time period allowed for challenging the issuance of bonds under South Carolina law ended, Plaintiffs filed the instant lawsuit (on March 17, 2024) disputing the Bond Ordinance's authorized uses. Plaintiffs then waited nearly another four months before filing the instant Injunction Motion (on July 3, 2024 at 3:09 PM) based, in part, on their alleged fears of immediate and irreparable harm resulting from the County's intended pursuit of capital projects for its citizens' benefit. Once they finally filed, Plaintiffs filed their Injunction Motion in the absence of any supporting evidence.

Plaintiffs come nowhere close to meeting the evidentiary burden required for the issuance of the preliminary injunctive relief they seek. Their lawsuit should not even be before the Court, let alone pushing a petition for extraordinary injunctive relief wherein they ask the Court to enjoin a public body's legislative acts. This Court must halt Plaintiffs' attempts to uproot local government bodies' access to capital markets, which is key to their ability to preserve their citizenry's health, safety, and welfare through capital projects. Accordingly, this Court should summarily deny Plaintiffs' Injunction Motion while simultaneously granting the County's Motion for Judgment on the Pleadings.³

³ According to Plaintiffs, it is inescapably clear that are entitled to preliminary injunctive relief because the County has acted unconstitutionally. Not so. However, the Court should rest assured if what Plaintiffs argue is true, they will incur no prejudice if the Court grants the County's Motion to Dismiss and denies their Motion for Preliminary Injunction. This is true because: Plaintiffs can file an immediate appeal and petition for a supersedeas. If, as Plaintiffs claim, they are plainly entitled to preliminary injunctive relief, then presumably the Court of Appeals will issue such relief during the pendency of the appeal and this case. Of course, this will not occur because contrary to what Plaintiffs urge, under South Carolina law, they should not be before this Court at all.

II. FACTUAL BACKGROUND

Plaintiffs unlawfully seek to contest the uses of bond proceeds authorized by the Bond Ordinance. The Oconee County Council unanimously enacted the Bond Ordinance in duly called meetings respectively held on: July 18, 2023, August 15, 2023, and September 5, 2023. (*See* Ans., Ex. B, Meeting Minutes.) The Bond Ordinance authorized the issuance of general obligation bonds in an amount not to exceed \$25,000,000 for the purpose of designing, acquiring, constructing, installing, equipping, or rehabilitating various capital projects, including wastewater improvements and related equipment, and other related personal property.

Pursuant to the Bond Ordinance, bonds issued on or about November 2, 2023. (Ans., Ex. C, Receipts.) A true, correct, and full record of proceedings in connection with the bond issuance was filed in the Clerk of Court for Oconee County on November 8, 2023, and indexed in a special book kept for that purpose. (Ans., Ex. A, Certificate of Clerk.)

Plaintiffs now impermissibly ask the Court to interject itself into these completed legislative acts, reversing the unanimous County Council, and impairing the contractual rights of unnamed *bona fide* purchasers who have already acquired the bonds. According to Plaintiffs, the bond proceeds will be utilized for a particular infrastructure project with construction activities substantially occurring in the southern portion of the County. (Compl. ¶ 13.) Plaintiffs claim bonds funding such a project may only issue following a “special assessment, tax or service charge” on all Oconee County residents who live outside of Seneca, Walhalla, Westminster, and certain neighborhoods preferred by Plaintiffs. (Compl. ¶ 29.) Like their Complaint, an array of legal infirmities afflicts Plaintiffs’ Injunction Motion. The Motion should be denied.

III. LEGAL STANDARD GOVERNING PRELIMINARY INJUNCTIONS

A preliminary injunction “is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” 11A Charles Alan Wright et al., *Federal Practice and Procedure: Civil 2d* § 2948 (1995); *see also LeFurgy v. Long Cove Club Owners Ass’n, Inc.*, 313 S.C. 555, 558, 443 S.E.2d 577, 578 (Ct. App. 1994).⁴ “[T]o obtain a preliminary injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and an inadequate remedy at law.” *See County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002); *Roach v. Combined Util. Comm’n*, 290 S.C. 437, 442, 351 S.E.2d 168, 170 (Ct. App. 1986). Injunctions are not favored, and a court should issue an injunction only when the urgency of the situation requires it. *Tim Thompson, Inc., v. Village of Hinsdale*, 247 Ill. App. 3d 863 (Ct. App. 1993).⁵

IV. LAW/ANALYSIS

Plaintiffs’ Injunction Motion fails for the following reasons:

A. PLAINTIFFS INTRODUCED NO EVIDENCE TO SUPPORT THEIR INJUNCTION MOTION AND THUS FAILED TO SATISFY THEIR REQUIRED SHOWING.

While they shouldered a “burden of persuasion” to prove the required showing to support their Injunction Motion by a “clear showing,” *see* 11 A Charles Alan Wright *et al.*, *Federal Practice and Procedure: Civil 2d* at § 2948 and *LeFurgy*, 313 S.C. at 558, Plaintiffs submitted no evidence whatsoever to fulfill any element of their required showing. Plaintiffs submitted no declarations,

⁴ *See also Murrow Furniture v. Thomasville Furniture*, 889 F.2d 524, 526 (4th Cir. 1989); *Rogers v. Comprehensive Rehabilitation Associates, Inc.*, 808 F. Supp. 493 (D.S.C. 1992).

⁵ Plaintiffs also improperly seek attorney’s fees under S.C. Code § 15-77-300. Such a request can only be made following the final disposition of the case. S.C. Code § 15-77-310. However, the County does not mean to suggest Plaintiffs intended to make a misstatement to the Court, as they appear to lack familiarity with the statute.

affidavits, testimony, or even foundational exhibits. Nor did Plaintiffs verify their Complaint. Indeed, not one evidentiary stitch supports Plaintiffs' Injunction Motion.

The evidentiary deficits underpinning Plaintiffs' Injunction Motion prove stark. Assuming for a moment the Injunction Motion otherwise had legal merit (it does not), the motion hinges upon a series of unsubstantiated factual premises for which no record evidence exists to support:

- No record evidence reflects the allocated amount of bond proceeds for the “various capital projects” authorized by the Bond Ordinance, *see* Inj. Mot. Supp. Brief, *passim*;
- No record evidence reflects the immediacy of use for any bond proceeds, *see Id.*;
- No record evidence demonstrates how any Plaintiff incurred, or would incur, any harm (particularly SCPIF, which does not pay taxes) by the intended use of any bond proceeds, which Plaintiffs have not shown the allocation thereof or immediacy of use, *see Id.*;
- No record evidence demonstrates how the bond proceeds are intended to be allocated across capital projects, assuming such allocation has occurred, *Id.*;
- No record evidence demonstrates why the County's capital projects would not confer benefits upon all Oconee County citizens (which SCPIF is notably not an Oconee County citizen), *see Id.*;
- No record evidence demonstrates how the bond proceeds only “benefit a particular geographical section of the county,” as Plaintiffs baldly assert, *see Id.* at 3;⁶

⁶ Apart from lacking any evidentiary basis supporting the truth of Plaintiffs' premise and the conclusion they draw therefrom, Plaintiffs act as if their reasoning is necessarily true, which is hardly correct. Among an array of other examples, increased sewer infrastructure would improve economic development on a County-wide basis. It would also increase the growth rate of new businesses and population growth, improve health safety and welfare conditions, create economies

- No record evidence demonstrates citizens in Seneca, Walhalla, and Westminster will receive no benefit from the capital projects for which bond proceeds are allocated;
- No record evidence demonstrates citizens in the “rural, mountainous, northern part of the County” will receive no benefit from the capital projects for bond proceeds are allocated. Plaintiffs submitted no evidence of the same. *Id.*;
- No record evidence demonstrates citizens in “upscale neighborhoods around Lake Keowee and Lake Jocassee” will receive no benefit from the capital projects for which bond proceeds are allocated. *Id.*;
- No record evidence demonstrates how bond proceeds are allocated as to what specific sewer capital projects; nor does any evidence reflect what areas and what benefits ensue from which. *Id.* at 4;
- No record evidence demonstrates how “Plaintiffs will be immediately and irreparably harmed by Defendants’ Constitutional violations, *Id.* at 5;
- No record evidence demonstrates exactly what “Constitutional violations” Plaintiffs attribute to the County, *Id.*;
- No record evidence demonstrates “the County will wrongfully collect and spend months and probably years’ worth of taxes that would be next to impossible to refund to the taxpayers,” *Id.* at 6;

of scale for a host of public infrastructure projects, increase property values which, in turn, improves tax revenues, which allows for enhanced Countywide services. Plaintiffs summary declaration that only islands of citizens would benefit from the capital projects is simply untrue. And Plaintiffs, who shoulder the burden of persuasion, have furnished virtually nothing supporting their claims.

- No record evidence establishes “it would be practically impossible to refund the wrongful taxation (which Plaintiffs fail to establish in the first instance) to the taxpayers,” *Id.* at 7;
- No record evidence establishes any remedy available to Plaintiffs “may be illusory,” *Id.* at 7;
- No record evidence establishes Oconee County has or will impose an “unconstitutional tax” and therefore no evidence similarly establishes the County “will not suffer any material damages,” due to Plaintiffs’ attempts to interfere with the performance of the County’s legislative duties, *Id.*;
- No evidence demonstrates the County has acted unconstitutionally by “tax[ing] the entire County to pay for bonds” to fund “sewer and wastewater facilities,” *Id.* at 8.

Indeed, apart from copying and pasting their unverified Complaint into a document captioned “Plaintiffs Motion for Temporary, Preliminary, and Permanent Injunctions [*sic*] and Memorandum of Law,” Plaintiffs failed to introduce any evidence to support any of the internal “logic” of their Injunction Motion. Accordingly, the Court may now simply deny Plaintiffs’ Injunction Motion.⁷

B. PLAINTIFFS OTHERWISE FAIL TO SATISFY THE NECESSARY CRITERIA TO OBTAIN PRELIMINARY INJUNCTIVE RELIEF.

Evidentiary deficiencies aside, Plaintiffs’ Injunction Motion fails to satisfy the required showing to support preliminary injunctive relief:

⁷ Nor can Plaintiffs remedy their evidentiary deficits now. SCRCP 6(d) (“When a motion is to be supported by affidavit the affidavit shall be served with the motion.”)

1. Not One of the Thirteen Plaintiffs Has Articulated How She or He Will Sustain Irreparable Injury.

Plaintiffs cannot satisfy the irreparable harm prong of their *prima facie* showing. Out of thirteen plaintiffs, not one has demonstrated how she or he would sustain any harm, let alone irreparable harm, as a result of the Bond Ordinance.⁸ The only harms Plaintiffs hint at are purely financial (*i.e.*, paying tax monies they suggest they should not). Of course, such harms are not “irreparable” in nature and, therefore, do not support Plaintiffs’ application for injunctive relief. *See, e.g., Steves & Sons, Inc. v. JELD-WEN, Inc.*, 988 F.3d 690, 718 (4th Cir. 2021) (“[T]he general rule is that a plaintiff’s harm is not irreparable if it is fully compensable by money damages.”)

Lacking any individualized harms capable of articulation to the Court, Plaintiffs next resort to assuming the conclusion and speculating irreparable injury necessarily will ensue. In this regard, Plaintiffs assert the County’s enactment of the Bond Ordinance was unconstitutional and such unconstitutional conduct, standing alone, results in particularized harm to them.⁹ For example, Plaintiffs claim: “A government’s unlawful conduct causes irreparable harm.” (Pl. Memo. in Supp. at 6.) However, the County did not act unlawfully as Plaintiffs baldly assert.

⁸ As an aside, this is why standing matters in this case. Plaintiffs now seek a preliminary injunction against a public legislative body, but not one of them can articulate any harms *she* or *he* personally sustained as a result of their Complaint’s allegations. To have standing, each Plaintiff must articulate how she or he “was affected in some special or peculiar way different in degree or kind from that suffered by the general public.” *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 319, 433 S.E.2d 875, 884 (Ct. App. 1992), *adhered to on reh’g* (Apr. 29, 1993).

⁹ Plaintiffs overstate the holdings of the cases they cite in this regard. All of the cases cited by Plaintiffs involve instances where the appellate courts agreed to relax the constitutional showing of individualized harm because the issues were so important that public importance standing was granted. Once a showing of individualized harm is removed, it appears almost inescapable that what would remain, generally speaking, would then constitute irreparable injury to the public at large. Contrary to what Plaintiffs assert, however, the decisions they cite do not stand for the proposition that any and all legal or constitutional infractions by a public body, however slight, remote, and regardless of the circumstances, would otherwise support an individualized irreparable harm showing sufficient to support preliminary injunction relief.

Indeed, the exact opposite proves true. “An ordinance is a legislative enactment and is presumed to be constitutional.” *Whaley v. Dorchester County Zoning Bd. Of Appeals*, 337 S.C. 568, 575, 524 S.E.2d 404, 408 (1999). Indeed, “[t]he burden of proving the invalidity of an ordinance is on the party attacking it.” *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 425, 593 S.E.2d 462, 467 (2004). Plaintiffs have provided the Court with no evidentiary basis to displace the strong presumptions favoring the County.

Plaintiffs offer no evidence in support of the legal conclusion they simply assume. Nor can they. Nor, for the reasons explained below, can the legal conclusion assumed by Plaintiffs ever be adjudicated, as S.C. Code § 11-15-30 statutorily forecloses judicial consideration of the same. Like a ship to nowhere, Plaintiffs’ irreparability showing assumes a legal conclusion forever legally unavailable and supported by non-existent evidence Plaintiffs never offered.

Plaintiffs’ last assertion claims they will sustain irreparable injury “because it would be practically impossible to refund the wrongful taxation to the taxpayers” rendering any potential remedy “illusory.” (Pl. Memo in Supp. at 7.) But, that is literally all Plaintiffs say about the assertion. Assuming Plaintiffs’ allegations had merit (they do not), assuming they had standing to assert them (they do not), assuming they had brought them in time to contest the County’s issuance of bonds (they did not), and assuming all of the factual premises underlying their claims proved true (they are not), neither evidence nor any explanation nor any reason obvious to anyone (perhaps apart from Plaintiffs) explain why the County could not make tax refunds to Plaintiffs should they prevail. Plaintiffs’ failed to establish the irreparable harm prong of their required showing.

Last, Plaintiffs’ own delay militates against a finding of irreparable injury in this case. Plaintiffs failed to file their lawsuit until nearly four (4) months after the Contest Period ended.

Once they did file, Plaintiffs then delayed nearly another three and a half (3.5) months before filing their Injunction Motion, which they then failed to support with any competent evidence of record.

Not only does Plaintiffs' delay implicate laches, it also indicates the absence of "the kind of irreparable harm required to support a preliminary injunction." *See, e.g., Citibank, N.A. v. Citytrust*, 756 F.2d 273, 276 (CA2 1985) (Significant period of delay indicates "an absence of the kind of irreparable harm required to support a preliminary injunction."); *Majorica, S.A. v. R.H. Macy & Co.*, 762 F.2d 7, 8 (CA2 1985) ("Lack of diligence, standing alone, may ... preclude the granting of preliminary injunctive relief, because it goes primarily to the issue of irreparable harm ..."); *Skehan v. Bd. of Trustees of Bloomsburg State College*, 353 F.Supp. 542, 543 (M.D. Pa. 1973) ("Since an application for preliminary injunction is based upon an urgent need for the protection of [a] Plaintiff's rights, a long delay in seeking relief indicates that speedy action is not required."); *Lydo Enterprises v. City of Las Vegas*, 745 F.2d 1211, 1213 (CA9 1984) (finding grant of preliminary injunction to be an abuse of discretion because, *inter alia*, the plaintiff waited four months after notification of adverse zoning decision before bringing suit). Accordingly, Plaintiffs failed to discharge their required irreparable injury burden by a showing of clear evidence.¹⁰

2. Plaintiffs Cannot Succeed on the Merits.

Plaintiffs' unverified Complaint will fail on the merits for no less three (3) reasons:

a. Section 11-15-30 Expressly Disallows Plaintiffs' Instant Action.

As the County fully briefed in its Memorandum Supporting its Motion for Judgment on the Pleadings, Section 11-15-30 expressly prohibits Plaintiffs' maintenance of the instant lawsuit. In

¹⁰ By contrast, the County and its citizenry will incur irreparable injury by virtue of the corresponding delay in capital improvement projects caused by Plaintiffs' wrongful filing of the above-captioned lawsuit. A further discussion of such harms can be found below in the section Plaintiffs' obligation to post a significant bond if they somehow prevailed.

lieu of merely rehashing that analysis, the County references its prior submittal to the Court and incorporates the same herein by reference. For all of the reasons set forth in that filing, Plaintiffs cannot satisfy the likelihood of success on the merits prong of their required showing.

That said, the County would like to add one feature to its prior analysis under Section 11-15-30 as related to the nature of the statutory provision as a species of time bar. As previously noted, when a County decides to issue bonds, Section 11-15-30 affords a person individually aggrieved by the bonds' issuance with the right to challenge the public body's decision. Yet, Section 11-15-30 mandates the filing of such action "shall" occur during the twenty (20) day Contest Period. *See* S.C. Code § 11-15-30. If a legal action does not commence during the Contest Period, the bonds issued by the County become "uncontestable."

Due to these unique features, Section 11-15-30 constitutes a Statute of Creation under South Carolina law because it affords a new remedy that "affixes the time within which an action may be commenced." *Knight Pub. Co. v. University of South Carolina*, 367 S.E.2d 20, 21, 295 S.C. 31, 33 (1988) (Limited on other grounds); *Simpson v. Sanders*, 314 S.C. 413, 415, 445 S.E.2d 93, 94 (1994); *Merchants Mut. Ins. Co. v. South Carolina Second Injury Fund*, 277 S.C. 604, 608, 291 S.E.2d 667 (1982); *Creech v. N.D.T. Indus., Inc.*, 815 F. Supp. 165, 172 (D.S.C. 1993).¹¹

"Commencement within the time affixed [by Section 11-15-30 proves] an indispensable condition of the action." *Knight Pub. Co.*, 295 S.C. at 33; *Sanders*, 314 S.C. at 415 ("[A]n action under a statute of creation cannot be maintained unless brought within the time allowed by that statute."); *Merchants Mut. Ins. Co.*, 277 S.C. at 608 ("The time factor" is "an inherent element of

¹¹ For example, the temporal limitation is intertwined with the actual statutory provision creating the right as opposed to a general procedural statute imposing a statute of limitations. *See, e.g.*, S.C. Code § 11-15-30.

the right so created, and the limitation of the remedy is a limitation of the right.”); *Creech v. N.D.T. Indus., Inc.*, 815 F. Supp. 165, 172 (D.S.C. 1993) (“Commencement of an action within the time set forth in a statute of creation is an “indispensable condition of the action.”) In short, as a Statute of Creation, Section 11-15-30 operates jurisdictionally and Plaintiffs’ failure to commence suit during the Contest Period deprives them of standing to pursue this lawsuit after it ends. As a consequence, Section 11-15-30 defeats Plaintiffs’ likelihood of success on the merits in this case because it forecloses Plaintiffs’ ability to obtain a merits determination. After the expiration of the Contest Period, the validity of the County’s Bond Ordinance, the uses specified thereunder, and the bonds issued under the same all became uncontestable by operation of law.

b. Plaintiffs Lack Standing.

Plaintiffs also cannot satisfy the likelihood of success criterion of their required showing because they lack standing to bring the action before the Court. In this regard, the County again incorporates herein by reference its previous discussion of standing as set forth in its brief supporting its Motion for Judgment on the Pleadings.

However, the County would make one additional point to the Court illustrating Plaintiffs’ lack of standing in this case. As previously discussed, Plaintiffs lack constitutional standing, which they do not even attempt to satisfy. To some extent Plaintiffs purport to assert taxpayer standing, which this Court can simply ignore as having been flatly overruled despite SCPIF’s repeated efforts to resurrect the same in this case and an array of others where it has been uniformly rejected. Nor do Plaintiffs invoke statutorily conferred standing. Indeed, Plaintiffs’ only colorable standing argument relates to public importance standing. Yet, this doctrine fails as well.

No public importance standing can exist in this case *because* Section 11-15-30 categorically extinguished Plaintiffs’ standing after the twenty (20) day contest period expired and

they had not commenced suit. Indeed, that is exactly what the General Assembly meant when it unambiguously stated: “no action shall be commenced...” after the Contest Period ends. S.C. Code § 11-15-30.

Just like the General Assembly can create standing through legislative enactment, it can similarly extinguish the same, as it has done here. It is simply legally farfetched for Plaintiffs to invoke the public importance exception to standing by contending the issues before the court are so important they compel adjudication by the Circuit Court when the General Assembly has already articulated the exact opposite public policy; namely, that in relation to the issuance of bonds public policy commands no judicial review of such issues can commence after the Contest Period ends so as to ensure local government bodies maintain the access to capital markets needed to finance the capital projects their constituents need to safeguard their health, safety, and welfare. For these reasons, Plaintiffs lack standing and their Injunction Motion should be denied.

c. No Less Than Two Equitable Maxims Bar the Issuance of Preliminary Injunctive Relief.

As an equitable remedy, traditional equitable defenses operate to defeat Plaintiffs’ Injunction Motion. *See* 23:27. Equitable Defenses, 2 Bus. & Com. Litig. Fed. Cts. § 23:27 (5th ed.) Two apply here. First, Plaintiffs slept on their right to challenge the bond’s issuance by waiting for nearly four months after the statutory Contest Period had passed. Even after filing their lawsuit, Plaintiffs then proceeded to wait another four months before filing their Injunction Motion, which they did in the absence of any supporting evidence. Equity “aids the vigilant, not those who sleep on their rights.” *Leaks v. Limestone Coll.*, No. 7:17-CV-00935-DCC, 2018 WL 618481, at *3 (D.S.C. Jan. 30, 2018). The doctrine of laches, therefore, bars issuance of injunctive relief to Plaintiffs. To hold otherwise would cause the County to incur the prejudice Section 11-15-30 was enacted to prevent.

Secondly, “it is well known that equity follows the law.” *Smith v. Barr*, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007). As a result, equity will not unleash from its quiver one of its most exceptional remedies in a lawsuit disallowed by statute. Accordingly, Plaintiffs failed to meet their required likelihood of success on the merits showing by clear evidence.

3. Plaintiffs Had Adequate Legal Remedies But Did Not Timely Pursue Them.

To the extent their assertions had merit (they do not), Plaintiffs possessed several legal remedies but either failed to or unsuccessfully pursued them. The existence of such remedies proves fatal to Plaintiffs’ attempt to obtain preliminary injunctive relief.

This necessarily proves true because: “The jurisdiction of equity to protect by injunction legal rights and interests in property is based on the inadequacy of the remedy at law and the jurisdiction is never exercised where the remedy at law is ample and complete.” *See* 43A C.J.S. Injunctions §126; *see also Knohl v. Duke Power Co.*, 196 S.E.2d 115, 116, 260 S.C. 374, 377 (1973). Here, Plaintiffs had recourse in no less than three (3) ways.

First, over a span of months prior to enacting the Bond Ordinance, the County held no less than three publicly noticed meetings. All such meetings amply complied with state law notice procedures. Citizens had an opportunity: to review meeting agendas in advance, attend the meetings, provide comment, submit materials, and otherwise shape the County’s deliberative process whereby it decided to issue bonds.

Second, once the County enacted the Bond Ordinance, any party specifically aggrieved by the bonds could challenge the legality of their issuance, including their intended uses, for a period of twenty (20) days after the bond transcript’s deliverance to the Oconee County Clerk of Court after which time they became uncontestable. *See* S.C. Code § 11-15-30. Prior to the expiration of the Contest Period, Plaintiffs could enjoy the full panoply of legal and equitable remedies available

to them, but unless they asserted the same before the cut-off date, Plaintiffs would otherwise enjoy none.

While Plaintiffs' reasoning legally and factually errs, an adjudication of Plaintiffs' assertions, whether by way of confirmation or denial, could never legally obtain from this Court's hand because the General Assembly jurisdictionally sealed the courthouse doors when the Contest Period ended. *Id.* ("No action shall be commenced..."). Because Plaintiffs chose to "sit on [their] rights to challenge" the Bond Ordinance's uses, their "deliberate delay precludes the possibility of equitable relief." *Perry v. Judd*, 471 F. App'x 219, 224 (4th Cir. 2012). For "equity ministers to the vigilant, not to those who sleep upon their rights." *Id.* The doctrine of laches, therefore, causes Plaintiffs' Injunction Motion to fail.

To rule otherwise would cause Oconee County, along with all other similarly situated local government bodies, to incur the exact harms and prejudice the General Assembly sought to avoid when enacting § 11-15-30 (*e.g.*, uprooting the stability and finality needed for public finance decisions, delaying the delivery of critically needed capital improvement projects, the freezing of borrowed proceeds for protracted time periods, the straight-jacketing of local governments' access to capital markets by clouding the validity of bonds, the inability of local government bodies to rely upon bonds as a public finance vehicle in a sufficient time frame to serve citizens, diminishing the marketability of South Carolina bonds in favor of sister jurisdictions where the finality of bond validity cannot be hijacked by attorneys, foreclosing the ability of local governments to issue bonds during the most advantageous times to issue them in the market, diminishing the marketability of certain bonds by risking the ability to generate revenue to repay bond holders and them at risk, and risking the repayment of certain bonds by foreclosing the generation of revenue needed to repay them.) *Arceneaux v. Arrington*, 284 S.C. 500, 503, 327 S.E.2d 357, 359 (Ct. App. 1985).

4. If Preliminary Injunctive Relief Issued, Which It Should Not, Then Plaintiffs Must Post an Extraordinary Bond Amount.

No scenario exists where this Court should issue preliminary injunctive relief in favor of Plaintiffs. In any event, if preliminary injunctive relief issued in this case, it would require posting of security by Plaintiffs “in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.” SCRCP 65(c). Here, bonds issued under the County’s Bond Ordinance totaled twenty-five million dollars (\$25,000,000.00) to fund capital improvements needed by the County’s constituents.

Plaintiffs’ wrongful attempts to interfere with the County’s attempts to use such bond funds will result in a myriad of harms inherently difficult to calculate. They include:

- The County and its citizenry will lose the ability pursue capital projects with a market value approximate to the aggregate amount of bond funds (*i.e.*, \$25 Million) for an undetermined amount of time.
- Also for an undetermined period of time, the County and its citizenry will lose the consequential benefits that would have flowed from the County’s capital projects. Economic growth will correspondingly slow. Population growth will correspondingly slow. Fewer business and fewer citizens will result in a correspondingly smaller tax base and less revenues from business licenses and similar revenues. The sought-after health, safety and welfare benefits will likewise be postponed. And, more macrocosmically, the South Carolina bond market will lessen in competitiveness, making it more difficult for the County to obtain public financing for other needed capital projects, which, in turn, will have their own corresponding lost benefits.

The potential harms the County and its citizenry might incur as a consequence of the preliminary injunctive relief Plaintiffs now wrongfully seek would be towering and difficult to quantify with specificity. Accordingly, in the remote chance the Court would ever issue a preliminary injunction in Plaintiffs' favor, then the County would respectfully request the Court require a bond in an amount not less than the bond's aggregate amount (*i.e.*, \$25 Million).

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' Injunction Motion and grant Defendants' Motion for Judgment on the Pleadings.

RESPECTFULLY SUBMITTED,

/s/ Lane W. Davis

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July 17, 2024
Greenville, South Carolina

Attorneys for Oconee County

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

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,

Plaintiffs,

v.

Oconee County,

Defendant.

IN THE COURT OF COMMON PLEAS

TENTH JUDICIAL CIRCUIT

C.A. No. 2024-CP-37-00202

**DEFENDANT OCONEE COUNTY'S
 MOTION FOR ALTERATION AND
 AMENDMENT OF THE COURT'S
 ORDER PURSUANT TO
 RULES 52(b), 59(e), SCRPC & THE
 COURT'S INHERENT
 AUTHORITY**

Pursuant to Rules 52(b) and 59(e), SCRPC and the inherent authority of the Court to alter, amend, and reconsider its own Orders, Defendant Oconee County (“the County”) moves the Court for an Order altering or amending its July 29, 2024 Order for the following reasons:

A. THE ENTIRETY OF THE COURT'S ORDER SUFFERS FROM SERIAL ERRORS AND SHOULD BE VACATED AND JUDGMENT ENTERED IN THE COUNTY'S FAVOR.

The instant case implicates serious public policy issues, many already determined by the South Carolina General Assembly, the South Carolina Court of Appeals, and the Supreme Court of South Carolina. The Court should revisit its ruling, immediately vacate the same, and enter judgment in favor of the County pursuant to the legal authority and arguments set forth in the Defendant's Memorandum Opposing Motion for Injunctive Relief, as set forth during the July 17, 2024 hearing, and for the grounds stated herein. The Court's Order errs and imperils both South Carolina's bond market and the ability of local government bodies across the state from having meaningful access to critical capital markets and the bond proceeds they require to deliver vital

infrastructure projects to their constituents. With such outsized impacts, the Court's ruling warrants further review to correct its manifest errors.

B. MANIFEST ERROR EXISTS WHERE, AS HERE, THE COURT ISSUES AN ORDER WITHOUT SUBJECT MATTER JURISDICTION TO DO SO.

The Court's Order errantly finds Plaintiffs possess standing, when they do not:

1. Mere Status as Taxpayers Does Not Confer Standing Upon Plaintiffs Absent Particularized Injuries, Which They Do Not Allege Because They Cannot.

Plaintiffs have led the Court constitutionally astray by invoking taxpayer standing when *no* such doctrine exists in South Carolina.¹ The South Carolina Supreme Court reconciled standing precedent in its modern formulation for standing analysis in the decision of *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 198 (2008).² In its unanimous decision, the Supreme Court held that a litigant may plead and prove standing in one of only three ways: (a) by establishing the particularized harms needed to show constitutional standing; (b) by invoking a statute conferring standing; or (c) by fulfilling the rigorous showing needed to satisfy the public importance exception. *See, e.g., Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40 (2012). Despite Plaintiffs' urgings, no fourth option, so-called "taxpayer standing," exists.

¹ The County has attached hereto the following Exhibits: (1) Exhibit A—07.29.24 Form 4 Order; (2) Exhibit B—07.17.24 Hearing Transcript.

² In addition to the arguments made during the July 17, 2024 hearing and the points set forth herein, the County incorporates herein by reference the arguments regarding taxpayer standing as set forth in its Memorandum Supporting its Motion for Judgment on the Pleadings dated June 6, 2024 (pp. 6-8), as existing in the Court's record.

2. The Court Manifestly Erred By Relying Upon Plaintiffs' Faulty Invocation of Public Importance Exception to Standing.³

Plaintiffs' arguments in relation to the public importance exception ("PIE") to standing have similarly infected the Court's Order with manifest error. (*See, e.g.*, Ex. B, pp. 6-13.) It is axiomatic: "For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance." *ATC South*, 380 S.C. at 199. However, the Court's Order altogether ignores the impact of S.C. Code § 11-15-30 as to the availability of PIE standing, an argument specifically raised by the County at the July 17, 2024 hearing but overlooked by the Court's ruling. (Ex. B, pp. 6-13.)

The South Carolina General Assembly has already answered the question of whether the public need for court resolution for future guidance outweighs the need for finality in the context of bonds after the expiration of twenty days from the date of the filing and indexing of bond transcript records:

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.

S.C. Code § 11-15-30. The General Assembly articulates public policy in South Carolina through the enactment of legislation. *Taghivand v. Rite Aid Corp.*, 411 S.C. 240, 244, 768 S.E.2d 385, 387 (2015) ("The primary source of the declaration of the public policy of the state is the General Assembly; the courts assume this prerogative only in the absence of legislative declaration.") Here, the General Assembly has weighed competing public policy considerations and without

³ Along with the issues raised herein and its arguments at the July 17, 2024 hearing, the County incorporates herein all arguments set forth between pages 8 and 10 of its Memorandum Supporting its Motion to Dismiss.

exception has closed the courthouse doors to bond challenges after the statutory, twenty-day window expires. Where, as here, a contrary “legislative declaration” exists, this Court must decline such prerogative as to invoke the judicially fashioned public importance exception to standing for purposes of “future guidance.” No PIE standing exists as a result and, as such, this Court lacks subject matter jurisdiction to hear this action and could not viably issue the Order.⁴

3. S.C. Code § 11-15-30 Afforded Standing Legislatively But Expressly Limited the Same Following the Twenty-Day Period, Which Plaintiffs Missed.

As the County argued in the County’s Brief in Opposition to Plaintiffs’ Motion for Preliminary Injunction, *see* County’s Opposition Brief, pp. 10-12, as well as its arguments during the July 17, 2024 hearing,⁵ the 20-Day Statute of Limitations in S.C. Code § 11-15-30 operates as a Statute of Creation. As such, the time element therein operates as an “indispensable condition of the action.” *Creech v. N.D.T. Indus., Inc.*, 815 F.Supp. 165, 172 (D.S.C. 1993); *Knight Pub. Co. v. University of South Carolina*, 367 S.E.2d 20, 21, 295 S.C. 31, 33 (1988); *Simpson v. Sanders*, 314 S.C. 413, 415, 445 S.E.2d 93, 94 (1994). Plaintiffs nowhere plead they have satisfied the indispensable time condition applicable to their action. Nor can they; their filing was four months past the statutorily imposed date when the General Assembly shut the doors to the Oconee County Court of Common Pleas to any challenges to the County’s bonds. The Court’s Order

⁴ Such defect obviously forecloses Plaintiffs’ ability to demonstrate a likelihood of success on the merits.

⁵ The County incorporates herein all arguments made in its Memorandum Opposing Plaintiffs’ Motion for Preliminary Injunction as set forth in pp. 10-12, as existing in the Court’s record, in relation to why S.C. Code § 11-15-30 causes Plaintiffs’ Motion for Preliminary Injunction to fail in satisfying the likelihood of success on the merits prong of their *prima facie* showing to obtain temporary injunctive relief under Rule 65, SCRCP.

neglects to issue a ruling on the foregoing analysis and, therefore, manifestly errs for another reason.⁶

C. THE COURT’S ORDER FAILED TO ADDRESS THE DEFICIENCIES IN PLAINTIFFS’ SHOWING SUPPORTING PRELIMINARY INJUNCTIVE RELIEF.

The Court’s Order erred in issuing injunctive relief for additional reasons. They include:

1. Plaintiffs Failed to Support Their Motion for Preliminary Injunction with Adequate Evidence.

As the Court recognized and Plaintiffs concede, prior to the July 17, 2024 hearing, Plaintiffs failed to submit any competent evidence whatsoever supporting their preliminary injunction motion. (Ex. A, p. 1; Ex. B, p. 2; Tr. p. 47, 20-23.) The resulting list of evidentiary deficits afflicting Plaintiffs’ *prima facie* showing appear on pages 5-7 of the County’s Brief Opposing Plaintiffs’ Motion for Preliminary Injunction, which are incorporated herein by reference from the record. No evidence supporting any of those deficiencies was in the record at the time the County was afforded an opportunity to be heard on Plaintiffs’ motion for preliminary injunction. None of these deficiencies are addressed by the Court’s Order.

The Court’s Order instead manifestly errs by relying upon an affidavit submitted by a single Plaintiff five (5) days after the July 17, 2024 hearing over the County’s standing objection. Specifically, the County objected to any untimely submittal of such evidence in FN 7 on page 7 of its Brief Opposing Plaintiffs’ Motion for Preliminary Injunction and again at the July 17, 2024

⁶ In addition, the South Carolina Supreme Court in *S.C. Pub. Interest Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 854 S.E.2d 836 (2021), considered and rejected an almost **identical** argument raised by the South Carolina Public Interest Foundation in an attempt to sidestep a statutorily time-barred claim. During the July 17, 2024 hearing, the County argued at length as to why the reasoning of the *Calhoun County* case similarly controlled under the facts of this case. Yet, the Court’s Order omits any discussion whatsoever as to why it rejected the County’s position. If the Court intends to issue injunctive relief impairing the legislative acts of an elected body, then its Order should explain why the Court accepts the Plaintiffs’ analysis even though the Supreme Court rejected the same in *Calhoun County*.

hearing. Notwithstanding the County's express objection and in the absence of any motion on the part of Plaintiffs to supplement the record or to show good cause as to why the belated affidavit should be considered five days after the hearing, the Court allowed the affidavit and relied upon the same in granting Plaintiffs' Preliminary Injunction Motion.

Rules 6 and 65, SCRCP specifically required Plaintiffs to support their Motion for Preliminary Injunction with either a verified complaint or an affidavit. (*Compare* Rule 6(d), SCRCP *with* Rule 65(f), SCRCP.) Plaintiffs did not verify their Complaint prior to the July 17, 2024 hearing; nor did Plaintiffs attach any supporting affidavit to their Motion for Preliminary Injunction. Rule 6(d), SCRCP.

In turn, in order for Plaintiffs to submit an affidavit to satisfy Rule 65, SCRCP past the time specified by Rule 6(d), SCRCP (*i.e.*, at the time of the motion's filing by way of attachment thereto), Plaintiffs were required, but did not, file a motion for enlargement of time under Rule 6(b)(2), SCRCP showing good cause. Instead of following these rules, Plaintiffs just filed an affidavit five days after the hearing ended without any motion, without affording the County an opportunity to be heard about such submittal, without acknowledging the County's standing objections about such untimely submittal, and with no evidentiary showing supporting good cause to allow the late submittal. The Court's Order nowhere addresses any of these issues.

To make matters worse, the procedural unfolding described above materially prejudiced the County. Prior and through the hearing on July 17, 2024, the County had no reason to submit any counter evidence into the record to rebut Plaintiffs' evidentiary showing. The reason was simple: Plaintiffs shouldered the evidentiary burden and submitted **no** evidence. Thus, no evidence existed to rebut.

Plaintiffs' *post-hearing* evidentiary submittal was not only procedurally improper, it substantially prejudiced the County for no reason. Indeed, by submitting an affidavit five days after the hearing—in a procedural posture that was starkly improper—and then by virtue of the Court allowing the same without a motion, without leave of Court, without a hearing, without opportunity for the County to be heard, and without affording the County an opportunity to submit counter evidence or otherwise object for record purposes, the Court proceeded to rely on the affidavit somehow finding the late submittal cured Plaintiffs' prior evidentiary deficiencies, procedural defects and standing objections notwithstanding. The Court then proceeded to rely upon the affidavit to issue preliminary injunctive relief, without consideration of the County's Due Process rights, in such fashion as to interfere judicially with the County's deliberative processes as a local legislative body and in such manner as runs afoul of the Separation of Powers Doctrine. *See* S.C. CONSTIT., Art. I, § 8. The Court's Order nowhere addresses or justifies any of these issues, all of which culminate in plain error.

2. The Affidavit in Question Does Not Even Submit Competent Evidence.

Out of all Plaintiffs named, they submitted a single, one-paragraph, untimely affidavit, the Affidavit of Jim Mann. In turn, the Mann Affidavit only states that the allegations set forth in the Complaint are true. However, the allegations in the Complaint fail to satisfy Plaintiffs' *prima facie* showing needed to obtain preliminary injunctive relief. They instead simply plead ultimate conclusions and conclusions of law. Nor does the Court's Order issue any findings explaining how it does. Rule 65, SCRCP requires the Court's Order to contain specific factual findings based upon the evidence submitted, as does Rule 52, SCRCP. The Court's Order has none. This is plain error.

3. The Court Order Failed to Satisfy the Required Showing for Preliminary Injunctive Relief.

For the reasons set forth above, Plaintiffs did not establish a likelihood of success on the merits. (*See, e.g., supra* Plaintiffs lack standing, S.C. Code § 11-15-30 bars this action.) No evidence likewise supports Plaintiffs' preliminary injunction motion in relation to the remaining prongs of their *prima facie* showing in relation to their suffering irreparable harm and lack of adequate legal remedy. Plaintiffs have not articulated any viable explanations as to how they satisfy such requirements. Nor does the Court's Order contain findings sufficient to meet the same.

For the foregoing reasons, the Court should alter or amend its ruling by vacating its Order and granting the County's Motion to Dismiss, while denying Plaintiff's Motion for Preliminary Injunction.

RESPECTFULLY SUBMITTED,

By: s/ Lane W. Davis
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Attorneys for Oconee County

August 8, 2024
 Greenville, South Carolina

Exhibit A

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP3700202

South Carolina Public Interest Foundation, et al
PLAINTIFF(S)

Oconee County et
DEFENDANT(S)

Submitted by: R. Lawton McIntosh

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

PLAINTIFF DID NOT MEET THE REQUIREMENTS OF RULE 65 BUT HAS SUBSEQUENTLY DONE SO. THE ISSUE IN THIS CASE IS OF SUCH IMPORTANCE THAT THE COURT PROCEEDS TO MAKE A DETERMINATION. BASED UPON OUR STATE CONSTITUTION, SC CODE ANN SECTION 11-15-30, AND OUR CASE LAW, THE COUNTY MAY NOT USE BOND REVENUES FOR SEWER PROJECT(S) THAT WILL ONLY BENEFIT THE SOUTHERN PART OF THE COUNTY WHILE TAXING THE ENTIRE COUNTY. TO MEET OUR CONSTITUTION'S MANDATE, THE COUNTY MUST CREATE A SPECIAL TAX DISTRICT SPECIFIC TO THE AREA THAT STANDS TO BENEFIT.

THIS CASE IS NOT ABOUT THE" ISSUANCE" OF BONDS WHICH WOULD BE BARRED BY § 11-15-30, BUT RATHER CONCERNS THE ISSUE OF THE" USE" OF BOND MONEY FOR UNCONSTITUTIONAL PURPOSES AFTER THE ISSUANCE OF THE BOND. THEREFORE, PLAINTIFFS REQUEST FOR A TEMPORARY INJUNCTION IS GRANTED PENDING FURTHER ORDER OF THE COURT. FURTHER, THIS MATTER NEEDS TO BE EXPEDITED FOR TRIAL. THE PARTIES HAVE STIPULATED AND AGREED THAT THIS MATTER WITH PROCEED AS A NON-JURY MATTER.

PLAINTIFF SHALL PUT UP A BOND IN THE AMOUNT OF \$1,000 WITH THE CLERK OF COURT SUBJECT TO THE RIGHT OF THE COUNTY TO DEMAND PAYMENT OF, AND ESTABLISH ENTITLEMENT TO, A HIGHER BOND AMOUNT. PLAINTIFF'S HAVE BOTH TAXPAYER AND IMPORTANT ISSUE STANDING.

