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S.C. SUPREME COURT

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

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 II

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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 **SUPPLEMENTAL MEMORANDUM OF DEFENDANT OCONEE COUNTY REGARDING *S.C. PUBLIC INTEREST FOUNDATION V. CALHOUN CTY. COUNCIL*, 432 S.C. 492 (2021) AND "EXCEPTIONS" INVOKED BY PLAINTIFFS**

Defendant Oconee County (the "County") respectfully submits this supplemental memorandum in further support of its Motion to Alter or Amend ("Motion") the Court's July 29, 2024 Order and superseding Order dated August 12, 2024 (together as, "Order").

INTRODUCTION

When issuing the Order prompting the County's Motion, the Court erred by failing to consider and not applying the holding of *S.C. Public Interest Foundation v. Calhoun County Council,* 432 S.C. 492, 854 S.E.2d 836 (2021) ("Calhoun Lawsuit" or "Calhoun") to the instant case ("Oconee Lawsuit"). The Court overlooked both the internal analysis of the *Calhoun* decision and omitted ruling upon key arguments made by Oconee County. At Plaintiffs' urging, the Court also read S.C. Code § 11-15-30 in an impermissible fashion so as to engraft an exception to this statute's unambiguous incontestability provision. All of the foregoing constitute manifest error and compel *vacatur* of the Court's Order, while also immediately warranting the dismissal of the instant lawsuit.

LAW/ANALYSIS

The Calhoun Lawsuit and the Oconee Lawsuit prove identical in every *material legal* respect. Yet, contrary to the holding in *Calhoun*, this Court summarily concluded S.C. Code Ann. § 11-15-30 "does not impact this court's power and jurisdiction to address the Constitutional violation." Order p. 22. This is incorrect. In so ruling, the Court devoted only a single page of its 28-page Order to this critical, foundational issue. *Id.* And nowhere in that single page does the Court's Order cite (or even indirectly reference) any authority from the South Carolina Supreme Court (or any court) supporting this profound, fundamental proposition. The Court manifestly erred by disregarding the South Carolina Supreme Court's holding in *Calhoun.*

The Calhoun Lawsuit and the Oconee Lawsuit share a common plaintiff, the South Carolina Public Interest Foundation ("SCPIF"), a serial litigant.[1] The SCPIF, in both actions, sought to halt each county's use of monies. Calhoun County, like Oconee County, secured funding for various local projects in accordance with a state authorized financing mechanism. Calhoun County utilized the one-cent sales tax permitted under the "Capital Project Sales Tax Act," while Oconee County issued bonds pursuant to S.C. Const. Art. X, Sec. 12 (and bond finance legislation enacted thereunder). Calhoun County's tax resolution followed a referendum approving use of the proceeds for fifteen specific projects, either by direct payment of project costs or debt service on bonds. Oconee County's bonds were issued pursuant to an ordinance authorizing use of the bond proceeds to fund various projects ("Bond Ordinance"), such as sewer and wastewater improvements (notably memorialized as conferring countywide benefits pursuant to County

[1] The County previously pointed out but the Court's Order did not address that, as a non-profit, SCPIF does not even pay taxes. Thus, while SCPIF urges the Court to acknowledge "taxpayer standing"—a standing doctrine expressly rejected by the South Carolina Supreme Court—the entity would not even qualify for such standing even if it did exist.

Resolution 2024-18 adopted pursuant to Bond Ordinance, *see, e.g.,* Memo. in Supp., Attach. Ex. F).[2]

SCPIF challenged the *Calhoun* tax and the *Oconee* bonds under the same basic theory, principally, the respective counties' intention to use monies for certain specified projects would violate state law. In *Calhoun*, the SCPIF claimed the Capital Project Sales Tax Act did not authorize use of the tax levy for four of the fifteen projects identified by Calhoun County. 432 S.C. at 494. In *Oconee*, SCPIF and the other plaintiffs similarly claim the South Carolina Constitution does not allow use of general indebtedness bond proceeds to fund certain sewer and wastewater improvements—specifically identified and authorized by Oconee County's Bond Ordinance--unless those projects somehow conferred generalized benefits upon County taxpayers (which they do and are legally so presumed).