MR. CARPENTER IS TO PREPARE A FORMAL ORDER THAT IS CONSISTENT WITH THIS ORDER, BRIEFS, AND ARGUMENTS MADE. HE IS TO PROVIDE THE ORDER TO OPPOSING COUNSEL PRIOR TO SUBMITTING IT TO THE COURT.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount

should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2155	
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Oconee Common Pleas

Case Caption: South Carolina Public Interest Foundation , plaintiff, et al VS Oconee County
Case Number: 2024CP3700202
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-07-29 09:18:22 page 4 of 4

ELECTRONICALLY FILED - 2024 Jul 29 9:22 AM - OCONEE - COMMON PLEAS - CASE#2024CP3700202
ELECTRONICALLY FILED - 2024 Aug 08 4:58 PM - OCONEE - COMMON PLEAS - CASE#2024CP3700202

Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS
C.A. NO. 2024-CP-37-00202

SOUTH CAROLINA PUBLIC INTEREST FOUNDATION, JIM MANN, DAVID DIAL,
RACHEL MOORE, TERRI MEYERRING, CARL MEYERRING, DOUG MUZIK, BRUCE
BURREL, INDIA LANCASTER, JOHN WAGNER, GWEN MCPHAIL, LILLIAN LUSK,
AND LINDA LOVE, ON BEHALF OF ALL OTHER SIMILARLY SITUATED

PLAINTIFFS,

VS.

OCONEE COUNTY

DEFENDANT.

H E A R I N G
BEFORE THE HONORABLE LAWTON MCINTOSH

DATE: JULY 17, 2024
TIME: 2:19 PM
LOCATION: SOUTH CAROLINA CIRCUIT COURT 10
TRANSCRIBED BY: KELLEY PRIMM

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GREENVILLE, SOUTH CAROLINA 29601

ATTORNEY FOR THE DEFENDANT

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EXHIBITS
(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 P R O C E E D I N G S

2 THE COURT: I hear motion to -- for injunction ---

3 UNIDENTIFIED SPEAKER: There are cross motions. There
4 are multiple motions. We have a motion for injunction, we
5 have a motion to compel, they have motion to dismiss.

6 THE COURT: Okay. Would you and (indiscernible) put
7 that into reference, what order we go in?

8 UNIDENTIFIED SPEAKER: Your Honor, ours was the first
9 file.

10 THE COURT: (Indiscernible) take care of them in that
11 order so if y'all can't agree (indiscernible) what we're
12 going to do.

13 UNIDENTIFIED SPEAKER: Yes, Your Honor. That'd be
14 great.

15 MR. WILKINS: May I please The Court?

16 THE COURT: Yes, sir.

17 MR. WILKINS: (Indiscernible) Billy Wilkins and Lane
18 Davis (indiscernible) I'm a (indiscernible) and I grew up in
19 Oconee County. Got off a number of years ago planning again
20 for a 280 acre industrial park to be located in close
21 proximity to I-85.

22 In order to complete installation of a sewer system and
23 related work, which would
24 (indiscernible) within the surrounding area, the county

1 Counsel has to, under the law of procedural and substitute
2 requirements, unanimously pass ordinance (indiscernible).
3 Which authorize the issuance of the bonds not to exceed
4 (indiscernible).

5 A full record of these proceedings that we'll file with
6 the (indiscernible) office on November the 8th of 2023. And
7 when was filing occurred? A 20 page statute of limitations
8 contestability period started to (indiscernible).

9 THE COURT: Tell me about that. I'm not familiar with
10 that, Mr. Wilkins. Once you file the plan, they have 20
11 days to contest. And when it's resulted, if you're not
12 timely in your contest ---

13 MR. WILKINS: Cannot bring a lawsuit. Can not bring
14 any suit. No suit. No action may be commenced after the
15 issuance of the bonds after the 20 day period is over.
16 Again, that's code -- section 11-15-30 this action was filed
17 months after this contestability period had expired.

18 THE COURT: Does that also include constitutional
19 issues as well, sir?

20 MR. WILKINS: (Indiscernible) The case law was very
21 clear on this (indiscernible) some of the leading cases,
22 Your Honor.

23 THE COURT: Okay.

24 MR. WILKINS: This complaint should be dismissed for
25 several reasons. First, section 11-15-30 is an absolutely

1 horrible (indiscernible) as I mentioned, because it provides
2 an (indiscernible) 20 days, no action may be commenced.

3 60 years ago The Supreme Court (indiscernible) Morgan
4 versus (indiscernible) case involving (indiscernible) county
5 school bonds. That case is Circuit Court focused on whoever
6 (indiscernible) the publication requirements (indiscernible)
7 before the referendum was held (indiscernible).

8 It just missed law student in beautiful (indiscernible)
9 County. Our Supreme Court said no, you should not even
10 address that issue because the 20 day statute of limitations
11 contestability period can expire (indiscernible). Do not
12 address any of the other issues.

13 And the fact they would (indiscernible). If you don't
14 meet contestability expiration in the time of limitation.
15 And in that 20 page memorandum, (indiscernible) do not
16 contest the validity of the appropriateness of this statute.
17 But tell me they do not site to a single case supporting
18 their proposition.

19 That the Plaintiffs are not contesting the issues of
20 the bonds, they are not contesting as a county authority and
21 power. The Plaintiffs say we are just challenging the
22 proper use of the bond proceeds. Well, 40 years later,
23 after the Morgan decision, (indiscernible) appeal to a case
24 I'm very (indiscernible) issued an opinion that reinforced
25 this absolute horror.

1 To bring the lawsuit on a count of issues of any bonds
2 by government authority. In this case, it was a town in
3 (indiscernible) South Carolina. 17 (indiscernible) not
4 against the town, not even against the town counsel, it was
5 a lawsuit against the bond attorneys, claiming that the bond
6 attorneys (indiscernible) and was a private (indiscernible).

7 If you missed the town counsel, the (indiscernible)
8 bonds still provide (indiscernible). (Indiscernible) the
9 action was not within the 20 day contestability period. And
10 (indiscernible) they are (indiscernible) the statute does
11 not apply. Because they (indiscernible).

12 They were just contesting the bond obligations
13 (indiscernible) County to repay the bonds. So I
14 (indiscernible) the Morgan decision (indiscernible). The
15 Court of appeals (indiscernible) the Circuit Court. Told
16 them that the 20 day contestability period applied, and that
17 consequently, Plaintiffs were now barred from attacking the
18 legality of the bond procedures.

19 (Indiscernible) came before The Court today, the
20 Plaintiffs made essentially the same argument. Same
21 (indiscernible). (Indiscernible) these last 2 cases I just
22 mentioned. On paragraph 29 (indiscernible), the Plaintiff
23 attacks the legality of the use of the proceeds of
24 (indiscernible) papers.

25 The legality of the use and the proceeds of

1 (indiscernible) bond. The (indiscernible) improved and
2 plead that the (indiscernible) taxing power of the county.
3 And just three years ago, in another unanimous decision
4 about the Supreme Court entitled *South Carolina Public*
5 *Interest Foundation versus Calhoun County Counsel*.

6 Which again, affirm they've all (indiscernible)
7 regarding the legislative inactive contestability period.
8 (Indiscernible) Plaintiff, in that case (indiscernible) in
9 this case (indiscernible) century (indiscernible). The
10 Calhoun County Counsel imposed a one percent sales tax to
11 fund 15 projects.

12 The lawsuit that was brought into this full of
13 (indiscernible) funded, it's inappropriate. Therefore, we
14 object to any funds being used to fund these projects, and
15 if you do that -- if you don't do that, Judge, it's going to
16 be misuse, that was the charge, misuse of the county
17 counsel's tax paying money.

18 They maintain that the statute of limitations
19 contestability period only applied to procedural issues and
20 not to any substitutions like this. Paid 14 of the
21 opposition through our motion to dismiss, the Plaintiff
22 makes the same claim, and I quote, this case at far involves
23 expenditure and the misuse of tax paying money.

24 The Calhoun County case I just mentioned. The Supreme
25 Court (indiscernible) rejected this argument and

1 (indiscernible) through for the statute of limitations
2 contestability period barred that lawsuit. The Court's made
3 it -- our conclusion is further (indiscernible) prior
4 decision including the cases I just mentioned.

5 That the short statute of limitations contestability
6 period does not distinguish between procedural and
7 substitute challenges. (Indiscernible) that the wisdom of
8 the short statute of limitations period is not
9 (indiscernible) as the Supreme Court observed in Morgan, the
10 (indiscernible) short contestability period, it's obvious
11 The Court (indiscernible).

12 And if (indiscernible) in full force in this state for
13 many years. It said it was obvious 60 years ago. The
14 position the Plaintiff (indiscernible) or it was Plaintiff's
15 decision (indiscernible) after the Morgan case
16 (indiscernible) by this Plaintiff is the docket.

17 It would have an immediate devastating effect on every
18 city and county in the state as far as ability to raise
19 money by the sale of (indiscernible) County office. I'm
20 sure investors (indiscernible) in South Carolina. That's
21 the reason the legislature passed in section 11-15-30.

22 The Plaintiffs made no mention, zero, in their
23 complaint of the contestability period set forth in that
24 statute. And the 23 page memorandum in opposition, it was
25 the Defendant's motion to dismiss (indiscernible) less than

1 a single page to address this threshold issue.

2 (Indiscernible) site no cases to any court in South
3 Carolina, or any court in the nation that would support
4 their opposition. (Indiscernible) critical legislative
5 activist does not apply. And it does not apply because the
6 Plaintiffs are not contesting the issues of the bond, they
7 say, but only the bond proceeds are being misused.

8 This threshold issue, Your Honor must decide
9 (indiscernible) this lawsuit from Oconee County from
10 spending the funds that have been raised to the sale of
11 these bonds. Here's the question, is it an action commenced
12 on a count of the issuance of the bonds?

13 THE COURT: Say that again?

14 MR. WILKINS: The statute says no action shall be
15 brought -- shall be commenced on account of the issuance of
16 the bonds. Which is just another way to say (indiscernible)
17 the Genesis of which is by reason of (indiscernible) the
18 result of the issuance of the bonds.

19 That's the words the Supreme Court used in the Calhoun
20 case. The Plaintiff, -- (indiscernible) the expenditure of
21 claims, the expenditure of funds was a misuse of the
22 county's funds. And in fact, challenged the results of the
23 (indiscernible).

24 (Indiscernible) misuse because they were challenging
25 the results of the reference -- reference which led to the

1 issuance of the bond, and thus, is barred (indiscernible)
2 period. In this lawsuit, this Plaintiff claims that the
3 expenditure of the funds is a misuse of Oconee County's
4 money.

5 It is a challenge to (indiscernible) of the enactment
6 of the county ordinance of Oconee County which authorized
7 the issuance of these bonds and is likewise barred by the
8 statute of limitations contestability period. Had these
9 bonds not been issued, Your Honor, there would have been no
10 proceeds generated.

11 If there had been no proceeds generated, there would be
12 no claim of misusing any of our county tax payers money. So
13 I say it again, the statutes are clear, the case law is
14 clear, the issues of (indiscernible) in just a minute,
15 really don't need to be heard. If you really in
16 (indiscernible) County, dismiss the (indiscernible) because
17 all the other issues automatically (indiscernible). I'd be
18 glad to answer any questions you may have, Your Honor.

19 THE COURT: Thank you, sir. I appreciate it. It's
20 good to see you. All right. Mr. Carpenter.

21 MR. CARPENTER: Thank you, Your Honor. This case is
22 about Oconee County violating the constitution. The
23 Plaintiff is asking this Court to stop the constitutional
24 violation. My opposing Counsel has made this argument
25 about South Carolina code annotative 11-15-30, it seems to

1 me that they were trying to put a square opinion through a
2 round hole.

3 If you read the statute, it's focused on the
4 (indiscernible) of the bonds. No action shall be commenced
5 on account of the issuance of any such bonds after the
6 expiration of 20 days (indiscernible) index and such
7 records, as prescribed by 11-15-10 -- 11-15-20.
8 (Indiscernible) issue went in the hands of a bonified
9 purchaser for value shall be incontestable. But if the
10 period (indiscernible) which actions may be commenced, shall
11 not begin to run (indiscernible). We don't have any
12 objection to the issuance of the bonds.

13 Issuance with bonds is done in New York -- the issuance
14 with the bonds, they came home with \$25,000,000. The issue
15 is, what are they going to do with that \$25,000,000? I know
16 Mr. Wilkins said what they're going to do is put it towards
17 waste water treatment, sewer, for a small part of Oconee
18 County down around Fair Play, down by I-85, down by the
19 welcome center, maybe up to exit 4, a small part of Oconee
20 County.

21 We alleged in the complaint that when they issued these
22 bonds, under ordinance itself, pledged full faith in credit
23 or taxing power of Oconee County. These are general
24 obligation bonds, these are not revenue bonds, those are
25 another thing.

1 They're going to take the taxing power of Oconee County
2 and tax -- and it says in the ordinance every single taxable
3 piece of property in Oconee County is going to be taxable to
4 pay back these funds. And that's the heart of the problem
5 because the constitution says that when you do a certain
6 number of services, one of which is waste water treatment
7 and management, and it only benefits a small part of the
8 county, you have to make a special tax district.

9 And you have to recess the people living in that
10 district who are going to benefit from those services to --
11 to support and pay back the bonds that will give these
12 services for that small group of people. In other words,
13 this is down in the southern part of the county. The
14 constitution -- and we (indiscernible) assume
15 (indiscernible)

16 THE COURT: Correct.

17 MR. CARPENTER: The constitution says that you can't do
18 that. You have to -- if you're going to -- if you're going
19 to issue bonds, (indiscernible) general obligation bonds,
20 you can't tax the whole county when the benefit of the bond
21 is only going to a small portion of the county.

22 And that's the constitutional violation and that's what
23 (indiscernible) here today. In the (indiscernible) this 11-
24 15-30, the focus of this statute is protecting the bonified
25 purchasers for value. These bonds were sold back in the

1 fall. The purchaser (indiscernible) we're not contesting
2 the bonds. The bonds are valid as far as I know, and
3 eventually they'll be paid back with Oconee County tax
4 payers in dollars.

5 THE COURT: Well, let me ask you this, Mr. Carpenter.
6 Mr. Wilkins says that the South Carolina Public Interest
7 Foundation filed the exact same claim earlier, which was
8 denied by the Supreme Court saying its not the bond issue,
9 it's the use of the proceeds that were contested
10 (indiscernible).

11 MR. CARPENTER: There is a -- there is a surface of
12 similarity between the two cases, can I talk a little bit
13 about both cases?

14 THE COURT: Sure.

15 MR. CARPENTER: They are distinguishable that
16 (indiscernible) was on the statute had to do with counties
17 getting money in another way. It didn't have anything to do
18 with this statute, this statute was never brought up and
19 it's a completely different statute with some similarity,
20 but it's completely different.

21 And this statute focuses on the people who buy the
22 bonds getting good value for their money. That after 20
23 days when they put millions of dollars into these bonds, we
24 can't have somebody coming in way after the fact and
25 contesting those bonds because as Mr. Wilkins said, nobody

1 could buy our bonds.

2 But that's not what's going on here. Those bonds are
3 valid, we're not touching those bonds. We are focusing, as
4 he said, on the proceeds of the bonds. And he
5 constitutional violation (indiscernible) when you take those
6 proceeds and certain and numerated functions, sewer,
7 lighting, a few other things, you have to make a taxing
8 district, and tax those people for the benefit to payback
9 those funds. Now, ---

10 THE COURT: Wasn't there a case, I think in Anderson
11 County some years ago, (indiscernible) taxable fees?

12 MR. CARPENTER: There is one out of Richland County
13 that I've read in preparation for this (indiscernible) fees
14 or assessments that they've distinguished between. It had
15 to do with sewer and (indiscernible).

16 THE COURT: (Indiscernible) is that relevant to this
17 case?

18 MR. CARPENTER: I don't think so. I read it again this
19 morning. Taxes are spread evenly among all tax payers and
20 they get general benefits. Assessments of fees are charged
21 to people who are getting the specific benefit from the
22 expenditure of the money.

23 THE COURT: Okay. (Indiscernible) it has been a long
24 time since (indiscernible) across the board whereas, you
25 don't have to have a special tax district (indiscernible).

1 MR. CARPENTER: As I recall, the taxpayers were arguing
2 what the county is arguing. They wanted to charge everybody
3 for a benefit that (indiscernible) a few people. And The
4 Court rejected that, which you can't charge everybody for a
5 benefit that's only being given to a few people. I think
6 it's called *Casey versus Richland County* (indiscernible).
7 But if you want me to go into ---

8 THE COURT: Go ahead.

9 MR. CARPENTER: But if you want me to stop with my
10 discussion of 11-15-30, I'll do that. If you want me to
11 bring the other motions up, I'll be happy to do that.

12 THE COURT: (Indiscernible) hear you on 11-15-30.

13 MR. CARPENTER: 11-15-30 is focusing on the security of
14 the bond (indiscernible). We're not challenging that in the
15 least. We are taking (indiscernible) the proceeds -- misuse
16 of the proceeds, that's a constitutional violation of the
17 section that we quoted, that requires the creation of a
18 special taxing district to (indiscernible) the bonds, and
19 that didn't happen here.

20 Now, the county had said well, we'll make the county
21 (indiscernible) general benefit. There's a case that we
22 sighted that says that the general benefit that the
23 neighboring properties might get because of this particular
24 section, I assume, is not the kind of benefit that allows
25 the county to tax them under this constitutional

1 (indiscernible), and I'll address that more (indiscernible)

2 THE COURT: Mr. Wilkins.

3 MR. WILKINS: Just very briefly, Your Honor, let me
4 just emphasize that the *Public Interest Foundation versus*
5 *Calhoun County*, they made the same claim in that case.
6 Calhoun County passed an ordinance (indiscernible) sales tax
7 was going to fund 15 projects.

8 This Plaintiff automatically says no, you can't do that
9 (indiscernible) not authorized to be funded. To do so
10 (indiscernible) would be a misuse of tax payers money.
11 That's the same thing they're saying here. We're not
12 challenging the bonds, they're fine, we're just challenging
13 the proceeds and how they're going to be used.

14 The Supreme Court was very clear, that is a
15 challenge -- a lawsuit brought challenging the result of the
16 issuance of the bonds. Because if it had not been for the
17 bonds, there'd be no proceeds.

18 THE COURT: So whether that was under 11-15-30 or some
19 other statute, it doesn't really matter? Or was it under
20 11-15-30? (Indiscernible) Mr. Carpenter says it was under a
21 different statute.

22 MR. WILKINS: It was under a different statute. But it
23 (indiscernible) the same thing (indiscernible) statute of
24 limitations contestability period. There's a 20 day period
25 under this statute, a 30 day period on another statute,

1 there's a six month period under another statute depending
2 on whether you do sales tax, bonds, or what not.

3 I'd like The Courts attention to *Casey versus Richland*
4 *Count Counsel* that is (indiscernible). And in that case The
5 Court says this was a (indiscernible) Richland County was
6 going to put sewer system in this unincorporated area and
7 they charged an assessment which is one way that you can
8 impose the tax burden on the citizens to think it's some
9 public maintenance of the sewer system and so forth.

10 The problem in that case is they place this assessment
11 on individuals in that district who will receive sewer from
12 another place. So they (indiscernible) twice. They had to
13 pay the sewer assessment for Richland County, -- charged for
14 Richland County, now they're paying (indiscernible) but you
15 could impose a tax county-wide.

16 Indeed, they claimed -- they stated here, the benefit
17 of an unimproved sanitary condition will (indiscernible) the
18 benefit of all of the citizens of Richland County. So there
19 are three ways you can impose a sales tax, you can impose an
20 assessment, or you can impose a county-wide tax
21 (indiscernible) in this case, but I'll go back to it.

22 What does it mean to commence an action on account of
23 the issuance of bonds? It does not mean the case is
24 appropriate. We're not just talking about problems, we're
25 talking about -- the Supreme Court says this applies to when

1 public notice wasn't given. You can't -- if public notice
2 isn't given, you can't bring a lawsuit after the 20 days.
3 The (indiscernible) of the facility, that's the charge.
4 You've got to (indiscernible) within that 20 day period. A
5 lawsuit made to get money raised, is not (indiscernible)
6 allocated. You can't do that. You do it within the 20
7 days. The lawsuit alleged misuse of public funds.

8 It has to be within the contestability period. And
9 even if the lawsuit is claiming that the bond
10 (indiscernible) to get the county to issue bonds to raise
11 money, you've got to challenge that even if you challenge
12 the allocation of those funds and how they're being spent
13 within the 20 day contestability period.

14 THE COURT: If you've (indiscernible) disagree, please.

15 MR. CARPENTER: Yes. Under the Calhoun County Counsel
16 case, the statute was the capitol project sales tax act. It
17 had nothing to do with the statute given here. And the
18 Casey case was the one with the (indiscernible) that
19 distinguished between the fees or assessment, and the taxes
20 and how they distinguish between the two of them.

21 THE COURT: All right. What's the next motion?

22 MR. CARPENTER: The next two motions are ours. This
23 case was -- in the beginning we issued some discovery quest
24 and (indiscernible) production. Requests for admission, we
25 served them properly, they wrote back to us and didn't

1 answer a single interrogatory, they didn't answer a single
2 request for admission, didn't answer a single request for
3 production.

4 They said oh, we've got motion to dismiss in here, we
5 don't think we have to answer discovery when we've got a
6 motion to dismiss. I think they filed a motion for
7 protective order, but we think that we have a good case here
8 and we want our discovery responded to within 24 months.
9 That's -- that's the essence of our motion to compel. On
10 our discovery responses, we didn't get anything.

11 THE COURT: Was the protective order signed?

12 MR. CARPENTER: Not -- I don't think it was.

13 MR. DAVIS: Your Honor, the protective order was
14 actually embedded in the motion to dismiss. We were saying
15 hey, look, the statute extinguishes your ability to bring
16 this lawsuit and taxpayers shouldn't have to pay for really
17 expensive discovery in a lawsuit Mr. Carpenter shouldn't
18 have filed.

19 So if we go to The Court and Judge McIntosh says yeah,
20 you're wrong minded, we're going forward, we'll give you
21 your discovery, but it's not true that we didn't respond.
22 We did, in fact, file objections and serve objections that
23 were responses, and when we did that I specifically wrote to
24 Jim and said Jim, if we go after our dispositive motion, and
25 The Court says we're going forward, of course we're going to

1 supplement, but we don't think the taxpayers should have to
2 incur that burden because we really do not believe we should
3 have ever been here.

4 And that was the basis of it. It was nothing
5 nefarious. It wasn't trying to keep anything from them.
6 And of course, we will supplement if Your Honor tells us
7 we're wrong, but we -- we pretty earnestly don't believe we
8 should be here.

9 THE COURT: If I were to (indiscernible) deny your
10 motion to dismiss, how long would it take you to get this
11 discovery (indiscernible)?

12 MR. DAVIS: 30 days, Your Honor.

13 THE COURT: Mr. Carpenter, (Indiscernible)

14 UNIDENTIFIED SPEAKER: We would be happy if they
15 responded in 30 days, Your Honor.

16 THE COURT: Anything further as far as that
17 (indiscernible) as well?

18 MR. CARPENTER: The -- the main motion is our motion
19 for injunctive relief, yes. (Indiscernible) motion for
20 injunctive relief is that we're requesting temporary,
21 preliminary, and eventually permanent injunctive relief and
22 we've briefed this thing extensively with (indiscernible)
23 pages of argument I'm going to site.

24 We've sighted 15 or 20 cases that say when a taxpaying
25 citizen sees that county or city government misusing

1 taxpayer money and spending it unlawfully, the tax paying
2 citizen has a right to apply to The Court inequity to stop
3 the unlawful expenditure of taxpayer money.

4 And that's the nature of our case here. The
5 constitution has, as we have sited and alluded to, no law
6 should be enacted preventing the incurring of bonded in
7 debt, that's for any county for sewage disposal or
8 treatment, and several other things, or any other service or
9 facility benefitting only a particular geographical section
10 of the county unless special assessment, tax, or service
11 charge in an amount designed to provide debt service on
12 bonded indebtedness revenue bonds incurred for such purposes
13 shall be imposed upon the area or persons receiving the
14 benefit therefrom.

15 We respectfully suggest that the county is clearly in
16 violation of this constitutional provision. They have
17 borrowed \$25,000,000 in bonds and they have said over, and
18 over again their intent is to use it for sewage and waste
19 water treatment down in the lower part of the county, down
20 around Fair Play, down -- like -- like Mr. Wilkins said,
21 down along the interstate down there.

22 Talked about the -- the welcome center and maybe up to
23 exit 4. But they have not created a special taxing district
24 down for that area. They have said in their ordinance,
25 we're going to put the full faith and credit of the entire

1 Oconee County and every single piece of taxable property in
2 Oconee County is going to be answerable to respond to the
3 payment of these bonds.

4 And this is a violation of article 10, section 12 of
5 the constitution. And the county has said in their answer
6 well, the issue is who is going to benefit from this? And
7 they have said that they think the whole county is going to
8 benefit because they're putting sewer down in this one small
9 part of the county.

10 And they think that might generate some economic
11 stimulus and might bring in some industry and so on.
12 There's one case that has addressed this issue, and it's
13 called *Robinson versus Richland County*. (Indiscernible)
14 opposing counsel, they probably have it already. Do y'all
15 need a copy?

16 In my research, I believe this is the only case that
17 specifically oppresses this constitutional provision in
18 South Carolina. And I've highlighted what seems to be the
19 important points of the case. This is a case where two tax
20 paying citizens sued Richland County Counsel over the
21 provision of sewer services and so on.

22 The Court cited article 10, section 12 of the
23 constitution, which is the one we've been relying on. If
24 you look at the 3rd page of the opinion, the right column,
25 towards the top of the page, article 10, section 12 of the

1 constitution prohibits counties from incurring bonded
2 indebtedness for sewage disposal or treatment, which
3 benefits only a particular area unless a special assessment,
4 tax or service charge adequate to provide debt service on
5 the bonds is imposed on those persons who will benefit from
6 the service.

7 So the issue is, who is going to benefit from the
8 service? Is it only those people in the service area? Or
9 does it include people on the adjacent properties? If you
10 look over at the next page, top of the page, tax payers
11 argument that neighboring property owners should be -- oh,
12 I'm sorry.

13 Second paragraph -- in addition to article 10, section
14 12, the constitution requires the charge be assessed only on
15 those who will benefit from the new facilities. And here's
16 the critical ruling, an increase in property values in the
17 adjoining area, because of the new sewer lines, is not
18 sufficient to putting adjacent landowners within the class
19 of those who benefit from the project.

20 And if you look at the bottom of the column there,
21 article 10, section 12 limits the power of counties to
22 impose general taxes to (indiscernible) the cost upon the
23 indebtedness incurred to build local improvements. As I
24 said, this case, as far as I know, is the only one that has
25 addressed this article 10, section 12 of South Carolina

1 constitution.

2 And The Court said it three different ways, if you're
3 going to have bonded indebtedness benefitting a small part
4 of the county, then you've got to make a special tax
5 district and tax those people, and you can't tax the
6 adjoining landowners because that -- that -- being close to
7 a new sewer is not the kind of benefit that this provision
8 of the constitution contemplates as they make those people
9 taxable for the sewer services provided to one particular
10 designated part of the county.

11 And if -- if an increase in the property value is in
12 the adjoining area because of the new sewer lines, it's not
13 sufficient to bring adjacent landowners within the class of
14 those who've benefitted from the project. Then, even more
15 so, some generic benefit of possible prosperity to the
16 county as a whole, is even more attenuated than the
17 adjoining landowners.

18 So you can't tax the people up in the northern part of
19 the county. You can't tax the people in the three cities
20 that have their own sewer systems. You can't tax the people
21 that are around the lakes of Keowee, Jocasee they have their
22 own sewer system.

23 You can't tax them to put in a sewer system down in the
24 lower part of the county and it's only going to be localized
25 down there at the supposed continuous possible benefit is

1 not sufficient to justify taxing the whole county. We have
2 a constitutional violation here. We're asking The Court to
3 issue a temporary and preliminary injunction to stop the
4 expenditure of this \$25,000,000 for that sewer project.
5 Now, if you look closely at the fourth instance and so
6 on, ---

7 THE COURT: Let me ask you this, how would you grant
8 your motion on what kind of bond would your foundation be
9 willing to (indiscernible) it's going to be a
10 (indiscernible) bond (indiscernible), don't you think?

11 MR. CARPENTER: We've faced that issue before and many
12 courts will tell you that because of the public interest
13 nature of this, and we're not causing any kind of
14 expenditure. We're stopping the use of these proceeds for
15 one particular purpose, because it violates the
16 constitution.

17 They can still use the proceeds to build roads, to
18 build schools, to build things that benefit the whole county
19 that are not in that list of enumerated kinds of contracts.
20 I think it was the lights, sewer, and garbage collection,
21 that sort of thing.

22 If the expenditure is not in that list, they can still
23 use the bonds for general county expenditures and county
24 improvements. Now, the ordinance that (indiscernible) the
25 bonds, specifically listed the sewer project, but they also

1 said and other projects.

2 So they can use the bonds on other projects, whatever
3 they are, provided those don't violate article 10, section
4 12. They would only stop the expenditure on this -- this
5 one project that violates the constitution. So I don't
6 think a bond would be appropriate when they can still spend
7 the money constitutionally.

8 THE COURT: The rule (indiscernible) the bond.

9 MR. CARPENTER: Well, then I ---

10 THE COURT: Discretionary, but it (indiscernible) the
11 bond.

12 MR. CARPENTER: I don't think that a fairly nominal
13 fund would be sufficient because there's no real risk to the
14 county. They're simply being prohibited from violating the
15 constitution. Which they should've been anyway. And they
16 can still spend the money other ways, and they can spend it
17 constitutionally, they just have to refrain from spending it
18 unconstitutionally.

19 So a nominal bond would be appropriate. I don't know
20 how much this matters, but a lot of people have the idea
21 that the South Carolina Public Interest Foundation is an
22 endowed foundation, it is not. We live hand to mouth on
23 periodic contributions.

24 So we wouldn't be able to put up a bond anywhere near
25 the million dollar mark, we just don't have it. It's just

1 not -- it's not an endowed foundation. Mr. (Indiscernible)
2 funded it when he was living and unfortunately, when he
3 died, he didn't fund it with his will in the state and other
4 people had come in and tried to help pick up the vision and
5 carry on, but it is -- it is not an endowed foundation, so
6 we would not be able to fund any sizable bonds, but a
7 nominal bond if that's required by The Court. That is
8 possible. But the point is, the county is not suffering any
9 real loss. They're just being prohibited from violating the
10 constitution.

11 MR. DAVIS: Trying to put my pen top back on without my
12 glasses, Your Honor. I'm sorry. (Indiscernible)
13 Respectfully, the Plaintiff's motion for preliminary
14 injunction is dead on arrival.

15 THE COURT: Let me ask you a question.

16 MR. DAVIS: Yes, sir.

17 THE COURT: If it weren't for the time frame of
18 (indiscernible) that you (indiscernible) from section
19 11-15-30, on the requirements of section 10 -- article 10,
20 section 12 of this South Carolina constitution?

21 MR. DAVIS: That's the ultimate -- that was actually
22 the argument -- the ultimate argument in this case is the
23 conclusion that -- Mr. Carpenter assumes (indiscernible)
24 arguments. In other words, hey, once we get to the merits
25 on this case I'm going to win and because I'm going to win,

1 we should have injunction relief issued.

2 (Indiscernible) contribution to his (indiscernible)
3 take out this most extraordinary explicable remedy and
4 injunction, and shoot it based upon the (indiscernible)
5 Plaintiffs because they're saying they're right, the
6 county's wrong, and that ultimately, the -- there's
7 unconstitutional infractions that remains, as of this date,
8 (indiscernible) proof and without a scratch of evidence in
9 the record.

10 So my preliminary thing that I would say to Your Honor
11 about the (indiscernible) injunction, you can deny it right
12 now because it's not supported by an affidavit. It's not
13 supported by a declaration. It's not supported by any
14 testimony.

15 It's not supported by a verified complaint. In the
16 record right now, the Plaintiffs have put zero evidence to
17 support their burden of proof on this motion, which is to
18 carry the prime (indiscernible) elements of injunction. The
19 three that we know well, irreparable harm, (indiscernible)
20 remedy by clear showing, with no clear showing.

21 No showing, whatsoever. So it's facially defective and
22 dead on arrival. And that's fairly significant because
23 within their complaint -- within their motion there are at
24 least 17 different factual premises that they have to
25 actually show The Court in order to be entitled to the

1 relief they seek.

2 For example, without representing any specific
3 infrastructure at all, -- okay, what sort of infrastructure
4 are we talking about? What does it do? How does it
5 upgrade? Is it a pump station? Is it trump
6 (indiscernible). Is it a treatment facility? We don't know
7 that.

8 If you look at the record right now, you couldn't tell
9 me that. Do you know why? They didn't (indiscernible) the
10 burden. That's why they lose immediately. Without knowing
11 what that infrastructure is, Your Honor can't assess or
12 allocate the metrics between what that infrastructure would
13 do, and what benefit would be conferred on what class of
14 people.

15 Whether it would be county-wide or a street driven in
16 the county. You just couldn't do it. You know why?
17 There's no evidence. So this motion fails off the top. But
18 those are not insignificant deficits, right? So if you
19 don't know how the funds under bond ordinance are -- are
20 really outdated.

21 And I would note for Your Honor, it's better that
22 underneath that ordinance, there's actually a specific
23 discretion inferred upon county counsel, a legislative body
24 that allows you to tug on how those are allocated
25 (indiscernible).

1 So what Mr. Carpenter's really asking you to do is to
2 invade the province of a legislative body, doing legislative
3 things, under a legislative enactment in respect to a
4 government service that's uniquely within his province. You
5 can't do that. That's called violation and separation of
6 powers.

7 THE COURT: Going back to my original question.

8 MR. DAVIS: Yes, sir.

9 THE COURT: Tell us the bond is issued and the
10 Plaintiff wrote this sewer improvement, whatever level or
11 part of it may be. Southern part of the county meet the
12 requirements of article 10, section 12 of our constitution.

13 MR. DAVIS: Yes, sir. (Indiscernible), Your Honor.

14 THE COURT: Tell me how it does.

15 MR. DAVIS: We think it confers a general benefit among
16 tax payers of Oconee County for a number of reasons. One,
17 is the health safety and welfare benefit, I mean, it's
18 obviously a health concern.

19 THE COURT: (Indiscernible)

20 MR. DAVIS: Well, I think that's what they were saying
21 in (indiscernible). You know, one of the primary principal
22 (indiscernible) of (indiscernible) we were talking about
23 with Mr. Wilkins and Mr. Carpenter. Number two, if you
24 think about what happens with respect to infrastructure,
25 it's basically any type of utility, where the number of

1 users increases, the economy of scales increase, the
2 incremental cost per user goes down, it creates a larger
3 group of people and a stronger utility base across the
4 county, it will invite economic development into the county
5 (indiscernible).

6 Everybody knows, in this space it's an accepted premiss
7 that if you built sewer, economic development follows it.
8 Economic development means more jobs, means more people
9 living here, more businesses, businesses paying business
10 licenses, people paying taxes, the tax base goes up.

11 These are not individualized, discrete benefits to
12 specific persons in the county, these are benefits that get
13 spread around the entire county. Look, all of these are
14 factual issues that we will show, but we shouldn't have to
15 show because underneath the statute that we're talking
16 about, 11-15-30, it cancels any basis to bring that
17 challenge here for us to reach those merits.

18 The general assembly decided this for you. And why did
19 they do that? It's not necessarily what Mr. Carpenter's
20 saying, that's not -- it wasn't solely based to protect the
21 holders of (indiscernible), if you think about what has to
22 happen for this to be an effective public finance mechanism
23 for local government, the local government's got to be able
24 to get the money and be able to use it for the things that
25 the tax payers need in a period of time that it actually

1 gets them what they need.

2 So if there's a public health issue or crisis, that has
3 to be addressed. And the county has to act. The fact the
4 South Carolina Public Interest Foundation can file a lawsuit
5 and hold those funds hostage for four years, that's no
6 bueno.

7 The local government body, you can't rely on that as a
8 public local source of financing to address the needs -- the
9 continuous needs now. They have no concrete time line.
10 General assembly said look, here's what we're going to do,
11 we're going to have this processed.

12 In order to have bond ordinance, we have to have, you
13 know this -- three (indiscernible), right? So we have a
14 public process, publically known as meeting agenda, public
15 is invited, they can come. They participate in the
16 legislative process.

17 There are elected officials, hear their concerns.
18 There's a debate, there's a discourse that goes on in
19 public, it happened once, it happened twice, it happened
20 three times. Legislative process happens. Then that bond
21 and it's transcript gets put on a guy with a bicycle who
22 rides over the (indiscernible) Court.

23 They file it. And in that point in time, when
24 (indiscernible) enacted of the bond to that filing of the
25 transcript, plus 20, they have an opportunity through an

1 (indiscernible) party by what the county just did, they can
2 file a lawsuit. And they can bring any substance of issue
3 out in the world, into the lawsuit.

4 They can challenge it however they want. All of the
5 remedies, they have plenty of remedies (indiscernible) that
6 they want to assert. There are remedies for
7 (indiscernible). The problem is, the standing commences
8 when the bond is enacted -- bond ordinance is enacted, it is
9 a (indiscernible) 20 days after the transcript arrived in
10 it's spot.

11 The legislator told you that hey, look, you don't have
12 standing on the 21st day after that transcript is filed. It
13 -- it doesn't make a difference what argument you want to
14 make, how clever you want to be, however you want to
15 collaterally attack that ordinance, it doesn't make a
16 difference what direction.

17 You don't get to come here and make the argument. It's
18 negated, it's extinguished. Incidentally, South Carolina's
19 not unique in this, this is how it is uniformly handled
20 around the Country. They do this because the local
21 government body need to have consistent, stable, reliable
22 access to capital markets in order to get the public
23 financing they need to do what?

24 Discharge your judiciary obligations (indiscernible)?
25 To get them the public service that they have to have,

1 right? We can't have sewer running down the middle of the
2 street. And that's the elected officials job to get it.
3 And this is one of the precious few public financing people
4 that they have to deliver it.

5 And they want to upset. It is for that reason the
6 South Carolina Supreme Court has consistently rejected these
7 exact arguments over, and over, and over again. Because if
8 you allow this, it does great violence to the public finance
9 (indiscernible) for every local government body across the
10 state. They also, in this case, they don't satisfy
11 (indiscernible) submitted evidence that support their
12 motion, which I don't see how we go up on appeal.

13 We say the Court of appeals and (indiscernible)
14 immediately (indiscernible) if Mr. Carpenter gets what he
15 wants, and leave it up to court of appeals and say okay,
16 show me the evidence in the record to support your
17 (indiscernible) elements, Jim. (Indiscernible).

18 Rule 65 is clear, you have to (indiscernible) if not,
19 it's open. But, in any event, if your irreparable harm that
20 they're siting in this case, it doesn't pass muster because
21 irreparable harm, all they're talking about are financial
22 funds, right?

23 Okay, well, you're going to pay these taxes
24 (indiscernible) and there's no way for us to ever give them
25 a refund. Why? Why is that so (indiscernible) if it

1 happens all the time? And incidentally, it is ---

2 THE COURT: What would be (indiscernible)?

3 MR. DAVIS: Well, you have to calculate what amount of
4 the tax burden -- assuming -- if you assume the correctness
5 of their argument, and you prevail at the end, you say okay,
6 look, there was a certain amount of tax burden that was
7 misallocated in use for this, and these people shouldn't
8 have got it, they'd be entitled to a refund.

9 It's -- if we (indiscernible) burdensome, perhaps, to
10 actually do -- but it's not (indiscernible) it's not
11 impossible, it's something that happens, it happened before.
12 It's a money (indiscernible) remedy, but it doesn't make a
13 difference that they couldn't raise it anyway.

14 But the point is this, irreparable injury that they're
15 claiming, with respect to the unconstitutional behavior, it
16 assumes the conclusion, right? It assumes the
17 unconstitutionality exists, and therefore, they're entitled
18 to the injunctive relief to prevent it.

19 But we do not, by any stretch of imagination, can see
20 that there's any unconstitutional infraction that's
21 occurred. You don't conceive that there's been any illegal
22 behavior that's occurred. In fact, we reject that and if we
23 go to the merit, we think we are still going to
24 (indiscernible).

25 But, in any event, it's not an appropriate argument the

1 (indiscernible) the cases that he sites with respect to
2 those issues, they don't apply here. These are all public
3 interest exception Plaintiff standing cases where The Court
4 starts off with this premiss, what we're dealing with here
5 is so important that we're going to lower the bar of
6 individualized harm showing for the Plaintiff.

7 That -- we're just going to take a generalized showing
8 that there's something really -- really important publically
9 and therefore, you don't have to do it. Well, of course in
10 those cases, where they've already decided that the issue is
11 so important that they're going to waive the constitutional
12 (indiscernible).

13 That they don't have to show an individualized showing.
14 Of course, in those cases, what they found is that there
15 isn't irreparable injury, because the irreparable injury
16 doesn't have to be (indiscernible) in person. That can't
17 happen.

18 Your Honor, it can't happen because there's a statute
19 that the general assembly has already occupied the field,
20 and it said on day 21, you don't have standing. The general
21 assembly has already evaluated and allocated how they want
22 the public policy to work here.

23 And what the general assembly said, as opposed to what
24 the South Carolina Public Interest Foundation says, is that
25 on 8/21, we have determined that the local governments

1 body's access to capital markets, so they can deliver the
2 infrastructure that their citizens need, outweighs any
3 challenges that weren't made within that window.

4 We're going to give them the chance to make those
5 challenges, but we're going to extinguish them on day 21
6 because equally important and these competing balancing of
7 the scales, we have to make sure that those elected
8 officials can do their job and given the tools to do it.
9 They've already cancelled that.

10 So you can't come into Court and invoke the public
11 interest (indiscernible) standing when the statute has
12 already said there is no standing, right? It's circulant
13 and nonsensical. The -- (indiscernible) the adjudication
14 that they assume, is the one the statute forecloses, right?

15 You can't come in on day 21 and ask for that
16 communication, but yet, Mr. Carpenter comes in and assumes
17 that (indiscernible) you can get in the lawsuit you
18 shouldn't have brought in a courtroom you shouldn't be in.
19 The next part is the likelihood of success in the merits,
20 and this is a little easier because obviously a lot of that
21 is grounded in the two arguments we've already talked about.

22 Section 11-15-30 is an absolute part of this lawsuit.
23 One thing I would like to add though is this, 11-15-30 is a
24 different species of statute of limitations. In South
25 Carolina the statute of limitations (indiscernible) it's

1 really a statute of creation, right?

2 The statute of creation being when the statute itself
3 gives you the right to challenge, to come into court, within
4 that statute there is a time frame imbedded, that's a
5 statute of creation. It is strictly construed under South
6 Carolina law, it is strictly construed around
7 (indiscernible).

8 The cases we have sited in our brief are the Knight
9 case, the Simpson case, the Merchant's case, the
10 (indiscernible) case, they're all on page 11. What we have
11 before The Court today is a statute of creation. It
12 requires that that 20 day period is an indispensable
13 component of their private (indiscernible).

14 In other words, if they don't actually file it in 20
15 days, they don't have a claim. They don't have standing.
16 And that's what all of this goes to say. I'll give you a
17 comparable example that you probably know. Foya, right?
18 Foya has the same thing, it has a really -- it's a one year
19 statute.

20 If you don't file that within one year, the Knight case
21 says that's the statute of creation. That's not something
22 that gets told, that's not something that can be waived, it
23 is something that is imbedded in the right to bring the
24 action in the first instance.