The South Carolina General Assembly intentionally established short temporal windows whereupon both the Calhoun County tax and the Oconee County bonds could be challenged. *See* S.C. Code Ann. § 4-10-330(F) (30 days to challenge Calhoun County's tax) and S.C. Code Ann. § 11-15-30 (20 days to challenge Oconee County's bonds). The same public policy underlies both truncated time periods. *Calhoun*, 432 S.C. at 498, 854 S.E.2d at 839 (discussing how tax proceeds could potentially be used to "defray debt service on bonds issued to pay for [the] projects") (quoting *Morgan v. Feagin*, 230 S.C. 315, 317, 95 S.E.2d 621, 622 (1956) (explaining, *inter alia*, that the "practical necessity" of the short window for suit is "obvious" as purchasers "could hardly

[2] To the extent necessary, pursuant to SCRE 201(a) & (d), the County asks the Court to take judicial notice of Oconee County Resolution 2024-18 and the content and legislative findings set forth therein.

be found" if terms were subject to change in subsequent attacks)).[3] Plaintiff SCPIF did not file either suit within the legislatively established timeframe, but instead delayed over four months after each limitations period expired.

The SCPIF contended in *Calhoun,* as it retries here, that the limitations period affixed by the statute to challenge the tax proceeds at issue did not apply to suits against Calhoun County's *use* of the funds ("substantive challenges") but only to suits against the *creation* of the bond or tax funding mechanism ("procedural challenges"). Not so. The *Calhoun* trial and appellate courts held that the limitations period at issue did not contain any language limiting its application to procedural challenges. *Id.* at 497.

As the *Calhoun* Court emphasized, it is "improvident to judicially engraft extra requirements," such as the claimed "procedural" limitation on a statute with clear language. *Id.* at 497, *quoting Grier v. AMISUB of S.C., Inc*., 397 S.C. 532, 540, 725 S.E.2d 693, 698 (2012). Even still, the *Calhoun* Court found SCPIF's attack against Calhoun County's "use of funds" was a

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[3] The Court's Order appears to suggest one (or *the*) primary underlying purpose of the incontestability provision set forth in S.C. Code § 11-15-30 (*i.e., no action* shall commence after 20 days) operates to protect purchasers of such bonds. *See* Order, p. 22. But, this is only one of several purposes underlying Section 11-15-30. The incontestability provision also allows government bodies like Oconee County to benefit from advantageous timing in the marketplace. The provision affords local government bodies the ability to gain assurances about project costs relative to fluctuating market pricing by allowing contemplated projects to move forward—without delays caused by lawsuits such as this one—in a timely enough manner to safeguard against market spikes. In this way, the County can be assured the amount of the bond proceeds sufficiently mirrors actual project costs. Incidentally, this is why the nominal bond imposed upon Plaintiffs likewise constitutes error and expressly contravenes both binding precedent and SCRCP 65. Moreover, the Order finds: "This case does not address the issuance of the bonds." *Id.* Such finding is both circular and manifest error. The Bond Ordinance—an integral step in the issuance of the bonds—specifically identifies and approves the "uses" Plaintiffs now challenge. A challenge to such uses, by definition, challenges the Bond Ordinance and, thus, the issuance of the bonds because no bonds could issue in the absence of the Ordinance, which authorizes the uses therein. The County made all such arguments in its prior submittals and at the hearing. Yet, the Court's Order fails to explain why such reasoning is incorrect.

"direct challenge" to the substance of the referendum and, thus, the statutory limitations period applied. The *Calhoun* Court's decision notably followed other well-established South Carolina precedent, including *Hite v. Town of West Columbia*, 220 S.C. 59, 66 S.E.2d 427 (1951) (an annexation case) and *Morgan v. Feagin,* 230 S.C. 315, 95 S.E.2d 621 (1956) (a lawsuit attacking a county's decision to issue bonds). *Calhoun* held that these cases, applying various limitation periods,[4] do not support deviating from the Legislature's short limitations periods on procedural vs. substantive grounds. *Calhoun*, 432 S.C. at 499, 854 S.E.2d at 839.[5]

Hoping the Court would overlook the holding, Plaintiffs just ignore SCPIF's recent loss in *Calhoun*. Attempting to direct the Court toward error, Plaintiffs simply repeat the already debunked argument that a limitations period somehow does not apply if they claim to be attacking the "substance" or "use" of bond money, and not the procedure through which the bond was issued. *Calhoun* compels a contrary result.