25 And that's what the Plaintiffs are doing here where

1 they're going outside of the time frame that's necessary to
2 bring the claim, it is a (indiscernible) argument, they
3 cannot get passed it. Your Honor, the standing argument we
4 just talked about, also (indiscernible) match.

5 If they don't have standing for those (indiscernible)
6 controversy for you to hear, or to issue any relief
7 (indiscernible) cases, if Mr. Carpenter is so confident is
8 his position, This Court should protect local government
9 bodies state-wide by not interfering with the public
10 finance.

11 You could dismiss this case, let them take their
12 immediate appeal, they can file petition for supercilious on
13 their preliminary injunction motion. We will get fairly
14 (indiscernible) in Columbia as to whether what they're
15 saying is so crystal clear that they're entitled to the
16 injunctive relief that they're getting.

17 I predict that they will fail. And they will also find
18 out pretty quickly that these public findings provisions are
19 bedrock and they cannot be circumvented in the way that
20 they're trying to do. They're not telling you the correct
21 application involved.

22 Finally, with respect to the (indiscernible) showing,
23 Your Honor, -- I won't say finally, there's another two
24 things (indiscernible). Because it's an injunctive,
25 injunctive (indiscernible), it's subject to equitable

1 maximums, and they violate two here.

2 Every (indiscernible) by case, it doesn't help those
3 who (indiscernible) in their rights. The statute says 20
4 days, they waited four months. After they filed four months
5 too late, they waited another four months to file this
6 lawsuit.

7 And there's a string of cases again, in our debrief
8 that say in addition to a (indiscernible) bar, the fact that
9 you waited that long is evidence in and of itself that The
10 Court should take notice of that the irreparable nature of
11 the harm isn't one that supports preliminary injunctive
12 relief because if what you're saying was true, was truly
13 irreparable harm by nature, that could support the relief
14 (indiscernible), you would have been here a lot earlier.
15 Because a (indiscernible).

16 With respect to the adequate remedies, it kind of goes
17 back to what we were talking about all along here, Your
18 Honor, which is, we have a statute that gave them an actual
19 adequate remedy. There is a process where they can
20 participate in the political process that went along a train
21 of first meeting, second meeting, third meeting, 30 days
22 apart, over a 90 day window.

23 They could participate in that political process, they
24 could try to convince their elected officials of how they
25 should go forward, if they don't prevail there, and the

1 elected officials try to do something they should not do,
2 then they have this window as the caboose on that train of a
3 process to bring it to you.

4 But after that caboose goes down the track, there's no
5 train left. There's nothing here to see. And that is an
6 adequate legal remedy, they just didn't (indiscernible)
7 themselves of it. And that's why (indiscernible) of this
8 case.

9 Second equitable (indiscernible) is equity follows the
10 law, and the law here says that they had to bring this case
11 in 20 days, and they didn't. Either equity follows the law,
12 and the law is saying 20 days, then that is a complete bar
13 for them to be able to come to this Court and ask for
14 injunctive relief.

15 The last thing I would say is, Your Honor, you picked
16 up on something that I likely didn't. This lawsuit serves
17 the prospect of highjacking public's funds, let's say that
18 the ordinance is unconstitutional, and I know Mr. Carpenter
19 wants to say no, it is about (indiscernible), it's not,
20 right?

21 Because what does the bond ordinance do? You, and I,
22 and the American people all know, on the base of that bond
23 ordinance there are specific sets of authorized uses, right?
24 So if Mr. Carpenter comes in here and (indiscernible) the
25 territory relief action that says that one of those uses is

1 unconstitutional, what does it do?

2 It renders by way of collateral pack, the bond
3 ordinance is unconstitutional. He wants you to believe in
4 horsey things while disavowing the horse, right? That's
5 what's happening. Well, I'm not doing that, I'm not
6 challenging the bond proceedings.

7 That's exactly what he's doing. The bond ordinance
8 authorizes the use he's challenging. If he challenges the
9 use and is successful, (indiscernible) is you're
10 (indiscernible) has gone and challenged the cause and the
11 adjudication of the ordinance that is specifically
12 disallowed by the statute.

13 There's only one applicant here, Your Honor, and we
14 respectfully ask that you -- you bring us to that place to
15 protect the county and to protect all these local government
16 bodies, this case should be dismissed. Even if we're so
17 wrong, I'm sure we'll be back soon, but we're not.

18 With respect to the bond, there's no prospect here that
19 the capital infrastructure equal to \$25,000,000 is going to
20 be basically highjacking an undetermined period of time.
21 All of the benefits that were intended from that capital
22 projects, the public health, the economic benefits, all of
23 the things that we are describing, and you're saying what
24 are the general benefits to the county?

25 The increase in business license revenue, the increased

1 population, the increase in new business, jobs, everything
2 that would be county-wide, including the health and safety
3 benefits are going to be highjacked in an undetermined
4 period of time.

5 Mr. Carpenter doesn't want just a one million dollar
6 bond, probably because the one million dollar bond is way,
7 way shy for anything he's (indiscernible) in this case.
8 It's a \$25,000,000 bond appropriation that they're trying to
9 get you to invade legislative bodies province and
10 (indiscernible) their uses, we would respectfully ask for a
11 \$25,000,000 bond, if we get it -- but there's no possible
12 way, in my view, that this motion should ever be printed.
13 And I appreciate your time and your patience, thank you.

14 THE COURT: Thank you.

15 MR. CARPENTER: Thank you, Your Honor. I'd like to
16 briefly address the three elements necessary for an issuance
17 of an injunction, irreparable harm, success of merits, and
18 no adequate remedy of law. Several cases have ruled, as
19 we've sited in our brief, that the violation of the
20 constitution, in and of itself, is irreparable harm to the
21 citizens of this county. The violation of the constitution,
22 in and of itself, is irreparable harm.

23 THE COURT: (Indiscernible) this in the Casey case,
24 except article 10, section 12 of my county-wide says they
25 give benefit.

1 MR. CARPENTER: The Casey case didn't have anything to
2 do with article 10, section 12. The case that did that
3 was ---

4 THE COURT: Well, (indiscernible) am I wrong there?

5 MR. DAVIS: No, Your Honor. What I was trying to say
6 was that the Casey case stands for the proposition that
7 sewer infrastructure in a discrete part of the county, in
8 fact, does, or possibly could confer a county-wide benefit
9 that is directly contrary to what Mr. Carpenter has
10 represented to you.

11 And so what we know from that is, that factually, when
12 we get to the case -- if this case goes forward and we go to
13 trial, there is definitely a scenario where the county could
14 present facts into the record where that outcome could be
15 true. This kind of idea that oh, well, if it's just
16 infrastructure here, it can't happen.

17 MR. CARPENTER: The Casey case dealt with is this a
18 tax, or is this a fee? That's what they were analyzing
19 there when they were talking about the sewer, whether it was
20 a general benefit. (Indiscernible) more important was the
21 Robinson case and it says that the general benefits to the
22 neighboring landowners, because the sewer went in down the
23 road, that is not the kind of benefit that justifies taxing
24 those neighbors.

25 THE COURT: (Indiscernible) because you've got

1 increasing value of the properties it's not a sufficient
2 benefit to the entire county (indiscernible).

3 MR. CARPENTER: Well, we might be talking out of two
4 sides of the same coin. What it says -- the language of The
5 Court was an increase of property value from the adjoining
6 areas because of the new sewer lines, is not sufficient to
7 bring adjacent landowners within the class of those who
8 benefit from the project. And the benefit is
9 (indiscernible) there because that's language from the
10 constitutional provision. You have to tax those who are
11 going to benefit, pay for the -- the sewer lines being put
12 in there.

13 THE COURT: Those who benefit in the case?

14 MR. CARPENTER: Well, Casey was a different issue --
15 couple different -- it didn't deal with this -- this
16 constitutional provision at all

17 THE COURT: Okay.

18 MR. CARPENTER: It was -- the issue was, is this a tax
19 or is this a fee? And can you charge people fees for this
20 or is it a general benefit that you can give us?

21 THE COURT: (Indiscernible)

22 MR. CARPENTER: (Indiscernible) so the violation of the
23 constitution is the irreparable harm, in and of itself. The
24 length of (indiscernible) success on merit, The Court asks
25 opposing Counsel (indiscernible) article 10, section 12, and

1 he immediately went into argument about the general benefit
2 of the county, and the possible additional taxes and the
3 possible industry coming in.

4 And all that stuff which is even more attenuated than
5 the benefit referenced in the Robinson case. And if the
6 neighboring landowners of the Robinson case are not
7 benefitted by the neighboring sewer coming in, then
8 certainly, people in the other parts of the county are not
9 within the realm of those who benefit, and they cannot be
10 taxed to pay for this infrastructure that's in a discrete
11 area of the county.

12 So the likelihood of success of the merits, I would
13 suggest is pretty high. And the no adequate remedy at law
14 he was talking about, well, if you tax all these people,
15 then you can reverse that taxation and give everybody a tax
16 refund, which is a cumbersome prospect and I would
17 respectfully submit not an adequate remedy at law because it
18 could be years down the road and (indiscernible) nightmare
19 and would likely not get done.

20 THE COURT: Well, let be ask you just a more basic
21 question, ordinance 65, did you file a verified complaint?
22 Did you file a sworn affidavit to support the complaint?

23 MR. CARPENTER: No, but in the answer ---

24 THE COURT: (Indiscernible) required by rule 65(d).

25 MR. CARPENTER: I don't have my book with me, but there

1 are admissions in the answer that establish what the facts
2 are. There are exhibits to the answer that establish what
3 the facts are.

4 THE COURT: I would think that the rule provides for
5 looking at (indiscernible) but it will set you
6 (indiscernible) itself. I would like to take a look at
7 (indiscernible) affidavit (indiscernible) before you can be
8 granted any kind of -- especially TRO or temporary relief.

9 MR. CARPENTER: I'd have to read it again, but I was
10 thinking the admissions of the Defendants in the answer,
11 along with their exhibits to the answer, established pretty
12 clear what the facts are. And they can't come in here and
13 debate and say the facts haven't been established when they
14 admit them in their answer.

15 And they attached the exhibits to their answer that
16 show that they have passed this ordinance, the \$25,000,000
17 to do sewer work. And they admit in their answer, they're
18 talking about a general benefit to the whole county, which
19 is not allowed under Robinson.

20 And these kind of admissions, it seems to me,
21 demonstrate that there's no (indiscernible) to speak about
22 what the facts are. It is simply a question of applying the
23 law to the facts as the Defendants have admitted
24 (indiscernible).

25 Now, if The Court reads it differently, then we would

1 request an opportunity to submit an adequate affidavit then.
2 But we think with the constitutional violation, they made it
3 pretty clear to the pleadings and the admissions on file.
4 And we ask The Court to ---

5 THE COURT: (Indiscernible) so you have a chance to
6 (indiscernible).

7 MR. CARPENTER: Well, I'm hoping we got past that.

8 THE COURT: I understand.

9 MR. CARPENTER: Now, the other side talked about
10 standing, we have alleged two kinds of standing. One is
11 taxpayer standing, and the other is public importance
12 standing. And I think he might've confused the two.
13 Taxpayer standing has been established in a number of cases
14 that we've sited.

15 That's where a taxpayer comes in and says you're taking
16 taxpayer funds and you're spending them unlawfully. And
17 there's -- I think we sited 15 cases that allowed taxpayer
18 standing when a city or county illegally spent taxpayer
19 funds.

20 And we've viewed that on many occasions.

21 (Indiscernible) The second kind of standing is what he
22 referred to, is public importance standing, which is a
23 different analytical frame work. But then the taxpayer
24 standing -- the cases ruled that a taxpayer, taxpaying
25 citizen, has an adequate interest by the fact that he's

1 paying taxes and his tax money is being taken and misused,
2 he has standing to be here and ask The Court to not allow
3 the misuse of taxpayer money. Public importance standing is
4 an exception to the requirement of constitutional standing.
5 And The Court grants standing ---

6 THE COURT: How does this case (indiscernible)?

7 MR. CARPENTER: Well, the most recent case that comes
8 to mind that dealt with public importance standing, was the
9 one where the governor wanted to take \$40,000,000 and give
10 it to private schools. It took people (indiscernible) the
11 Supreme Court, and The Court granted taxpayer standing to
12 those people and granted original jurisdiction to them.

13 And then the two factors were improper conduct of
14 public officials, and misuse of public moneys. And The
15 Court found that when those two factors were present, -- or
16 the presence of those two factors created an issue of great
17 public importance.

18 And that is -- that has been -- The Court has wrestled
19 with this issue of great public importance over the last 15
20 or 20 years. The case I just mentioned, I think is the most
21 recent, and the most comprehensive recent statement of what
22 the standard is.

23 When there's misconduct by public officials, and the
24 use of public moneys, then that creates an issue of great
25 public importance. That's not the only way to do it, but

1 that's one way to do it, and that would apply here because
2 you have \$25,000,000 of public moneys and unconstitutional
3 conduct on the part of the public's officials. That would
4 create issues of great public importance in addition to
5 supporting taxpayer (indiscernible). I'll be happy to
6 address any questions that The Court has.

7 THE COURT: I don't have any at this moment.

8 MR. DAVIS: Your Honor, I just want to say one thing.
9 That taxpayer standing was overruled in the ATC opinions
10 cited in our -- taxpayer standing was overruled in our -- in
11 the ATC opinions cited in our brief. And I'll rely upon my
12 analysis about the public interest exception as being
13 extinguished by the statute that we're sitting in the attempt
14 to (indiscernible) the judicial exception on a statute that
15 says no. Thank you.

16 THE COURT: Any other motions (indiscernible)?

17 MR. DIAMADUROS: Now, I just want to make one comment,
18 Judge.

19 THE COURT: Yes, sir?

20 MR. DIAMADUROS: Mr. Carpenter passed up the Robinson
21 case to The Court. It sites to the Casey case that I
22 mentioned, *Casey versus Richland County*, and I think if you
23 read those two cases in -- together, they -- they come to
24 the conclusion that all of this business about -- you can't
25 tax people that are not -- not hooked up to the sewer

1 system, it's not right.

2 You can not pose an assessment on those people, but as
3 the Casey case says, the benefit of improved sanitary
4 conditions, when they put sewer in this unincorporated area,
5 The Court said well, renewal to the benefit of all citizens
6 of Richland County, including those in the City of Columbia
7 West, Columbia and so forth.

8 MR. WILKINS: Was that making distinction between
9 assessment between assessments and taxes?

10 MR. DIAMADUROS: Yes, sir. That's -- that's -- if you
11 read these two together, you have to come to conclusion.
12 That you can either -- the county can impose a sales tax,
13 but they have to do it county-wide. Or they could impose
14 some type of special tax, not an assessment, but a tax like
15 in this case that applies county-wide.

16 But if it's assessment, there's a distinction between a
17 direct benefit from the sewer system, and the general
18 benefit that all the citizens will benefit from. If it's a
19 ---

20 THE COURT: Can I ask you this, wouldn't -- is the
21 assessment not to be the method that go county-wide as
22 opposed to having a specialty tax district?

23 MR. DIAMADUROS: No. You can't go County wide with
24 assessment.

25 THE COURT: You can not?

1 MR. DIAMADUROS: You can not. No, you can't. But you
2 can go county-wide with a tax, or a sales tax, or a special
3 tax that applies to all property owners. But if you
4 (indiscernible) pay for sewer by the assessment, you have to
5 get the funding from those who are hooked up to that system.
6 The direct benefit, as opposed to the general benefit.

7 THE COURT: Thank you. (Indiscernible)

8 MR. CARPENTER: There are a lot of different ways to
9 pay for sewer systems, but this constitution says,
10 (indiscernible) bonds, and you've got to follow this
11 provision. If your going to pay off the bonds, you can only
12 put the taxes on those who are getting the benefit from it.
13 That's -- that's where we're going with this case.

14 THE COURT: All right. (Indiscernible) ask any of the
15 Oconee County attorneys whether they believe that the
16 response filed -- response to the filing (indiscernible)
17 meet the requirements of rule of 65.

18 MR DAVIS: Absolutely not. And moreover, it's
19 decidedly unsupporting, at least in my view, for
20 Mr. Carpenter to say well, we're relying on the admissions
21 in the answer. That's not what they ever wrote in --
22 anywhere in their paperwork or their motion to say like, oh,
23 well, these facts have been established because of X, Y, Z
24 paragraph.

25 It basically deprives us of our ability to even respond

1 to that and it's not true. And even to this day, I don't
2 know exactly what provisions he's talking about so I could
3 respond to it. The reality is, it's a defective motion.
4 It's dead on arrival.

5 It should be -- and by the book, he shouldn't be able
6 to submit a post facto motion or an affidavit to support his
7 motion. It's specifically disallowed by rule 6(d). It has
8 to be with the motion when filed. It wasn't. It loses. We
9 -- we should go home. Thank you.

10 THE COURT: So let me go over with the Counsel. Is
11 there any other motions here that (indiscernible)?

12 MR. DAVIS: Luckily, no.

13 THE COURT: Okay. So as the threshold question, one of
14 the 11-15-30 barred (indiscernible). And two, whether
15 article 10, section 12 of our constitution prohibits the
16 issuance of bonds (indiscernible) taxable county-wide
17 (indiscernible) county's improvement (indiscernible).

18 The Richland County Casey case say that extends because
19 of that. (Indiscernible) County as a whole, so you are
20 (indiscernible) the constitution. So (indiscernible) this
21 issue (indiscernible) that's the issue I'm looking at, might
22 as well (indiscernible) simplicity. Rule 65 issue.

23 MR. DAVIS: I -- I think that's right. I think that's
24 what's presented by our motion to dismiss, is one, is this
25 dead on arrival? And two, have they stated a claim for

1 relief in the sense that the county could have conferred a
2 county-wide benefit, in any event, that would have not been
3 an infraction.

4 I'm -- I'm not sure that we're asking The Court to
5 decide that, that's an ultimate issue on the merits if the
6 case went forward. But we're saying as they plead it, --
7 it's not correctly plead because that is a possibility that
8 escapes the four corners of their pleading.

9 THE COURT: And in addition, taxpayers (indiscernible)
10 constitutional (indiscernible)?

11 MR. DAVIS: Yes, Your Honor.

12 THE COURT: All right. Do you agree with that,
13 Mr. Carpenter?

14 MR. CARPENTER: I disagree with one part when you were
15 trying to get Casey mixed up with this constitutional
16 provision because it -- the other case is the one that dealt
17 with this constitutional provision (indiscernible) case.
18 And Casey's a completely different analytical frame work and
19 issues, and I would hope The Court wouldn't ---

20 THE COURT: (Indiscernible) going to go back and read
21 all of this again (indiscernible) so (indiscernible). Is
22 there anything further?

23 MR. DAVIS: No, Your Honor. We appreciate your time.
24 Thank you.

CERTIFICATE OF TRANSCRIBER

I, Kelley Primm, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 17th day of July, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 3, 2024

Kelley Primm

Certified Transcriber

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

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,

Plaintiffs,

v.

Oconee County,

Defendant.

IN THE COURT OF COMMON PLEAS

TENTH JUDICIAL CIRCUIT

C.A. No. 2024-CP-37-00202

**DEFENDANT OCONEE COUNTY'S
 NEW & REVISED MOTION FOR
 ALTERATION AND AMENDMENT
 OF THE COURT'S PRIOR ORDERS
 PURSUANT TO RULES 52(b), 59(e),
 SCRPC & THE COURT'S INHERENT
 AUTHORITY**

Pursuant to Rules 52(b) and 59(e), SCRPC and the inherent authority of the Court to alter, amend, and reconsider its own Orders, Defendant Oconee County ("the County") moves the Court for an Order altering or amending its July 29, 2024 Order, along with its superseding Order dated August 12, 2024 (together as, "Order"), for the following reasons:¹

A. THE ENTIRETY OF THE COURT'S ORDER SUFFERS FROM SERIAL ERRORS AND SHOULD BE VACATED AND JUDGMENT ENTERED IN THE COUNTY'S FAVOR.

For the reasons set forth herein, the entirety of the Court's Order, including its internal logic, legal analysis, conclusions of law, and conclusions of fact (as based on an absence of any evidence, competent or otherwise) cause the Court's Order to suffer from manifest error. As the instant case implicates serious public policy issues, many already determined by the South Carolina General Assembly, the South Carolina Court of Appeals, and the Supreme Court of South

¹ Since the Court previously granted relief upon the issuance of its July 29, 2024 Order, Oconee County moved the Court to alter or amend that Order and hereby submits this Motion to Amend or Alter the Court's August 12, 2024 Order superseding its earlier July 29, 2024 Order.

Carolina, the Court should revisit its ruling, immediately vacate the same, and enter judgment in favor of the County pursuant to the legal authority and arguments set forth in: the Defendant's Memorandum Opposing Motion for Injunctive Relief, Defendant's Memorandum Supporting its Motion for Judgment on the Pleadings, Defendant's oral argument during the July 17, 2024 hearing, the grounds stated herein, and any Memorandum in Support of this Motion as filed prior to a hearing on this Motion. The Court's Order errs and imperils both South Carolina's bond market and the ability of local government bodies across the state from having meaningful access to critical capital markets and the bond proceeds they require to deliver vital infrastructure projects to their constituents. With such outsized impacts, the Court's ruling warrants further review to correct its manifest errors.

B. MANIFEST ERROR EXISTS WHERE, AS HERE, THE COURT ISSUES AN ORDER WITHOUT SUBJECT MATTER JURISDICTION TO DO SO.

The Court's Order errantly finds Plaintiffs possess standing, when they do not, and does not rule upon several grounds raised by the County in relation to the same, as follows:

1. Mere Status as Taxpayers Does Not Confer Standing Upon Plaintiffs Absent Particularized Injuries, Which They Do Not Allege Because They Cannot.

Plaintiffs have led the Court constitutionally astray by invoking taxpayer standing when *no* such doctrine exists in South Carolina.² (*See, e.g.*, Ex. A, p. 1; Ex. B, pp. 13-20.) The South Carolina Supreme Court reconciled standing precedent in its modern formulation for standing analysis in the decision of *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 198 (2008).³ In

² The County has attached hereto true and accurate copies of the following Exhibits: (1) Exhibit A—07.29.24 Form 4 Order; (2) Exhibit B—08.12.24 Order; (3) Exhibit C—07.17.24 Hearing Transcript; (4) Exhibit D—09.05.23 Oconee County Bond Ordinance (“Bond Ordinance”).

³ In addition to the arguments made during the July 17, 2024 hearing and the points set forth herein, the County incorporates herein by reference the arguments regarding taxpayer standing as set forth in its Memorandum Supporting its Motion for Judgment on the Pleadings dated June 6, 2024 (pp. 6-8), as existing in the Court's record. Of note, the Order omits and Plaintiff SCPIF never explains

its unanimous decision, the Supreme Court held that a litigant may plead and prove standing in one of only three ways: (a) by establishing the particularized harms needed to show constitutional standing; (b) by invoking a statute conferring standing; or (c) by fulfilling the rigorous showing needed to satisfy the public importance exception. *See, e.g., Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40 (2012). Despite Plaintiffs' urgings, no fourth option, so-called "taxpayer standing," exists.

Without acknowledging the same, Plaintiffs have argued against controlling precedent by distinguishing *ATC* and *Freemantle* in ways unsupported by South Carolina decisional law. (*See, e.g.,* Ex. A, p. 1; Ex. B, pp. 19-20.) Notably absent from the authority cited by Plaintiffs and thereafter errantly relied upon in the Court's Order is a single case allowing "taxpayer standing" *after* the Supreme Court's issuance of the *ATC* decision (*i.e.,* after November 2008).⁴ In the absence of any authority, Plaintiffs purport to distinguish *ATC* and *Freemantle* in ways unsupported by precedent or logic. (*See, Ex. B, pp. 19-20.*) By recognizing Plaintiffs have taxpayer standing to assert their claims, *see id.*, when South Carolina decisional law recognizes no such doctrine, Plaintiffs have caused the Court to commit plain error. The Court should alter or amend its Order to remove such findings.

how it could possess taxpayer standing when, as a non-profit organization, it pays no taxes as noted in FN 3 on page 8 of the County's supporting memorandum.

⁴ The Court's Order contains a notable scrivener's error in this regard citing the *Freemantle* decision as a 2002 opinion, when it was issued in 2012.

2. The Court Manifestly Erred By Relying Upon Plaintiffs' Faulty Invocation of the Public Importance Exception to Standing.⁵

Plaintiffs' arguments in relation to the public importance exception ("PIE") to standing have similarly infected the Court's Order with manifest error. (*See, e.g.*, Ex. A, p. 1; Ex. B, pp. 6-13.) It is axiomatic: "For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance." *ATC South*, 380 S.C. at 199. However, the Court's Order altogether ignores the impact of S.C. Code § 11-15-30 as to the availability of PIE standing, an argument specifically raised by the County at the July 17, 2024 hearing but overlooked by the Court's ruling. (Ex. B, pp. 6-13.)⁶

The South Carolina General Assembly has already answered the question of whether the public need for court resolution for future guidance outweighs the need for finality in the context of bonds after the expiration of twenty days from the date of the filing and indexing of bond transcript records:

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

⁵ Along with the issues raised herein and its arguments at the July 17, 2024 hearing, the County incorporates herein all arguments set forth between pages 8 and 10 of its Memorandum Supporting its Motion to Dismiss.

⁶ Directly implicating the existence of subject matter jurisdiction, the issue of standing constitutes "a threshold question" the Court must first decide. *See Peoples Fed. Sav. & Loan Ass'n v. Res. Plan. Corp.*, 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004) ("A threshold inquiry for any court is . . . whether the litigation presents an active case or controversy." (quoting *Lennon v. S.C. Coastal Council*, 330 S.C. 414, 415, 498 S.E.2d 906, 906 (Ct. App. 1998))); *James v. Anne's Inc.*, 390 S.C. 188, 193, 701 S.E.2d 730, 732 (2010) (stating appellate courts have "the inherent authority to consider justiciability"); *Carolina All. for Fair Emp. v. S.C. Dep't of Labor, Licensing, & Reg.*, 337 S.C. 476, 486-87, 523 S.E.2d 795, 800-01 (Ct. App. 1999) (raising the issue of standing *sua sponte* in a declaratory judgment action and affirming the grant of summary judgment under Rule 56(c) because the appellant lacked standing).

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.

S.C. Code § 11-15-30. The General Assembly articulates public policy in South Carolina through the enactment of legislation. *Taghivand v. Rite Aid Corp.*, 411 S.C. 240, 244, 768 S.E.2d 385, 387 (2015) (“The primary source of the declaration of the public policy of the state is the General Assembly; the courts assume this prerogative only in the absence of legislative declaration.”)

Here, the General Assembly has weighed competing public policy considerations and without exception has closed the courthouse doors to bond challenges after the statutory, twenty-day window expires. Where, as here, a contrary “legislative declaration” exists, this Court must decline such prerogative as to invoke the judicially fashioned public importance exception to standing for purposes of “future guidance.” No PIE standing exists as a result and, as such, this Court lacks subject matter jurisdiction to hear this action and could not viably issue the Order.⁷

3. S.C. Code § 11-15-30 Afforded Standing Legislatively, But Expressly Limited the Same Following the Twenty-Day Period, Which Plaintiffs Missed.

As the County argued in its Brief in Opposition to Plaintiffs’ Motion for Preliminary Injunction, *see* County’s Opposition Brief, pp. 10-12, as well as its arguments during the July 17, 2024 hearing,⁸ the 20-Day Window in S.C. Code § 11-15-30 operates as a Statute of Creation. As such, the time element therein operates as an “indispensable condition of the action.” *Creech v.*

⁷ Such defect obviously forecloses Plaintiffs’ ability to demonstrate a likelihood of success on the merits.

⁸ The County incorporates herein all arguments made in its Memorandum Opposing Plaintiffs’ Motion for Preliminary Injunction as set forth in pp. 10-12, as existing in the Court’s record, in relation to why S.C. Code § 11-15-30 causes Plaintiffs’ Motion for Preliminary Injunction to fail in satisfying the likelihood of success on the merits prong of their *prima facie* showing to obtain temporary injunctive relief under Rule 65, SCRCP.

N.D.T. Indus., Inc., 815 F. Supp. 165, 172 (D.S.C. 1993); *Knight Pub. Co. v. University of South Carolina*, 367 S.E.2d 20, 21, 295 S.C. 31, 33 (1988); *Simpson v. Sanders*, 314 S.C. 413, 415, 445 S.E.2d 93, 94 (1994). Plaintiffs nowhere plead they have satisfied the indispensable time condition applicable to their action.⁹ Nor can they; Plaintiffs' filing was four months past the statutorily imposed date when the General Assembly shut the doors to the Oconee County Court of Common Pleas to any challenges to the County's bonds. The Court's Order neglects to issue a ruling on the foregoing analysis and, therefore, manifestly errs for another reason.

C. THE ORDER FAILED TO ADDRESS THE COUNTY'S ARGUMENTS EXPLAINING WHY THIS CASE NECESSARILY RELATES TO THE ISSUANCE OF BONDS.

The Court's Order both expressly and errantly ruled South Carolina Code § 11-15-30 does not limit Plaintiffs' lawsuit because it is not "about the 'issuance of bonds, which would be barred by § 11-15-30, but rather it concerns the 'use' of bond money for unconstitutional purposes after the issuance of the bond." (Ex. A, p. 1, Ex. B, p. 22.) The County respectfully disagrees and submits this analysis is plain error. But, as expressly stated in the formal order prepared by Counsel and entered by the Court, Plaintiffs and Oconee County all agree with one aspect of the Court's ruling: if this case *is* about the "issuance of bonds," then, it *is* statutorily "barred" by § 11-15-30. (Ex. B, p. 22.)

By contrast, the County otherwise disagreed (and still disagrees) this case does *not* concern the issuance of bonds.¹⁰ In the County's view, such analysis constitutes plain error. During the July

⁹ Plaintiffs also cannot establish the ripeness of their claims, nor have they from an evidentiary standpoint. To support such findings in its Order, the Court makes factual conclusions unsupported by any record evidence and without any citation. (Ex. B, p. 23.) The Order instead resorts to citing "news accounts" that Plaintiffs did not even submit, assuming they would otherwise be admissible in the first instance. (*Id.*)

¹⁰ The Sections of the Court's Order addressing Section 11-15-30 contain several conclusions for which the Court does not cite any supporting analysis or factual findings. For example, the Court finds: "Plaintiffs' claims do not imperil the rights of a 'bona fide' purchaser for value," Ex. B, p.

17, 2024 hearing, the County made two arguments demonstrating why this case involved the issuance of bonds despite Plaintiffs' contrary arguments. The Court's Order should have, but did not, address those arguments. They include:

- **First**, the County specifically cited the decision of *S.C. Pub. Interest Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 854 S.E.2d 836 (2021). In the *Calhoun County* case, the South Carolina Supreme Court rejected an almost **identical** argument raised by the South Carolina Public Interest Foundation in an attempt to sidestep a statutorily time-barred claim. During the hearing, the County argued at length as to why the reasoning of the *Calhoun County* case similarly controlled under the facts of this case. Yet, the Court's Order omits any discussion whatsoever as to why it rejected the County's position. If the Court intends to issue injunctive relief impairing the legislative acts of an elected body, then its Order should explain why the Court accepts the Plaintiffs' analysis even though the Supreme Court rejected the same in *Calhoun County*.
- **Second**, the County also argued this lawsuit *necessarily* implicates the bond issuance process/issuance of bonds, not merely the legality of the "use" of bond monies. Under the instant facts, the issuance of bonds and their subsequent use are inextricably tied together.¹¹

22; *id.* at *passim*. No evidence supports any such finding. The Court's Order further similarly states: "The Constitution prohibits the expenditure [of] the proceeds of bonds, 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..." (*Id.*; *see also id.* at pp. 4, 5, 21, 23.) No record evidence reflects what capital projects are implicated, let alone what benefits would result from the same. Indeed, the County specifically disputes such factual conclusion and contends the entire County is, in fact, benefited by the capital projects in question. Entering such factual findings without any supporting evidence is plain error. The Court's Order similarly fails to explain why S.C. Code § 11-15-30's time limitation does not render Plaintiffs' entire lawsuit moot. (*See, e.g.,* Ex. A, p. 1; Ex. B, p. 23.)

¹¹ The Court's Order seems to suggest the incontestability language set forth in S.C. Code § 11-15-30 only protects bondholders and not the public bodies issuing the bonds in the first instance. (*See, e.g.,* Ex. B, p. 22.) This is incorrect. No statutory language supports such a conclusion. As

This is true because the Bond Ordinance specifically lists the uses of bond proceeds authorized by the local legislation.¹² Of course, Oconee County could not issue the bonds in question without first enacting the Bond Ordinance. And, seeking an adjudication about the unconstitutionality of the “use” of bond proceeds *necessarily* challenges the Ordinance specifically authorizing such challenged use—the keystone of the bond issuance process. Plaintiffs’ lawsuit inescapably challenges the Bond Ordinance. At a minimum, for purposes of correctness (and facilitation of appellate review), the Court’s Order should explain why it has rejected the County’s legal arguments.¹³

D. THE COURT’S ORDER DOES NOT ADDRESS THE COUNTY’S ARGUMENTS CONCERNING THE BENEFITS RECEIVED BY COUNTY CITIZENS.

The Court’s Order repeats the same flawed reasoning afflicting Plaintiffs’ asserted claims. According to Plaintiffs, proposed sewer infrastructure in one part of a county (*e.g., here, southern Oconee County*) cannot confer a benefit, legally or factually speaking, upon a county’s remaining citizens. (*Compare* Compl., ¶¶ 22-23 *with* Ex. A, p. 1 *with* Ex. B, p. 21.)¹⁴ Despite Plaintiffs’

noted during the July 17, 2024 hearing and omitted from the Court’s Order, by limiting the amount of time to challenge bonds, Section 11-15-30 affords local governing bodies with needed certainty about the timeline upon which bond proceeds will become available and no longer subject to contest in relation to the delivery of critical capital projects required by the citizenry. Also, the cited statutory provision applies generally to the issuance of public bonds and not specifically to certain types of bonds.

¹² *See, e.g.,* Ex. D.

¹³ Such legal defects foreclose Plaintiffs’ ability to prevail on the likelihood of success on the merits prong of their *prima facie* showing.

¹⁴ The County reiterates the lack of competent evidence in the Record. No evidence supports the various factual assertions sprinkled throughout the Order, as if Plaintiffs had submitted uncontroverted evidence supporting the same. They presented no competent evidence to support their preliminary injunction motion. Nor did they submit any evidence, competent or otherwise, in compliance with the South Carolina Rules of Civil Procedure. For example, Plaintiffs have not even identified: what the sewer projects are in the southern part of Oconee County, what infrastructure will be built where, and why such infrastructure exclusively benefits only citizens

assertions and the Court's acceptance of the same, South Carolina decisional law teaches otherwise.¹⁵

As discussed in support of the County's Motion for Judgment on the Pleadings ("JOP Motion"), in the decision of *Casey v. Richland Cnty. Council*, 282 S.C. 387, 390, 320 S.E.2d 443, 444 (1984), the South Carolina Supreme Court reached the exact opposite conclusion.¹⁶ The *Casey* Court found the sewer infrastructure in dispute under the facts of that case, which was only built in a discrete unincorporated section of the county (as Plaintiffs contend here) and where certain citizens already received service elsewhere (as Plaintiffs contend here), conferred a benefit upon **all** of Richland County's citizens including all of the residents of the City of Columbia who maintained its own sewer system. *Id.* at 390; *see also* County Memo. Supp. JOP Mot., pp. 12-13. The District Court of South Carolina reached a similar result in its analysis in *N. Carolina Elec. Membership Corp. v. White*, 722 F. Supp. 1314, 1337 (D.S.C. 1989). Of note, neither case involved the construction of a sewer system for use by an industrial park to further economic development.

living adjacent thereto. This was, of course, Plaintiffs' burden (by clear evidence) when seeking one of the most exceptional remedies the Court could issue.

¹⁵ The County incorporates herein all arguments made in its Memorandum Supporting Its Motion for Judgment on the Pleadings as set forth in pp. 12-13, including FN5 on p. 13, which the Court's Order misapprehends in its analysis.

¹⁶ The County also notes South Carolina law presumes Oconee County Ordinance 2023-13 (*e.g.*, the "Bond Ordinance") as constitutional as likewise noted by the County and not addressed by the Court's Order. (*See* County Memo. Supp. JOP Mot., p. 13, FN5.) This highlights a primary pleading deficiency in Plaintiffs' Complaint (*i.e.*, the presumption is constitutionality and South Carolina precedent demonstrates localized sewer infrastructure *can* (but does not necessarily) deliver benefits to all citizens of a County. The Court's Order omits any ruling or discussion on this material issue. Such defect forecloses Plaintiffs' ability to prevail on the likelihood of success prong of their *prima facie* showing.

The Court misapprehended *Casey*'s importance and distinguished its holding on immaterial bases by noting that *Casey* did not involve the constitutional provision at issue in this case (Ex. B, p. 21) and that *Casey* involved the use of tax proceeds to build sewer infrastructure, not funds generated from the sale of bonds. (*Id.*) Yet, neither distinction matters.

The County cited *Casey* for the proposition that localized sewer infrastructure can, in fact, confer a countywide benefit on citizens. (County Memo. Supp. JOP Mot., p. 12.) The Court's Order nowhere explains why a countywide benefit to citizens in one context altogether ceases to confer a countywide benefit in another. It does not. Thus, when Plaintiffs merely allege sewer infrastructure will be built in one area of a county, without more, they have not alleged a constitutional infraction.¹⁷ Nor does the Court's Order explain how it could. At a minimum, the Court should expressly explain such a conclusion for purposes of appellate review.¹⁸

E. THE COURT'S ORDER FAILED TO ADDRESS THE DEFICIENCIES IN PLAINTIFFS' SHOWING SUPPORTING PRELIMINARY INJUNCTIVE RELIEF.

In addition, the Court's Order failed to address an array of deficiencies foreclosing the issues of preliminary injunctive relief. They include:

1. Plaintiffs Failed to Support Their Motion for Preliminary Injunction with Adequate Evidence.

As the Court recognized and Plaintiffs concede, prior to the July 17, 2024 hearing, Plaintiffs failed to submit any competent evidence whatsoever supporting their preliminary

¹⁷ Plaintiffs' analysis suffers from a logical fallacy demonstrated as follows: all dogs are animals; Beatty owns a pet that is an animal; therefore, Beatty owns a pet dog. The conclusion does not follow the premises. Plaintiffs repeat the same mistake here: all infractions of Article X, § 12 of the South Carolina Constitution involve specific types of localized infrastructure (*e.g.*, sewage disposal or treatment, fire protection, street lighting, etc.); Plaintiffs complain about localized infrastructure; therefore, Plaintiffs have pled a constitutional infraction of Article X, § 12. They have not.

¹⁸ Of course, such issues directly relate to the likelihood of success on the merits prong of Plaintiffs' *prima facie* showing for preliminary injunctive relief.

injunction motion. (Ex. A, p. 1; Ex. B, p. 2.) The resulting list of evidentiary deficits afflicting Plaintiffs' *prima facie* showing appear on pages 5-7 of the County's Brief Opposing Plaintiffs' Motion for Preliminary Injunction, which are incorporated herein by reference from the record. No evidence supporting any of those deficiencies was in the record at the time the County was afforded an opportunity to be heard on Plaintiffs' motion for preliminary injunction. None of these deficiencies are addressed by the Court's Order.

The Court's Order instead manifestly errs by relying upon an affidavit submitted by a single Plaintiff five (5) days after the July 17, 2024 hearing over the County's standing objection. Specifically, the County objected to any untimely submittal of such evidence in FN7 on page 7 of its Brief Opposing Plaintiffs' Motion for Preliminary Injunction and again at the July 17, 2024 hearing. Notwithstanding the County's express objection and in the absence of any motion on the part of Plaintiffs to supplement the record or to show good cause as to why the belated affidavit should be considered five days after the hearing, the Court allowed the affidavit and relied upon the same in granting Plaintiffs' Preliminary Injunction Motion. Yet, the Court's Order neglects to address any of the County's Objections. (*See* Ex. A, p. 1; Ex. B, p. 2.)

Rules 6 and 65, SCRCP specifically required Plaintiffs to support their Motion for Preliminary Injunction with either a verified complaint or an affidavit. (*Compare* Rule 6(d), SCRCP *with* Rule 65(f), SCRCP.) Plaintiffs did not verify their Complaint prior to the July 17, 2024 hearing; nor did Plaintiffs attach any supporting affidavit to their Motion for Preliminary Injunction. Rule 6(d), SCRCP.

In turn, in order for Plaintiffs to submit an affidavit to satisfy Rule 65, SCRCP past the time specified by Rule 6(d), SCRCP (*i.e.*, at the time of the motion's filing by way of attachment thereto), Plaintiffs were required, but did not, file a motion for enlargement of time under Rule

6(b)(2), SCRCP showing good cause. Instead of following these rules, Plaintiffs just filed an affidavit five days after the hearing ended without any motion, without affording the County an opportunity to be heard about such submittal, without acknowledging the County's standing objections about such untimely submittal, and with no evidentiary showing supporting good cause to allow the late submittal. The Court's Order nowhere addresses any of these issues.

To make matters worse, the procedural unfolding described above materially prejudiced the County. Prior to and through the hearing on July 17, 2024, the County had no reason to submit any counter evidence into the record to rebut Plaintiffs' evidentiary showing. The reason was simple: Plaintiffs shouldered the evidentiary burden and submitted **no** evidence. Thus, no evidence existed to rebut.

Plaintiffs' *post-hearing* evidentiary submittal was not only procedurally improper, it substantially prejudiced the County for no reason. Indeed, by submitting an affidavit five days after the hearing—in a procedural posture that was starkly improper—and then by virtue of the Court allowing the same without a motion, without leave of Court, without a hearing, without opportunity for the County to be heard, and without affording the County an opportunity to submit counter evidence or otherwise object for record purposes, the Court proceeded to rely on the affidavit somehow finding the late submittal cured Plaintiffs' prior evidentiary deficiencies, procedural defects and standing objections notwithstanding. The Court then proceeded to rely upon the affidavit to issue preliminary injunctive relief, without consideration of the County's Due Process rights, in such fashion as to interfere judicially with the County's deliberative processes as a local legislative body and in such manner as runs afoul of the Separation of Powers Doctrine. *See* S.C. CONSTIT., Art. I, § 8. The Court's Order nowhere addresses or justifies any of these issues, all of which culminate in plain error.

2. The Affidavit in Question Does Not Even Submit Competent Evidence.

Out of all Plaintiffs named, they submitted a single, one-paragraph, untimely affidavit, the Affidavit of Jim Mann. In turn, the Mann Affidavit only states that the allegations set forth in the Complaint are true. However, the allegations in the Complaint fail to satisfy Plaintiffs' *prima facie* showing needed to obtain preliminary injunctive relief. They instead simply plead ultimate conclusions and conclusions of law. Nor does the Court's Order issue any findings explaining how it does. Rule 65, SCRCP requires the Court's Order to contain specific factual findings based upon the evidence submitted, as does Rule 52, SCRCP. The Court's Order has none. This is plain error.