Under *Calhoun*, this Court lacks the authority to engraft a procedural limitation onto the clear language of Section 11-15-30. But, even if it somehow could, under *Calhoun*, challenges to the *use* of bond proceeds constitute direct challenges to the bond itself. *Calhoun*, 432 S.C. at 499, 854 S.E.2d at 839; *see also, e.g., State v. Cty. of Florence*, 406 S.C. 169, 180, 749 S.E.2d 516, 522 (2013) (declining to 'augment the statutory language' to include a requirement that is not contained

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[4] Although sometimes generically referenced as a statute of limitations, the particular temporal limitation in this instance is most correctly referenced as a "statute of creation," since the statutory provision allowing challenges to bonds simultaneously affixes a time period for doing so within the same statutory provision thereby rendering it an integral part of the claim. *E.g.,* 20 days. For this reason and to avoid confusion, the time limitation set forth in S.C. Code § 11-15-30 is simply referenced as a "limitations period."

[5] Underscoring the definiteness of its ruling, *Calhoun* noted that there is just one potential exception to the statute of limitations— not procedural vs. substantive, but rather the occurrence of "deceit or nefarious conduct." *Id*. at 499, n2. Such exception does not apply here, as Plaintiffs have made no such allegations. Nor can they.

in the statute at issue). The Calhoun Lawsuit and the Oconee Lawsuit are identical in every material legal respect. The Court's Order manifestly errs by ignoring *Calhoun* and other well-established South Carolina law rejecting the SCPIF's procedural vs. substantive distinction and requiring dismissal of this action pursuant to Section 11-15-30's incontestability language. The Court's Order similarly misapprehends the damage it risks inflicting on the ability of local government bodies' ability—across the state--to use bond proceeds as a viable financing mechanism to meet critical needs of their constituents.

Last, contrary to their arguments, Plaintiffs' description of the County's issuance of bonds for the purposes expressly enumerated in the Bond Ordinance as "unconstitutional" likewise does not circumvent Section 11-15-30's incontestability provision. If Plaintiffs' argument, in this regard, were somehow true, the "exception" (albeit nowhere appearing in the statute) would nonsensically swallow the *rule* (*i.e.,* the actual language of Section 11-15-30). Constitutional claims are still subject to statutes of limitation/statutes of creation. *See, e.g., United States v. Dickinson*, 331 U.S. 745, 747, 67 S.Ct. 1382 (1947) (applying limitations period to takings claim) (cited by *Webb v. Greenwood Cnty.*, 229 S.C. 267, 279, 92 S.E.2d 688, 693 (1956)); *see also, e.g.,*28 USC § 2244(d)(1) ("A 1-year period of limitation shall apply to an application for writ of habeas corpus by a person in custody pursuant to the judgment of a State court."); 28 USC § 2255(f) ("A 1-year period of limitation shall apply" to a motion to vacate, set aside, or correct a federal sentence by a person in federal custody.).

Here, the South Carolina General Assembly intentionally chose not to include any exceptions in the S.C. Code Ann. § 11-15-30 limitations period. *Compare with, e.g.*, S.C. Code Ann. § 15-48-130(b) (carving out certain circumstances from statute of limitation on arbitration awards). Yet, at Plaintiffs' urging, this Court's ruling impermissibly rewrites Section 11-15-30

finding exceptions nowhere supported by the statute's unambiguous language. Of course, the policy considerations referenced *supra* explain exactly why the Legislature elected against including *any* carve-outs, including a constitutional one. *E.g.,* the exception would swallow the rule, jeopardize the critical ability for local governments to issue bonds, imperil projects with delays skewing project costs, worsen creditworthiness of local governments, and create a risk of litigation to and by bondholders. *See, e.g*., *Calhoun*, 432 S.C. at 498 (citing cases).[6]

Nevertheless, even though the 20-day limitation period bars consideration, in fact no constitutional violation exists here. Oconee County Council has identified how the bond proceeds will be used and, after twice weighing their public impacts, determined such uses confer countywide benefits. *See, e.g.,* Memo. in Supp., Attach. Ex. F. Such legislative findings escape the purview of this Court's review. *See, e.g., Bear Enter. v. Cnty. of Greenville*, 319 S.C. 137, 140, 459 S.E.2d 883, 885 (Ct. App. 1995).

CONCLUSION

For the foregoing reasons, the Court should vacate its Order, reverse its findings, and grant the County's Motion to Dismiss based upon S.C. Code Ann. § 11-15-30 as required by law, fact, reason, and the public policy established by the South Carolina General Assembly.

[6] And this is why South Carolina precedent forbids its Courts from rewriting statutes. It is the province of the legislature alone to debate, weigh, and determine public policy in South Carolina.