3. The Court Order Failed to Satisfy the Required Showing for Preliminary Injunctive Relief.

The Order failed to articulate sufficient findings to support the issuance of preliminary injunctive relief. For the reasons set forth above, the Court's Order erred in determining Plaintiffs established a likelihood of success on the merits of this case. (*See, e.g., supra* Plaintiffs lack standing, S.C. Code § 11-15-30 bars this action, no evidence supports Plaintiffs' preliminary injunction motion, etc.). The Court's Order similarly fails to identify any legally viable, irreparable harm justifying the issuance of preliminary injunctive relief. (Ex. B, pp. 25-28.) Without any supporting facts, explanation, or reasoning, the Court simply concludes the County will unlawfully collect taxes "that would be next to impossible to refund..." (*Id.*) Such finding is plainly deficient and fails. Last, Plaintiffs similarly failed to establish an inadequate legal remedy. (Ex. B, p. 27.) Without factual basis or legal authority, the Court summarily concludes no adequate legal remedy exists in Plaintiffs' favor, although this is incorrect. Such finding is inadequate and without basis.

For the foregoing reasons, the Court should alter or amend its ruling by vacating its Order and granting the County's Motion to Dismiss, while denying Plaintiff's Motion for Preliminary Injunction. Alternatively, the Court should alter or amend its Order to address the foregoing infirmities and rule upon the omitted arguments made by the Court to perfect the record for appellate consideration. This Motion is supported by the South Carolina Rules of Civil Procedure, South Carolina precedent, South Carolina statutory law, such materials as are in the Court's record, and such memorandum as the County may file in support of this motion in advance of the hearing.

RESPECTFULLY SUBMITTED,

/s/ Lane W. Davis

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Attorneys for Oconee County

August 22, 2024
Greenville, South Carolina

Exhibit A

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP3700202

South Carolina Public Interest Foundation, et al
PLAINTIFF(S)

Oconee County et
DEFENDANT(S)

Submitted by: R. Lawton McIntosh

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

PLAINTIFF DID NOT MEET THE REQUIREMENTS OF RULE 65 BUT HAS SUBSEQUENTLY DONE SO. THE ISSUE IN THIS CASE IS OF SUCH IMPORTANCE THAT THE COURT PROCEEDS TO MAKE A DETERMINATION. BASED UPON OUR STATE CONSTITUTION, SC CODE ANN SECTION 11-15-30, AND OUR CASE LAW, THE COUNTY MAY NOT USE BOND REVENUES FOR SEWER PROJECT(S) THAT WILL ONLY BENEFIT THE SOUTHERN PART OF THE COUNTY WHILE TAXING THE ENTIRE COUNTY. TO MEET OUR CONSTITUTION'S MANDATE, THE COUNTY MUST CREATE A SPECIAL TAX DISTRICT SPECIFIC TO THE AREA THAT STANDS TO BENEFIT.

THIS CASE IS NOT ABOUT THE" ISSUANCE" OF BONDS WHICH WOULD BE BARRED BY § 11-15-30, BUT RATHER CONCERNS THE ISSUE OF THE" USE" OF BOND MONEY FOR UNCONSTITUTIONAL PURPOSES AFTER THE ISSUANCE OF THE BOND. THEREFORE, PLAINTIFFS REQUEST FOR A TEMPORARY INJUNCTION IS GRANTED PENDING FURTHER ORDER OF THE COURT. FURTHER, THIS MATTER NEEDS TO BE EXPEDITED FOR TRIAL. THE PARTIES HAVE STIPULATED AND AGREED THAT THIS MATTER WITH PROCEED AS A NON-JURY MATTER.

PLAINTIFF SHALL PUT UP A BOND IN THE AMOUNT OF \$1,000 WITH THE CLERK OF COURT SUBJECT TO THE RIGHT OF THE COUNTY TO DEMAND PAYMENT OF, AND ESTABLISH ENTITLEMENT TO, A HIGHER BOND AMOUNT. PLAINTIFF'S HAVE BOTH TAXPAYER AND IMPORTANT ISSUE STANDING.

MR. CARPENTER IS TO PREPARE A FORMAL ORDER THAT IS CONSISTENT WITH THIS ORDER, BRIEFS, AND ARGUMENTS MADE. HE IS TO PROVIDE THE ORDER TO OPPOSING COUNSEL PRIOR TO SUBMITTING IT TO THE COURT.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount

should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

_____	2155	_____
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Oconee Common Pleas

Case Caption: South Carolina Public Interest Foundation , plaintiff, et al VS Oconee County
Case Number: 2024CP3700202
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-07-29 09:18:22 page 4 of 4

ELECTRONICALLY FILED - 2024 Jul 29 9:22 AM - OCONEE - COMMON PLEAS - CASE#2024CP3700202
ELECTRONICALLY FILED - 2024 Aug 22 12:37 PM - OCONEE - COMMON PLEAS - CASE#2024CP3700202

Exhibit B

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

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,)
Plaintiffs,)

v.)

Oconee County,)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

IN THE 10TH CIRCUIT

CASE NO: 2024-CP-37-00202

**ORDER GRANTING
TEMPORARY INJUNCTION**

This matter comes before the Court on the Defendant's Motion to Dismiss, Plaintiffs' Motion for Temporary Injunction, and Plaintiffs' Motion to Compel. The Court heard arguments on July 17, 2024. James G. Carpenter represented the Plaintiffs. William W. Wilkins and Lane Davis represented the Defendant.

Based on the pleadings, filings, arguments of counsel, and the authorities cited, the Court makes the following rulings:

1. The Court grants Plaintiffs' Motion for Temporary Injunction, pending further Order of the Court.
2. The Court grants Plaintiffs' Motion to Compel, and grants Defendant 30 days from the entry of this Order to respond to the Plaintiffs' Interrogatories, Requests for Production, and Requests for Admission.
3. The Court denies Defendant's Motion to Dismiss.

STATEMENT OF THE CASE

Plaintiffs filed a Complaint March 18, 2024. Defendant served an Answer April 19, 2024. Defendant filed a Motion to Dismiss April 24, 2024. Plaintiffs filed a Motion to Compel on June

29, 2024. Plaintiffs filed a Motion for Temporary, Preliminary, and Permanent Injunctions on July 3, 2024. The Court held a hearing and took the motions under advisement. The Court issued a Form 4 Order July 29, 2024.

At the hearing, the Court noted that the Plaintiffs had failed to file an affidavit in support of their motion for injunctive relief, as required by SCRCP 65(f)(1). On July 22, 2024, Plaintiffs filed the Affidavit of Plaintiff Jim Mann verifying the allegations of the Complaint. Plaintiffs submitted the Affidavit in support of the motion for injunctive relief.

The Court finds that despite Plaintiffs' failure to file the affidavit earlier, this case raises issues of great public importance, including the upholding of the Constitution, unlawful actions of public officials, and the misuse of public monies. Accordingly, the Court will proceed to make a determination on the issues.

STATEMENT OF THE FACTS

For purposes of the Plaintiffs' motion for injunctive relief, the Court finds the following facts from the verified Complaint. Oconee County has implemented two phases of a three-phase sewer project in the Southern part of the County. Phases one and two were paid for primarily through state and federal grants and appropriations from general County funds. This case addresses improvements or expansion of wastewater treatment beyond phase two funded by County General Obligation bonds.

On November 2, 2023, the County issued \$25,000,000 of General Obligation Bonds, Series 2023 (the "2023 Bonds") 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.” *See* Official Statement for 2023 Bonds, Cover.¹

The South Carolina Constitution, Article X, Section 14 provides that counties “shall have the power to incur indebtedness in the following categories and in no others: (a) General obligation debt; and (b) Indebtedness payable only from a revenue-producing project or from a special source as provided in subsection (10) of this section.” Section 14(2) further provides that such bonds may be issued only “upon such terms and conditions as the General Assembly shall prescribe by general law within the limitations set forth in this section and Section 12 of this article.”

Article X, Section 12 of the State Constitution provides:

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.

Id.

This section recognized the counties’ enhanced powers and the restriction on the creation of new special purpose districts, all of which arose from the Home Rule amendments to the State Constitution in the 1970s. Following the Home Rule amendments on March 7, 1973, the General Assembly was bound by Article VIII, Section 7, which prohibited laws applicable only to a specific county. The same section empowered the Legislature to enact general laws granting counties “the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided.”

¹ Available at <https://emma.msrb.org/P21737547-P21334508-P21768579.pdf>

Should a county want to provide sewer services, funded by bonds, and support such activities with a tax or special assessment, the county is required to create a special taxing district under S.C. Code Ann. § 4-9-30(5)(a). Thereafter, the County may impose a uniform rate of taxation within the special taxing district. *See Ex Parte Yeargin*, 295 S.C. 521, 523, 369 S.E.2d 844 (1988) (upholding Anderson County’s special tax district for sewer service).

Article X, Section 12 expressly prohibits “bonded indebtedness by any county for sewage disposal . . . 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.” *Id.*

The municipalities of Seneca, Walhalla, and Westminster have the exclusive right to provide sewer services within their municipal limits. The citizens of those cities will not benefit from the new sewer services.

The rural, mountainous, Northern part of the County is served primarily by private septic tanks, septic fields, and septic systems. The rural, mountainous, Northern part of the County will not benefit from the new sewer services in the Southern part of the County.

The upscale neighborhoods around Lake Keowee and Lake Jocassee are served primarily by privately owned sewer systems. Those neighborhoods will not benefit from the new sewer services in the Southern part of the County.

Accordingly, the proposed new sewer services will only benefit a “particular geographical section of the [C]ounty.” The County may not use the bond revenues for sewer projects that will benefit only the Southern part of the county while taxing the entire County.

To meet our Constitution’s mandate, the County must create a special tax district specific to the area that stands to benefit.

“Article X, § 12 of the Constitution *requires* the charge be assessed only on those who benefit from the new facilities.” *Robinson v. Richland Cnty. Council*, 293 S.C. 27, 32, 358 S.E.2d 392 (S.C. 1987) (emphasis in original).

Ordinance 2023-13, enacted September 5, 2023, (the “Bond Ordinance”) recites that “[t]he full faith, credit and taxing power of the County are irrevocably pledged to the payment of the principal and interest of the [2023 Bonds] as they mature and to create a sinking fund to aid in the retirement and payment thereof. There shall be levied and collected annually upon all taxable property in the County . . . an ad valorem tax, without limit as to rate or amount, sufficient for such purposes.” Bond Ordinance, § 11.

The County could possibly use the bond proceeds for other lawful purposes that benefit the whole county, but not the planned sewer or wastewater services benefiting only the Southern part of the County.

The County’s stated intent to use the 2023 Bond proceeds for wastewater improvements, and pledge the full faith, credit, and taxing power of the entire County, violates the State Constitution, Article X, Section 12, unless the County imposes and pledges “a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]” in an area of the County that benefits from the new sewer service, and that does not encompass the municipal boundaries of Seneca, Walhalla, and Westminster, the rural, mountainous Northern part of the County, or the neighborhoods around Lake Keowee and Lake Jocassee served by private sewer systems.

LEGAL DISCUSSION

I. Plaintiffs Possess Public Importance Standing and Taxpayer Standing.

The individual Plaintiffs 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. Plaintiffs have asserted both taxpayer standing and public importance standing in this action.

A. Plaintiffs Possess Public Importance Standing.

When a plaintiff raises an issue of great public importance, particularly a Constitutional violation, a court may grant a plaintiff standing to address the issue. South Carolina courts 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. Richland 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 public officials and the misuse of taxpayer 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).

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*, the Supreme 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).

The Supreme Court rendered a similar holding in *City of Columbia v. Sanders*, 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.

97 S.E.2d 213 (emphasis added). The Supreme Court repeated this holding in *State ex rel McLeod v. McGinnis*, 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.” 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 the 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).

B. Plaintiffs Possess Public Importance Standing to Challenge an *Ultra Vires* Act.

Plaintiffs possess standing as citizens and taxpayers to seek declaratory and injunctive relief for an *ultra vires* act. One clear statement of this rule of standing is Justice Toal's dissenting opinion in *Newman v. Richland County Historic Preservation Comm'n.*, 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*, 16 Ohio App. 3d 30, 16 Ohio B. Rep. 32, 474 N.E.2d 336 (Oh. App. 1983). "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. 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.

* * *

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).

An authoritative case on this kind of standing is *Baird v. Charleston County*, 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.” 333 S.C. 519, 531, 511 S.E.2d 69, 75.

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.

333 S.C. 519, 531, 511 S.E.2d 69, 75-76.

The issue Plaintiff’s raise in this case—allegations of an unconstitutional act—is also an important public issue, which calls for judicial intervention.

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.

The individual Plaintiffs allege standing as citizens and taxpayers. They allege that the County engaged in an *ultra vires* acts, in violation of the Constitution. 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, these Plaintiffs should be granted standing to contest the unconstitutional act in this case; there is a profound public interest involved. A judicial decision is necessary for future guidance, "and any further determination of imminent prejudice is unnecessary." *Id.*

In the case at bar, Plaintiffs 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). The County's alleged constitutional violation makes this an issue of great public importance.

C. Plaintiffs 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*, the Supreme Court recognized taxpayers' standing to contest allegedly illegal or *ultra vires* actions of a city. 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. 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.

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).

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). For 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, the individual Plaintiffs possess standing to seek an injunction against illegal acts affecting public funds and public assets.

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..

The 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. Thus, under *Shillito*, the individual Plaintiffs, as taxpayers, have standing to seek declaratory and injunctive relief against an illegal collection and expenditure of public funds.

In *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985), 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. 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.” 285 S.C. at 480.

Myers v. Patterson, 315 S.C. 248, 433 S.E.2d 841 (1993) has a similar holding. A plaintiff had standing as a taxpayer to contest the allegedly unlawful transfer of money collected for one purpose to a fund set up to address another purpose. The 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 nevertheless 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*, 342 S.C. 515, 520, 537 S.E.2d 299, 301 (Ct. App. 2000). Appellants have standing, under the common law, as taxpayers and citizens to seek declaratory and injunctive relief against an unconstitutional act of the County.

Plaintiffs do not need a statutory right of action to challenge an *ultra vires* act. Plaintiffs’ 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. Plaintiffs 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).

The Defendant County has decreed that the full faith and credit of the County will be pledged in repayment of the bonds. Accordingly, the tax proceeds of the County will be applied to the bonds, which means that all the individual Plaintiffs, 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. Accordingly, the individual Plaintiffs possess standing as taxpayers, citizens and residents of Oconee County, and based upon the great public importance of the issues this action raises.

D. Defendant's Cases Are Distinguishable.

Against this long list of cases, Defendant relied primarily on two cases: *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 198 (2008), and *Fremantle v. Preston*, 398 S.C. 186, 193, 728 SE2d 40, 44 (2002). The two cases on which the Defendant 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 Constitution. This case involves the direct misuse of taxpayer money.

ATC South involved a citizen objecting to a regulatory decision by a local government, a zoning issue for the placement of a cell phone tower. It did not involve 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 *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 a 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.*, 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.

Fremantle v. Preston is also distinguishable. 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 on which the Defendant relies are distinguishable.

The individual Plaintiffs in the case at bar 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). (All Plaintiffs also possess public importance standing.)

E. Plaintiffs have Stated a Valid Cause of Action.

The Home Rule Act of 1975 is the source of authority for county government. Prior to 1975, county government was an arm of the state government at the county level. Each year the state legislature passed a supply bill, which was the county budget. Home Rule played an important role in “eliminat[ing] archaic provisions” of the Constitution by strengthening “proper safeguards for sound State, County, and Local governments. *South Carolina in Hosp. Ass’n of S.C., Inc. v. Cty. of Charleston* 320 S.C. 219, 225, 464 S.E.2d 113, 117 (1995). The “West Committee” held hearings and conferences in the late 1960s to early 1970s seeking to place control of management

of county and municipal affairs in the hands of local officials. *Hosp. Ass'n of S.C.*, 320 S.C. at 225, 464 S.E.2d at 117. The Committee unanimously recommended amendments to the Constitution in favor of Home Rule. *Id.*

The S.C. Constitution, as amended, provides:

The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided.

Id., Article VIII, Sec. 7

Oconee County has implemented two of three phases of sewer projects in the Southern part of the County. Phases one and two were paid for primarily through state and federal grants and appropriations from general County funds. This case addresses wastewater improvements or expansion beyond phase two and the financing for any additional phases through bonds. The proposed new sewer services will only benefit a “particular geographical section of the [C]ounty.” The Plaintiffs will be immediately and irreparably impaired by the Defendant’s Constitutional violations.

Defendant relies on *Casey v. Richland County Council*, 282 S.C. 387, 320 S.E.2d 443 (1984), for the proposition that funding a sewer system for only part of the county benefits the whole county. Casey is distinguishable from the case at bar in that the constitutional provision at issue in this case was not a part of Casey. Second, the sewer services at issue in Casey were not being funded by bonds, but rather by taxes. The Court ruled that the funding was a tax and not an assessment; however, it was an unconstitutional tax because it was charged to only certain parts of the county and not other parts, in contravention of the constitutional provision that required taxation to be uniform across the county. In short, Casey has no application to the case at bar.

II. S.C. Code Ann. § 11-15-30 Does Not Bar Plaintiffs' Claims.

Defendant contends that S.C. Code Ann. § 11-15-30 bars Plaintiffs' claims. The Court disagrees. S.C. Code Ann. § 11-15-30 limits civil actions that are commenced on the account of issuance of bonds.

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).

This case is not about the “issuance” of bonds, which would be barred by § 11-15-30, but rather it concerns the “use” of bond money for unconstitutional purposes after the issuance of the bond. Plaintiffs do not contest the issuance of the bonds, nor the power or authority of the Defendant County to issue such bonds. Plaintiffs are not challenging the bonds, which are already sold in the public marketplace, and they are in the stream of commerce. Plaintiffs' claims do not imperil the rights of “a bona fide purchaser for value.” Nothing this Court does can affect the bonds themselves, or the accumulation of interest. That is already established. Plaintiffs challenge the proper uses of the bond proceeds, which, under the Constitution, cannot be used for creating facilities for the treatment of sewer or wastewater disposal that benefits a only portion of the County, without a special tax district and special assessment in that district to pay for the sewer services that benefit that special tax district. This case does not address the issuance of the bonds.

The Constitution prohibits the expenditure the proceeds of the bonds 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. Section 11-15-30 does not impact this court's power and jurisdiction to address the Constitutional violation.

III. Plaintiff's Claims Are Not Barred by Ripeness or Mootness.

A. Plaintiff's Claims Are Ripe.

Plaintiff's claims are ripe. The Defendant County has already sold \$25 million with the bonds. The stated plan of the County is to use proceeds of the bonds to pay for sewer system in the lower part of the County in violation of the Constitution. They have committed the \$25 million of bonds, or the vast majority of it, to pay for this installation of the sewer services in the lower part of the County. The action is ripe for action by this Court because the County has already committed to spend the money in violation of the Constitution. News accounts report that Phase Two (funded by other sources) is nearly complete, and Phase Three (to be funded by the bond proceeds) is imminent.

B. Plaintiff's 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 actually spent. Accordingly, this matter is not moot. However, if the Court were to determine that matter were moot, Plaintiffs 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 is very much similar 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 unlawful 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 ruling on this action.

C. This Court Possesses Subject Matter Jurisdiction.

Plaintiffs have alleged a violation of the South Carolina Constitution by public officials of Oconee County. The courts are the institutions in which address issues of constitutionality. Accordingly, this Court possesses subject matter jurisdiction.

D. Plaintiffs’ Claims Have Sufficient Particularity.

Plaintiffs quoted the provision of the Constitution which the County is violating. Plaintiffs alleged with some specificity the \$25 million in bonds which have been issued and the purposes for which the bonds of been issued, in violation of the Constitution. Accordingly, plaintiff’s claims are pled with sufficient particularity for the Defendant understand them, and for the Court to rule upon them.

Defendant contends that the Plaintiffs 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 Constitution. Accordingly, Plaintiffs’ allegations that the actions of the Defendant are unconstitutional constitute a justiciable controversy.

IV. Plaintiffs Are Entitled to a Temporary Injunction.

The courts of this State have explained the requirements for the issuance of a Temporary Injunction:

A temporary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law. *E.g., AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct.App.2009) (internal citation omitted).

Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010).

The purpose of a temporary restraining order or preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it. *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002). In evaluating whether a plaintiff is entitled to a preliminary injunction, the court must examine the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief. *Compton v. S.C. Dept. of Corrections*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011).

The plaintiff is not required to prove an absolute legal right when seeking a preliminary injunction, but the plaintiff must present a reasonable question as to the existence of such a right. *AJG Holdings LLC v. Dunn*, 382 S.C. 43, 50, 674 S.E.2d 505, 508 (Ct. App. 2009). When a court is requested to issue a temporary injunction, it may consider the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate. *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992). In evaluating whether a plaintiff is entitled

to a preliminary injunction, the court must examine the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a sufficient *prima facie* showing of entitlement to relief. *Compton v. S.C. Dept. of Corrections*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011). Once a *prima facie* showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate determination of the case on the merits. *Helsel*, 307 S.C. at 32, 413 S.E.2d at 826.

A. Plaintiffs Will Suffer Irreparable Harm if the Injunction is not Granted.

In this case, Plaintiffs meet this standard. A temporary injunction is necessary to preserve the *status quo ante*. Without the issuance of such an injunction, even if the Plaintiffs prevail ultimately, the County will wrongfully collect and spend months and probably years' worth of taxes that would be next to impossible to refund to the taxpayers. In that case, any victory of the Plaintiffs would be a hollow, Pyrrhic victory. A government's unlawful conduct causes irreparable harm. *Adams v. McMaster*, 432 S.C. 225, 851 S.E.2d 703 (2020). "[T]he taxpayers of [Oconee] County would suffer irreparable harm if the County is not required to follow the law." *Richland County v. South Carolina Department of Revenue*, 422 S.C. 292, 311, 811 S.E.2d 758, 768 (2018).

Because it would be practically impossible to refund the wrongful taxation to the taxpayers, Plaintiffs need a temporary injunction to preserve the *status quo ante* while the legal issues are decided in this case. Otherwise, any remedy may be illusory. Furthermore, Defendant will not suffer any material damages if they are not allowed to collect an unconstitutional tax.

B. Plaintiffs Will Likely Succeed on the Merits.

Plaintiffs have alleged a viable, persuasive cause of action. Defendant violated the clear, plain language of the South Carolina Constitution. Plaintiffs are likely to succeed on the merits, based on the clear violation of the South Carolina Constitution, Article X, § 12:

Defendant contends that the whole county will “receive the benefit” if the sewer line is constructed in the Southern part of the county. Accordingly, they attempt to justify imposing taxes on the whole county. The South Carolina Supreme Court has ruled that such a vague, intangible benefit is not sufficient to impose a tax on the whole county to pay for sewer system that is installed in one distinct portion of the county.

In *Robinson v. Richland County Council*, two citizens “individually and as taxpayers,” brought a declaratory judgment action that challenged certain statutes and ordinances that provided for the creation and installation of public sewer systems in parts of Richland County. 293 S.C. 27, 358 S.E.2d 392 (1987). The case was appealed to the South Carolina Supreme Court.

The Supreme Court addressed Article X, § 12 of the South Carolina Constitution at some length. *Robinson* addresses this Constitutional provision.

Article X, § 12 of the Constitution prohibits counties from incurring bonded indebtedness for sewage disposal or treatment which benefits only a particular area unless a special assessment, tax or service charge, adequate to provide debt service on the bonds, is imposed on those persons who will benefit from the service.

* * *

In addition, Article X, § 12 of the Constitution *requires* the charge be assessed only on those who will benefit from the new facilities. 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.

Id., 293 S.C. 27, 31-33, 358 S.E.2d 392, 395-396. This analysis is controlling for the case at bar. The vague, general benefit to the middle and northern parts of Oconee County is not sufficient to justify taxing those portions to pay for bonds that fund sewer and wastewater projects distinctly in the Southern part of the county. It is unconstitutional for Oconee County to tax the entire County to pay for bonds that will fund sewer and wastewater facilities in only one small area in the Southern part of the County. Accordingly, Plaintiffs are likely to succeed on the merits.

C. Plaintiffs Have no Adequate Remedy at Law.

As discussed above, if the taxes are collected, it would be extremely difficult to reestablish the *status quo ante*. No adequate remedy would be available to the Plaintiffs once the money is taken. This Court should issue a temporary injunction until this Court can fully and fairly address the legal issues pending in this case.

WHEREFORE the Court grants temporary injunctive relief against the Defendant's unconstitutional conduct, pending further Order of this Court. Based upon our State Constitution, and our state case law, the County may not use bond revenues for sewer projects that will benefit only the Southern part of the County while taxing the entire County. To meet our Constitution's mandate, the County must create a special tax district specific to the area that stands to benefit.

Furthermore, the Court Orders that this matter should be expedited for trial and notes that the parties have stipulated and agreed that this matter will proceed as a nonjury matter.

Plaintiffs shall post a bond in the amount of \$1,000 with the Clerk of Court subject to the right of the County to demand payment of, and establish entitlement to, a higher bond amount.

SO ORDERED this _____ day of _____, 2024.

R. Lawton McIntosh
Circuit Judge Presiding



Oconee Common Pleas

Case Caption: South Carolina Public Interest Foundation , plaintiff, et al VS Oconee County
Case Number: 2024CP3700202
Type: Order/Temporary Injunction

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-08-09 17:31:10 page 29 of 29

ELECTRONICALLY FILED - 2024 Aug 12 8:30 AM - OCONEE - COMMON PLEAS - CASE#2024CP3700202
ELECTRONICALLY FILED - 2024 Aug 22 12:37 PM - OCONEE - COMMON PLEAS - CASE#2024CP3700202

Exhibit C

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS
C.A. NO. 2024-CP-37-00202

SOUTH CAROLINA PUBLIC INTEREST FOUNDATION, JIM MANN, DAVID DIAL,
RACHEL MOORE, TERRI MEYERRING, CARL MEYERRING, DOUG MUZIK, BRUCE
BURREL, INDIA LANCASTER, JOHN WAGNER, GWEN MCPHAIL, LILLIAN LUSK,
AND LINDA LOVE, ON BEHALF OF ALL OTHER SIMILARLY SITUATED

PLAINTIFFS,

VS.

OCONEE COUNTY

DEFENDANT.

H E A R I N G
BEFORE THE HONORABLE LAWTON MCINTOSH

DATE: JULY 17, 2024
TIME: 2:19 PM
LOCATION: SOUTH CAROLINA CIRCUIT COURT 10
TRANSCRIBED BY: KELLEY PRIMM

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ATTORNEY FOR THE DEFENDANT

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EXHIBITS
(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 P R O C E E D I N G S

2 THE COURT: I hear motion to -- for injunction ---

3 UNIDENTIFIED SPEAKER: There are cross motions. There
4 are multiple motions. We have a motion for injunction, we
5 have a motion to compel, they have motion to dismiss.

6 THE COURT: Okay. Would you and (indiscernible) put
7 that into reference, what order we go in?

8 UNIDENTIFIED SPEAKER: Your Honor, ours was the first
9 file.

10 THE COURT: (Indiscernible) take care of them in that
11 order so if y'all can't agree (indiscernible) what we're
12 going to do.

13 UNIDENTIFIED SPEAKER: Yes, Your Honor. That'd be
14 great.

15 MR. WILKINS: May I please The Court?

16 THE COURT: Yes, sir.

17 MR. WILKINS: (Indiscernible) Billy Wilkins and Lane
18 Davis (indiscernible) I'm a (indiscernible) and I grew up in
19 Oconee County. Got off a number of years ago planning again
20 for a 280 acre industrial park to be located in close
21 proximity to I-85.

22 In order to complete installation of a sewer system and
23 related work, which would
24 (indiscernible) within the surrounding area, the county

1 Counsel has to, under the law of procedural and substitute
2 requirements, unanimously pass ordinance (indiscernible).
3 Which authorize the issuance of the bonds not to exceed
4 (indiscernible).

5 A full record of these proceedings that we'll file with
6 the (indiscernible) office on November the 8th of 2023. And
7 when was filing occurred? A 20 page statute of limitations
8 contestability period started to (indiscernible).

9 THE COURT: Tell me about that. I'm not familiar with
10 that, Mr. Wilkins. Once you file the plan, they have 20
11 days to contest. And when it's resulted, if you're not
12 timely in your contest ---

13 MR. WILKINS: Cannot bring a lawsuit. Can not bring
14 any suit. No suit. No action may be commenced after the
15 issuance of the bonds after the 20 day period is over.
16 Again, that's code -- section 11-15-30 this action was filed
17 months after this contestability period had expired.

18 THE COURT: Does that also include constitutional
19 issues as well, sir?

20 MR. WILKINS: (Indiscernible) The case law was very
21 clear on this (indiscernible) some of the leading cases,
22 Your Honor.

23 THE COURT: Okay.

24 MR. WILKINS: This complaint should be dismissed for
25 several reasons. First, section 11-15-30 is an absolutely

1 horrible (indiscernible) as I mentioned, because it provides
2 an (indiscernible) 20 days, no action may be commenced.

3 60 years ago The Supreme Court (indiscernible) Morgan
4 versus (indiscernible) case involving (indiscernible) county
5 school bonds. That case is Circuit Court focused on whoever
6 (indiscernible) the publication requirements (indiscernible)
7 before the referendum was held (indiscernible).

8 It just missed law student in beautiful (indiscernible)
9 County. Our Supreme Court said no, you should not even
10 address that issue because the 20 day statute of limitations
11 contestability period can expire (indiscernible). Do not
12 address any of the other issues.

13 And the fact they would (indiscernible). If you don't
14 meet contestability expiration in the time of limitation.
15 And in that 20 page memorandum, (indiscernible) do not
16 contest the validity of the appropriateness of this statute.
17 But tell me they do not site to a single case supporting
18 their proposition.

19 That the Plaintiffs are not contesting the issues of
20 the bonds, they are not contesting as a county authority and
21 power. The Plaintiffs say we are just challenging the
22 proper use of the bond proceeds. Well, 40 years later,
23 after the Morgan decision, (indiscernible) appeal to a case
24 I'm very (indiscernible) issued an opinion that reinforced
25 this absolute horror.

1 To bring the lawsuit on a count of issues of any bonds
2 by government authority. In this case, it was a town in
3 (indiscernible) South Carolina. 17 (indiscernible) not
4 against the town, not even against the town counsel, it was
5 a lawsuit against the bond attorneys, claiming that the bond
6 attorneys (indiscernible) and was a private (indiscernible).

7 If you missed the town counsel, the (indiscernible)
8 bonds still provide (indiscernible). (Indiscernible) the
9 action was not within the 20 day contestability period. And
10 (indiscernible) they are (indiscernible) the statute does
11 not apply. Because they (indiscernible).

12 They were just contesting the bond obligations
13 (indiscernible) County to repay the bonds. So I
14 (indiscernible) the Morgan decision (indiscernible). The
15 Court of appeals (indiscernible) the Circuit Court. Told
16 them that the 20 day contestability period applied, and that
17 consequently, Plaintiffs were now barred from attacking the
18 legality of the bond procedures.

19 (Indiscernible) came before The Court today, the
20 Plaintiffs made essentially the same argument. Same
21 (indiscernible). (Indiscernible) these last 2 cases I just
22 mentioned. On paragraph 29 (indiscernible), the Plaintiff
23 attacks the legality of the use of the proceeds of
24 (indiscernible) papers.

25 The legality of the use and the proceeds of

1 (indiscernible) bond. The (indiscernible) improved and
2 plead that the (indiscernible) taxing power of the county.
3 And just three years ago, in another unanimous decision
4 about the Supreme Court entitled *South Carolina Public*
5 *Interest Foundation versus Calhoun County Counsel*.

6 Which again, affirm they've all (indiscernible)
7 regarding the legislative inactive contestability period.
8 (Indiscernible) Plaintiff, in that case (indiscernible) in
9 this case (indiscernible) century (indiscernible). The
10 Calhoun County Counsel imposed a one percent sales tax to
11 fund 15 projects.

12 The lawsuit that was brought into this full of
13 (indiscernible) funded, it's inappropriate. Therefore, we
14 object to any funds being used to fund these projects, and
15 if you do that -- if you don't do that, Judge, it's going to
16 be misuse, that was the charge, misuse of the county
17 counsel's tax paying money.

18 They maintain that the statute of limitations
19 contestability period only applied to procedural issues and
20 not to any substitutions like this. Paid 14 of the
21 opposition through our motion to dismiss, the Plaintiff
22 makes the same claim, and I quote, this case at far involves
23 expenditure and the misuse of tax paying money.

24 The Calhoun County case I just mentioned. The Supreme
25 Court (indiscernible) rejected this argument and

1 (indiscernible) through for the statute of limitations
2 contestability period barred that lawsuit. The Court's made
3 it -- our conclusion is further (indiscernible) prior
4 decision including the cases I just mentioned.

5 That the short statute of limitations contestability
6 period does not distinguish between procedural and
7 substitute challenges. (Indiscernible) that the wisdom of
8 the short statute of limitations period is not
9 (indiscernible) as the Supreme Court observed in Morgan, the
10 (indiscernible) short contestability period, it's obvious
11 The Court (indiscernible).

12 And if (indiscernible) in full force in this state for
13 many years. It said it was obvious 60 years ago. The
14 position the Plaintiff (indiscernible) or it was Plaintiff's
15 decision (indiscernible) after the Morgan case
16 (indiscernible) by this Plaintiff is the docket.

17 It would have an immediate devastating effect on every
18 city and county in the state as far as ability to raise
19 money by the sale of (indiscernible) County office. I'm
20 sure investors (indiscernible) in South Carolina. That's
21 the reason the legislature passed in section 11-15-30.

22 The Plaintiffs made no mention, zero, in their
23 complaint of the contestability period set forth in that
24 statute. And the 23 page memorandum in opposition, it was
25 the Defendant's motion to dismiss (indiscernible) less than

1 a single page to address this threshold issue.

2 (Indiscernible) site no cases to any court in South
3 Carolina, or any court in the nation that would support
4 their opposition. (Indiscernible) critical legislative
5 activist does not apply. And it does not apply because the
6 Plaintiffs are not contesting the issues of the bond, they
7 say, but only the bond proceeds are being misused.

8 This threshold issue, Your Honor must decide
9 (indiscernible) this lawsuit from Oconee County from
10 spending the funds that have been raised to the sale of
11 these bonds. Here's the question, is it an action commenced
12 on a count of the issuance of the bonds?

13 THE COURT: Say that again?

14 MR. WILKINS: The statute says no action shall be
15 brought -- shall be commenced on account of the issuance of
16 the bonds. Which is just another way to say (indiscernible)
17 the Genesis of which is by reason of (indiscernible) the
18 result of the issuance of the bonds.

19 That's the words the Supreme Court used in the Calhoun
20 case. The Plaintiff, -- (indiscernible) the expenditure of
21 claims, the expenditure of funds was a misuse of the
22 county's funds. And in fact, challenged the results of the
23 (indiscernible).

24 (Indiscernible) misuse because they were challenging
25 the results of the reference -- reference which led to the

11

1 issuance of the bond, and thus, is barred (indiscernible)
2 period. In this lawsuit, this Plaintiff claims that the
3 expenditure of the funds is a misuse of Oconee County's
4 money.

5 It is a challenge to (indiscernible) of the enactment
6 of the county ordinance of Oconee County which authorized
7 the issuance of these bonds and is likewise barred by the
8 statute of limitations contestability period. Had these
9 bonds not been issued, Your Honor, there would have been no
10 proceeds generated.

11 If there had been no proceeds generated, there would be
12 no claim of misusing any of our county tax payers money. So
13 I say it again, the statutes are clear, the case law is
14 clear, the issues of (indiscernible) in just a minute,
15 really don't need to be heard. If you really in
16 (indiscernible) County, dismiss the (indiscernible) because
17 all the other issues automatically (indiscernible). I'd be
18 glad to answer any questions you may have, Your Honor.

19 THE COURT: Thank you, sir. I appreciate it. It's
20 good to see you. All right. Mr. Carpenter.

21 MR. CARPENTER: Thank you, Your Honor. This case is
22 about Oconee County violating the constitution. The
23 Plaintiff is asking this Court to stop the constitutional
24 violation. My opposing Counsel has made this argument
25 about South Carolina code annotative 11-15-30, it seems to

1 me that they were trying to put a square opinion through a
2 round hole.

3 If you read the statute, it's focused on the
4 (indiscernible) of the bonds. No action shall be commenced
5 on account of the issuance of any such bonds after the
6 expiration of 20 days (indiscernible) index and such
7 records, as prescribed by 11-15-10 -- 11-15-20.
8 (Indiscernible) issue went in the hands of a bonified
9 purchaser for value shall be incontestable. But if the
10 period (indiscernible) which actions may be commenced, shall
11 not begin to run (indiscernible). We don't have any
12 objection to the issuance of the bonds.

13 Issuance with bonds is done in New York -- the issuance
14 with the bonds, they came home with \$25,000,000. The issue
15 is, what are they going to do with that \$25,000,000? I know
16 Mr. Wilkins said what they're going to do is put it towards
17 waste water treatment, sewer, for a small part of Oconee
18 County down around Fair Play, down by I-85, down by the
19 welcome center, maybe up to exit 4, a small part of Oconee
20 County.

21 We alleged in the complaint that when they issued these
22 bonds, under ordinance itself, pledged full faith in credit
23 or taxing power of Oconee County. These are general
24 obligation bonds, these are not revenue bonds, those are
25 another thing.

1 They're going to take the taxing power of Oconee County
2 and tax -- and it says in the ordinance every single taxable
3 piece of property in Oconee County is going to be taxable to
4 pay back these funds. And that's the heart of the problem
5 because the constitution says that when you do a certain
6 number of services, one of which is waste water treatment
7 and management, and it only benefits a small part of the
8 county, you have to make a special tax district.

9 And you have to recess the people living in that
10 district who are going to benefit from those services to --
11 to support and pay back the bonds that will give these
12 services for that small group of people. In other words,
13 this is down in the southern part of the county. The
14 constitution -- and we (indiscernible) assume
15 (indiscernible)

16 THE COURT: Correct.

17 MR. CARPENTER: The constitution says that you can't do
18 that. You have to -- if you're going to -- if you're going
19 to issue bonds, (indiscernible) general obligation bonds,
20 you can't tax the whole county when the benefit of the bond
21 is only going to a small portion of the county.

22 And that's the constitutional violation and that's what
23 (indiscernible) here today. In the (indiscernible) this 11-
24 15-30, the focus of this statute is protecting the bonified
25 purchasers for value. These bonds were sold back in the

1 fall. The purchaser (indiscernible) we're not contesting
2 the bonds. The bonds are valid as far as I know, and
3 eventually they'll be paid back with Oconee County tax
4 payers in dollars.

5 THE COURT: Well, let me ask you this, Mr. Carpenter.
6 Mr. Wilkins says that the South Carolina Public Interest
7 Foundation filed the exact same claim earlier, which was
8 denied by the Supreme Court saying its not the bond issue,
9 it's the use of the proceeds that were contested
10 (indiscernible).

11 MR. CARPENTER: There is a -- there is a surface of
12 similarity between the two cases, can I talk a little bit
13 about both cases?

14 THE COURT: Sure.

15 MR. CARPENTER: They are distinguishable that
16 (indiscernible) was on the statute had to do with counties
17 getting money in another way. It didn't have anything to do
18 with this statute, this statute was never brought up and
19 it's a completely different statute with some similarity,
20 but it's completely different.

21 And this statute focuses on the people who buy the
22 bonds getting good value for their money. That after 20
23 days when they put millions of dollars into these bonds, we
24 can't have somebody coming in way after the fact and
25 contesting those bonds because as Mr. Wilkins said, nobody

1 could buy our bonds.

2 But that's not what's going on here. Those bonds are
3 valid, we're not touching those bonds. We are focusing, as
4 he said, on the proceeds of the bonds. And he
5 constitutional violation (indiscernible) when you take those
6 proceeds and certain and numerated functions, sewer,
7 lighting, a few other things, you have to make a taxing
8 district, and tax those people for the benefit to payback
9 those funds. Now, ---

10 THE COURT: Wasn't there a case, I think in Anderson
11 County some years ago, (indiscernible) taxable fees?

12 MR. CARPENTER: There is one out of Richland County
13 that I've read in preparation for this (indiscernible) fees
14 or assessments that they've distinguished between. It had
15 to do with sewer and (indiscernible).

16 THE COURT: (Indiscernible) is that relevant to this
17 case?

18 MR. CARPENTER: I don't think so. I read it again this
19 morning. Taxes are spread evenly among all tax payers and
20 they get general benefits. Assessments of fees are charged
21 to people who are getting the specific benefit from the
22 expenditure of the money.

23 THE COURT: Okay. (Indiscernible) it has been a long
24 time since (indiscernible) across the board whereas, you
25 don't have to have a special tax district (indiscernible).

1 MR. CARPENTER: As I recall, the taxpayers were arguing
2 what the county is arguing. They wanted to charge everybody
3 for a benefit that (indiscernible) a few people. And The
4 Court rejected that, which you can't charge everybody for a
5 benefit that's only being given to a few people. I think
6 it's called *Casey versus Richland County* (indiscernible).
7 But if you want me to go into ---

8 THE COURT: Go ahead.

9 MR. CARPENTER: But if you want me to stop with my
10 discussion of 11-15-30, I'll do that. If you want me to
11 bring the other motions up, I'll be happy to do that.

12 THE COURT: (Indiscernible) hear you on 11-15-30.

13 MR. CARPENTER: 11-15-30 is focusing on the security of
14 the bond (indiscernible). We're not challenging that in the
15 least. We are taking (indiscernible) the proceeds -- misuse
16 of the proceeds, that's a constitutional violation of the
17 section that we quoted, that requires the creation of a
18 special taxing district to (indiscernible) the bonds, and
19 that didn't happen here.

20 Now, the county had said well, we'll make the county
21 (indiscernible) general benefit. There's a case that we
22 sighted that says that the general benefit that the
23 neighboring properties might get because of this particular
24 section, I assume, is not the kind of benefit that allows
25 the county to tax them under this constitutional

1 (indiscernible), and I'll address that more (indiscernible)

2 THE COURT: Mr. Wilkins.

3 MR. WILKINS: Just very briefly, Your Honor, let me
4 just emphasize that the *Public Interest Foundation versus*
5 *Calhoun County*, they made the same claim in that case.
6 Calhoun County passed an ordinance (indiscernible) sales tax
7 was going to fund 15 projects.

8 This Plaintiff automatically says no, you can't do that
9 (indiscernible) not authorized to be funded. To do so
10 (indiscernible) would be a misuse of tax payers money.
11 That's the same thing they're saying here. We're not
12 challenging the bonds, they're fine, we're just challenging
13 the proceeds and how they're going to be used.

14 The Supreme Court was very clear, that is a
15 challenge -- a lawsuit brought challenging the result of the
16 issuance of the bonds. Because if it had not been for the
17 bonds, there'd be no proceeds.

18 THE COURT: So whether that was under 11-15-30 or some
19 other statute, it doesn't really matter? Or was it under
20 11-15-30? (Indiscernible) Mr. Carpenter says it was under a
21 different statute.