RESPECTFULLY SUBMITTED,

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January 24, 2025

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	IN THE 10TH CIRCUIT
	)	
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.	)	CASE NO: 2024-CP-37-00202 **Plaintiffs' Memorandum in Opposition to Defendant's Motion to Alter or Amend**

STATEMENT OF THE CASE

This Court issued a Preliminary Injunction to preserve the *status quo* until trial and to uphold and enforce the following Constitutional provision:

> **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**.

South Carolina Constitution Article X, Section 12. (emphasis added).

Defendant moved the Court to alter or amend the Order issuing the Preliminary Injunction. In support of this motion, **Defendant brings no new arguments**. Rather, the Defendant repeats in a lengthy manner the same arguments the Court properly rejected.

Accordingly, Plaintiffs submit this Memorandum of Law in Opposition to Defendant's Motion.

STATEMENT OF THE FACTS

Defendant does not deny or contradict the basic facts of the case. The verified Complaint established the following facts:

1) Oconee County has implemented two phases of a three-phase sewer project in the Southern part of the County.
2) State and federal grants and appropriations from general county funds paid for phases one and two.
3) This action addresses improvements or expansion of wastewater treatment beyond phase two, funded by County General Obligation bonds, thereby implicating article X, Section 12.
4) 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] (emphasis added)
5) 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).

[1] Available at https://emma.msrb.org/P21737547-P21334508-P21768579.pdf

6) Defendant admits the issuance of bonds, and indeed Defendant provided documentary evidence on the issuance of the bonds.

7) Should a county want to provide sewer services, funded by bonds, the county is required to create a special taxing district under S.C. Code Ann. § 4-9-30(5)(a). Then, 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).

8) Defendant does **not** contend the new sewer will serve the whole county. Defendant does **not** contend the three major cities will use the new sewer; Defendant does **not** contend the upscale neighborhoods around Lake Keowee and Lake Jocassee will use the new sewer; Defendant does **not** contend the rural Northern parts of the county will use the new sewer. Defendant does **not** contend that it created a special tax district to pay for the bonds. Despite multiple opportunities to do so, the Defendant has not contradicted or disputed the basic factual allegations of the Complaint. Instead, the Defendant repeats arguments that the Court thoroughly dealt with and rejected in the Order granting a Preliminary Injunction.

9) The Court will find nothing in the Defendant's Motion to Alter or Amend that raises an issue that the Court has not already considered and decided. Accordingly, the Court should deny Defendant's Motion to Alter or Amend.

LEGAL DISCUSSION

I. 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. This Court properly rejected this argument.

S.C. Code Ann. § 11-15-30 limits civil actions that are commenced on the account of **issuance** of bonds, not the expenditures of bond proceeds.

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

Id., (emphasis added).

The Court properly held that this case is not about the "issuance" of bonds, but rather it concerns the use of **bond proceeds** for unconstitutional purposes **after** the issuance of the bonds. The bonds were sold long ago, and they are circulating in the public marketplace. They are in the stream of commerce, and they are not retrievable. This litigation does not address the issuance of the bonds, the buyers of the bonds, the holders the bonds, the interest on the bonds, or the repayment of the bonds. Those factors were settled long ago. Accordingly, Plaintiffs' claims do not imperil the rights of "a bona fide purchaser for value."

Under the Constitution, article X, Section 12, the bond proceeds cannot be used to create infrastructure for the treatment of sewer or wastewater disposal that benefit only a portion of the County, without a special tax district and a special assessment in that district to pay for the sewer services that benefit that special tax district, which the Defendant did not create.

In summary, the Constitution prohibits the expenditure of the bonds proceeds for sewer and wastewater treatment, when the whole County is obligated to pay for the bonds, but only a

small portion of the County will benefit from the sewer and wastewater treatment. Furthermore, section 11-15-30 does not bar the Plaintiffs' claims or this Court's power to address the Constitutional violation.

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

II. Only a Small Portion of the County Will Benefit from the Proposed Sewer and Wastewater Treatment Facilities in Violation of Article X, Section 12.

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

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

Accordingly, the proposed 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 a small area in the Southern part of the county while taxing the entire County. The County could possibly use the bond proceeds for other lawful purposes that benefit

the entire county, but not for 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, § 12. Instead, the County must assess "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.