22 MR. WILKINS: It was under a different statute. But it
23 (indiscernible) the same thing (indiscernible) statute of
24 limitations contestability period. There's a 20 day period
25 under this statute, a 30 day period on another statute,

1 there's a six month period under another statute depending
2 on whether you do sales tax, bonds, or what not.

3 I'd like The Courts attention to *Casey versus Richland*
4 *Count Counsel* that is (indiscernible). And in that case The
5 Court says this was a (indiscernible) Richland County was
6 going to put sewer system in this unincorporated area and
7 they charged an assessment which is one way that you can
8 impose the tax burden on the citizens to think it's some
9 public maintenance of the sewer system and so forth.

10 The problem in that case is they place this assessment
11 on individuals in that district who will receive sewer from
12 another place. So they (indiscernible) twice. They had to
13 pay the sewer assessment for Richland County, -- charged for
14 Richland County, now they're paying (indiscernible) but you
15 could impose a tax county-wide.

16 Indeed, they claimed -- they stated here, the benefit
17 of an unimproved sanitary condition will (indiscernible) the
18 benefit of all of the citizens of Richland County. So there
19 are three ways you can impose a sales tax, you can impose an
20 assessment, or you can impose a county-wide tax
21 (indiscernible) in this case, but I'll go back to it.

22 What does it mean to commence an action on account of
23 the issuance of bonds? It does not mean the case is
24 appropriate. We're not just talking about problems, we're
25 talking about -- the Supreme Court says this applies to when

1 public notice wasn't given. You can't -- if public notice
2 isn't given, you can't bring a lawsuit after the 20 days.
3 The (indiscernible) of the facility, that's the charge.
4 You've got to (indiscernible) within that 20 day period. A
5 lawsuit made to get money raised, is not (indiscernible)
6 allocated. You can't do that. You do it within the 20
7 days. The lawsuit alleged misuse of public funds.

8 It has to be within the contestability period. And
9 even if the lawsuit is claiming that the bond
10 (indiscernible) to get the county to issue bonds to raise
11 money, you've got to challenge that even if you challenge
12 the allocation of those funds and how they're being spent
13 within the 20 day contestability period.

14 THE COURT: If you've (indiscernible) disagree, please.

15 MR. CARPENTER: Yes. Under the Calhoun County Counsel
16 case, the statute was the capitol project sales tax act. It
17 had nothing to do with the statute given here. And the
18 Casey case was the one with the (indiscernible) that
19 distinguished between the fees or assessment, and the taxes
20 and how they distinguish between the two of them.

21 THE COURT: All right. What's the next motion?

22 MR. CARPENTER: The next two motions are ours. This
23 case was -- in the beginning we issued some discovery quest
24 and (indiscernible) production. Requests for admission, we
25 served them properly, they wrote back to us and didn't

1 answer a single interrogatory, they didn't answer a single
2 request for admission, didn't answer a single request for
3 production.

4 They said oh, we've got motion to dismiss in here, we
5 don't think we have to answer discovery when we've got a
6 motion to dismiss. I think they filed a motion for
7 protective order, but we think that we have a good case here
8 and we want our discovery responded to within 24 months.
9 That's -- that's the essence of our motion to compel. On
10 our discovery responses, we didn't get anything.

11 THE COURT: Was the protective order signed?

12 MR. CARPENTER: Not -- I don't think it was.

13 MR. DAVIS: Your Honor, the protective order was
14 actually embedded in the motion to dismiss. We were saying
15 hey, look, the statute extinguishes your ability to bring
16 this lawsuit and taxpayers shouldn't have to pay for really
17 expensive discovery in a lawsuit Mr. Carpenter shouldn't
18 have filed.

19 So if we go to The Court and Judge McIntosh says yeah,
20 you're wrong minded, we're going forward, we'll give you
21 your discovery, but it's not true that we didn't respond.
22 We did, in fact, file objections and serve objections that
23 were responses, and when we did that I specifically wrote to
24 Jim and said Jim, if we go after our dispositive motion, and
25 The Court says we're going forward, of course we're going to

1 supplement, but we don't think the taxpayers should have to
2 incur that burden because we really do not believe we should
3 have ever been here.

4 And that was the basis of it. It was nothing
5 nefarious. It wasn't trying to keep anything from them.
6 And of course, we will supplement if Your Honor tells us
7 we're wrong, but we -- we pretty earnestly don't believe we
8 should be here.

9 THE COURT: If I were to (indiscernible) deny your
10 motion to dismiss, how long would it take you to get this
11 discovery (indiscernible)?

12 MR. DAVIS: 30 days, Your Honor.

13 THE COURT: Mr. Carpenter, (Indiscernible)

14 UNIDENTIFIED SPEAKER: We would be happy if they
15 responded in 30 days, Your Honor.

16 THE COURT: Anything further as far as that
17 (indiscernible) as well?

18 MR. CARPENTER: The -- the main motion is our motion
19 for injunctive relief, yes. (Indiscernible) motion for
20 injunctive relief is that we're requesting temporary,
21 preliminary, and eventually permanent injunctive relief and
22 we've briefed this thing extensively with (indiscernible)
23 pages of argument I'm going to site.

24 We've sighted 15 or 20 cases that say when a taxpaying
25 citizen sees that county or city government misusing

1 taxpayer money and spending it unlawfully, the tax paying
2 citizen has a right to apply to The Court inequity to stop
3 the unlawful expenditure of taxpayer money.

4 And that's the nature of our case here. The
5 constitution has, as we have sited and alluded to, no law
6 should be enacted preventing the incurring of bonded in
7 debt, that's for any county for sewage disposal or
8 treatment, and several other things, or any other service or
9 facility benefitting only a particular geographical section
10 of the county unless special assessment, tax, or service
11 charge in an amount designed to provide debt service on
12 bonded indebtedness revenue bonds incurred for such purposes
13 shall be imposed upon the area or persons receiving the
14 benefit therefrom.

15 We respectfully suggest that the county is clearly in
16 violation of this constitutional provision. They have
17 borrowed \$25,000,000 in bonds and they have said over, and
18 over again their intent is to use it for sewage and waste
19 water treatment down in the lower part of the county, down
20 around Fair Play, down -- like -- like Mr. Wilkins said,
21 down along the interstate down there.

22 Talked about the -- the welcome center and maybe up to
23 exit 4. But they have not created a special taxing district
24 down for that area. They have said in their ordinance,
25 we're going to put the full faith and credit of the entire

1 Oconee County and every single piece of taxable property in
2 Oconee County is going to be answerable to respond to the
3 payment of these bonds.

4 And this is a violation of article 10, section 12 of
5 the constitution. And the county has said in their answer
6 well, the issue is who is going to benefit from this? And
7 they have said that they think the whole county is going to
8 benefit because they're putting sewer down in this one small
9 part of the county.

10 And they think that might generate some economic
11 stimulus and might bring in some industry and so on.
12 There's one case that has addressed this issue, and it's
13 called *Robinson versus Richland County*. (Indiscernible)
14 opposing counsel, they probably have it already. Do y'all
15 need a copy?

16 In my research, I believe this is the only case that
17 specifically oppresses this constitutional provision in
18 South Carolina. And I've highlighted what seems to be the
19 important points of the case. This is a case where two tax
20 paying citizens sued Richland County Counsel over the
21 provision of sewer services and so on.

22 The Court cited article 10, section 12 of the
23 constitution, which is the one we've been relying on. If
24 you look at the 3rd page of the opinion, the right column,
25 towards the top of the page, article 10, section 12 of the

1 constitution prohibits counties from incurring bonded
2 indebtedness for sewage disposal or treatment, which
3 benefits only a particular area unless a special assessment,
4 tax or service charge adequate to provide debt service on
5 the bonds is imposed on those persons who will benefit from
6 the service.

7 So the issue is, who is going to benefit from the
8 service? Is it only those people in the service area? Or
9 does it include people on the adjacent properties? If you
10 look over at the next page, top of the page, tax payers
11 argument that neighboring property owners should be -- oh,
12 I'm sorry.

13 Second paragraph -- in addition to article 10, section
14 12, the constitution requires the charge be assessed only on
15 those who will benefit from the new facilities. And here's
16 the critical ruling, an increase in property values in the
17 adjoining area, because of the new sewer lines, is not
18 sufficient to putting adjacent landowners within the class
19 of those who benefit from the project.

20 And if you look at the bottom of the column there,
21 article 10, section 12 limits the power of counties to
22 impose general taxes to (indiscernible) the cost upon the
23 indebtedness incurred to build local improvements. As I
24 said, this case, as far as I know, is the only one that has
25 addressed this article 10, section 12 of South Carolina

1 constitution.

2 And The Court said it three different ways, if you're
3 going to have bonded indebtedness benefitting a small part
4 of the county, then you've got to make a special tax
5 district and tax those people, and you can't tax the
6 adjoining landowners because that -- that -- being close to
7 a new sewer is not the kind of benefit that this provision
8 of the constitution contemplates as they make those people
9 taxable for the sewer services provided to one particular
10 designated part of the county.

11 And if -- if an increase in the property value is in
12 the adjoining area because of the new sewer lines, it's not
13 sufficient to bring adjacent landowners within the class of
14 those who've benefitted from the project. Then, even more
15 so, some generic benefit of possible prosperity to the
16 county as a whole, is even more attenuated than the
17 adjoining landowners.

18 So you can't tax the people up in the northern part of
19 the county. You can't tax the people in the three cities
20 that have their own sewer systems. You can't tax the people
21 that are around the lakes of Keowee, Jocasee they have their
22 own sewer system.

23 You can't tax them to put in a sewer system down in the
24 lower part of the county and it's only going to be localized
25 down there at the supposed continuous possible benefit is

1 not sufficient to justify taxing the whole county. We have
2 a constitutional violation here. We're asking The Court to
3 issue a temporary and preliminary injunction to stop the
4 expenditure of this \$25,000,000 for that sewer project.
5 Now, if you look closely at the fourth instance and so
6 on, ---

7 THE COURT: Let me ask you this, how would you grant
8 your motion on what kind of bond would your foundation be
9 willing to (indiscernible) it's going to be a
10 (indiscernible) bond (indiscernible), don't you think?

11 MR. CARPENTER: We've faced that issue before and many
12 courts will tell you that because of the public interest
13 nature of this, and we're not causing any kind of
14 expenditure. We're stopping the use of these proceeds for
15 one particular purpose, because it violates the
16 constitution.

17 They can still use the proceeds to build roads, to
18 build schools, to build things that benefit the whole county
19 that are not in that list of enumerated kinds of contracts.
20 I think it was the lights, sewer, and garbage collection,
21 that sort of thing.

22 If the expenditure is not in that list, they can still
23 use the bonds for general county expenditures and county
24 improvements. Now, the ordinance that (indiscernible) the
25 bonds, specifically listed the sewer project, but they also

1 said and other projects.

2 So they can use the bonds on other projects, whatever
3 they are, provided those don't violate article 10, section
4 12. They would only stop the expenditure on this -- this
5 one project that violates the constitution. So I don't
6 think a bond would be appropriate when they can still spend
7 the money constitutionally.

8 THE COURT: The rule (indiscernible) the bond.

9 MR. CARPENTER: Well, then I ---

10 THE COURT: Discretionary, but it (indiscernible) the
11 bond.

12 MR. CARPENTER: I don't think that a fairly nominal
13 fund would be sufficient because there's no real risk to the
14 county. They're simply being prohibited from violating the
15 constitution. Which they should've been anyway. And they
16 can still spend the money other ways, and they can spend it
17 constitutionally, they just have to refrain from spending it
18 unconstitutionally.

19 So a nominal bond would be appropriate. I don't know
20 how much this matters, but a lot of people have the idea
21 that the South Carolina Public Interest Foundation is an
22 endowed foundation, it is not. We live hand to mouth on
23 periodic contributions.

24 So we wouldn't be able to put up a bond anywhere near
25 the million dollar mark, we just don't have it. It's just

1 not -- it's not an endowed foundation. Mr. (Indiscernible)
2 funded it when he was living and unfortunately, when he
3 died, he didn't fund it with his will in the state and other
4 people had come in and tried to help pick up the vision and
5 carry on, but it is -- it is not an endowed foundation, so
6 we would not be able to fund any sizable bonds, but a
7 nominal bond if that's required by The Court. That is
8 possible. But the point is, the county is not suffering any
9 real loss. They're just being prohibited from violating the
10 constitution.

11 MR. DAVIS: Trying to put my pen top back on without my
12 glasses, Your Honor. I'm sorry. (Indiscernible)
13 Respectfully, the Plaintiff's motion for preliminary
14 injunction is dead on arrival.

15 THE COURT: Let me ask you a question.

16 MR. DAVIS: Yes, sir.

17 THE COURT: If it weren't for the time frame of
18 (indiscernible) that you (indiscernible) from section
19 11-15-30, on the requirements of section 10 -- article 10,
20 section 12 of this South Carolina constitution?

21 MR. DAVIS: That's the ultimate -- that was actually
22 the argument -- the ultimate argument in this case is the
23 conclusion that -- Mr. Carpenter assumes (indiscernible)
24 arguments. In other words, hey, once we get to the merits
25 on this case I'm going to win and because I'm going to win,

1 we should have injunction relief issued.

2 (Indiscernible) contribution to his (indiscernible)
3 take out this most extraordinary explicable remedy and
4 injunction, and shoot it based upon the (indiscernible)
5 Plaintiffs because they're saying they're right, the
6 county's wrong, and that ultimately, the -- there's
7 unconstitutional infractions that remains, as of this date,
8 (indiscernible) proof and without a scratch of evidence in
9 the record.

10 So my preliminary thing that I would say to Your Honor
11 about the (indiscernible) injunction, you can deny it right
12 now because it's not supported by an affidavit. It's not
13 supported by a declaration. It's not supported by any
14 testimony.

15 It's not supported by a verified complaint. In the
16 record right now, the Plaintiffs have put zero evidence to
17 support their burden of proof on this motion, which is to
18 carry the prime (indiscernible) elements of injunction. The
19 three that we know well, irreparable harm, (indiscernible)
20 remedy by clear showing, with no clear showing.

21 No showing, whatsoever. So it's facially defective and
22 dead on arrival. And that's fairly significant because
23 within their complaint -- within their motion there are at
24 least 17 different factual premises that they have to
25 actually show The Court in order to be entitled to the

1 relief they seek.

2 For example, without representing any specific
3 infrastructure at all, -- okay, what sort of infrastructure
4 are we talking about? What does it do? How does it
5 upgrade? Is it a pump station? Is it trump
6 (indiscernible). Is it a treatment facility? We don't know
7 that.

8 If you look at the record right now, you couldn't tell
9 me that. Do you know why? They didn't (indiscernible) the
10 burden. That's why they lose immediately. Without knowing
11 what that infrastructure is, Your Honor can't assess or
12 allocate the metrics between what that infrastructure would
13 do, and what benefit would be conferred on what class of
14 people.

15 Whether it would be county-wide or a street driven in
16 the county. You just couldn't do it. You know why?
17 There's no evidence. So this motion fails off the top. But
18 those are not insignificant deficits, right? So if you
19 don't know how the funds under bond ordinance are -- are
20 really outdated.

21 And I would note for Your Honor, it's better that
22 underneath that ordinance, there's actually a specific
23 discretion inferred upon county counsel, a legislative body
24 that allows you to tug on how those are allocated
25 (indiscernible).

1 So what Mr. Carpenter's really asking you to do is to
2 invade the province of a legislative body, doing legislative
3 things, under a legislative enactment in respect to a
4 government service that's uniquely within his province. You
5 can't do that. That's called violation and separation of
6 powers.

7 THE COURT: Going back to my original question.

8 MR. DAVIS: Yes, sir.

9 THE COURT: Tell us the bond is issued and the
10 Plaintiff wrote this sewer improvement, whatever level or
11 part of it may be. Southern part of the county meet the
12 requirements of article 10, section 12 of our constitution.

13 MR. DAVIS: Yes, sir. (Indiscernible), Your Honor.

14 THE COURT: Tell me how it does.

15 MR. DAVIS: We think it confers a general benefit among
16 tax payers of Oconee County for a number of reasons. One,
17 is the health safety and welfare benefit, I mean, it's
18 obviously a health concern.

19 THE COURT: (Indiscernible)

20 MR. DAVIS: Well, I think that's what they were saying
21 in (indiscernible). You know, one of the primary principal
22 (indiscernible) of (indiscernible) we were talking about
23 with Mr. Wilkins and Mr. Carpenter. Number two, if you
24 think about what happens with respect to infrastructure,
25 it's basically any type of utility, where the number of

1 users increases, the economy of scales increase, the
2 incremental cost per user goes down, it creates a larger
3 group of people and a stronger utility base across the
4 county, it will invite economic development into the county
5 (indiscernible).

6 Everybody knows, in this space it's an accepted premiss
7 that if you built sewer, economic development follows it.
8 Economic development means more jobs, means more people
9 living here, more businesses, businesses paying business
10 licenses, people paying taxes, the tax base goes up.

11 These are not individualized, discrete benefits to
12 specific persons in the county, these are benefits that get
13 spread around the entire county. Look, all of these are
14 factual issues that we will show, but we shouldn't have to
15 show because underneath the statute that we're talking
16 about, 11-15-30, it cancels any basis to bring that
17 challenge here for us to reach those merits.

18 The general assembly decided this for you. And why did
19 they do that? It's not necessarily what Mr. Carpenter's
20 saying, that's not -- it wasn't solely based to protect the
21 holders of (indiscernible), if you think about what has to
22 happen for this to be an effective public finance mechanism
23 for local government, the local government's got to be able
24 to get the money and be able to use it for the things that
25 the tax payers need in a period of time that it actually

1 gets them what they need.

2 So if there's a public health issue or crisis, that has
3 to be addressed. And the county has to act. The fact the
4 South Carolina Public Interest Foundation can file a lawsuit
5 and hold those funds hostage for four years, that's no
6 bueno.

7 The local government body, you can't rely on that as a
8 public local source of financing to address the needs -- the
9 continuous needs now. They have no concrete time line.
10 General assembly said look, here's what we're going to do,
11 we're going to have this processed.

12 In order to have bond ordinance, we have to have, you
13 know this -- three (indiscernible), right? So we have a
14 public process, publically known as meeting agenda, public
15 is invited, they can come. They participate in the
16 legislative process.

17 There are elected officials, hear their concerns.
18 There's a debate, there's a discourse that goes on in
19 public, it happened once, it happened twice, it happened
20 three times. Legislative process happens. Then that bond
21 and it's transcript gets put on a guy with a bicycle who
22 rides over the (indiscernible) Court.

23 They file it. And in that point in time, when
24 (indiscernible) enacted of the bond to that filing of the
25 transcript, plus 20, they have an opportunity through an

1 (indiscernible) party by what the county just did, they can
2 file a lawsuit. And they can bring any substance of issue
3 out in the world, into the lawsuit.

4 They can challenge it however they want. All of the
5 remedies, they have plenty of remedies (indiscernible) that
6 they want to assert. There are remedies for
7 (indiscernible). The problem is, the standing commences
8 when the bond is enacted -- bond ordinance is enacted, it is
9 a (indiscernible) 20 days after the transcript arrived in
10 it's spot.

11 The legislator told you that hey, look, you don't have
12 standing on the 21st day after that transcript is filed. It
13 -- it doesn't make a difference what argument you want to
14 make, how clever you want to be, however you want to
15 collaterally attack that ordinance, it doesn't make a
16 difference what direction.

17 You don't get to come here and make the argument. It's
18 negated, it's extinguished. Incidentally, South Carolina's
19 not unique in this, this is how it is uniformly handled
20 around the Country. They do this because the local
21 government body need to have consistent, stable, reliable
22 access to capital markets in order to get the public
23 financing they need to do what?

24 Discharge your judiciary obligations (indiscernible)?
25 To get them the public service that they have to have,

1 right? We can't have sewer running down the middle of the
2 street. And that's the elected officials job to get it.
3 And this is one of the precious few public financing people
4 that they have to deliver it.

5 And they want to upset. It is for that reason the
6 South Carolina Supreme Court has consistently rejected these
7 exact arguments over, and over, and over again. Because if
8 you allow this, it does great violence to the public finance
9 (indiscernible) for every local government body across the
10 state. They also, in this case, they don't satisfy
11 (indiscernible) submitted evidence that support their
12 motion, which I don't see how we go up on appeal.

13 We say the Court of appeals and (indiscernible)
14 immediately (indiscernible) if Mr. Carpenter gets what he
15 wants, and leave it up to court of appeals and say okay,
16 show me the evidence in the record to support your
17 (indiscernible) elements, Jim. (Indiscernible).

18 Rule 65 is clear, you have to (indiscernible) if not,
19 it's open. But, in any event, if your irreparable harm that
20 they're sitting in this case, it doesn't pass muster because
21 irreparable harm, all they're talking about are financial
22 funds, right?

23 Okay, well, you're going to pay these taxes
24 (indiscernible) and there's no way for us to ever give them
25 a refund. Why? Why is that so (indiscernible) if it

1 happens all the time? And incidentally, it is ---

2 THE COURT: What would be (indiscernible)?

3 MR. DAVIS: Well, you have to calculate what amount of
4 the tax burden -- assuming -- if you assume the correctness
5 of their argument, and you prevail at the end, you say okay,
6 look, there was a certain amount of tax burden that was
7 misallocated in use for this, and these people shouldn't
8 have got it, they'd be entitled to a refund.

9 It's -- if we (indiscernible) burdensome, perhaps, to
10 actually do -- but it's not (indiscernible) it's not
11 impossible, it's something that happens, it happened before.
12 It's a money (indiscernible) remedy, but it doesn't make a
13 difference that they couldn't raise it anyway.

14 But the point is this, irreparable injury that they're
15 claiming, with respect to the unconstitutional behavior, it
16 assumes the conclusion, right? It assumes the
17 unconstitutionality exists, and therefore, they're entitled
18 to the injunctive relief to prevent it.

19 But we do not, by any stretch of imagination, can see
20 that there's any unconstitutional infraction that's
21 occurred. You don't conceive that there's been any illegal
22 behavior that's occurred. In fact, we reject that and if we
23 go to the merit, we think we are still going to
24 (indiscernible).

25 But, in any event, it's not an appropriate argument the

1 (indiscernible) the cases that he sites with respect to
2 those issues, they don't apply here. These are all public
3 interest exception Plaintiff standing cases where The Court
4 starts off with this premiss, what we're dealing with here
5 is so important that we're going to lower the bar of
6 individualized harm showing for the Plaintiff.

7 That -- we're just going to take a generalized showing
8 that there's something really -- really important publically
9 and therefore, you don't have to do it. Well, of course in
10 those cases, where they've already decided that the issue is
11 so important that they're going to waive the constitutional
12 (indiscernible).

13 That they don't have to show an individualized showing.
14 Of course, in those cases, what they found is that there
15 isn't irreparable injury, because the irreparable injury
16 doesn't have to be (indiscernible) in person. That can't
17 happen.

18 Your Honor, it can't happen because there's a statute
19 that the general assembly has already occupied the field,
20 and it said on day 21, you don't have standing. The general
21 assembly has already evaluated and allocated how they want
22 the public policy to work here.

23 And what the general assembly said, as opposed to what
24 the South Carolina Public Interest Foundation says, is that
25 on 8/21, we have determined that the local governments

1 body's access to capital markets, so they can deliver the
2 infrastructure that their citizens need, outweighs any
3 challenges that weren't made within that window.

4 We're going to give them the chance to make those
5 challenges, but we're going to extinguish them on day 21
6 because equally important and these competing balancing of
7 the scales, we have to make sure that those elected
8 officials can do their job and given the tools to do it.
9 They've already cancelled that.

10 So you can't come into Court and invoke the public
11 interest (indiscernible) standing when the statute has
12 already said there is no standing, right? It's circulant
13 and nonsensical. The -- (indiscernible) the adjudication
14 that they assume, is the one the statute forecloses, right?

15 You can't come in on day 21 and ask for that
16 communication, but yet, Mr. Carpenter comes in and assumes
17 that (indiscernible) you can get in the lawsuit you
18 shouldn't have brought in a courtroom you shouldn't be in.
19 The next part is the likelihood of success in the merits,
20 and this is a little easier because obviously a lot of that
21 is grounded in the two arguments we've already talked about.

22 Section 11-15-30 is an absolute part of this lawsuit.
23 One thing I would like to add though is this, 11-15-30 is a
24 different species of statute of limitations. In South
25 Carolina the statute of limitations (indiscernible) it's

1 really a statute of creation, right?

2 The statute of creation being when the statute itself
3 gives you the right to challenge, to come into court, within
4 that statute there is a time frame imbedded, that's a
5 statute of creation. It is strictly construed under South
6 Carolina law, it is strictly construed around
7 (indiscernible).

8 The cases we have sited in our brief are the Knight
9 case, the Simpson case, the Merchant's case, the
10 (indiscernible) case, they're all on page 11. What we have
11 before The Court today is a statute of creation. It
12 requires that that 20 day period is an indispensable
13 component of their private (indiscernible).

14 In other words, if they don't actually file it in 20
15 days, they don't have a claim. They don't have standing.
16 And that's what all of this goes to say. I'll give you a
17 comparable example that you probably know. Foya, right?
18 Foya has the same thing, it has a really -- it's a one year
19 statute.

20 If you don't file that within one year, the Knight case
21 says that's the statute of creation. That's not something
22 that gets told, that's not something that can be waived, it
23 is something that is imbedded in the right to bring the
24 action in the first instance.

25 And that's what the Plaintiffs are doing here where

1 they're going outside of the time frame that's necessary to
2 bring the claim, it is a (indiscernible) argument, they
3 cannot get passed it. Your Honor, the standing argument we
4 just talked about, also (indiscernible) match.

5 If they don't have standing for those (indiscernible)
6 controversy for you to hear, or to issue any relief
7 (indiscernible) cases, if Mr. Carpenter is so confident is
8 his position, This Court should protect local government
9 bodies state-wide by not interfering with the public
10 finance.

11 You could dismiss this case, let them take their
12 immediate appeal, they can file petition for supercilious on
13 their preliminary injunction motion. We will get fairly
14 (indiscernible) in Columbia as to whether what they're
15 saying is so crystal clear that they're entitled to the
16 injunctive relief that they're getting.

17 I predict that they will fail. And they will also find
18 out pretty quickly that these public findings provisions are
19 bedrock and they cannot be circumvented in the way that
20 they're trying to do. They're not telling you the correct
21 application involved.

22 Finally, with respect to the (indiscernible) showing,
23 Your Honor, -- I won't say finally, there's another two
24 things (indiscernible). Because it's an injunctive,
25 injunctive (indiscernible), it's subject to equitable

1 maximums, and they violate two here.

2 Every (indiscernible) by case, it doesn't help those
3 who (indiscernible) in their rights. The statute says 20
4 days, they waited four months. After they filed four months
5 too late, they waited another four months to file this
6 lawsuit.

7 And there's a string of cases again, in our debrief
8 that say in addition to a (indiscernible) bar, the fact that
9 you waited that long is evidence in and of itself that The
10 Court should take notice of that the irreparable nature of
11 the harm isn't one that supports preliminary injunctive
12 relief because if what you're saying was true, was truly
13 irreparable harm by nature, that could support the relief
14 (indiscernible), you would have been here a lot earlier.
15 Because a (indiscernible).

16 With respect to the adequate remedies, it kind of goes
17 back to what we were talking about all along here, Your
18 Honor, which is, we have a statute that gave them an actual
19 adequate remedy. There is a process where they can
20 participate in the political process that went along a train
21 of first meeting, second meeting, third meeting, 30 days
22 apart, over a 90 day window.

23 They could participate in that political process, they
24 could try to convince their elected officials of how they
25 should go forward, if they don't prevail there, and the

1 elected officials try to do something they should not do,
2 then they have this window as the caboose on that train of a
3 process to bring it to you.

4 But after that caboose goes down the track, there's no
5 train left. There's nothing here to see. And that is an
6 adequate legal remedy, they just didn't (indiscernible)
7 themselves of it. And that's why (indiscernible) of this
8 case.

9 Second equitable (indiscernible) is equity follows the
10 law, and the law here says that they had to bring this case
11 in 20 days, and they didn't. Either equity follows the law,
12 and the law is saying 20 days, then that is a complete bar
13 for them to be able to come to this Court and ask for
14 injunctive relief.

15 The last thing I would say is, Your Honor, you picked
16 up on something that I likely didn't. This lawsuit serves
17 the prospect of highjacking public's funds, let's say that
18 the ordinance is unconstitutional, and I know Mr. Carpenter
19 wants to say no, it is about (indiscernible), it's not,
20 right?

21 Because what does the bond ordinance do? You, and I,
22 and the American people all know, on the base of that bond
23 ordinance there are specific sets of authorized uses, right?
24 So if Mr. Carpenter comes in here and (indiscernible) the
25 territory relief action that says that one of those uses is

1 unconstitutional, what does it do?

2 It renders by way of collateral pack, the bond
3 ordinance is unconstitutional. He wants you to believe in
4 horsey things while disavowing the horse, right? That's
5 what's happening. Well, I'm not doing that, I'm not
6 challenging the bond proceedings.

7 That's exactly what he's doing. The bond ordinance
8 authorizes the use he's challenging. If he challenges the
9 use and is successful, (indiscernible) is you're
10 (indiscernible) has gone and challenged the cause and the
11 adjudication of the ordinance that is specifically
12 disallowed by the statute.

13 There's only one applicant here, Your Honor, and we
14 respectfully ask that you -- you bring us to that place to
15 protect the county and to protect all these local government
16 bodies, this case should be dismissed. Even if we're so
17 wrong, I'm sure we'll be back soon, but we're not.

18 With respect to the bond, there's no prospect here that
19 the capital infrastructure equal to \$25,000,000 is going to
20 be basically highjacking an undetermined period of time.
21 All of the benefits that were intended from that capital
22 projects, the public health, the economic benefits, all of
23 the things that we are describing, and you're saying what
24 are the general benefits to the county?

25 The increase in business license revenue, the increased

1 population, the increase in new business, jobs, everything
2 that would be county-wide, including the health and safety
3 benefits are going to be hijacked in an undetermined
4 period of time.

5 Mr. Carpenter doesn't want just a one million dollar
6 bond, probably because the one million dollar bond is way,
7 way shy for anything he's (indiscernible) in this case.
8 It's a \$25,000,000 bond appropriation that they're trying to
9 get you to invade legislative bodies province and
10 (indiscernible) their uses, we would respectfully ask for a
11 \$25,000,000 bond, if we get it -- but there's no possible
12 way, in my view, that this motion should ever be printed.
13 And I appreciate your time and your patience, thank you.

14 THE COURT: Thank you.

15 MR. CARPENTER: Thank you, Your Honor. I'd like to
16 briefly address the three elements necessary for an issuance
17 of an injunction, irreparable harm, success of merits, and
18 no adequate remedy of law. Several cases have ruled, as
19 we've cited in our brief, that the violation of the
20 constitution, in and of itself, is irreparable harm to the
21 citizens of this county. The violation of the constitution,
22 in and of itself, is irreparable harm.

23 THE COURT: (Indiscernible) this in the Casey case,
24 except article 10, section 12 of my county-wide says they
25 give benefit.

1 MR. CARPENTER: The Casey case didn't have anything to
2 do with article 10, section 12. The case that did that
3 was ---

4 THE COURT: Well, (indiscernible) am I wrong there?

5 MR. DAVIS: No, Your Honor. What I was trying to say
6 was that the Casey case stands for the proposition that
7 sewer infrastructure in a discrete part of the county, in
8 fact, does, or possibly could confer a county-wide benefit
9 that is directly contrary to what Mr. Carpenter has
10 represented to you.

11 And so what we know from that is, that factually, when
12 we get to the case -- if this case goes forward and we go to
13 trial, there is definitely a scenario where the county could
14 present facts into the record where that outcome could be
15 true. This kind of idea that oh, well, if it's just
16 infrastructure here, it can't happen.

17 MR. CARPENTER: The Casey case dealt with is this a
18 tax, or is this a fee? That's what they were analyzing
19 there when they were talking about the sewer, whether it was
20 a general benefit. (Indiscernible) more important was the
21 Robinson case and it says that the general benefits to the
22 neighboring landowners, because the sewer went in down the
23 road, that is not the kind of benefit that justifies taxing
24 those neighbors.

25 THE COURT: (Indiscernible) because you've got

1 increasing value of the properties it's not a sufficient
2 benefit to the entire county (indiscernible).

3 MR. CARPENTER: Well, we might be talking out of two
4 sides of the same coin. What it says -- the language of The
5 Court was an increase of property value from the adjoining
6 areas because of the new sewer lines, is not sufficient to
7 bring adjacent landowners within the class of those who
8 benefit from the project. And the benefit is
9 (indiscernible) there because that's language from the
10 constitutional provision. You have to tax those who are
11 going to benefit, pay for the -- the sewer lines being put
12 in there.

13 THE COURT: Those who benefit in the case?

14 MR. CARPENTER: Well, Casey was a different issue --
15 couple different -- it didn't deal with this -- this
16 constitutional provision at all

17 THE COURT: Okay.

18 MR. CARPENTER: It was -- the issue was, is this a tax
19 or is this a fee? And can you charge people fees for this
20 or is it a general benefit that you can give us?

21 THE COURT: (Indiscernible)

22 MR. CARPENTER: (Indiscernible) so the violation of the
23 constitution is the irreparable harm, in and of itself. The
24 length of (indiscernible) success on merit, The Court asks
25 opposing Counsel (indiscernible) article 10, section 12, and

1 he immediately went into argument about the general benefit
2 of the county, and the possible additional taxes and the
3 possible industry coming in.

4 And all that stuff which is even more attenuated than
5 the benefit referenced in the Robinson case. And if the
6 neighboring landowners of the Robinson case are not
7 benefitted by the neighboring sewer coming in, then
8 certainly, people in the other parts of the county are not
9 within the realm of those who benefit, and they cannot be
10 taxed to pay for this infrastructure that's in a discrete
11 area of the county.

12 So the likelihood of success of the merits, I would
13 suggest is pretty high. And the no adequate remedy at law
14 he was talking about, well, if you tax all these people,
15 then you can reverse that taxation and give everybody a tax
16 refund, which is a cumbersome prospect and I would
17 respectfully submit not an adequate remedy at law because it
18 could be years down the road and (indiscernible) nightmare
19 and would likely not get done.

20 THE COURT: Well, let be ask you just a more basic
21 question, ordinance 65, did you file a verified complaint?
22 Did you file a sworn affidavit to support the complaint?

23 MR. CARPENTER: No, but in the answer ---

24 THE COURT: (Indiscernible) required by rule 65(d).

25 MR. CARPENTER: I don't have my book with me, but there

1 are admissions in the answer that establish what the facts
2 are. There are exhibits to the answer that establish what
3 the facts are.

4 THE COURT: I would think that the rule provides for
5 looking at (indiscernible) but it will set you
6 (indiscernible) itself. I would like to take a look at
7 (indiscernible) affidavit (indiscernible) before you can be
8 granted any kind of -- especially TRO or temporary relief.

9 MR. CARPENTER: I'd have to read it again, but I was
10 thinking the admissions of the Defendants in the answer,
11 along with their exhibits to the answer, established pretty
12 clear what the facts are. And they can't come in here and
13 debate and say the facts haven't been established when they
14 admit them in their answer.

15 And they attached the exhibits to their answer that
16 show that they have passed this ordinance, the \$25,000,000
17 to do sewer work. And they admit in their answer, they're
18 talking about a general benefit to the whole county, which
19 is not allowed under Robinson.

20 And these kind of admissions, it seems to me,
21 demonstrate that there's no (indiscernible) to speak about
22 what the facts are. It is simply a question of applying the
23 law to the facts as the Defendants have admitted
24 (indiscernible).

25 Now, if The Court reads it differently, then we would

1 request an opportunity to submit an adequate affidavit then.
2 But we think with the constitutional violation, they made it
3 pretty clear to the pleadings and the admissions on file.
4 And we ask The Court to ---

5 THE COURT: (Indiscernible) so you have a chance to
6 (indiscernible).

7 MR. CARPENTER: Well, I'm hoping we got past that.

8 THE COURT: I understand.

9 MR. CARPENTER: Now, the other side talked about
10 standing, we have alleged two kinds of standing. One is
11 taxpayer standing, and the other is public importance
12 standing. And I think he might've confused the two.
13 Taxpayer standing has been established in a number of cases
14 that we've sited.

15 That's where a taxpayer comes in and says you're taking
16 taxpayer funds and you're spending them unlawfully. And
17 there's -- I think we sited 15 cases that allowed taxpayer
18 standing when a city or county illegally spent taxpayer
19 funds.

20 And we've viewed that on many occasions.
21 (Indiscernible) The second kind of standing is what he
22 referred to, is public importance standing, which is a
23 different analytical frame work. But then the taxpayer
24 standing -- the cases ruled that a taxpayer, taxpaying
25 citizen, has an adequate interest by the fact that he's

1 paying taxes and his tax money is being taken and misused,
2 he has standing to be here and ask The Court to not allow
3 the misuse of taxpayer money. Public importance standing is
4 an exception to the requirement of constitutional standing.
5 And The Court grants standing ---

6 THE COURT: How does this case (indiscernible)?

7 MR. CARPENTER: Well, the most recent case that comes
8 to mind that dealt with public importance standing, was the
9 one where the governor wanted to take \$40,000,000 and give
10 it to private schools. It took people (indiscernible) the
11 Supreme Court, and The Court granted taxpayer standing to
12 those people and granted original jurisdiction to them.

13 And then the two factors were improper conduct of
14 public officials, and misuse of public moneys. And The
15 Court found that when those two factors were present, -- or
16 the presence of those two factors created an issue of great
17 public importance.

18 And that is -- that has been -- The Court has wrestled
19 with this issue of great public importance over the last 15
20 or 20 years. The case I just mentioned, I think is the most
21 recent, and the most comprehensive recent statement of what
22 the standard is.

23 When there's misconduct by public officials, and the
24 use of public moneys, then that creates an issue of great
25 public importance. That's not the only way to do it, but

1 that's one way to do it, and that would apply here because
2 you have \$25,000,000 of public moneys and unconstitutional
3 conduct on the part of the public's officials. That would
4 create issues of great public importance in addition to
5 supporting taxpayer (indiscernible). I'll be happy to
6 address any questions that The Court has.

7 THE COURT: I don't have any at this moment.

8 MR. DAVIS: Your Honor, I just want to say one thing.
9 That taxpayer standing was overruled in the ATC opinions
10 cited in our -- taxpayer standing was overruled in our -- in
11 the ATC opinions cited in our brief. And I'll rely upon my
12 analysis about the public interest exception as being
13 extinguished by the statute that we're sitting in the attempt
14 to (indiscernible) the judicial exception on a statute that
15 says no. Thank you.

16 THE COURT: Any other motions (indiscernible)?

17 MR. DIAMADUROS: Now, I just want to make one comment,
18 Judge.

19 THE COURT: Yes, sir?

20 MR. DIAMADUROS: Mr. Carpenter passed up the Robinson
21 case to The Court. It sites to the Casey case that I
22 mentioned, *Casey versus Richland County*, and I think if you
23 read those two cases in -- together, they -- they come to
24 the conclusion that all of this business about -- you can't
25 tax people that are not -- not hooked up to the sewer

1 system, it's not right.

2 You can not pose an assessment on those people, but as
3 the Casey case says, the benefit of improved sanitary
4 conditions, when they put sewer in this unincorporated area,
5 The Court said well, renewal to the benefit of all citizens
6 of Richland County, including those in the City of Columbia
7 West, Columbia and so forth.

8 MR. WILKINS: Was that making distinction between
9 assessment between assessments and taxes?

10 MR. DIAMADUROS: Yes, sir. That's -- that's -- if you
11 read these two together, you have to come to conclusion.
12 That you can either -- the county can impose a sales tax,
13 but they have to do it county-wide. Or they could impose
14 some type of special tax, not an assessment, but a tax like
15 in this case that applies county-wide.

16 But if it's assessment, there's a distinction between a
17 direct benefit from the sewer system, and the general
18 benefit that all the citizens will benefit from. If it's a
19 ---

20 THE COURT: Can I ask you this, wouldn't -- is the
21 assessment not to be the method that go county-wide as
22 opposed to having a specialty tax district?

23 MR. DIAMADUROS: No. You can't go County wide with
24 assessment.

25 THE COURT: You can not?

1 MR. DIAMADUROS: You can not. No, you can't. But you
2 can go county-wide with a tax, or a sales tax, or a special
3 tax that applies to all property owners. But if you
4 (indiscernible) pay for sewer by the assessment, you have to
5 get the funding from those who are hooked up to that system.
6 The direct benefit, as opposed to the general benefit.

7 THE COURT: Thank you. (Indiscernible)

8 MR. CARPENTER: There are a lot of different ways to
9 pay for sewer systems, but this constitution says,
10 (indiscernible) bonds, and you've got to follow this
11 provision. If your going to pay off the bonds, you can only
12 put the taxes on those who are getting the benefit from it.
13 That's -- that's where we're going with this case.

14 THE COURT: All right. (Indiscernible) ask any of the
15 Oconee County attorneys whether they believe that the
16 response filed -- response to the filing (indiscernible)
17 meet the requirements of rule of 65.

18 MR DAVIS: Absolutely not. And moreover, it's
19 decidedly unsupporting, at least in my view, for
20 Mr. Carpenter to say well, we're relying on the admissions
21 in the answer. That's not what they ever wrote in --
22 anywhere in their paperwork or their motion to say like, oh,
23 well, these facts have been established because of X, Y, Z
24 paragraph.

25 It basically deprives us of our ability to even respond

1 to that and it's not true. And even to this day, I don't
2 know exactly what provisions he's talking about so I could
3 respond to it. The reality is, it's a defective motion.
4 It's dead on arrival.

5 It should be -- and by the book, he shouldn't be able
6 to submit a post facto motion or an affidavit to support his
7 motion. It's specifically disallowed by rule 6(d). It has
8 to be with the motion when filed. It wasn't. It loses. We
9 -- we should go home. Thank you.

10 THE COURT: So let me go over with the Counsel. Is
11 there any other motions here that (indiscernible)?

12 MR. DAVIS: Luckily, no.

13 THE COURT: Okay. So as the threshold question, one of
14 the 11-15-30 barred (indiscernible). And two, whether
15 article 10, section 12 of our constitution prohibits the
16 issuance of bonds (indiscernible) taxable county-wide
17 (indiscernible) county's improvement (indiscernible).

18 The Richland County Casey case say that extends because
19 of that. (Indiscernible) County as a whole, so you are
20 (indiscernible) the constitution. So (indiscernible) this
21 issue (indiscernible) that's the issue I'm looking at, might
22 as well (indiscernible) simplicity. Rule 65 issue.

23 MR. DAVIS: I -- I think that's right. I think that's
24 what's presented by our motion to dismiss, is one, is this
25 dead on arrival? And two, have they stated a claim for

1 relief in the sense that the county could have conferred a
2 county-wide benefit, in any event, that would have not been
3 an infraction.

4 I'm -- I'm not sure that we're asking The Court to
5 decide that, that's an ultimate issue on the merits if the
6 case went forward. But we're saying as they plead it, --
7 it's not correctly plead because that is a possibility that
8 escapes the four corners of their pleading.

9 THE COURT: And in addition, taxpayers (indiscernible)
10 constitutional (indiscernible)?

11 MR. DAVIS: Yes, Your Honor.

12 THE COURT: All right. Do you agree with that,
13 Mr. Carpenter?

14 MR. CARPENTER: I disagree with one part when you were
15 trying to get Casey mixed up with this constitutional
16 provision because it -- the other case is the one that dealt
17 with this constitutional provision (indiscernible) case.
18 And Casey's a completely different analytical frame work and
19 issues, and I would hope The Court wouldn't ---

20 THE COURT: (Indiscernible) going to go back and read
21 all of this again (indiscernible) so (indiscernible). Is
22 there anything further?

23 MR. DAVIS: No, Your Honor. We appreciate your time.
24 Thank you.

CERTIFICATE OF TRANSCRIBER

I, Kelley Primm, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 17th day of July, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 3, 2024

Kelley Primm

Certified Transcriber

Exhibit D

A

\$25,000,000
OCONEE COUNTY, SOUTH CAROLINA
GENERAL OBLIGATION BONDS
SERIES 2023

CERTIFIED COPY OF ORDINANCE ENACTED SEPTEMBER 5, 2023

I, the undersigned being the duly qualified and acting Clerk to County Council (“County Council”) of Oconee County, South Carolina (“County”), certify that attached as Exhibit A is a copy of the Ordinance authorizing a programmatic series of general obligation bonds, read and enacted by the County Council at meetings duly called and held on July 18, 2023, August 15, 2023, and September 5, 2023, at which a quorum was present and acting throughout, which Ordinance has been compared by me with the original, and that the Ordinance has been duly enacted and has not been modified, amended or repealed and is in full force and effect on and as of the date hereof in the form attached hereto.

[SIGNATURE PAGE FOLLOWS]

ELECTRONICALLY FILED - 2024 Aug 22 12:37 PM - OCONEE - COMMON PLEAS - CASE#2024CP3700202

IN WITNESS WHEREOF, I have set my hand and the official County seal, effective November 2, 2023. (SEAL)

By: Jennifer C. Adams
Name: Jennifer C. Adams

Its: Clerk to County Council

[SIGNATURE PAGE FOR CERTIFIED COPY OF ORDINANCE]

EXHIBIT A

OCONEE COUNTY, SOUTH CAROLINA

ORDINANCE NO. 2023-13

#

AN ORDINANCE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS, IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, IN AN AMOUNT NOT TO EXCEED \$25,000,000 FOR THE PURPOSE OF DESIGNING, ACQUIRING, CONSTRUCTING, INSTALLING, EQUIPPING, OR REHABILITATING VARIOUS CAPITAL PROJECTS, INCLUDING WASTEWATER IMPROVEMENTS AND RELATED EQUIPMENT; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE THE FORM AND DETAILS OF THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND THE DISPOSITION OF THE PROCEEDS OF THE BONDS; PROVIDING FOR BORROWING IN ANTICIPATION OF THE ISSUANCE OF THE BONDS; AND OTHER RELATED MATTERS.

ADOPTED: SEPTEMBER 5, 2023

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AN ORDINANCE

AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS, IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, IN AN AMOUNT NOT TO EXCEED \$25,000,000 FOR THE PURPOSE OF DESIGNING, ACQUIRING, CONSTRUCTING, INSTALLING, EQUIPPING, OR REHABILITATING VARIOUS CAPITAL PROJECTS, INCLUDING WASTEWATER IMPROVEMENTS AND RELATED EQUIPMENT; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE THE FORM AND DETAILS OF THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND THE DISPOSITION OF THE PROCEEDS OF THE BONDS; PROVIDING FOR BORROWING IN ANTICIPATION OF THE ISSUANCE OF THE BONDS; AND OTHER RELATED MATTERS.

THE OCONEE COUNTY, SOUTH CAROLINA, COUNTY COUNCIL ORDAINS:

SECTION 1. *Findings.* The County Council ("Council") of the Oconee County, South Carolina ("County"), finds and determines:

(a) Article X, Sections 12 and 14 of the Constitution of the State of South Carolina, 1895, as amended ("Constitution"), provides that each county may incur general obligation bonded indebtedness upon such terms and conditions as the General Assembly may prescribe by general law subject to the following limitations: (i) such debt must be incurred only for a purpose which is a public purpose and a corporate purpose for a county, and (ii) unless excepted therefrom, such debt may be issued in an amount not exceeding eight percent of the assessed value of all taxable property of such county ("Bonded Debt Limit").

(b) Pursuant to Title 4, Chapter 15, Code of Laws of South Carolina, 1976, as amended ("County Bond Act"), the county council of any county of the State may issue general obligation bonds for any corporate purpose of such county for any amount not exceeding the Available Debt Limit (as defined below).

(c) The County Bond Act provides that as a condition precedent to the issuance of bonds an election be held and result favorably thereto. Chapter 27, Title 11, Code of Laws of South Carolina, 1976, as amended, provides that if an election be prescribed by the provisions of the County Bond Act, but is not required by the provisions of Article X of the Constitution, then in every such instance, no election need be held (notwithstanding the requirement therefor) and the remaining provisions of the County Bond Act shall constitute a full and complete authorization to issue bonds in accordance with such remaining provisions.

(d) The County has determined to design, acquire, construct, install, and equip, various capital projects, as more fully described in Section 20 (collectively, "Projects");

(e) The assessed valuation of all property in the County as of June 30, 2022, for purposes of computation of the Bonded Debt Limit, is not less than \$644,580,960. Eight percent of this assessed valuation is 51,566,477 ("County Bonded Debt Limit"). As of the date of this Ordinance, the County has outstanding no more than \$8,587,000 of general obligation indebtedness subject to the County Bonded Debt Limit. As of the adoption of this Ordinance, the difference between the County Bonded Debt Limit and the principal amount of the outstanding general obligation indebtedness subject to the County Bonded Debt Limit ("Available Debt Limit") is the amount of general obligation indebtedness which the County may incur without a referendum, which is no less than: \$42,979,477.

(f) The Council has found it is in the best interest of the County for the Council to provide for the issuance of one or more general obligation bonds of the County, pursuant to the provisions of the Constitution and laws of the State of South Carolina, in aggregate \$25,000,000, without regard to premium, if any, for the purpose of: (i) funding all or a portion of the Projects, and (ii) paying the costs of issuance related to the Bonds (defined below).

SECTION 2. *Authorization and Details of Bonds and the Projects.* Pursuant to the aforesaid provisions of the Constitution and laws of the State of South Carolina, the County is authorized to issue an amount not to exceed the aggregate of \$25,000,000, without regard to premium, if any, in general obligation bonds of the County to be designated "Oconee County, South Carolina General Obligation Bonds" ("Bonds") for the purposes set forth in Section 1(d). The Bonds also may be issued in one or more series, taxable or tax-exempt, from time to time as may be determined in the manner provided below with such further designation of each series to identify the year in which such bonds are issued.

The Bonds may be issued as fully registered bond; dated the date of their delivery or such other date as may be selected by the County Administrator; may be in denominations of \$5,000 or any integral multiple thereof not exceeding the principal amount of the Bonds maturing in each year, or in such other denomination as the County Administrator may determine; shall be numbered from R-1 upward; shall bear interest, if any, from their date as may be determined by the County Administrator; and shall mature as determined by the County Administrator.

SECTION 3. *Delegation of Certain Details of the Bonds to the County Administrator.* The Council expressly delegates to the County Administrator determinations regarding the Bonds as are necessary or appropriate, including the form of the Bonds (or BANs) and whether to issue bonds as provided by any state or federal economic recovery or "stimulus" laws. The County Administrator is further directed to consult with the County's bond counsel in making any such decisions.

SECTION 4. *Registrar/Paying Agent.* Both the principal installments of and interest on the Bonds shall be payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts. The County Treasurer's Office or a qualified financial institution shall serve as the Registrar/Paying Agent for the Bonds ("Registrar/Paying Agent") and shall fulfill all functions of the Registrar/Paying Agent enumerated herein.

SECTION 5. *Registration and Transfer.* The County shall cause books (herein referred to as the "registry books") to be kept at the offices of the Registrar/Paying Agent, for the registration and transfer of the Bonds. Upon presentation at its office for such purpose, the Registrar/Paying Agent shall register or transfer, or cause to be registered or transferred, on such registry books, the Bonds under such reasonable regulations as the Registrar/Paying Agent may prescribe.

The Bonds shall be transferable only upon the registry books of the County, which shall be kept for such purpose at the principal office of the Registrar/Paying Agent, by the registered owner thereof in person or by his duly authorized attorney upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar/Paying Agent, duly executed by the registered owner or his duly authorized attorney. Upon the transfer of the Bonds, the Registrar/Paying Agent on behalf of the County shall issue in the name of the transferee new fully registered Bonds, of the same aggregate principal amount, interest rate and maturity as the surrendered Bonds. Any Bond surrendered in exchange for a new registered Bond pursuant to this Section shall be canceled by the Registrar/Paying Agent.

The County and the Registrar/Paying Agent may deem or treat the person in whose name the fully registered Bonds shall be registered upon the registry books as the absolute owner of such Bonds, whether such Bonds shall be overdue or not, for the purpose of receiving payment of the principal of and interest on

such Bonds and for all other purposes, and all such payments so made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bonds to the extent of the sum or sums so paid, and neither the County nor the Registrar/Paying Agent shall be affected by any notice to the contrary. In all cases in which the privilege of transferring the Bonds is exercised, the County shall execute, and the Registrar/Paying Agent shall authenticate and deliver the Bonds in accordance with the provisions of this Ordinance. Neither the County nor the Registrar/Paying Agent shall be obliged to make any such transfer of the Bonds during the period beginning on the Record Date (as defined in Section 6 hereof) and ending on an interest payment date.

SECTION 6. *Record Date.* The County establishes a record date ("Record Date") for the payment of interest or for the giving of notice of any proposed redemption of the Bonds, and such Record Date shall be the 15th day of the calendar month next preceding an interest payment date on the Bonds or, in the case of any proposed redemption of the Bonds, such Record Date shall not be more than 15 days prior to the mailing of notice of redemption of the Bonds.

SECTION 7. *Lost, Stolen, Destroyed or Defaced Bonds.* In case the Bonds shall at any time become mutilated in whole or in part, or be lost, stolen or destroyed, or be so defaced as to impair the value thereof to the owner, the County shall execute and the Registrar/Paying Agent shall authenticate and deliver at the principal office of the Registrar/Paying Agent, or send by registered mail to the owner thereof at his request, risk and expense, a new Bond of the same interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Bond, or in lieu of or in substitution for such lost, stolen or destroyed Bond. In any such event the applicant for the issuance of a substitute Bond shall furnish the County and the Registrar/Paying Agent evidence or proof satisfactory to the County and the Registrar/Paying Agent of the loss, destruction, mutilation, defacement or theft of the original Bond, and of the ownership thereof, and also such security and indemnity in such amount as may be required by the laws of the State of South Carolina or such greater amount as may be required by the County and the Registrar/Paying Agent. Any duplicate Bond issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Bond or in substitution for any allegedly lost, stolen, or destroyed Bond shall be entitled to the identical benefits under this Ordinance as was the original Bond in lieu of which such duplicate Bond is issued.

All expenses necessary for the providing of any duplicate Bond shall be borne by the applicant, therefore.

SECTION 8. *Book-Entry Only System.*

(a) Notwithstanding anything to the contrary herein, so long as the Bond is being held under a book-entry system of a securities depository, transfers of beneficial ownership of the Bond will be affected pursuant to rules and procedures established by such securities depository. The County may elect the initial securities depository for the Bond to be The Depository Trust Company ("DTC"), New York, New York. DTC and any successor securities depositories are hereinafter referred to as the "Securities Depository." The Bond shall be registered in the name of Cede & Co., as the initial Securities Depository nominee for the Bond. Cede & Co. and successor Securities Depository nominees are hereinafter referred to as the "Securities Depository Nominee."

(b) As long as a book-entry system is in effect for the Bond, the Securities Depository Nominee will be recognized as the holder of the Bond for the purposes of (i) paying the principal, interest and premium, if any, on such Bond, (ii) if the Bond is to be redeemed in part, selecting the portions of such Bond to be redeemed, (iii) giving any notice permitted or required to be given to bondholders under this ordinance, (iv) registering the transfer of the Bond, and (v) requesting any consent or other action to be taken by the holder of such Bond, and for all other purposes whatsoever, and the County shall not be affected by any notice to

the contrary.

(c) The County shall not have any responsibility or obligation to any participant, any beneficial owner or any other person claiming a beneficial ownership in the Bond which is registered to a Securities Depository Nominee under or through the Securities Depository with respect to any action taken by the Securities Depository as holder of the Bond.

(d) The County shall pay all principal, interest and premium, if any, on the Bond issued under a book-entry system, only to the Securities Depository or the Securities Depository Nominee, as the case may be, for such Bond, and all such payments shall be valid and effectual to fully satisfy and discharge the obligations with respect to the principal of and premium, if any, and interest on such Bond.

(e) In the event that the County determines that it is in the best interest of the County to discontinue the book-entry system of transfer for the Bond, or that the interests of the beneficial owners of the Bond may be adversely affected if the book-entry system is continued, then the County shall notify the Securities Depository of such determination. In such event, the County shall appoint a Registrar/Paying Agent which shall authenticate, register, and deliver physical certificates for the Bond in exchange for the Bond registered in the name of the Securities Depository Nominee.

(f) In the event that the Securities Depository for the Bond discontinues providing its services, the County shall either engage the services of another Securities Depository or arrange with a Registrar/Paying Agent for the delivery of physical certificates in the manner described in (e) above.

(g) In connection with any notice or other communication to be provided to the holder of the Bond by the County or by the Registrar/Paying Agent with respect to any consent or other action to be taken by the holder of the Bond, the County or the Registrar/Paying Agent, as the case may be, shall establish a record date for such consent or other action and give the Securities Depository Nominee notice of such record date not less than 15 days in advance of such record date to the extent possible.

SECTION 9. *Execution of Bonds.* The Bonds shall be executed in the name of the County with the manual or facsimile signature of the County Council Chairman and attested by the manual or facsimile signature of the Clerk to County Council under a facsimile of the seal of the County which shall be impressed, imprinted, or reproduced thereon. The Bonds shall not be valid or become obligatory for any purpose unless there shall have been endorsed thereon a certificate of authentication. The Bonds shall bear a certificate of authentication manually executed by the Registrar/Paying Agent in substantially the form set forth herein.

SECTION 10. *Form of Bonds.* The Bonds shall be in the form as determined by the County Administrator under Section 3.

SECTION 11. *Security for Bonds.* The full faith, credit and taxing power of the County are irrevocably pledged for the payment of the principal and interest of the Bonds as they mature and to create a sinking fund to aid in the retirement and payment thereof. There shall be levied and collected annually upon all taxable property in the County in the County an ad valorem tax, without limitation as to rate or amount, sufficient for such purposes.

SECTION 12. *Exemption from State Taxation.* Both the principal of and interest on the Bonds shall be exempt, in accordance with the provisions of Section 12-2-50 of the Code of Laws of South Carolina, 1976, as amended, from all State, county, municipal, school district and all other taxes or assessments, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate and transfer taxes, but the interest thereon may be includable in certain franchise

fees or taxes.

SECTION 13. *Sale of Bond, Form of Notice of Sale.* The Bonds may be sold at a public or private sale, as authorized by Section 11-27-40(4) of the Code of Laws of South Carolina, 1976, as amended, as the County Administrator may determine, using a Notice of Sale or other similar Notice, as the County Administrator may determine.

SECTION 14. *Deposit and Application of Proceeds.* It is expected that proceeds of the Bonds will be fully drawn at Closing. The proceeds of the Bonds or of BANs (authorized under Section 16 of this Ordinance), when drawn, will be deposited in a bond account fund for the County and shall be expended and made use of as follows:

(a) any accrued interest, if any, shall be applied to the payment of the first installment of interest to become due on the Bonds or BANs; and

(b) the remaining proceeds shall be expended and made use of to defray the cost of issuing the Bonds or BANs, to defray the costs of the Project. Pending the use of such proceeds, the same shall be invested and reinvested in such investments as are permitted under State law. Earnings on such investments shall be applied either to defray Project costs or, if not so required, to pay principal on the Bonds.

SECTION 15. *Defeasance.*

(a) If a series of bonds issued pursuant to this Ordinance shall have been paid and discharged, then the obligations of the Ordinance hereunder, and all other rights granted thereby shall cease and determine with respect to such series of bonds. A series of bonds shall be deemed to have been paid and discharged within the meaning of this Section under any of the following circumstances:

(i) If the Registrar/Paying Agent (or, if the County is the Registrar/Paying Agent, a bank or other institution serving in a fiduciary capacity) ("Escrow Agent") shall hold, at the stated maturities of the bonds, in trust and irrevocably appropriated thereto, moneys for the full payment thereof; or

(ii) If default in the payment of the principal of such series of bonds or the interest thereon shall have occurred, and thereafter tender of payment shall have been made, and the Escrow Agent shall hold, in trust and irrevocably appropriated thereto, sufficient moneys for the payment thereof to the date of the tender of payment; or

(iii) If the County shall have deposited with the Escrow Agent, in an irrevocable trust, either moneys in an amount which shall be sufficient, or direct general obligations of the United States of America, which are not subject to redemption by the issuer prior to the date of maturity thereof, as the case may be, the principal of and interest on which, when due, and without reinvestment thereof, will provide moneys, which, together with the moneys, if any, deposited with the Escrow Agent at the same time, shall be sufficient to pay, when due, the principal, interest, and redemption premium or premiums, if any, due and to become due on such series of bonds and prior to the maturity date or dates of such series of bonds, or, if the County shall elect to redeem such series of bonds prior to their stated maturities, and shall have irrevocably bound and obligated itself to give notice of redemption thereof in the manner provided in the form of the bonds, on and prior to the redemption date or dates of such series of bonds, as the case may be; or

(iv) If there shall have been deposited with the Escrow Agent either moneys in an amount which shall be sufficient, or direct general obligations of the United States of America the principal of and interest on which, when due, will provide moneys which, together with the moneys, if any, deposited

with the Escrow Agent at the same time, shall be sufficient to pay, when due, the principal and interest due and to become due on such series of bonds on the maturity thereof.

(b) In addition to the above requirements of paragraph (a), in order for this Ordinance to be discharged with respect to a series of bonds, all other fees, expenses and charges of the Escrow Agent have been paid in full at that time.

(c) Notwithstanding the satisfaction and discharge of this Ordinance with respect to a series of bonds, the Escrow Agent shall continue to be obligated to hold in trust any moneys or investments then held by the Escrow Agent for the payment of the principal of, premium, if any, and interest on, such series of bonds, to pay to the owners of such series of bonds the funds so held by the Escrow Agent as and when payment becomes due.

(d) Any release under this Section shall be without prejudice to the rights of the Escrow Agent to be paid reasonable compensation for all services rendered under this Ordinance and all reasonable expenses, charges, and other disbursements and those of their respective attorneys, agents, and employees, incurred on and about the performance of the powers and duties under this Ordinance.

(e) Any moneys which at any time shall be deposited with the Escrow Agent by or on behalf of the County for the purpose of paying and discharging any bonds shall be and are assigned, transferred, and set over to the Escrow Agent in trust for the respective holders of such bonds, and the moneys shall be and are irrevocably appropriated to the payment and discharge thereof. If, through lapse of time or otherwise, the holders of such bonds shall no longer be entitled to enforce payment of their obligations, then, in that event, it shall be the duty of the Escrow Agent to transfer the funds to the County.

(f) In the event any bonds are not to be redeemed within the 60 days next succeeding the date the deposit required by Section 15(a)(iii) or (iv) is made, the County shall give the Escrow Agent irrevocable instructions to mail, as soon as practicable by registered or certified mail, a notice to the owners of the bonds at the addresses shown on the registry books that (i) the deposit required by subparagraph (a)(iii) or (a)(iv) of this Section 15 has been made with the Escrow Agent, (ii) the bonds are deemed to have been paid in accordance with this Section and stating the maturity or redemption dates upon which moneys are to be available for the payment of the principal of, and premium, if any, and interest on, the bonds, and (iii) stating whether the County has irrevocably waived any rights to redeem the bonds, or any of them, prior to the maturity or redemption dates set forth in the preceding clause (ii).

(g) The County covenants and agrees that any moneys which it shall deposit with the Escrow Agent shall be deemed to be deposited in accordance with, and subject to, the applicable provisions of this Section, and whenever it shall have elected to redeem bonds, it will irrevocably bind and obligate itself to give notice of redemption thereof, and will further authorize and empower the Escrow Agent to cause notice of redemption to be given in its name and on its behalf.

SECTION 16. *Authority to Issue Bond Anticipation Notes.* If the County Administrator should determine that issuance of BANs pursuant to Chapter 17 of Title 11 of the Code ("BAN Act") rather than the Bonds would be in the best interest of the County, the County Administrator is further requested and authorized to effect the issuance of one or more series of BANs pursuant to the BAN Act. If BANs are issued and if, upon the maturity thereof, the County Administrator should determine that further issuance of BANs rather than the Bonds would be in the best interest of the County, the County Administrator is requested to continue the issuance of BANs until the County Administrator determines to issue the Bonds on the basis as aforesaid, and the Bond is issued.

SECTION 17. *Details of Bond Anticipation Notes.* Subject to changes in terms required for any

particular issue of BANs, the BANs shall be subject to the following particulars:

(a) The BANs shall be dated and bear interest from the date of delivery thereof or, if the BAN is issued on a draw-down basis, from the date of each such advance, payable upon the stated maturity thereof, at the rate negotiated by the County Administrator and shall mature on such date, not to exceed one year from the issue date thereof, as shall be determined by the County Administrator.

(b) The BANs shall be numbered from one upwards for each issue and shall be in the denomination of \$5,000 or any integral multiple thereof requested by the purchaser thereof. The BANs shall be payable, both as to principal and interest, in legal tender upon maturity, at the principal office of a bank designated by the County or, at the option of the County, by the purchaser thereof.

The BANs also may be issued as one or more fully registered "draw-down" style instruments in an aggregate face amount not exceeding the maximum amount permitted hereunder, to a lending institution under terms which permit the balance due under such note or notes to vary according to the actual cash needs of the County, as shall be determined by the County Administrator. In such event, the County may draw upon such note or notes as it needs funds so long as the maximum outstanding balance due under such note or notes does not exceed the aggregate face amount thereof.

(c) The County Administrator is authorized to negotiate or to arrange for a sale of the BANs and to determine the rate of interest to be borne thereby.

(d) The BANs shall be in the form as determined by the County Administrator under Section 3.

(e) The BANs shall be issued in fully registered or bearer certificated form or a book-entry-only form as specified by the County, or at the option of the County, by the purchaser thereof; provided that once issued, the BANs of any particular issue shall not be reissued in any other form and no exchange shall be made from one form to the other.

(f) In the event any BAN is mutilated, lost, stolen or destroyed, the County may execute a new BAN of like date and denomination as that mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated BAN, such mutilated BAN shall first be surrendered to the County, and in the case of any lost, stolen or destroyed BAN, there shall be first furnished to the County evidence of such loss, theft or destruction satisfactory to the County, together with indemnity satisfactory to it; provided that, in the case of a holder which is a bank or insurance company, the agreement of such bank or insurance company to indemnify shall be sufficient. In the event any such BAN shall have matured, instead of issuing a duplicate BAN, the County may pay the same without surrender thereof. The County may charge the holder of such BAN with its reasonable fees and expenses in this connection.

(g) Any BAN issued in fully registered form shall be transferable only upon the books of registry of the County, which shall be kept for that purpose at the office of the County as note registrar (or its duly authorized designee), by the registered owner thereof or by his attorney, duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the County as note registrar, duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any BAN, the County shall issue, subject to the provisions of paragraph (h) below, in the name of the transferee, a new BAN or BANs of the same aggregate principal amount as the unpaid principal amount of the surrendered BAN. Any holder of a BAN in fully registered form requesting any transfer shall pay any tax or other governmental charge required to be paid with respect thereto. As to any BAN in fully registered form, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal and interest of any BAN in fully registered form shall be made only to or upon the order of the registered holder thereof, or his duly

authorized attorney, and the County shall not be affected by any notice to the contrary, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such BAN to the extent of the sum or sums so paid.

(h) BANs issued in fully registered form, upon surrender thereof at the office of the County (or at such office as may be designated by its designee) as note registrar, with a written instrument of transfer satisfactory to the County, duly executed by the holder of the BAN or his duly authorized attorney, may, at the option of the holder of the BAN, and upon payment by such holder of any charges which the County may make as provided in paragraph (i), be exchanged for a principal amount of BANs in fully registered form of any other authorized denomination equal to the unpaid principal amount of surrendered BANs.

(i) In all cases in which the privilege of exchanging or transferring BANs in fully registered form is exercised, the County shall execute and deliver BANs in accordance with the provisions of such Ordinance. All BANs in fully registered form surrendered in any such exchanges or transfers shall forthwith be canceled by the County. There shall be no charge to the holder of such BAN for such exchange or transfer of BANs in fully registered form except that the County may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer.

SECTION 18. *Security for Bond Anticipation Notes.* For the payment of the principal of and interest on the BANs as the same shall fall due, so much of the principal proceeds of the Bond when issued shall and is directed to be applied, to the extent necessary, to the payment of the BANs; and, further, the County covenants and agrees to effect the issuance of sufficient BANs or bonds in order that the proceeds thereof will be sufficient to provide for the retirement of any BANs issued pursuant hereto.

SECTION 19. *Tax and Securities Laws Covenants.*

(a) The County covenants that no use of the proceeds of the sale of the Bond or BANs authorized hereunder shall be made which, if such use had been reasonably expected on the date of issue of such Bond or BANs would have caused the Bond or BANs to be "arbitrage bonds," as defined in the Code, and to that end the County shall comply with all applicable regulations of the Treasury Department previously promulgated under Section 103 of the Internal Revenue Code of 1954, as amended, and any regulations promulgated under the Code so long as the Bond or BANs are outstanding.

(b) The County further covenants to take all action necessary, including the payment of any rebate amount, to comply with Section 148(f) of the Code and any regulations promulgated thereunder.

(c) The County covenants to file IRS form 8038, if the Code so requires, at the time and in the place required therefore under the Code.

SECTION 20. *Projects.* The County intends to design, acquire, construct, install, and equip, various capital projects, including wastewater improvements and related equipment, and other related personal property, provided, however, the County may amend the project description by subsequent resolution of the Council, provided the par amount, without regard to premium, if any, of the Bonds does not exceed \$25,000,000.

SECTION 21. *Authorization for County Officials to Execute Documents.* The Council authorizes the County Council Chairman, Clerk to County Council, the County Administrator, and other County Officials to execute and consent to such documents and instruments, including, *e.g.*, purchase-sale agreements, option contracts, lease-purchase agreements, or other similar agreements, as may be necessary to effect the intent of this Ordinance, the issuance of the Bonds, and any documents related to the transfer to, or acquisition from (or both), the Projects.

SECTION 22. *Amendments.* The County Council, at any time and from time to time may enact amending or supplementing ordinances without the consent or concurrence of any registered owner of any Bond so long as the amendment or supplement does not materially and negatively impact any right of any holder of a Bond outstanding at the time of the enactment of the amendment or supplement.

SECTION 23. *Publication of Notice of Adoption of Ordinance.* Pursuant to the provisions of Section 11-27-40 of the Code, the County Administrator, at his option, is authorized to arrange to publish a notice of adoption of this Ordinance.

SECTION 24. *Retention of Bond Counsel and Other Suppliers.* The Council authorizes the County Administrator to retain the law firm of King Kozlarek Law LLC, as its bond counsel in connection with the issuance of the Bonds.

The Council further authorizes the County Administrator to enter such contractual arrangements with printers and the suppliers of other goods and services necessary to the sale, execution, and delivery of the Bond as is necessary and desirable. To the extent feasible, such arrangements shall be made with persons of sound reputation after obtaining two or more bids for such services; however, the County Administrator is authorized to make such arrangements without obtaining bids or quotes where (i) the services to be provided are unique or (ii) it is impractical to obtain bids in order to comply with any time requirements with respect to the issuance and sale of the Bond or (iii) the County has had previous experience with a supplier who has performed reliably and satisfactorily.

SECTION 25. *General Repealer.* All ordinances, rules, regulations, resolutions, and parts thereof, procedural, or otherwise, in conflict herewith or the proceedings authorizing the issuance of the Bond are, to the extent of such conflict, repealed and this Ordinance shall take effect and be in full force from and after its adoption.

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OCONEE COUNTY, SOUTH CAROLINA



Chairman, County Council
Oconee County, South Carolina

(SEAL)

ATTEST:



Clerk to County Council
Oconee County, South Carolina

First Reading:	July 18, 2023
Second Reading:	August 15, 2023
Public Hearings:	July 18, 2023, September 5, 2023
Third Reading:	September 5, 2023

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

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,

Plaintiffs,

v.

Oconee County,

Defendant.

IN THE COURT OF COMMON PLEAS

TENTH JUDICIAL CIRCUIT

C.A. No. 2024-CP-37-00202

**DEFENDANT OCONEE COUNTY'S
 MEMORANDUM IN SUPPORT OF ITS
 MOTIONS FOR ALTERATION AND
 AMENDMENT OF THE COURT'S
 PRIOR ORDERS PURSUANT TO
 RULES 52(b), 59(e), SCRPC & THE
 COURT'S INHERENT
 AUTHORITY**

Defendant Oconee County ("Defendant" or "the County") respectfully submits this memorandum in support of its Motions for Alteration and Amendment of the Court's prior July 29, 2024 Order, along with its superseding Order dated August 12, 2024 (together as, "Order") ("Motion") pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure ("SCRPC"), and the Court's inherent authority to alter, amend, and reconsider its own Orders.

I. INTRODUCTION

For the reasons set forth herein, the entirety of the Court's Order, including its internal logic, legal analysis, conclusions of law, and conclusions of fact (as based on an absence of any evidence, competent or otherwise), cause the Court's Order to suffer from manifest error. As the instant case implicates serious public policy issues, many already determined by the South Carolina General Assembly, the South Carolina Court of Appeals, and the Supreme Court of South Carolina, the Court should revisit its ruling, immediately vacate the same, and enter judgment in favor of the County pursuant to the legal authority and arguments set forth in: the Defendant's Memorandum Opposing Motion for Injunctive Relief, Defendant's Memorandum Supporting its

Motion for Judgment on the Pleadings, Defendant’s oral argument during the July 17, 2024 hearing, and the grounds stated herein. The Court’s Order errs imperiling South Carolina’s bond market, the ability of local government bodies across the state to have meaningful access to critical capital markets, along with the bond proceeds local governments require to deliver vital infrastructure projects to their constituents. With such outsized impacts, the Court’s ruling warrants further review to correct its manifest errors.

II. FACTUAL BACKGROUND

On November 2, 2023, the County issued \$25,000,000 in General Obligation Bonds, Series 2023 (the “2023 Bonds”). The 2023 Bonds were issued 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.” *See* Official Statement for 2023 Bonds.

On March 18, 2024, Plaintiffs filed this action seeking declaratory judgment and injunctive relief. Plaintiffs, who lack any associational standing, taxpayer standing, or any other form of standing, argue that Defendants violated the South Carolina Constitution as the proposed sewer services would only benefit a particular geographical section of Oconee County and, as a result, 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.” (*See* Compl. ¶¶ 16, 25, 29-31.) Specifically, Plaintiffs claim that the County has violated Article X, § 12 of the South Carolina Constitution, which provides:

No law shall be enacted permitting the incurring of bond 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 bond indebtedness or revenue bonds incurred for such purposes shall be imposed upon the area receiving the benefit therefrom.

(Compl. ¶ 18.) According to Plaintiffs, should the County “want to provide sewer services and support such activities with a tax or special assessment, the [C]ounty is required to create a special taxing district ... [and] may thereafter impose a uniform rate of taxation within the special taxing district.” (Compl. ¶ 20.)¹

On April 19, 2024, the County filed its Answer, followed by its Motion for Judgment on the Pleadings on April 24, 2024. Plaintiffs filed a Motion for Temporary, Preliminary, and Permanent Injunction on July 3, 2024, thereafter the Court held a hearing and took the Motions under advisement.

On July 29, 2024, the Court issued a Form 4 Order, which concluded: (i) the County may not use bond revenues for sewer projects that will only benefit the southern part of the county while taxing the entire county; (2) the county must create a special tax district specific to the area that stands to benefit; and (3) the case is not about the “issuance” of bonds which would be barred by S.C. Code Ann. § 11-15-30, but rather concerns the issue of the “use” of bond money for unconstitutional purposes after the issuance of the bond.² (Ex. A, p. 1.) The Court’s Form 4 Order

¹ Plaintiffs’ Complaint copies almost exclusively from a memo supplied to Oconee Joint Regional Sewer Authority – but after doing so – conspicuously omits the passage concluding the statute forecloses judicial review. *Compare* (Compl. ¶¶ 15, 17-21, 25-27, 29, 30) *with* (Ex. E, pp. 1-3); *see also* (Ex. E) (“From a practical point of view, **judicial review of the issuance of the 2023 Bonds is likely unavailable as the statute of limitations expires 20 days after the filing of the record of proceedings of the 2023 Bonds with the County clerk of court...**”) (emphasis added.)

² The County has attached true and accurate copies of the following Exhibits to its Motion, and incorporates said Exhibits to this Memorandum by reference: (1) Exhibit A—07.29.24 Form 4 Order; (2) Exhibit B—08.08.24 Order; (3) Exhibit C—07.17.24 Hearing Transcript; (4) Exhibit D—09.05.23 Oconee County Bond Ordinance (“Bond Ordinance”). Furthermore, the County also attaches the following Exhibits in addition to those incorporated by reference: Exhibit E— Memo supplied to OJRSA; Exhibit F—Oconee County Resolution 2024-18.

also instructed Plaintiffs' counsel to prepare a formal order for the court. (*Id.*) On August 9, 2024, the Court signed Plaintiffs' proposed Order Granting Temporary Injunction. The County's instant Motion followed and was filed on August 22, 2024.

III. LEGAL STANDARD

A party may request the court to amend its findings or the judgment accordingly upon motion within ten days upon receipt of entry of the judgment or order. *See* Rule 52(b), SCRCP ("Upon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly, and the motion may be made with a timely motion for a new trial."); Rule 59(e), SCRCP ("A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.")

"The power of the court to grant an injunction is in equity." *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). "The court will reserve its equitable powers for situations when there is no adequate remedy at law." *Id.* "The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction." *Id.* "The remedy of an injunction is a drastic one and ought to be applied with caution." *Id.* "In deciding whether to grant an injunction, the court must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances of the case." *Id.*

The decision to grant injunctive relief rests within the trial court's sound discretion 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, 520–21 (2000). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *County of*

Richland v. Simpkins, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002). To succeed in its motion for injunctive relief, a party has to establish: they have standing;³ they would suffer irreparable harm without an injunction; they lack an adequate remedy at law, and they will likely succeed on the merits. *Rawlinson Rd. Homeowners Ass'n, Inc. v. Jackson*, 395 S.C. 25, 35, 716 S.E.2d 337, 343 (Ct. App. 2011); *Hawkins v. Hammond*, 437 S.C. 36, 43, 875 S.E.2d 60, 63 (Ct. App. 2022) (“Standing to sue is a fundamental requirement in instituting an action.” (quoting *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999))).

Furthermore, “[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.” *Id.* “Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Id.* “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” *Id.* (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)).

³ As discussed in more detail, standing may only be acquired: (1) through the rubric of “constitutional standing”; (2) under the ‘public importance’ exception; or (3) by statute.” *Freemantle v. Preston*, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012).

IV. LEGAL ANALYSIS

The Court should vacate its Order and enter judgment in the County's favor for the following reasons:

A. MANIFEST ERROR EXISTS WHERE, AS HERE, THE COURT ISSUES AN ORDER WITHOUT SUBJECT MATTER JURISDICTION TO DO SO.

The Court's Order errantly finds Plaintiffs possess standing, when they do not, and does not rule upon several grounds raised by the County in relation to the same, as follows:

1. Mere Status as Taxpayers Does Not Confer Standing Upon Plaintiffs Absent Particularized Injuries, Which They Do Not Allege Because They Cannot.

Plaintiffs have led the Court constitutionally astray by invoking taxpayer standing when *no* such doctrine exists in South Carolina. (*See, e.g.,* Ex. A, p. 1; Ex. B, pp. 13-20.) The South Carolina Supreme Court reconciled standing precedent in its modern formulation for standing analysis in *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 198,, 669 S.E.2d 337, 340-41 (2008).⁴ In its unanimous decision, the Supreme Court held that a litigant may plead and prove standing in one of only three ways: (a) by establishing the particularized harms needed to show constitutional standing; (b) by invoking a statute conferring standing; or (c) by fulfilling the rigorous showing needed to satisfy the public importance exception. *See, e.g., Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40 (2012). Despite Plaintiffs' urgings, no fourth option, so-called "taxpayer standing," exists. While a plaintiff's status as a taxpayer may be a consideration in establishing standing, it does not inherently grant standing without satisfying the threshold

⁴ In addition to the arguments made during the July 17, 2024 hearing and the points set forth herein, the County incorporates by reference the arguments regarding taxpayer standing as set forth in its Memorandum Supporting its Motion for Judgment on the Pleadings dated June 6, 2024 (pp. 6-8), as existing in the Court's record. Of note, the Order omits and Plaintiff SCPIF never explains how it could possess taxpayer standing when, as a non-profit organization, it pays no taxes as noted in FN 3 on page 8 of the County's supporting memorandum.

inquiries required under the rubric of constitutional standing, the public importance exception, or by statute. *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. at 198, 669 S.E.2d at 340–41 (holding that when the injury to a taxpayer is common to all property owners in the county, this commonality defeats the constitutional requirement of a concrete and particularized injury.); *Freemantle*, 398 S.C. at 193, 728 S.E.2d at 44 (rejecting the claim of “taxpayer standing under constitutional standing principles” because the injury as a taxpayer was common to all citizens and taxpayers of the count); *Frothingham v. Mellon*, 262 U.S. 447, 488, 43 S.Ct. 597, 67 L.Ed. 1078 (1923) (holding a taxpayer lacks standing when he “suffers in some indefinite way in common with people generally.”) As a result, Plaintiffs **must** establish standing via the rubric of constitutional standing, the public importance exception, or by statute.⁵

⁵ The cases cited by this Court in its Order support this argument. *See e.g., South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 119, 804 S.E.2d 854, 859 (2017) (finding petitioners were unable to show they suffered a concrete and particularized injury, as required for constitutional standing, that was distinct from other taxpayers and therefore lacked standing (citing *Freemantle v. Preston*, 398 S.C. 186, 193, 728 S.E.2d 40, 44 (2012) (recognizing that a taxpayer's injuries are “common to all citizens and taxpayers ... [which thereby] defeats the constitutional requirement of a concrete and particularized injury”)); *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008) (declining to address SCPIF’s contention that the 2007 Act Nos. 130, 136, 142, 143 and 151 constitute special laws in violation of the South Carolina Constitution because petitioner lacked standing); *Sloan v. Department of Transportation*, 379 S.C. 160, 170-71, 666 S.E.2d 236, 241 (2008) (finding standing based upon the public importance exception because “the expenditure of public funds pursuant to a competitive bidding statute is of immense public importance”); *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007) (finding the matter was of sufficient public interest to confer standing); *Sloan v. Department of Transportation*, 365 S.C. 299, 305, 618 S.E.2d 876, 879 (2005) (finding the issue was of such public importance to confer standing); *Sloan v. Wilkins*, 362 S.C. 430, 437, 608 S.E.2d 579 (2005) (finding standing because the issue was of such public importance as to require its resolution for future guidance); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470, 583 (2004) (finding standing via the “pubic importance” exception.); *Sloan v. Greenville County*, 356 S.C. 531, 548, 590 S.E.2d 338, 347 (Ct. App. 2003) (finding standing because the case was of sufficient public importance to confer standing); *Baird v. Richland County*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999) (holding standing existed to challenge an alleged *ultra vires* act of issuing tax-exempt hospital bonds because the act affected profound public interests).

Without acknowledging the same, Plaintiffs have argued against controlling precedent by distinguishing *ATC* and *Freemantle* in ways unsupported by South Carolina decisional law. (See, e.g., Ex. A, p. 1; Ex. B, pp. 19-20.) Notably absent from the authority cited by Plaintiffs and thereafter errantly relied upon in the Court's Order is a single case allowing "taxpayer standing" after the Supreme Court's issuance of the *ATC* decision (i.e., after November 2008).⁶ In the absence of any authority, Plaintiffs purport to distinguish *ATC* and *Freemantle* in ways unsupported by precedent or logic. (See, Ex. B, pp. 19-20.) By recognizing Plaintiffs have taxpayer standing to assert their claims, *see id.*, when South Carolina decisional law recognizes no such doctrine, Plaintiffs have caused the Court to commit plain error. The Court should alter or amend its Order to remove such findings.

2. The Court Manifestly Erred By Relying Upon Plaintiffs' Faulty Invocation of the Public Importance Exception to Standing.⁷

Plaintiffs' arguments in relation to the public importance exception ("PIE") to standing have similarly infected the Court's Order with manifest error. (See, e.g., Ex. A, p. 1; Ex. B, pp. 6-13.) It is axiomatic: "[f]or a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance." *ATC South*, 380 S.C. at 199. "The key to the public importance analysis is whether a resolution is needed for future guidance." *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008). "It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance."

⁶ The Court's Order contains a notable scrivener's error in this regard citing the *Freemantle* decision as a 2002 opinion, when it was issued in 2012.

⁷ Along with the issues raised herein and its arguments at the July 17, 2024 hearing, the County incorporates herein all arguments set forth between pages 8 and 10 of its Memorandum Supporting its Motion to Dismiss.

Id. (quoting *Baird v. Charleston County*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999) (“[A] court may confer standing upon a party when an issue is of such public importance as to require its resolution for future guidance.”); *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004) (“[U]nder certain circumstances, standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance.”) (citations omitted). In performing the public importance analysis, “[a]n appropriate balance between the competing policy concerns underlying the issue of standing must be realized.” *Sloan*, 357 S.C. at 434, 593 S.E.2d at 472.

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

Id.