Nevertheless, the County contends that the entire County population will benefit from the wastewater treatment facilities, despite the fact that they cover only a small portion of the Southern part of the county. The County presented this argument in the earlier hearing, and in anticipation of this hearing on the Motion to Alter or Amend, the County submits three new statements and a County Council resolution. It appears that the three statements and the resolution were probably drafted by lawyers. Despite the resolution, there is still no budget for spending the bond proceeds, nor has any project scope been provided, other than spending all the bond money on sewer expansion, which is a violation of the SC Constitution.

The County appears to be completely repeating its prior argument that even though it covers only a small portion of the County, the wastewater treatment system benefits the entire County. This argument disregards the decision and analysis of *Robinson v. Richland County Council,* 293 S.C. 27, 32, 358 S.E.2d 392 (S.C. 1987).

The *Robinson* Court specifically rejected the argument of incidental benefit to the surrounding portions of the county.

> Taxpayers' argument that neighboring property owners should be required to pay capital sewer charges **is without merit**.

* * *

> 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 . . . requires** the funding for a sewerage facility which will **benefit only a particular geographical area** come from a **special assessment** on those persons **benefited**.
>
> **Article X, § 12 limits the power** of counties to impose **general taxes** to defray the cost of bonded indebtedness incurred **to build local improvements**.
>
> * * *
>
> Taxes are imposed on all property for the maintenance of government while **assessments are placed only on the property to be benefited**. *Casey v. Richland County Council,* [282 S.C. 387, 320 S.E.2d 443 (1984)] To be an assessment, the improvement must **confer a benefit on property distinguishable from the general benefit** enjoyed by surrounding areas. *Id.*
>
> The charge imposed here is clearly an assessment. **It does not become a tax merely because the general public obtains a health benefit from the elimination of the sewage problem**. *Casey v. Richland County Council, supra.*

Id., 293 S.C. 27, 32-33, 358 S.E.2d 392, 395-96, (emphasis added).

Similarly, in *Casey v. Richland County Council*, the Court ruled,

> We recognize the proposed system **will improve sanitary conditions** in the unincorporated area which would **enhance property values** but **disagree** with Appellant's claim **that this generalized benefit is sufficient to make the surcharge an assessment**. *Wright v. Proffitt,* 261 S.C. 68, 198 S.E.2d 275 (1973), *Mills Mill v. Hawkins,* 232 S.C. 515, 103 S.E.2d 14 (1957). To be an assessment, the improvement must confer a **benefit on property distinguishable from the general benefit enjoyed by surrounding areas**. *Wright, supra.* The benefit of improved sanitary conditions would inure to all.

Id., 282 S.C. 387, 389-90, 320 S.E.2d 443 (1984).

Even so, the County continues to argue in favor of a general taxation to benefit only a small portion of the County. This is unconstitutional and contrary to the ruling of *Robinson v. Richland Cnty. Council* and *Casey v. Richland County Council*.

III. The Court Properly and Comprehensively Addressed the Issue of Standing.

Defendants again argue lack of standing. The Court interpreted this issue thoroughly and properly, and decided that the Plaintiffs possess public importance standing because of the constitutional and statutory issues that this case raises and the expenditure of $25 million of taxpayer money. Furthermore, the Court properly ruled that the Plaintiffs possess public importance standing to challenge the unconstitutional act of the Defendant County.

Third, the Court properly found that the individual Plaintiffs possess taxpayer standing because of the $25 million in taxpayer funds necessary to repay the bonds, plus interest. Taxpayer standing has been accepted and acknowledged for more than 150 years in multiple states and in the federal courts. This Court properly ruled that the courts of this State acknowledged and accepted taxpayer standing in cases involving the unlawful expenditure of taxpayer funds.

Finally, the Court addressed the two cases on which the Defendants continue to rely and properly found them to be distinguishable. *ATC South Inc. v. Charleston County*, 380 S.C. 191, 198 (2008), did not involve the direct expenditure or misuse of taxpayer money. It is therefore distinguishable from the case at bar. *Fremantle v. Preston*, 398 S.C. 186, 193, 728 SE2d 40, 44 (2002) is also distinguishable. That plaintiff sought to recover personal damages for himself. Taxpayer standing benefits the county and protects the taxpayer funds of the county from improper expenditures by unscrupulous public officials. Accordingly, Defendant's arguments contesting taxpayer and public importance standing provide no basis to reconsider this Court's rulings.