The Court’s Order altogether ignores the impact of S.C. Code § 11-15-30 as to the availability of PIE standing, an argument specifically raised by the County at the July 17, 2024 hearing but overlooked by the Court’s ruling. (Ex. B, pp. 6-13.)⁸ The South Carolina General Assembly has already answered the question of whether the public need for court resolution for

⁸ Directly implicating the existence of subject matter jurisdiction, the issue of standing constitutes “a threshold question” the Court must first decide. *See Peoples Fed. Sav. & Loan Ass’n v. Res. Plan. Corp.*, 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004) (“A threshold inquiry for any court is . . . whether the litigation presents an active case or controversy.” (quoting *Lennon v. S.C. Coastal Council*, 330 S.C. 414, 415, 498 S.E.2d 906, 906 (Ct. App. 1998))); *James v. Anne’s Inc.*, 390 S.C. 188, 193, 701 S.E.2d 730, 732 (2010) (stating appellate courts have “the inherent authority to consider justiciability); *Carolina All. for Fair Emp. v. S.C. Dep’t of Labor, Licensing, & Reg.*, 337 S.C. 476, 486-87, 523 S.E.2d 795, 800-01 (Ct. App. 1999) (raising the issue of standing *sua sponte* in a declaratory judgment action and affirming the grant of summary judgment under Rule 56(c) because the appellant lacked standing).

future guidance outweighs the need for finality in the context of bonds after the expiration of twenty days from the date of the filing and indexing of bond transcript records:

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.

S.C. Code § 11-15-30. The General Assembly articulates public policy in South Carolina through the enactment of legislation. *Taghivand v. Rite Aid Corp.*, 411 S.C. 240, 244, 768 S.E.2d 385, 387 (2015) (“The primary source of the declaration of the public policy of the state is the General Assembly; the courts assume this prerogative only in the absence of legislative declaration.”).

Here, the General Assembly has weighed competing public policy considerations and without exception has closed the courthouse doors to bond challenges after the statutory, twenty-day window expires.⁹ Where, as here, a contrary “legislative declaration” exists, this Court must decline such prerogative as to invoke the judicially fashioned public importance exception to standing for purposes of “future guidance.” *Meier v. Burnsed*, 438 S.C. 362, 371, 882 S.E.2d 863, 867 (Ct. App. 2022) (“Once the Legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.” (quoting *S.C. Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 20, 382 S.E.2d 11, 14 (Ct. App. 1989))); *see also* *Town of Leesburg v. Giordano*, 276 Va. 318, 323, 667 S.E.2d 552, 553–54 (2008) (“Our duty ... is ‘to construe the law as it is written,’ and we are also mindful that ‘[t]o depart from the meaning

⁹ *See Hodges*, 341 S.C. at 85, 533 S.E.2d at 581 (“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.”); *id.* (“Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.”); *id.* (“What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.”)).

expressed by the words is to alter the statute, to legislate and not to interpret.” (quoting *Hampton Roads Sanitation Dist. Comm'n v. City of Chesapeake*, 218 Va. 696, 702, 240 S.E.2d 819, 823 (1978)).

No PIE standing exists as a result and, as such, this Court lacks subject matter jurisdiction to hear this action and could not viably issue the Order.¹⁰

3. S.C. Code § 11-15-30 Afforded Standing Legislatively, But Expressly Limited the Same Following the Twenty-Day Period, Which Plaintiffs Missed By Four Months.

As the County argued in its Brief in Opposition to Plaintiffs’ Motion for Preliminary Injunction, *see* County’s Opposition Brief, pp. 10-12, as well as its arguments during the July 17, 2024 hearing,¹¹ the 20-Day Window in S.C. Code § 11-15-30 operates as a Statute of Creation. As such, the time element therein operates as an “indispensable condition of the action.” *Creech v. N.D.T. Indus., Inc.*, 815 F. Supp. 165, 172 (D.S.C. 1993); *Knight Pub. Co. v. University of South Carolina*, 367 S.E.2d 20, 21, 295 S.C. 31, 33 (1988); *Simpson v. Sanders*, 314 S.C. 413, 415, 445 S.E.2d 93, 94 (1994).

“Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs.” *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). “One purpose

¹⁰ Such defect obviously forecloses Plaintiffs’ ability to demonstrate a likelihood of success on the merits. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 508 (Ct. App. 2009) (holding to grant a preliminary injunction, the plaintiff must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law.)

¹¹ The County incorporates herein all arguments made in its Memorandum Opposing Plaintiffs’ Motion for Preliminary Injunction as set forth in pp. 10-12, as existing in the Court’s record, in relation to why S.C. Code § 11-15-30 causes Plaintiffs’ Motion for Preliminary Injunction to fail in satisfying the likelihood of success on the merits prong of their *prima facie* showing to obtain temporary injunctive relief under Rule 65, SCRPC.

of a statute of limitations is ‘to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.’” *Id.* (quoting *McKinney v. CSX Transp., Inc.*, 298 S.C. 47, 49–50, 378 S.E.2d 69, 70 (Ct. App. 1989)). “Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation.” *Id.* “The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation.” *Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175, 609 S.E.2d 548, 552 (Ct. App. 2005). “[S]hort statutes of limitation, applicable to actions which question the proceedings upon the issuance of municipal and other bonds have been of force in this State for many years.” *Morgan v. Feagin*, 230 S.C. 315, 317, 95 S.E.2d 621, 622 (1956). “The practical necessity of them is obvious. Purchasers of bonds could hardly be found if the bonds were subject in their hands to attack for alleged illegality in the proceedings upon the issuance of them.” *Id.* “Furthermore, it is within common knowledge that sales of bonds are frequently timed to take advantage of a favorable market, which might well be hindered by long delay.” *Id.* In ascertaining the intent of the legislature, it is well-established that “[i]f 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.” *Berry v. McLeod*, 328 S.C. 435, 443, 492 S.E.2d 794, 798 (Ct. App. 1997) (citing *Morgan*, 230 S.C. at 317, 95 S.E.2d at 622).¹²

¹² See also *S.C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 498, 854 S.E.2d 836, 839 (2021) (dismissing the South Carolina Public Interest Foundation’s suit pursuant to a thirty-day statute of limitations because the statute at issue did not distinguish between procedural and substantive challenges.); *State ex rel. Condon v. City of Columbia*, 339 S.C. 8, 12, 528 S.E.2d 408, 410 (2000) (holding that because the State failed to file its lawsuit within the ninety-day limitations period, it was barred by the statute of limitations, and that statutes of limitation “are designed to promote justice by forcing parties to pursue a case in a timely manner.”); *Hite v. Town of W. Columbia*, 220 S.C. 59, 66, 66 S.E.2d 427, 430 (1951) (holding the ninety-day statute of limitations barred landowners suit because the landowner’s interpretation of the statute was “too

Plaintiffs nowhere plead they have satisfied the indispensable time condition applicable to their action.¹³ Nor can they; Plaintiffs' filing was four months past the statutorily imposed date when the General Assembly shut the doors to the Oconee County Court of Common Pleas to any challenges to the County's bonds. Plaintiffs' arguments that this lawsuit is not about the "issuance of bonds" but rather the "use" is also misplaced, as discussed in more detail below, and is "too technical" a reading of the express language of the legislature and the statute's application is not bound by such a narrow reading. *Hite v. Town of W. Columbia*, 220 S.C. 59, 66, 66 S.E.2d 427, 430 (1951) (holding the ninety-day statute of limitations barred landowners suit because the landowner's interpretation of the statute was "too technical" and the limitations period was not confined to a challenge of the "casting and counting of ballots," but instead to the entire annexation process).¹⁴

technical" and the limitations period was not confined to a challenge of the "casting and counting of ballots," but instead to the entire annexation process).

¹³ Plaintiffs also cannot establish the ripeness of their claims, nor have they from an evidentiary standpoint. To support such findings in its Order, the Court makes factual conclusions unsupported by any record evidence and without any citation. (Ex. B, p. 23.) The Order instead resorts to citing "news accounts" that Plaintiffs did not even submit, assuming they would otherwise be admissible in the first instance. (*Id.*)

¹⁴ Other states with similar short statutes of limitations for contesting the issuance of bonds have interpreted similar statutory language and have rejected this Court's conclusion. *See e.g., Naquin v. Lafayette City-Par. Consol. Gov't*, 2006-2227 (La. 2/22/07), 950 So. 2d 657, 669 (finding that "[t]he intent of the framers of the Constitution to prohibit *any challenge* not raised within the constitutional time limitations is clear and unambiguous" and "once the 30-day period from publication of the [bond] ordinance in the local newspaper expired, no one had 'any cause of action to test the regularity, formality, legality, or effectiveness of the ordinance or resolution, and provisions thereof *for any cause whatever*,' and therefore, "neither this court nor the court of appeal has 'authority to inquire' into any issue not timely raised in the plaintiffs' motion for judgment to the bond ordinance." (emphasis added)); *Harper v. City Council of City of Richmond*, 220 Va. 727, 735-36, 261 S.E.2d 560, 565 (1980) (Finding the thirty-day statute of limitations to contest the issuance of a bond "is applicable and that the defendants waited too long to attack the validity of the bond ordinances."); *Citizens Ass'n for Reasonable Growth of Washington, N.C. v. City of Washington*, 45 N.C. App. 7, 10, 262 S.E.2d 343, 345 (1980) (holding that three claims for relief based on alleged errors in the bond orders as adopted by the city council were barred by the

The Court's Order neglects to issue a ruling on the foregoing analysis and, therefore, manifestly errs for another reason.

B. THE ORDER FAILED TO ADDRESS THE COUNTY'S ARGUMENTS EXPLAINING WHY THIS CASE NECESSARILY RELATES TO THE ISSUANCE OF BONDS.

The Court's Order both expressly and errantly ruled South Carolina Code § 11-15-30 does not limit Plaintiffs' lawsuit because it is not "about the 'issuance of bonds, which would be barred by § 11-15-30, but rather it concerns the 'use' of bond money for unconstitutional purposes after the issuance of the bond." (Ex. A, p. 1, Ex. B, p. 22.) The County respectfully disagrees and submits this analysis is plain error. But, as expressly stated in the formal order prepared by Counsel and entered by the Court, Plaintiffs and Oconee County all agree with one aspect of the Court's ruling: if this case *is* about the "issuance of bonds," then it *is* statutorily "barred" by § 11-15-30. (Ex. B, p. 22.)

By contrast, the County otherwise disagreed (and still disagrees) this case does *not* concern the issuance of bonds.¹⁵ In the County's view, such analysis constitutes plain error. During the

applicable statute of limitation because "[a]ny action or proceeding in any court to set aside a bond order, *or to obtain any other relief*, upon the ground that the order is invalid, must begin within 30 days after the date of publication of the bond order as adopted." (emphasis added)); *id.*, 45 N.C. App. at 12, 262 S.E.2d at 346-47 (finding that the statute is different from other statutes of limitations because "by providing actions 'must be begun' within the prescribed period, 'no right of action . . . shall be asserted' and the 'validity of the referendum' shall not be questioned after the prescribed period, this statute provides *any claim* not prosecuted within 30 days of the date of publication is extinguished.")

¹⁵ The Sections of the Court's Order addressing Section 11-15-30 contain several conclusions for which the Court does not cite any supporting analysis or factual findings. For example, the Court finds: "Plaintiffs' claims do not imperil the rights of a 'bona fide' purchaser for value," *Ex. B*, p. 22; *id.* at *passim*. No evidence supports any such finding. The Court's Order further similarly states: "The Constitution prohibits the expenditure [of] the proceeds of bonds, 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..." (*Id.*; *see also id.* at pp. 4, 5, 21, 23.) No record evidence reflects what capital projects are implicated, let alone what benefits would result from the same.

July 17, 2024 hearing, the County made two arguments demonstrating why this case involved the issuance of bonds despite Plaintiffs' contrary arguments. The Court's Order should have, but did not, address those arguments. They include:

- **First**, the County specifically cited the decision of *S.C. Pub. Interest Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 854 S.E.2d 836 (2021). In the *Calhoun County* case, the South Carolina Supreme Court rejected an almost **identical** argument raised by the South Carolina Public Interest Foundation in an attempt to sidestep a statutorily time-barred claim.¹⁶ During the hearing, the County argued at length as to why the reasoning of the *Calhoun County* case similarly controlled under the facts of this case. Yet, the Court's Order omits any discussion whatsoever as to why it rejected the County's position. If the Court intends to issue injunctive relief impairing the legislative acts of an elected body, then its Order should explain why the Court accepts the Plaintiffs' analysis even though the Supreme Court rejected the same in *Calhoun County*.
- **Second**, the County also argued this lawsuit *necessarily* implicates the bond issuance process/issuance of bonds, not merely the legality of the "use" of bond monies. Under the

Indeed, the County specifically disputes such factual conclusion and contends the entire County is, in fact, benefited by the capital projects in question. Entering such factual findings without any supporting evidence is plain error. The Court's Order similarly fails to explain why S.C. Code § 11-15-30's time limitation does not render Plaintiffs' entire lawsuit moot. (*See, e.g.*, Ex. A, p. 1; Ex. B, p. 23.)

¹⁶ SCPIF argued that the applicable thirty-day statute of limitations period set forth in section 4-10-330(F) only applied to procedural challenges, rather than substantive. The Supreme Court of South Carolina disagreed and determined the statute's plain language did not distinguish between procedural and substantive challenges and the wisdom of the short statute of limitation period was not for the courts to determine, but only the General Assembly. *S.C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 497-99, 854 S.E.2d 836, 838-39 (2021).

instant facts, the issuance of bonds and their subsequent use are inextricably tied together.¹⁷

This is true because the Bond Ordinance authorizes specific uses of the bond proceeds.¹⁸

Of course, Oconee County could not issue the bonds in question without first enacting the Bond Ordinance. And, seeking an adjudication about the unconstitutionality of the “use” of bond proceeds *necessarily* challenges the Ordinance specifically authorizing such challenged use—the keystone of the bond issuance process. Plaintiffs’ lawsuit inescapably challenges the Bond Ordinance. At a minimum, for purposes of correctness, the Court’s Order should explain why it has rejected the County’s legal arguments.¹⁹

C. THE COURT’S ORDER DOES NOT ADDRESS THE COUNTY’S ARGUMENTS CONCERNING THE BENEFITS RECEIVED BY COUNTY CITIZENS.

The Court’s Order repeats the same flawed reasoning afflicting Plaintiffs’ asserted claims. According to Plaintiffs, proposed sewer infrastructure in one part of a county (*e.g., here, southern Oconee County*) cannot confer a benefit, legally or factually speaking, upon a county’s remaining

¹⁷ The Court’s Order seems to suggest the incontestability language set forth in S.C. Code § 11-15-30 only protects bondholders and not the public bodies issuing the bonds in the first instance. (*See, e.g., Ex. B, p. 22.*) This is incorrect. No statutory language supports such a conclusion. As noted during the July 17, 2024 hearing and omitted from the Court’s Order, by limiting the amount of time to challenge bonds, Section 11-15-30 affords local governing bodies with needed certainty about the timeline upon which bond proceeds will become available and no longer subject to contest in relation to the delivery of critical capital projects required by the citizenry. *See Morgan*, 230 S.C. at 317, 95 S.E.2d at 622 (holding that short statutes of limitation are necessary because “purchasers of bonds could hardly be found if the bonds were subject in their hands to attack for alleged illegality in the proceedings upon the issuance of them.”) Also, the cited statutory provision applies generally to the issuance of public bonds and not specifically to certain types of bonds.

¹⁸ *See, e.g., Ex. D.*

¹⁹ Such legal defects foreclose Plaintiffs’ ability to prevail on the likelihood of success on the merits prong of their *prima facie* showing.

citizens. (*Compare* Compl., ¶¶ 22-23 with Ex. A, p. 1 with Ex. B, p. 21.)²⁰ Despite Plaintiffs’ assertions and the Court’s acceptance of the same, the expressions of legislative intent by Oconee County Council when issuing the 2023 Bonds, along with South Carolina decisional law, teaches otherwise.²¹ *See 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.”)²²

²⁰ The County reiterates the lack of competent evidence in the Record. No evidence supports the various factual assertions sprinkled throughout the Order, as if Plaintiffs had submitted uncontroverted evidence supporting the same. They presented no competent evidence to support their preliminary injunction motion. Nor did they submit any evidence, competent or otherwise, in compliance with the South Carolina Rules of Civil Procedure. For example, Plaintiffs have not even identified: what the sewer projects are in the southern part of Oconee County, what infrastructure will be built where, and why such infrastructure exclusively benefits only citizens living adjacent thereto. This was, of course, Plaintiffs’ burden (by clear evidence) when seeking one of the most exceptional remedies the Court could issue.

²¹ The County incorporates herein all arguments made in its Memorandum Supporting Its Motion for Judgment on the Pleadings as set forth in pp. 12-13, including FN5 on p. 13, which the Court’s Order misapprehends in its analysis. (*See also* Ex. F.)

²² When determining whether Plaintiffs will likely succeed on the merits of this case, the Court must take into account both the presumptions and evidentiary burdens applicable to Plaintiffs’ *prima facie* case. *See, e.g., Amazon.com, Inc. v. BarnesandNoble.com, Inc.*, 239 F.3d 1343, 1350 (Fed. Cir. 2001); *Sanofi-Synthelabo v. Apotex, Inc.*, 470 F.3d 1368, 1374 (Fed. Cir. 2006). Here, such presumptions and evidentiary burdens sink Plaintiffs’ Motion for Preliminary Injunction for two reasons. First, “[t]he decision of [a] legislative body is presumptively valid and [Plaintiffs shoulder] the burden of proving otherwise.” *Bear Enters.*, 319 S.C. 137, 141, 459 S.E.2d 883, 886 (Ct.App. 1995) (citing *Lenardis v. City of Greenville*, 316 S.C. 471, 471, 450 S.E.2d 597, 597 (Ct. App. 1994)). “If the propriety of the Council’s decision is even ‘fairly debatable,’ [the Court] cannot inject [its] judgment into a review of [the Council’s] decision, but must leave that decision undisturbed.” *Id.* at 140, 459 S.E.2d at 885 (citing *Lenardis*, 316 S.C. at 472, 450 S.E.2d at 598). Second, “[a] legislative act will not be declared unconstitutional unless its repugnance to the constitution is beyond a reasonable doubt.” *Joytime Distributors & Amusement Co. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999).

As discussed in support of the County’s Motion for Judgment on the Pleadings (“JOP Motion”), in the decision of *Casey v. Richland Cnty. Council*, 282 S.C. 387, 390, 320 S.E.2d 443, 444 (1984), the South Carolina Supreme Court reached the exact opposite conclusion.²³ The *Casey* Court found the sewer infrastructure in dispute under the facts of that case, which was only built in a discrete unincorporated section of the county (as Plaintiffs contend here) and where certain citizens already received service elsewhere (as Plaintiffs contend here), conferred a benefit upon **all** of Richland County’s citizens including all of the residents of the City of Columbia who maintained its own sewer system. *Id.* at 390; *see also* County Memo. Supp. JOP Mot., pp. 12-13. The District Court of South Carolina reached a similar result in its analysis in *N. Carolina Elec. Membership Corp. v. White*, 722 F. Supp. 1314, 1337 (D.S.C. 1989). Of note, neither case involved the construction of a sewer system for use by an industrial park to further economic development.

The Court misapprehended *Casey*’s importance and distinguished its holding on immaterial bases by noting *Casey* did not involve the constitutional provision at issue in this case, *see* Ex. B, p. 21, and *Casey* involved the use of tax proceeds to build sewer infrastructure, not funds generated from the sale of bonds. (*Id.*) Yet, neither distinction matters.

²³ As noted above and in its prior arguments, South Carolina law presumes Oconee County Ordinance 2023-13 (*e.g.*, the “Bond Ordinance”) as constitutional. (*See* County Memo. Supp. JOP Mot., p. 13, FN5; *see supra* at FN22.) This highlights a primary pleading deficiency in Plaintiffs’ Complaint (*i.e.*, the presumption is constitutionality and South Carolina precedent demonstrates localized sewer infrastructure *can* (but does not necessarily) deliver benefits to all citizens of a County. (*See also* Ex. F.) The Court’s Order omits any ruling or discussion on this material issue. Such defect similarly forecloses Plaintiffs’ ability to prevail on the likelihood of success prong of their *prima facie* showing.

The County cited *Casey* to demonstrate localized sewer infrastructure can, in fact, confer a countywide benefit on citizens.²⁴ (County Memo. Supp. JOP Mot., p. 12.) The Court's Order nowhere explains why a countywide benefit to citizens in one context altogether ceases to confer a countywide benefit in another. It does not. Thus, when Plaintiffs merely allege sewer infrastructure will be built in one area of a county, without more, they have not alleged a constitutional infraction.²⁵ Nor does the Court's Order explain how it could. At a minimum, the Court should expressly explain such a conclusion for purposes of appellate review.²⁶

D. THE COURT'S ORDER FAILED TO ADDRESS THE DEFICIENCIES IN PLAINTIFFS' SHOWING FOR PRELIMINARY INJUNCTIVE RELIEF.

²⁴ Resolution 2024-18 confirms Oconee County Council's legislative intent that allocation of the 2023 Bonds "[benefits] the County's citizens as a whole" and "[r]esolves 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." (Ex. F at ¶¶ 1, 3.) The Resolution further provides that the Bond Allocations will confer benefits upon County citizens relating 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. (Ex. F at 3.) Based upon Plaintiffs' heavy reliance on the memo to Oconee Joint Regional Sewer in drafting their Complaint, the County would respectfully direct the Court to the memo's conclusion, which concluded that while the authors could find no evidence that the 2023 Bonds were issued in compliance with the State Constitution, "[w]e are [] unaware of any legislative finding that the purpose of the Series 2023 Bond financed sewer improvements is economic development. Should the foregoing conditions exist, our analysis will change." (Ex. E at 3.)

²⁵ Plaintiffs' analysis suffers from a logical fallacy demonstrated as follows: all dogs are animals; Beatty owns a pet that is an animal; therefore, Beatty owns a pet dog. The conclusion does not follow the premises. Plaintiffs repeat the same mistake here: all infractions of Article X, § 12 of the South Carolina Constitution involve specific types of localized infrastructure (*e.g.*, sewage disposal or treatment, fire protection, street lighting, etc.); Plaintiffs complain about localized infrastructure; therefore, Plaintiffs have pled a constitutional infraction of Article X, § 12. They have not. Nor does the Court's Order explain why sewer infrastructure resulting from proceeds under one statute *can* confer a general public benefit to all citizens, while the Bond Statute in question here cannot.

²⁶ Of course, such issues directly relate to the likelihood of success on the merits prong of Plaintiffs' *prima facie* showing for preliminary injunctive relief.

The Court's Order failed to address an array of deficiencies foreclosing the issues of preliminary injunctive relief. They include:

1. Plaintiffs Failed to Support Their Motion for Preliminary Injunction with Adequate Evidence.

As the Court recognized and Plaintiffs concede, prior to the July 17, 2024 hearing, Plaintiffs failed to submit any competent evidence whatsoever supporting their preliminary injunction motion. (Ex. A, p. 1; Ex. B, p. 2.) The resulting list of evidentiary deficits afflicting Plaintiffs' *prima facie* showing appear on pages 5-7 of the County's Brief Opposing Plaintiffs' Motion for Preliminary Injunction, which are incorporated herein by reference from the record. No evidence supporting any of those deficiencies was in the record at the time the County was afforded an opportunity to be heard on Plaintiffs' motion for preliminary injunction. None of these deficiencies are addressed by the Court's Order.

The Court's Order instead manifestly errs by relying upon an affidavit submitted by a single Plaintiff five (5) days after the July 17, 2024 (in the absence of any Motion, good cause showing, or Order) hearing over the County's twice-made standing objections. Specifically, the County objected to any untimely submittal of such evidence in FN7 on page 7 of its Brief Opposing Plaintiffs' Motion for Preliminary Injunction and again at the July 17, 2024 hearing. 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 show good cause as to why the belated affidavit should be considered five days after the hearing, the Court allowed the affidavit and relied upon the same in granting Plaintiffs' Preliminary Injunction Motion. Yet, the Court's Order neglects to address any of the County's Objections. (*See* Ex. A, p. 1; Ex. B, p. 2.)

Rules 6 and 65, SCRCP specifically required Plaintiffs to support their Motion for Preliminary Injunction with either a verified complaint or an affidavit. (*Compare* Rule 6(d), SCRCP *with* Rule 65(f), SCRCP.) Plaintiffs did not verify their Complaint prior to the July 17, 2024 hearing; nor did Plaintiffs attach any supporting affidavit to their Motion for Preliminary Injunction. Rule 6(d), SCRCP.

In turn, in order for Plaintiffs to submit an affidavit to satisfy Rule 65, SCRCP past the time specified by Rule 6(d), SCRCP (*i.e.*, at the time of the motion's filing by way of attachment thereto), Plaintiffs were required, but did not, file a motion for enlargement of time under Rule 6(b)(2), SCRCP showing good cause. Instead of following these rules, Plaintiffs just filed an affidavit five days after the hearing ended without any motion, without affording the County an opportunity to be heard about such submittal, without acknowledging the County's standing objections about such untimely submittal, and with no evidentiary showing supporting good cause to allow the late submittal. The Court's Order nowhere addresses any of these issues, to the County's prejudice.

To make matters worse, the procedural unfolding described above materially prejudiced the County. Prior to and through the hearing on July 17, 2024, the County had no reason to submit any counter evidence into the record to rebut Plaintiffs' evidentiary showing. The reason was simple: Plaintiffs shouldered the evidentiary burden and submitted **no** evidence. Thus, no evidence existed to rebut.

Plaintiffs' *post-hearing* evidentiary submittal was not only procedurally improper, it substantially prejudiced the County for no reason. Indeed, by submitting an affidavit five days after the hearing—in a procedural posture that was starkly improper—and then by virtue of the Court allowing the same without a motion, without leave of Court, without a hearing, without

opportunity for the County to be heard, and without affording the County an opportunity to submit counter evidence or otherwise object for record purposes, the Court proceeded to rely on the affidavit somehow finding the late submittal cured Plaintiffs' prior evidentiary deficiencies, procedural defects, and standing objections notwithstanding. The Court then proceeded to rely upon the affidavit to issue preliminary injunctive relief, without consideration of the County's Due Process rights, in such fashion as to interfere judicially with the County's deliberative processes as a local legislative body and in such manner as runs afoul of the Separation of Powers Doctrine. *See* S.C. CONSTIT., Art. I, § 8. The Court's Order nowhere addresses or justifies any of these issues, all of which culminate in plain error.

2. The Untimely Affidavit in Question Does Not Even Submit Competent Evidence.

Out of all Plaintiffs named, they submitted a single, one-paragraph, untimely affidavit, the Affidavit of Jim Mann. In turn, the Mann Affidavit only states that the allegations set forth in the Complaint are true. However, the allegations in the Complaint fail to satisfy Plaintiffs' *prima facie* showing needed to obtain preliminary injunctive relief.²⁷ They instead simply plead ultimate conclusions and conclusions of law. Nor does the Court's Order issue any findings explaining how it does. Rule 65, SCRCP requires the Court's Order to contain specific factual findings based upon the evidence submitted, as does Rule 52, SCRCP. The Court's Order has none. This is plain error.

²⁷ *See MailSource, LLC v. M.A. Bailey & Assocs.*, 356 S.C. 363, 367–68, 588 S.E.2d 635, 638 (Ct. App. 2003), holding modified by *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010) (“To warrant a temporary injunction, the complaint *must allege facts sufficient to constitute a cause of action for injunction* and the information offered by both sides must demonstrate the injunction to be reasonably necessary to protect the legal rights of the plaintiff pending in the litigation. Generally, to obtain an injunction, *a party must demonstrate irreparable harm, a likelihood of success on the merits, and an inadequate remedy at law.*” (internal citations omitted) (emphasis added.))

3. The Court Order Failed to Satisfy the Required Showing for Preliminary Injunctive Relief.

The Order failed to articulate sufficient findings to support the issuance of preliminary injunctive relief. For the reasons set forth above, the Court's Order erred in determining Plaintiffs established a likelihood of success on the merits of this case. (*See, e.g., supra* Plaintiffs lack standing, S.C. Code § 11-15-30 bars this action, no evidence supports Plaintiffs' preliminary injunction motion, etc.). The Court's Order similarly fails to identify any legally viable, irreparable harm justifying the issuance of preliminary injunctive relief.²⁸ (Ex. B, pp. 25-28.) Without any supporting facts, explanation, or reasoning, the Court simply concludes the County will unlawfully collect taxes "that would be next to impossible to refund..." (*Id.*) Such finding is plainly deficient and fails. Last, Plaintiffs similarly failed to establish an inadequate legal remedy. (Ex. B, p. 27.) Without factual basis or legal authority, the Court summarily concludes no adequate legal remedy exists in Plaintiffs' favor, although this is incorrect. Such finding is inadequate and without basis.

For the foregoing reasons, the Court should alter or amend its ruling by vacating its Order and granting the County's Motion to Dismiss, while denying Plaintiff's Motion for Preliminary Injunction. Alternatively, the Court should alter or amend its Order to address the

²⁸ To obtain a preliminary injunction, Plaintiffs must "demonstrate that irreparable injury is *likely* in the absence of an injunction," not merely *possible*. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 129 S. Ct. 365, 375, 172 L. Ed. 2d 249 (2008) (emphasis in original); *see also* 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948.1, p. 139 (2d ed.1995) (applicant must demonstrate that in the absence of a preliminary injunction, "the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered.") "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 129 S. Ct. at 376

foregoing infirmities and rule upon the omitted arguments made by the Court to perfect the record for appellate consideration.

V. CONCLUSION

For the reasons set forth above, the entirety of the Court's Order, including its internal logic, legal analysis, conclusions of law, and conclusions of fact (as based on an absence of any evidence, competent or otherwise), cause the Court's Order to suffer from manifest error. As a result, the Court should revisit its ruling, immediately vacate the same, and enter judgment in favor of the County pursuant to the legal authority and arguments set forth in: the Defendant's Memorandum Opposing Motion for Injunctive Relief, Defendant's Memorandum Supporting its Motion for Judgment on the Pleadings, Defendant's oral argument during the July 17, 2024 hearing, and the grounds stated herein.

RESPECTFULLY SUBMITTED,

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Attorneys for Oconee County

November 8th, 2024

Greenville, South Carolina

EXHIBIT E

Plaintiffs' Complaint Substantially Copies from OJRSA Memorandum Except in Relation to the Expiration of the Statute of Limitations

Page 3 of OJRSA Memo But Omitted From Plaintiffs' Complaint



From a practical point of view, judicial review of the issuance of the 2023 Bonds is likely unavailable as the statute of limitations expires 20 days after the filing of the record of proceedings of the 2023 Bonds with the County clerk of court, which typically happens coincident with closing. However, confirmation of such recording should be confirmed to ensure the applicable statute of limitations has expired.



Side By Side Comparison of Balance of Plaintiffs' Complaint & OJRSA Memorandum

Paragraphs from Plaintiffs' Complaint	Paragraphs From OJRSA Memorandum
Compl., ¶15 15. On November 2, 2023, the County issued \$25,000,000 General Obligation Bonds, Series 2023 (the "2023 Bonds") 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." See Official Statement for 2023 Bonds, Cover.¹	OJRSA Memo., p. 1 On November 2, 2023, Oconee County, South Carolina (the "County") issued its \$25,000,000 General Obligation Bonds, Series 2023 (the "2023 Bonds") 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." See Official Statement for 2023 Bonds, Cover.¹ Oconee Joint Regional Sewer Authority (the "Authority") has raised questions about the 2023 Bonds and whether the 2023 Bonds were legally issued.

Plaintiffs' Complaint Substantially Copies from OJRSA Memorandum Except in Relation to the Expiration of the Statute of Limitations

Compl., ¶17

17. The South Carolina Constitution Article X, Section 14 provides that counties "shall have the power to incur indebtedness in the following categories and in no others: (a) General obligation debt; and (b) Indebtedness payable only from a revenue-producing project or from a special source as provided in subsection (10) of this section." Section 14(2) further provides that such bonds may only be issued "upon such terms and conditions as the General Assembly shall prescribe by general law within the limitations set forth in this section and Section 12 of this article."

OJRSA Memo., p. 1

Article X, Section 14 of the Constitution of the State of South Carolina 1895, as amended (the "*State Constitution*") provides that counties "shall have the power to incur indebtedness in the following categories and in no others: (a) General obligation debt; and (b) Indebtedness payable only from a revenue-producing project or from a special source as provided in subsection (10) of this section." Section 14(2) further provides that such bonds may only be issued "upon such terms and conditions as the General Assembly shall prescribe by general law within the limitations set forth in this section and Section 12 of this article."

Compl., ¶18

18. Article X, Section 12 of the State Constitution provides:
- 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).

OJRSA Memo., pp.1-2

Article X, Section 12 of the State Constitution provides that:

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.

**Plaintiffs' Complaint Substantially Copies from OJRSA Memorandum Except in
Relation to the Expiration of the Statute of Limitations**

Compl., ¶19 19. This section recognized the counties' enhanced powers and the restriction on the creation of new special purpose districts, all of which arose from the Home Rule amendments to the State Constitution in the 1970's. Following the Home Rule amendments on March 7, 1973, the General Assembly was bound by Article VIII, Section 7, which prohibited laws applicable only to a specific county. The same section empowered the Legislature to enact general laws granting counties "the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided."	OJRSA Memo., p. 2 S.C. Const. art. X, § 12. This section of the State Constitution was enacted in recognition of the significantly enhanced powers of counties on the one hand, and restriction on the creation of new special purpose districts on the other – all of which is necessitated by Home Rule amendments to the State Constitution in the 1970's. Following the effective date of the Home Rule amendments to the State Constitution on March 7, 1973, the South Carolina General Assembly (the "Legislature") was then bound by Article VIII, Section 7 of the State Constitution, which prohibited laws applicable only to a specific county. But the same section also empowered the Legislature to enact general laws granting counties "the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided." To provide
Compl., ¶20 20. Should a county want to provide sewer services and support such activities with a tax or special assessment, the county is required to create a special taxing district under S.C. Code Ann. § 4-9-30(5)(a) may thereafter impose a uniform rate of taxation within the special taxing district. See <i>Ex parte Yeargin</i>, 295 S.C. 521, 523 (1988) (upholding Anderson County's special tax district for sewer service).	OJRSA Memo., p. 2 Should a county have a successful referendum to go into, for instance, the sewer business,² and should it want to support such activities with a tax or special assessment, the county is required to create a special taxing district under Section 4-9-30(5)(a) of the Code of Laws of South Carolina 1976, as amended and may thereafter impose a uniform rate of taxation within the special taxing district. See <i>Ex parte Yeargin</i>, 295 S.C. 521, 523 (1988) (upholding Anderson County's special tax district for sewer service). Article X, § 12 of the State Constitution governs the issuance by

**Plaintiffs' Complaint Substantially Copies from OJRSA Memorandum Except in
Relation to the Expiration of the Statute of Limitations**

Compl., ¶21 21. Section 12 expressly prohibits "bonded indebtedness by any county for sewage disposal . . . 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." <i>Id.</i>	OJRSA Memo. p. 2 Section 12 expressly prohibits "bonded indebtedness by any county for sewage disposal . . . 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."
Compl., ¶25 25. Accordingly, the proposed new sewer services will only benefit a "particular geographical section of the [C]ounty."	OJRSA Memo., p. 3 of the municipalities' existing sewer service compels the conclusion that the 2023 Bonds could only benefit a "particular geographical section of the [C]ounty." We think it is questionable
Compl., ¶26 26. "Article X, § 12 of the Constitution <i>requires</i> the charge be assessed only on those who benefit from the new facilities." <i>Robinson v. Richland Cnty. Council</i>, 293 S.C. 27, 32, (S.C. 1987) (emphasis in original).	OJRSA Memo., p. 3 12 of the State Constitution. The Supreme Court of South Carolina has held that "Article X, § 12 of the [State] Constitution <i>requires</i> the charge be assessed only on those who benefit from the new facilities." <i>Robinson v. Richland Cnty. Council</i>, 293 S.C. 27, 32, (S.C. 1987) (emphasis in original). No case has been heard by the courts where a party has argued that County-wide benefit

Plaintiffs' Complaint Substantially Copies from OJRSA Memorandum Except in Relation to the Expiration of the Statute of Limitations

Compl., ¶27

27. Ordinance 2023-13, enacted September 5, 2023, (the "Bond Ordinance") recites that "[t]he full faith, credit and **taxing power of the County** are irrevocably pledged to the payment of the principal and interest of the [2023 Bonds] as they mature and to create a sinking fund to aid in the retirement and payment thereof. There shall be levied and collected annually upon **all taxable property in the County** . . . an ad valorem tax, without limit as to rate or amount, sufficient for such purposes." Bond Ordinance, § 11 (emphasis added).

OJRSA Memo, p. 3

Ordinance 2023-13, enacted September 5, 2023 by County Council (the "**Bond Ordinance**") recites that "[t]he full faith, credit and taxing power of the County are irrevocably pledged to the payment of the principal and interest of the [2023 Bonds] as they mature and to create a sinking fund to aid in the retirement and payment thereof. There shall be levied and collected annually upon all taxable property in the County in the County [sic] an ad valorem tax, without limit as to rate or amount, sufficient for such purposes." Bond Ordinance, § 11.

Compl., ¶29

29. 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. Rather it must impose and pledge "a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]" in an area of the County that **benefits from the new sewer service and does not encompass the municipal boundaries** of Seneca, Walhalla, and Westminster.

OJRSA Memo., p. 3

In the absence of a legislative finding as to County-wide benefit (which as mentioned above, may be difficult or impossible to establish) the Bond Ordinance cannot both (i) authorize the issuance of the 2023 Bonds for wastewater improvements, and (ii) pledge the full faith, credit, and taxing power of the entire County, without first imposing and pledging "a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]" in an area of the County that does not encompass the municipal boundaries of the members of the Authority.

**Plaintiffs' Complaint Substantially Copies from OJRSA Memorandum Except in
Relation to the Expiration of the Statute of Limitations**

Compl., ¶30	OJRSA Memo., p. 3
30. The County's stated intent to use the 2023 Bond proceeds for wastewater improvements, and pledge the full faith, credit, and taxing power of the entire County, without first imposing and pledging "a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]" in an area of the County that benefits from	compliance with the State Constitution, specifically Article X, Section 12. We are currently unaware of a sewer special taxing district in the County or the imposition of a special assessment, tax, or service charge imposed in an amount sufficient to pay debt service on the 2023 Bonds. We

**CERTIFICATION OF FOIA FULFILLMENT
FOR THE OCONEE JOINT REGIONAL SEWER AUTHORITY**

PURSUANT TO §§ 30-2-50 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED, YOU ARE PROHIBITED FROM KNOWINGLY OBTAINING OR USING INFORMATION OBTAINED FROM THE OCONEE JOINT REGIONAL SEWER AUTHORITY FOR COMMERCIAL SOLICITATION. VIOLATION OF THIS PROHIBITION IS PUNISHABLE BY LAW AS A MISDEMEANOR, RESULTING IN UP TO A YEAR IN PRISON OR A FINE NOT TO EXCEED \$500.

REQUESTOR NAME: Laurie Jerome
DATE OF REQUEST: September 3, 2024
DATE OF RESPONSE: September 4, 2024

I, Christopher Eleazer, the undersigned employee of the OCONEE JOINT REGIONAL SEWER AUTHORITY, certify that I have processed your request for access to public records pursuant to the Freedom of Information Act, as codified at §§ 30-4-10 et seq. of the Code of Laws of South Carolina 1976, as amended, and am making available to you via [☐ U.S. Mail] [☒ E-mail] [☐ In-person] [☐ Other: _____] the requested records contained herein.



Oconee Joint Regional Sewer Authority



Pope Flynn, LLC
1411 Gervais Street, Suite 300
Post Office Box 11509 (29211)
Columbia, SC 29201
MAIN 803.354.4900
FAX 803.354.4899
www.popeflynn.com

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

MEMORANDUM

To: Oconee Joint Regional Sewer Authority

From: Pope Flynn, LLC

Date: February 1, 2024

Re: Status of General Obligation Bonds of Oconee County, South Carolina Issued for Sewer Purposes

I. Background

On November 2, 2023, Oconee County, South Carolina (the “*County*”) issued its \$25,000,000 General Obligation Bonds, Series 2023 (the “*2023 Bonds*”) 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.” See Official Statement for 2023 Bonds, Cover.¹ Oconee Joint Regional Sewer Authority (the “*Authority*”) has raised questions about the 2023 Bonds and whether the 2023 Bonds were legally issued.

II. Analysis

Article X, Section 14 of the Constitution of the State of South Carolina 1895, as amended (the “*State Constitution*”) provides that counties “shall have the power to incur indebtedness in the following categories and in no others: (a) General obligation debt; and (b) Indebtedness payable only from a revenue-producing project or from a special source as provided in subsection (10) of this section.” Section 14(2) further provides that such bonds may only be issued “upon such terms and conditions as the General Assembly shall prescribe by general law within the limitations set forth in this section and Section 12 of this article.”

Article X, Section 12 of the State Constitution provides that:

¹ Available at <https://emma.msrb.org/P21737547-P21334508-P21768579.pdf>

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. This section of the State Constitution was enacted in recognition of the significantly enhanced powers of counties on the one hand, and restriction on the creation of new special purpose districts on the other – all of which is necessitated by Home Rule amendments to the State Constitution in the 1970's. Following the effective date of the Home Rule amendments to the State Constitution on March 7, 1973, the South Carolina General Assembly (the “*Legislature*”) was then bound by Article VIII, Section 7 of the State Constitution, which prohibited laws applicable only to a specific county. But the same section also empowered the Legislature to enact general laws granting counties “the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided.” To provide utility services in the unincorporated area of a county, which counties previously lacked the legal power to provide, counties were required to have a “going into the business” referendum under Article VIII, § 16 of the State Constitution.

Should a county have a successful referendum to go into, for instance, the sewer business,² and should it want to support such activities with a tax or special assessment, the county is required to create a special taxing district under Section 4-9-30(5)(a) of the Code of Laws of South Carolina 1976, as amended and may thereafter impose a uniform rate of taxation within the special taxing district. *See Ex parte Yeargin*, 295 S.C. 521, 523 (1988) (upholding Anderson County’s special tax district for sewer service). Article X, § 12 of the State Constitution governs the issuance by counties of general obligation bonds to finance the utility services specified in Article VIII, § 16, namely “gas, water, sewer, electric, transportation or other public utility systems and plants.” Section 12 expressly prohibits “bonded indebtedness by any county for sewage disposal . . . 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.”

The Joint Authority’s members are the municipalities of Seneca, Walhalla, and Westminster, each of which provides and has the exclusive right to provide sewer service within its municipal limits. Accordingly, the County could not have issued the 2023 Bonds if the proceeds will only benefit a “particular geographical section of the [C]ounty.” Absent a legislative determination by the County Council of the County the “*County Council*”) finding that a county-wide benefit, such as economic development, is the primary purpose of the 2023 Bonds, the fact

² The County had a “going into the sewer business referendum” in 1976, but such authorization did not authorize the expenditure of tax dollars in support of sewer operations. The attempted use of tax dollars in support of the County’s sewer business was invalidated by the Supreme Court in *Cornelius v. Oconee County*, 369 SC 531 (2006). However, upon information and belief, the County held a successful subsequent sewer referendum in 2012, which included express authorization to utilize *ad valorem* tax dollars.

of the municipalities' existing sewer service compels the conclusion that the 2023 Bonds could only benefit a "particular geographical section of the [C]ounty." We think it is questionable whether any sewer project could provide a County-wide benefit for the purposes of Article X, § 12 of the State Constitution. The Supreme Court of South Carolina has held that "Article X, § 12 of the [State] Constitution *requires* the charge be assessed only on those who benefit from the new facilities." *Robinson v. Richland Cnty. Council*, 293 S.C. 27, 32, (S.C. 1987) (emphasis in original). No case has been heard by the courts where a party has argued that County-wide benefit exempted a county from Article X, § 12. We cannot forecast the outcome of such a case.

Ordinance 2023-13, enacted September 5, 2023 by County Council (the "**Bond Ordinance**") recites that "[t]he full faith, credit and taxing power of the County are irrevocably pledged to the payment of the principal and interest of the [2023 Bonds] as they mature and to create a sinking fund to aid in the retirement and payment thereof. There shall be levied and collected annually upon all taxable property in the County in the County [sic] an ad valorem tax, without limit as to rate or amount, sufficient for such purposes." Bond Ordinance, § 11.

In the absence of a legislative finding as to County-wide benefit (which as mentioned above, may be difficult or impossible to establish) the Bond Ordinance cannot both (i) authorize the issuance of the 2023 Bonds for wastewater improvements, and (ii) pledge the full faith, credit, and taxing power of the entire County, without first imposing and pledging "a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]" in an area of the County that does not encompass the municipal boundaries of the members of the Authority.

III. Conclusion

Based on our review of the Bond Ordinance and the official statement used in connection with the sale of the 2023 Bonds, we can find no evidence that the 2023 Bonds were issued in compliance with the State Constitution, specifically Article X, Section 12. We are currently unaware of a sewer special taxing district in the County or the imposition of a special assessment, tax, or service charge imposed in an amount sufficient to pay debt service on the 2023 Bonds. We are also unaware of any legislative finding that the purpose of the Series 2023 Bond financed sewer improvements is economic development. Should the foregoing conditions exist, our analysis will change.

From a practical point of view, judicial review of the issuance of the 2023 Bonds is likely unavailable as the statute of limitations expires 20 days after the filing of the record of proceedings of the 2023 Bonds with the County clerk of court, which typically happens coincident with closing. However, confirmation of such recording should be confirmed to ensure the applicable statute of limitations has expired.

For further information and as a means of developing the public record, the Authority may wish to request an opinion of the Attorney General.

Please let us know if further discussion would be beneficial.

OJRSA
February 1, 2024
Page | 4

* * *

FREEDOM OF INFORMATION ACT REQUEST FORM

The Oconee Joint Regional Sewer Authority, South Carolina (the "OJRSA") has adopted its "Policy Regarding Requests for Public Records Under the Freedom of Information Act" (the "Policy"). Pursuant to the Policy, requests for information made under the Freedom of Information Act, now codified at §§ 30-4-10 et seq. of the Code of Laws of South Carolina, 1976, as amended (the "FOIA") shall be made using this form. This form must be signed and submitted either (1) in person at the offices of the OJRSA, which are located at 623 Return Church Road, Seneca, SC, 29678; (2) by mail to Oconee Joint Regional Sewer Authority, Attn: Executive Director, 623 Return Church Rd., Seneca, SC, 29679; or (3) by electronic mail to info@ojrsa.org. Fees will be charged at the rates listed in the current version of the OJRSA SCHEDULE OF FEES. No faxed requests will be accepted.

NAME: Laurie Jerome DATE OF REQUEST: September 3, 2024
 ADDRESS: 104 South Main Street, Suite 900
 CITY: Greenville STATE: SC ZIP: 29601
 PHONE NUMBER: 864.282.1132 EMAIL: ljerome@maynardnexsen.com
☐ Pick up in person ☐ U.S. First Class Mail ☒ Email link to filesharing website
 DELIVERY PREFERENCE METHOD (check one): ☐ Flash drive to be picked up in person ☐ Flash drive delivered by U.S. Mail

I, the undersigned, agree to pay the charges set by the fee schedule as listed in the OJRSA SCHEDULE OF FEES for the services and copies I have requested. The SCHEDULE OF FEES can be found on the OJRSA website at www.ojrsa.org/resources or in person at the OJRSA.

SIGNATURE: Laurie Jerome

INFORMATION REQUESTED (please be as specific as possible and attach additional pages if needed):

Please provide the memorandum authored by Pope Flynn, LLC, authored on or about February 1, 2024, which was discussed in executive session on March 4, 2024. Any potentially applicable privilege has been waived as to this memorandum as it was discussed in the presence of Angie Melford and has been circulated to members of the community.

Section 30-4-30(b) of FOIA authorizes the OJRSA, as a public body, to charge and collect fees for the actual costs of responding to requests for public information. Under the Policy, the OJRSA has duly adopted the fee schedule set forth below for copies and for staff time in searching for and providing requested information. A deposit is required for requests that are anticipated to exceed twenty-five dollars (\$25.00).

PURSUANT TO § 30-2-50 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED, YOU ARE PROHIBITED FROM KNOWINGLY USING PUBLIC RECORDS OBTAINED FROM THE OCONEE JOINT REGIONAL SEWER AUTHORITY FOR COMMERCIAL SOLICITATION. VIOLATION OF THIS LAW IS PUNISHABLE AS A MISDEMEANOR, RESULTING IN UP TO A YEAR IN PRISON OR A FINE NOT TO EXCEED \$500. MY FILING OF THIS REQUEST CONSTITUTES ACKNOWLEDGMENT OF THIS PROHIBITION.

The OJRSA SCHEDULE OF FEES can be found on the OJRSA website at www.ojrsa.org/resources or in person at the OJRSA.

FOR OJRSA USE ONLY

REQUEST RECEIVED BY: info@ojrsa.org DATE RECEIVED: 9/3/2024 TIME RECEIVED: 1534
 DEPARTMENT SUBJECT TO REQUEST: Administration REQUEST ASSIGNED TO: Cheryl Elcasser
 DATE OF ASSIGNMENT: 9/3/2024 DATE OF COMPLETION: 9/4/2024
 DATE RESPONSE DUE: 10/3/2024 FEE FOR SERVICES: \$ 0
 METHOD OF PAYMENT: N/A

Notes:

Sent by email to address listed above.

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

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,
Plaintiffs,

v.

Oconee County,
Defendants.

IN THE COURT OF COMMON PLEAS

IN THE 10TH CIRCUIT

CASE NO: 2024-CP-37-00 ____

SUMMONS

TO: DEFENDANTS:

You are hereby summoned and required to serve upon the attorney at the address below an
Answer to the attached Complaint within 30 days of the date of service hereof. If you fail to do
so, judgment by default will be entered against you for the relief demanded in the Complaint.

THE CARPENTER LAW FIRM, PC

s/ James G. Carpenter

S.C. Bar No. 1136

819 East North Street

Greenville, SC 29601

(864) 235-1269

jim@carpenterlawfirm.net

Attorney for the Plaintiffs

March 17, 2024

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

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,
Plaintiffs,

v.

Oconee County,
Defendants.

IN THE COURT OF COMMON PLEAS

IN THE 10TH CIRCUIT

CASE NO: 2024-CP-37-00 _____

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

NOW COME the Plaintiffs, by their undersigned attorney, and as a Complaint against the Defendants, would show unto the Court:

1. Plaintiff South Carolina Public Interest Foundation is a not-for-profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including the proper application and enforcement of South Carolina law and Constitution.
2. Plaintiffs 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 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.
3. The Defendant Oconee County ("County") is a political subdivision of the State of South Carolina.

4. This Court has jurisdiction pursuant to the South Carolina Constitution, the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 *et seq.*, and the South Carolina Rules of Civil Procedure.
5. This Court possesses jurisdiction under the following decisions, which address public interest standing and taxpayer standing: *South Carolina Public Interest Foundation v. Wilson*, 437 S.C. 334, 878 S.E.2d 891 (2022); *Adams v. McMaster*, 432 S.C. 225, 851 S.E.2d 703 (2020); *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017); *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), *Sloan v. Friends of the Hunley*, 393 S.C. 152, 711 S.E.2d 895 (2011), *American Petroleum Institute v. S.C. Dept. of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v. Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Richland County*, 333 S.C. 519, 511 S.E.2d 69 (1999), and *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

6. This action raises issues of great public importance, namely the unlawful, unconstitutional actions of public officials and the misuse of taxpayer 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).
7. Plaintiffs 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.
8. Venue is properly placed in Oconee County.
9. The Home Rule Act of 1975 is the source of authority for County Government. Prior to 1975, county government was an arm of the state government at the county level. Each year the state legislature passed a supply bill, which was the county budget.
10. Home Rule played an important role in “eliminat[ing] archaic provisions” of the Constitution by strengthening “proper safeguards for sound State, County, and Local governments. *South Carolina in Hosp. Ass’n of S.C., Inc. v. Cty. of Charleston* 320 S.C. 219, 225, 464 S.E.2d 113, 117 (1995).
11. The “West Committee” held hearings and conferences in the late 1960s to early 1970s seeking to place control of management of county and municipal affairs in the hands of local officials. *Hosp. Ass’n of S.C.*, 320 S.C. at 225, 464 S.E.2d at 117. The Committee unanimously recommended amendments to the Constitution in favor of Home Rule. *Id.*
12. The S.C. Constitution, as amended, provides:

The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided.

Id., Article VIII, Sec. 7

13. Oconee County has implemented two of three phases of sewer projects in the Southern part of the County. Phases one and two were paid for primarily through state and federal grants and appropriations from general County funds.
14. This case addresses wastewater improvements or expansion beyond phase two and the financing for any additional phases through bonds.
15. On November 2, 2023, the County issued \$25,000,000 General Obligation Bonds, Series 2023 (the “2023 Bonds”) 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.” See Official Statement for 2023 Bonds, Cover.¹
16. As set forth below, the Defendants violated the Constitution.
17. The South Carolina Constitution Article X, Section 14 provides that counties “shall have the power to incur indebtedness in the following categories and in no others: (a) General obligation debt; and (b) Indebtedness payable only from a revenue-producing project or from a special source as provided in subsection (10) of this section.” Section 14(2) further provides that such bonds may only be issued “upon such terms and conditions as the General Assembly shall prescribe by general law within the limitations set forth in this section and Section 12 of this article.”
18. Article X, Section 12 of the State Constitution provides:

No law shall be enacted permitting the incurring of bonded indebtedness by any county for sewage disposal or treatment, fire

¹ Available at <https://emma.msrb.org/P21737547-P21334508-P21768579.pdf>

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).

19. This section recognized the counties' enhanced powers and the restriction on the creation of new special purpose districts, all of which arose from the Home Rule amendments to the State Constitution in the 1970's. Following the Home Rule amendments on March 7, 1973, the General Assembly was bound by Article VIII, Section 7, which prohibited laws applicable only to a specific county. The same section empowered the Legislature to enact general laws granting counties "the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided."
20. Should a county want to provide sewer services and support such activities with a tax or special assessment, the county is required to create a special taxing district under S.C. Code Ann. § 4-9-30(5)(a) may thereafter impose a uniform rate of taxation within the special taxing district. *See Ex parte Yeargin*, 295 S.C. 521, 523 (1988) (upholding Anderson County's special tax district for sewer service).
21. Section 12 expressly prohibits "bonded indebtedness by any county for sewage disposal . . . 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." *Id.*

22. The municipalities of Seneca, Walhalla, and Westminster have the exclusive right to provide sewer services within their municipal limits. The citizens of those cities will not benefit from the new sewer services.
23. The rural, mountainous, Northern part of the County is served primarily by private septic tanks, septic fields, and septic systems. The rural, mountainous, Northern part of the County will not benefit from the new sewer services in the Southern part of the County.
24. The upscale neighborhoods around Lake Keowee and Lake Jocassee are served by primarily by privately owned sewer systems. Those neighborhoods will not benefit from the new sewer services in the Southern part of the County.
25. Accordingly, the proposed new sewer services will only benefit a “particular geographical section of the [C]ounty.”
26. “Article X, § 12 of the Constitution *requires* the charge be assessed only on those who benefit from the new facilities.” *Robinson v. Richland Cnty. Council*, 293 S.C. 27, 32, (S.C. 1987) (emphasis in original).
27. Ordinance 2023-13, enacted September 5, 2023, (the “Bond Ordinance”) recites that “[t]he full faith, credit and taxing power of the County are irrevocably pledged to the payment of the principal and interest of the [2023 Bonds] as they mature and to create a sinking fund to aid in the retirement and payment thereof. There shall be levied and collected annually upon all taxable property in the County . . . an ad valorem tax, without limit as to rate or amount, sufficient for such purposes.” Bond Ordinance, § 11 (emphasis added).
28. The County could possibly use the bond proceeds for other lawful purposes that benefit the whole county, but not the planned sewer or wastewater services benefiting only the Southern part of the County.

29. 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. Rather it must impose and pledge “a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]” in an area of the County that benefits from the new sewer service and does not encompass the municipal boundaries of Seneca, Walhalla, and Westminster.
30. The County’s stated intent to use the 2023 Bond proceeds for wastewater improvements, and pledge the full faith, credit, and taxing power of the entire County, without first imposing and pledging “a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]” in an area of the County that benefits from the new sewer service and that does not encompass the municipal boundaries of Seneca, Walhalla, and Westminster, the rural, mountainous Northern part of the County, or the neighborhoods around Lake Keowee and Lake Jocassee served by private sewer systems, violates the State Constitution, Article X, Section 12.
31. The Plaintiffs will be immediately and irreparably impaired by the Defendants’ Constitutional violations.

WHEREFORE, having fully pled, the Plaintiffs pray the Court for the following:

1. That the Court declare that County’s stated intent to use the 2023 Bond proceeds for wastewater improvements, and pledge the full faith, credit, and taxing power of the entire County, without first imposing and pledging “a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]” in an area of the County that benefits from the new sewer service and that does not encompass the municipal boundaries of Seneca, Walhalla, and Westminster, the rural,

mountainous Northern part of the County, or the neighborhoods around Lake Keowee and Lake Jocassee served by private sewer systems, violates the State Constitution, Article X, Section;

2. That the Court grant temporary, preliminary, and permanent restraining orders/injunctive relief against the Defendants' unconstitutional conduct;
3. That the Court grant Plaintiffs their costs and attorneys' fees of this action, pursuant to S.C. Code Ann. § 15-77-300 and Rule 54 SCRPC; and
4. For such other and further relief as the court deems just and proper.

Respectfully submitted,

THE CARPENTER LAW FIRM, PC

s/ James G. Carpenter

S.C. Bar No. 1136

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Greenville, SC 29601

(864) 235-1269

jim@carpenterlawfirm.net

Attorney for the Plaintiffs

March 17, 2024

EXHIBIT F

**STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
RESOLUTION 2024-18**

**A RESOLUTION CONCERNING CERTAIN ALLOCATIONS OF
BOND PROCEEDS FOR CAPITAL PROJECTS**

WHEREAS, following public readings on July 18, 2023, August 15, 2023, and September 5, 2023, along with public hearings on July 18, 2023 and September 5, 2023, Oconee County Council (“Council”) adopted Ordinance No. 2023-13 (“Bond Ordinance”) finding it was in the best interest of the County’s citizens for Council to provide for the issuance of one or more general obligation bonds in the aggregate amount of twenty-five million dollars and no cents (\$25,000,000.00) (“Bond Proceeds”);

WHEREAS, Council adopted the Bond Ordinance to provide funding for various capital projects in Oconee County (“County”), including wastewater improvements and related equipment for a public and corporate purpose conferring benefits upon Oconee County’s citizenry as a whole;

WHEREAS, Council thereafter delivered a full record of the proceedings resulting in the adoption of the Bond Ordinance and issuance of bonds thereunder to the Clerk of Court of Oconee County, South Carolina on November 8, 2023;

WHEREAS, Ordinance No. 2023-13 specifically authorized the County to adopt subsequent resolutions about how bond proceeds shall be allocated for use in relation to the capital projects contemplated by Council. In pertinent part, Section 20 of the Bond Ordinance states, “[T]he County may amend the project description by subsequent resolution of the Council, provided the *par* amount, without regard to premium, if any, of the Bonds does not exceed \$25,000,000.”;

WHEREAS, by adopting this Resolution, Council desires to provide: additional detail, by amendment, for certain of the capital projects for which the Bond Proceeds were and are intended

to be allocated; confirmation that the *par* amount for such capital projects shall not exceed twenty-five million dollars and no cents (\$25,000,000); and such capital projects have been found by Council to confer benefits upon all Oconee County citizens consistent with Council's intent when enacting the Bond Ordinance;

WHEREAS, Council adopts this Resolution in furtherance of its implementation of the Bond Ordinance to secure the intended benefits for the whole of the County's citizenry.

NOW, THEREFORE, Council hereby:

(1) As to Allocations of Certain Bond Proceeds.

Resolves to confirm the allocation of certain of the Bond Proceeds as to specific capital projects benefitting the County's citizens as a whole to include those projects with following project descriptions: (1) Sewer South Phase II (located from the Golden Corner Commerce Park to I-85 (Exit 1); (2) Sewer Infrastructure Expansion at Durham Road (located along I-85 (Exits 2 & 3); (3) Sewer Infrastructure Expansion at Exit 4 (located at Blue Ridge Electric Cooperative Industrial Site); (4) Sewer Infrastructure Expansion at Exit 1 (north) (located at South Carolina Highway 11); (5) Business and Industry Park Site Improvements (located at Golden Corner Commerce Park/Seneca Rail Park) (treated herein as, "Bond Allocations.")

(2) As to Remaining Bond Proceeds After Bond Allocations.

Resolves to confirm that any unallocated amount of Bond Proceeds, not specified above, shall similarly be used for other capital projects within the County for the benefit of its citizenry. In that regard, Council reserves the right to adopt an additional future resolution about such later allocations, to the extent needed, in order to implement the Bond Ordinance and accomplish its intended public benefit in a manner conforming to both the

Bond Ordinance and applicable law. Council further reserves the right to amend the instant Resolution to take into account changes in capital projects or such other needs, as may from time to time arise.

(3) **As to the Reaffirmation of Benefits Accruing to the Whole of the County's Citizens.**

Resolves to reaffirm its prior legislative intent and findings, when in 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. In reaffirming its prior findings in that regard, Council identifies the following bases supporting its decision-making based upon the record and assessment of the County's needs historically:

- (A) The Bond Allocations will confer benefits upon all County citizens in relation to engineering benefits ("Engineering Benefits"), as further discussed in the Declaration of Ryan Page, P.E. ("Page Declaration") and the Declaration of Richard Blackwell ("Blackwell Declaration"), which were considered and accredited by Council. Specifically, Council finds the Bond Allocations will be used for capital projects accruing the following Engineering Benefits:

- **Environmental Benefits.**

The Bond Allocations will result in improved and superior environmental outcomes as a whole in Oconee County thereby benefiting all citizens. The Bond Allocations relate to capital projects that will decrease overall reliance upon septic tanks in Oconee County. (Page Declaration, ¶¶23-27.) A decrease in septic tanks, in turn, decreases ground water and surface water contamination and the attendant risks

thereof. (*Id.*) Such contaminants can contaminate water sources providing drinking water to all Oconee County residents, not just those residing in the southern part of the County. (*Id.* at ¶23.)

The Bond Allocations will further preserve and safeguard the County's natural water resources. (*Id.* at ¶24.) Specifically, septic tanks located in the southern portion of Oconee County, including the Golden Corner area, discharge sewer effluent into Lake Hartwell. (*Id.* at ¶25.) "It is well documented that public sewer infrastructure results in significantly less effluent discharge, thereby reducing groundwater and surface water contamination from sewer storage in septic tanks." (*Id.* at ¶24.)¹

Installing public sewer infrastructure, as contemplated by the Bond Allocations, will reduce the amount of contaminants reaching Lake Hartwell, which benefits all of Oconee County's citizens, who use the lake for recreation, irrigation, and as a source of water. (*Id.* at ¶26.) Accordingly, Council finds that efforts to preserve the County's natural water resources, such as will ensue from the Bond Allocations, continue to make such resources available for use by all County citizens, both directly and by way of redundant water supply sources in the event of the intermittent unavailability of other sources. In this way, Council finds the Bond Allocations benefit all County citizens by preserving the County's natural water resources. (*Id.* at ¶26.)

- **Economies of Scale.**

¹ It should also be noted that the Bond Allocations will allow for the termination of the SC Welcome Center septic tank system, located on S. Highway 11 at the South Carolina / Georgia border.

The Bond Allocations will also result in improved economies of scale for utility recipients countywide.² (Page Declaration, ¶¶20-22; Blackwell Declaration, ¶¶16-17.) Council finds that installation of additional public sewer infrastructure will increase the number of users of existing utilities, including but not limited to public sewer systems, thereby decreasing the costs per user to deliver such services. (*Id.*) Based upon the record before it and experience, Council finds this is particularly true in relation to commercial or industrial utility users that consume more utility services and typically pay higher rates. (Blackwell Declaration at ¶17.)

Council further finds the Bond Allocations are intended and will likely attract commercial or industrial utility users. (Page Declaration at ¶¶14-18, 21; Blackwell Declaration at ¶¶8-16.) The addition of such utility users “spreads the economic burden” across a greater number of users and increases the percentage of industrial users paying a higher rate thereby benefiting residential users in return. (*Id.*) In turn, the increase of fee-paying users decreases the potential risk of default for such utilities when repaying costs associated with building such infrastructure. (Page Declaration at ¶ 22.) As a result, Council finds that the Bond Allocations

² Note also that in addition to the County’s partnership with the State of South Carolina and the South Carolina Department of Parks, Recreation and Tourism to service the Welcome Center (see above), the County intends to serve the Blue Ridge Electric Industrial / Commerce site near Exit 4 of I-85, which would benefit the Cooperative’s approximate 35,000 Oconee members.

will confer a benefit upon all County citizens since it will enhance the economies of scale associated with the delivery of existing utility systems.

- (B) The Bond Allocations will confer benefits upon all County citizens relating to economic benefits (“Economic Benefits”). In addition to being confirmed by serial prior studies by the County, dating back several decades, such Economic Benefits are similarly discussed by the Page and Blackwell Declarations, along with the Declaration of County Administrator Amanda Brock. Specifically, Council finds the Bond Allocations will accrue the following Economic Benefits:

- **Fulfillment of a Long Recognized Need for Funded Capital Projects.**

The County has historically studied what public assets are needed to promote economic growth. All of the Bond Allocations fulfill needs identified by such studies for several decades, as confirmed by the attachments to the Declaration of County Administrator, Amanda Brock (“Brock Declaration”). Without the benefit of the capital projects funded by the Bond Allocations, the County has historically lost a slew of business development opportunities. (See Brock Declaration, ¶¶4-8). Council finds the previous studies undertaken by the County, as reflected by the Brock Declaration and its attachments, further confirm the Bond Allocations will confer significant benefits upon all County citizens.

- **Increased Economic Activity.**

Council finds the Bond Allocations will result in economic growth in Oconee County beneficial to all of its citizens. “[C]apital investment and industry generally follow sewer infrastructure.” (Blackwell Declaration at

¶7; *see also* Page Declaration at ¶21.) As Mr. Blackwell stated: “no product, no project.” (Blackwell Declaration at ¶9.) Council finds that it is vital to Oconee County’s present and future that it has a “product” such that it can land “project[s]” in furtherance of the County’s economic growth and benefit of its citizens. Council notes that the County previously has lost major employers due to the lack of sewer infrastructure. (Blackwell Declaration at ¶¶10-11; *see also* Page Declaration at ¶¶14-15.)

By contrast, Oconee County’s ability to attract major employers through the installation of needed sewer infrastructure will create potential job opportunities for all of the County’s citizens. (Blackwell Declaration at ¶13; Page Declaration at ¶¶16-18.) Prior examples of the County having installed public sewer infrastructure resulting in the attraction of new employers teach that economic growth requires taking those steps needed to have a “product” to present to those industries the County would benefit from attracting. (Blackwell Declaration at ¶13; Page Declaration at ¶16.)

Council finds the Bond Allocations will result in several other economic advantages beneficial to all County citizens. Not only will installation of public sewer infrastructure increase the property values of the owners served by such infrastructure but Council finds it will also increase revenues to the County as a whole thereby increasing Council’s ability to enhance other public services needed by our citizens. (Blackwell Declaration at ¶18; Page Declaration at ¶19.) The Bond Allocations will also allow Oconee County to keep the vibrancy and talent of its young

people by providing them a community they will want to return to or never leave. (Blackwell Declaration at ¶¶20-21.) Economic growth similarly promotes other secondary markets thereby causing further economic benefits. (Blackwell Declaration at ¶19.)

In short, “Economic growth begets economic growth, while economic stagnation begets economic stagnation.” (Blackwell Declaration at ¶19.) As Governor Henry McMaster noted in his 2023 State of the State Address:

Rural South Carolina has everything it needs for beauty and tranquility. But what it needs for good public and economic health is water and sewer. The right water and sewer systems in a county can transform a tax base. That means jobs, good schools, strong families, and a safe and vibrant community.

McMaster, Henry. “State of the State Address 2023.” 25 Jan. 2023. It is for these reasons, Council finds that it is in the best interest of all County citizens for its decisions to promote jobs, good schools, strong families, and a safe and vibrant community, not stagnation. Council finds the Bond Allocations accomplish these goals.

(4) **Compliance With Applicable Law and Court Orders.**

Nothing in this Resolution should be construed to indicate or mean that Oconee County Council will move forward with expending any of the Bond Allocations set forth herein in any manner or fashion that would violate applicable law or order of any court of competent jurisdiction. Rather, the instant Resolution is intended to reaffirm and articulate with particularity how the Bond Allocations shall be used when Council is freely allowed to use them and by reaffirming Council’s prior deliberative legislative process when enacting the

Bond Ordinance. For the reasons stated above, Council again confirms the capital projects referenced in the Bond Ordinance, inclusive of the Bond Allocations, confer significant benefits upon all citizens of Oconee County, South Carolina.

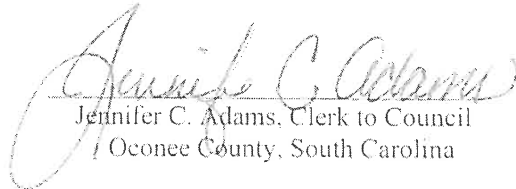
ADOPTED, by a vote of 3 to 2, by the Oconee County Council in a meeting duly assembled this 4th day of November 2024, at which a quorum was present and voting.

OCONEE COUNTY COUNCIL


Matthew Durham, Chairman

IN WITNESS WHEREOF, I Have set my hand and the official County seal, effective November 4th, 2024.

ATTEST:


Jennifer C. Adams, Clerk to Council
Oconee County, South Carolina

(SEAL)

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

DECLARATION OF RICHARD BLACKWELL

I, Richard Blackwell, who first being duly sworn, deposes and states under the penalty of perjury the following:

1. My name is Richard Blackwell.
2. I am over the age of eighteen (18) and am competent to give this testimony.
3. I am currently the Vice President of Development for the Southeast Region at Agrecel, Inc., an industrial real estate development company that primarily focuses on projects in the southeastern United States, and specifically, throughout South Carolina.
4. I have a B.A. in Political Science and an M.A. in Public Administration from the University of South Carolina. I have over twenty (20) years of economic development experience in public service and private industry, with a majority of that time spent focusing on South Carolina.
5. In public service, I served as the President of the South Carolina Economic Developers Association and as the Oconee County Economic Alliance Director from 2012-2018. In 2022, I was appointed by Governor Henry McMaster and confirmed by the South Carolina Senate to serve as the South Carolina "District 3 Representative" on the South Carolina Jobs-Economic Development Authority Board (SC JEDA), which is a post I still hold today.
6. Unless otherwise indicated, I have personal knowledge of the facts and opinions set forth herein through my significant experience in economic development and familiarity with

economic development in South Carolina, and specifically, in Oconee County. The information contained herein is true and correct to the best of my information and belief.

7. Based upon my training and experience, the construction of sewer infrastructure provides benefits to County citizens beyond the immediate geographic area where such infrastructure is actually built.
8. As an initial matter, capital investment and industry generally follows sewer infrastructure. Industry and employers will not move into an area without public sewer infrastructure because traditional septic systems cannot support the business needs of such enterprises relative to volume and treatment.
9. There is a saying in the economic development space, “no product, no project.” That saying illustrates the necessity of having infrastructure installed in an industrial park before companies, industries, multi-family developers, or other businesses will even entertain the idea of moving into an area.
10. For example, the lack of sewer infrastructure was a major factor in Oconee County losing manufacturer Dunlop (Taylor Made) to an industrial park in Pickens County. At the time, Dunlop had been located in Oconee County for nearly forty (40) years and was interested in moving to a larger site to fulfill its land mass needs. However, Oconee County only had raw undeveloped land without infrastructure to offer. As a result, Dunlop chose a site in Pickens County with fully installed sewage infrastructure already available. Again, “no product, no project.”
11. This is just one of many examples that I personally experienced while working in economic development on behalf of Oconee County. Overall, capital investment and industry will choose already developed land with utility infrastructure over undeveloped raw land.

12. In my experience, capital investment and industry moving into discrete areas of Oconee County (*e.g.*, the southern portion of the County) will confer significant benefits upon all County citizens, not just those where the sewer infrastructure is built.
13. This is true because attracting industry and major employers into a given area creates new potential jobs for all of Oconee County's citizens. Employers that are targeted to move into certain locations must employ individuals with diverse backgrounds, experience, and training-meaning they will employ residents from all throughout Oconee County (*i.e.*, up to an hour commute in some cases). While residents in the immediate area will obviously benefit too, citizens throughout the entire county where infrastructure is built will be employed by the companies attracted to locate in Oconee by available public sewer infrastructure.
14. One illustration of the wide-reaching employers attracted to locations with public sewer infrastructure is the RBC Aerospace location in the Oconee County Commerce Center, which I was personally involved in recruiting to the area as the Oconee County Economic Alliance Director. RBC Aerospace was originally located in Rabun County, Georgia but relocated to Oconee County. People who work for RBC Aerospace commute to work from all parts of Oconee County and elsewhere.
15. Similarly, if the planned sewer infrastructure is built in the southern portion of Oconee County, as is contemplated by the County's current plan, other major employers like RBC Aerospace will be attracted to move into Oconee County creating job opportunities for citizens throughout the County and reaping other economic benefits as well. Increasing the amount of available jobs within a commutable distance to all residents of Oconee County, in my opinion and experience, will confer substantial benefits upon all Oconee County citizens. Conversely,

without available public sewer infrastructure, major employers will not seriously consider Oconee County as a site for future operations.

16. Attracting major industry and employers into Oconee County also greatly benefits utility providers in the area. When large utility users like major companies and employers connect and use the utilities in an area, it spreads the burden and costs of such utilities among a greater number of users. Large corporate utility users pay higher rates for the utilities they consume when compared to traditional residential users, which benefits all county residents, including those located within cities, who are also connected to those utility lines.
17. If you extend sewer lines to the interstate and attract new, larger utility users, all users of that utility benefit, especially traditional residential users whose fees decrease (or at least do not increase as rapidly over time) by the addition of such large users. For example, Oconee County Joint Regional Sewer Authority will benefit if sewer infrastructure is installed in the southern portion of Oconee County thereby attracting companies and industry to that region of the County. Rate-paying citizens residing within Oconee County's cities in Oconee County will similarly benefit (*e.g.*, Seneca, Walhalla, and Westminster). This is true because the addition of industries paying higher rates than the residential users in those cities "spreads the economic burden" of providing sewer treatment to all users.
18. For the reasons stated above, the property value of land surrounding newly built sewer infrastructure significantly increases, which likewise provides a benefit to the entire county. Increasing property values not only benefits the landowners of the property but also generates additional revenues for the County. And, those revenues can then be used to enhance further public benefits to all County citizens in terms of improving roads, schools, and other needed public services beneficial to all County citizens.

19. In addition to the benefits flowing from the construction of sewer infrastructure discussed above, there are other benefits that will flow to all residents of Oconee County. As discussed above, sewer infrastructure attracts industry and employers in the form of economic development. Economic development not only brings employers, jobs, and employees into the area, but it also creates secondary markets targeting the additional people the economic development attracts to the area. Restaurants, schools, multi-family and single-family housing, retail stores, and other enterprises follow people and infuse vitality to the community where growth occurs. In this way, economic growth unsurprisingly begets economic growth, while economic stagnation begets economic stagnation.
20. From an economic standpoint, Oconee County not only wants to bring in jobs, but also wants the people who take those jobs to choose to live, go to church, spend their time, buy a home, pay their taxes, and send their kids to schools in Oconee County. The secondary market enterprises that ensue from economic development improve the overall quality of life for all residents in Oconee County. Such growth incentivizes more people, especially young people, to move into the area for jobs, buy homes in the area, and stay in the area for many years to come. But, none of this occurs absent the construction of public sewer infrastructure.
21. Economic growth also incentivizes people who grew up and went to school in Oconee County to pursue their careers in Oconee County, rather than going to other communities perceived as being a “better fit” for young professionals. Talent retention and attraction are critical for Oconee County’s growth and sustainability, which starts by creating a community where our children desire to work, live, and raise families. Creating that environment begins with projects like building sewer infrastructure such as the one contemplated by Oconee County.

22. In short, based upon my experience and training, installation of sewer infrastructure such as that proposed by Oconee County in the southern part of the County reaps benefits for all County citizens, not just those in close proximity to where the infrastructure is built.

I declare, under the penalty of perjury in the State of South Carolina, the foregoing contents of this declaration to be true and correct to the best of my knowledge.

Executed on 11/1/24.


Richard Blackwell

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

DECLARATION OF AMANDA BROCK

I, Amanda Brock, who first being duly sworn, deposes and states under the penalty of perjury the following:

1. My name is Amanda Brock. I am over the age of eighteen (18) and I am competent to give this testimony. Unless indicated otherwise, this declaration is based upon personal knowledge and experience.
2. I have worked for Oconee County ("County") for over twenty-three (23) years and I am currently employed as the Oconee County Administrator. I am familiar with the subject matter of this declaration.
3. In my capacity as County Administrator, as well as my prior positions, I have become familiar with the County's efforts to deliver comprehensive public sewer service throughout Oconee County for the benefit of all its citizenry.
4. In that regard, Oconee County has studied how to deliver comprehensive sewer services throughout the County for more than two decades. During that time period, the lack of sewer infrastructure has cost the County to lose a variety of new economic growth opportunities, while actually causing some industry to leave the County (*e.g.*, Dunlop). As a result, Oconee County has conducted numerous studies and pursued a variety of efforts to secure for its citizens the expansive benefits that would result from comprehensive sewer service.

5. Historically, the County (or in one instance the Oconee Economic Alliance) commissioned the following studies in relation to the delivery of comprehensive sewer service in Oconee County, which reflect and confirm, the capital projects for which bond allocations (treated together as, “Bond Allocations”) exist in the Resolution under consideration by the Council were part of a *comprehensive, integrated* plan: to improve infrastructure throughout the County, to promote economic growth throughout the County, and to confer benefits upon all citizens in the County¹:

- a. In May of 2004, the County had a study completed, which was entitled, “Master Plan Summary Document.”
- b. In August of 2006, the County had a report completed, which was entitled, “Preliminary Engineering Report for Southern Oconee County Regional Sewer Project.”
- c. In February of 2012, the County had a technical memorandum completed, which was entitled, “Sewer Service to Golden Corner Commerce Park and South Oconee County.”
- d. In June of 2015, the Oconee Economic Alliance prepared a study entitled, “I-85 Corridor Sewer Expansion Feasibility Study.”
- e. In January of 2013, the County had a report completed, which was entitled, “Wastewater Improvements to Serve Golden Corner Commerce Park.”
- f. In 2020, the County had a plan completed, which was entitled, “Comprehensive Plan 2020.”

¹ Due to size, I have not attached the various studies but I am glad to make copies available upon request by Council.

6. Key features of all of the studies, reports, and memoranda cited above include: treatment of the capital projects now slated for funding by the Bond Allocations as part of a phased master plan/countywide plan for the benefit of all County citizens; treatment of the Bond Allocations as a necessary ingredient for Countywide economic growth--particularly development by industries--which will ensue once sewer service is available; treatment of the Bond Allocations as necessary to support the County's economic and employment base into the future by way of long-term planning for both development and appropriate infrastructure.
7. Not once has the County, as reflected by these various documents, viewed the Bond Allocations as conferring a discrete and particularized benefit upon only those citizens residing in southern Oconee County; indeed, the exact opposite is true. The Bond Allocations have always been viewed as part of a comprehensive plan regarding what the County needs by way of infrastructure as a whole, now and the future, to benefit all its citizens. The Bond Allocations were always viewed as such because that is exactly what the capital projects are intended to do—*confer significant benefits upon all County citizens*.
8. Based upon the foregoing, along with my personal understanding and experience, the Bond Allocations do, in fact, confer benefits upon all Oconee County citizens. Such benefits include, among others, environmental benefits, economic growth benefits, the ability to retain homegrown talent, the ability to attract new industry and citizens, to promote job growth, to increase the tax base, to improve the County's communities, and to improve the lives of our citizens—as a whole, not as a part. I agree with the Countywide benefits discussed in the declarations of Ryan Page, P.E. and Richard Blackwell and I incorporate them herein by reference as they are consistent with my both experience and understanding.

I declare, under the penalty of perjury in the State of South Carolina, the foregoing contents of this declaration to be true and correct to the best of my knowledge.

Executed on 11.2.2024

A handwritten signature in cursive script, appearing to read "Amanda Brock", written over a horizontal line.

Amanda Brock

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

DECLARATION OF RYAN PAGE

I, Ryan Page, who first being duly sworn, deposes and states under the penalty of perjury the following:

1. My name is Ryan Page, P.E.
2. I am over the age of eighteen (18) and am competent to give this testimony.
3. I am the Civil Department Manager in the Greenville, South Carolina office at Thomas & Hutton, an engineering consulting firm located in the Southeastern United States.
4. I obtained a Bachelor of Science in Civil Engineering from Clemson University in 2007 and have eighteen (18) years of experience in land development and infrastructure design.
5. I have been a licensed professional engineer in the state of South Carolina for thirteen (13) years.
6. I have personal knowledge of the facts and opinions set forth herein through my employment with Thomas & Hutton as well as URS, my involvement in the "Wastewater Improvements to Serve Golden Corner Commerce Park" project, and my other professional work experience and training.
7. The information contained herein is true and correct to the best of my information and belief.
8. The current Oconee County sewer projects ("Sewer Project") are a multi-part, comprehensive plan to install public sewer infrastructure to the southern portion of Oconee County.
9. I was personally involved in presenting an early phase of this plan to the Oconee County Council ("Council") in 2013, which was approved and resulted in the installation of fifteen (15) miles of force main and an 1,800 gpm regional pump station at the Golden Corner

- Commerce Park (GCCP), to serve as the first Phase of a chain of pump stations to serve the southern portion of the County. See "Preliminary Engineering Report" attached as Exhibit A.
10. Council approved this plan due to the downstream benefits that public sewer infrastructure has the potential to provide to the GCCP, the southern part of the county, and Oconee County citizens as a whole.
 11. The current phase of the Sewer Project, installing sewer infrastructure at exits 1, 2, and 4 along I-85, are the final phases of the original plan.
 12. The overall purpose of the Sewer Project was (and is) to install public sewer infrastructure in Oconee County, including the southern portion thereof, to promote economic development, attract industry, and to gain the environmental benefits of such infrastructure.
 13. The Sewer Project may confer benefits upon both commercial and residential sewage needs in the surrounding area. However, in addition to serving the immediate area, public sewer infrastructure may also confer benefits to Oconee County citizens as a whole in multiple ways.
 14. For example, the Sewer Project can assist in attracting economic development to Oconee County. In my experience, access to both sewer and water infrastructure are "conditions precedent" to industry and employers moving into Oconee County.
 15. From my experience working with economic development projects, most major industry and employers will not entertain selecting a prospective site for a project unless there is fully functioning and adequate sewer infrastructure in place, or there is a concise and clear plan to install the sewer within the project's schedule, if not readily available.
 16. For example, Oconee County completed infrastructure improvements at the Oconee Industry and Technology Park (OITP) prospectively in 2013 to attract manufacturers and other select

businesses. Oconee County completed grading, roadway, water and sewer improvements for the park. Today, OITP is nearly fully occupied by manufacturers and other businesses.

17. Promoting economic development in any area of Oconee County has the potential to confer benefits upon all Oconee County citizens. Industry and businesses moving into the area create jobs, which, in addition to the potential benefits of more available jobs for Oconee County citizens, also increases the County's tax base. A tax base increase allows Oconee County to devote more resources to other projects, such as improving roads, schools, and other projects with additional tangible benefits to Oconee County residents. Industrial growth and job creation further benefits the County as it has the potential to spur additional development in the residential and commercial sectors to support the growth.
18. In my opinion and experience, building sewer infrastructure in one geographic area of Oconee County, particularly as part of a comprehensive plan, can result in direct benefits to citizens throughout the County.
19. Installation of public sewer infrastructure can also increase surrounding property values, which can provide a clear financial benefit to landowners served by the public sewer infrastructure.
20. Installing additional public sewer infrastructure also generally creates more users that can connect to treatment infrastructure, such as that proposed with the Sewer Project, which improves economies of scale to the benefit of all users of the sewer infrastructure.
21. For example, extending sewer infrastructure to the southern portion of Oconee County will likely attract larger businesses to locate to the area and connect to the sewer infrastructure, which can create new users on the existing sewer infrastructure in the region. The addition of new connections to the existing sewer infrastructure then increases the overall users paying fees for using such infrastructure.

22. Increasing the number of users paying fees typically decreases per-user fees paid. Additionally, more users create more financial opportunities for the sewer infrastructure to support further financing.
23. Additional sewer infrastructure in Oconee County can also provide significant environmental benefits to other Oconee County residents. Even properly designed and well-maintained septic systems can discharge effluents that contaminate groundwater and flow into surface water sources. As such, those contaminants can pollute the natural water sources used for drinking water for other Oconee County residents, not just those residing in the southern part of the County.
24. Septic system effluents also contaminate surface water sources, such as lakes and streams, which provide irrigation water for plants and livestock. By contrast, it is well documented that public sewer infrastructure results in significantly less effluent discharge, thereby reducing groundwater and surface water contamination resulting from sewer septic systems.
25. Specifically, septic systems located in the southern portion of Oconee County, including the Golden Corner Commerce Park area, discharge sewer effluents into Lake Hartwell. *See, e.g., Preliminary Engineering Report, Page 10.*
26. Installing public sewer infrastructure in that area can reduce the loading of contaminants reaching Lake Hartwell, which benefits the general public that utilizes the lake for recreation, irrigation, and as a source of water. As such, preservation of large natural water sources in the area benefits the general public in the area – not just people who live and work in the southern portion of Oconee County.
27. As a result, it is my professional opinion that construction of sewer infrastructure, as presently proposed by Oconee County (*i.e.*, in the southern portion of the County) can potentially provide

direct benefits to others citizens of Oconee County and not just those citizens who live in southern Oconee County.

I declare, under the penalty of perjury in the State of South Carolina, the foregoing contents of this declaration to be true and correct to the best of my knowledge.

Executed on 11/4/24.

Ryan Page

A handwritten signature in black ink, appearing to be 'Ryan Page', written over a horizontal line.