CONCLUSION

The Defendant County does not dispute the most consequential facts alleged in the Complaint: vast sections of the County do not need new sewer or wastewater service. Only a small portion in the Southern part of the County may benefit from new sewer or wastewater treatment facilities. Yet the County plans to tax every piece of property in the county to pay for this new, limited wastewater treatment service. This violates the Constitution, and it disregards the rulings of the South Carolina Supreme Court.

Furthermore, this Court properly found that the Plaintiffs have public importance standing, and individual Plaintiffs have taxpayer standing.

Finally, S.C. Code Ann. § 11-15-30 does not bar the Plaintiffs' claims, because the section deals with the issuance of bonds, and the Plaintiffs did not contest the issuance of the bonds. Instead, the Plaintiffs contest the unlawful and unconstitutional expenditure the proceeds of the bonds. The Court fully and properly interpreted and decided all these issues and correctly issued an injunction against the unlawful and unconstitutional use of the proceeds of the bonds. As Defendant has brought no new arguments to challenge the Court's rulings, Defendant's Motion to Alter or Amend should be denied.

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January 28, 2025

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 **Plaintiffs' Motion to Alter or Amend**

STATEMENT OF THE CASE

This Court issued a Preliminary Injunction dated August 12, 2024, to uphold and enforce the S.C. Constitution's prohibition against general county taxation for public utilities installed in only limited zones of the "**particular geographical**" area of a county "for **such purposes**."

> **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.

South Carolina Const. art. X, 12. (emphasis added).

Following this Order, Defendant moved the Court to alter or amend the Order issuing the Preliminary Injunction. Defendant brought no new arguments; even so, the Court granted the Defendant's Motion to Alter or Amend.

In the Order entered March 11, 2025, the Court again found that the Plaintiffs possess public importance standing to bring this action. Further, the Court agreed with the Plaintiffs "that

a plain reading of section 11-15-30 would seem to indicate that this section applies only to the issuance and not the use of the bond revenues."

However, the Court also agreed with the Defendant County that the wastewater treatment project "generally benefits all the citizens of Oconee County by creating more environmentally favorable conditions, better sanitary conditions, the increase in property values, increase in the economies of scale resulting in lower prices and more favorable conditions for new industry to move into the County, inter alia."

Plaintiffs respectfully suggest that the Court ruled correctly in its Order of August 12, 2024, that the use of bond proceeds to pay for wastewater treatment that serves only a small part of the county violates the South Carolina Constitution, that it provides a "distinguishable benefit" only to those citizens or industry who can make physical connection to the expanded wastewater disposal system, and the South Carolina Constitution prohibits general county taxation for such public services installed in a limited geographical section or area.

Plaintiffs question, if Article X, 12 does not target **these circumstances**, then why was it included in the South Carolina Constitution?

Accordingly, Plaintiffs move the Court to alter or amend its most recent Order entered March 11, 2025, and reinstate permanently its injunction issued August 12, 2024.

STATEMENT OF THE FACTS

Defendant Oconee County does not deny or contradict the following facts alleged in the verified Complaint:

Oconee County implemented two phases of a three-phase sewer project in the Southern part of the County (Complaint, par. 13). Significantly, state and federal grants and appropriations from general county funds paid for phases one and two. *Id.*

This public interest action seeks to enforce the prohibition in South Carolina Constitution Article X, § 12 by challenging improvements or expansion of wastewater treatment beyond phase two, because they were funded by County General Obligation bonds (Complaint, par. 14).

On November 2, 2023, Oconee 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] (emphasis added)

> Ordinance 2023-13, enacted September 5, 2023, (the "Bond Ordinance") recites:
>
> "[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).

Defendant admitted the issuance of bonds and provided documentary evidence on the issuance of the bonds (Answer, Exhibits A and C). Should a South Carolina county want to provide sewer services "benefitting only a particular geographical section," funded by bonds, the county is required to create a special taxing district under S.C. Code Ann. § 4-9-30(5)(a). Then, 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).

[1] Available at https://emma.msrb.org/P21737547-P21334508-P21768579.pdf

Defendant does **not** contend the new sewer facilities will serve the whole county. Defendant does **not** contend the three major cities will use the new sewer facilities; Defendant does **not** contend the luxury neighborhoods around Lake Keowee and Lake Jocassee will use the new sewer facilities; Defendant does **not** contend the rural Northern parts of the county will use the new sewer facilities. Defendant does **not** contend that it created a special tax district to pay for the bonds. Despite multiple opportunities, Defendant has not contradicted or disputed the factual allegations of the Complaint.

Instead, Defendant contends that the geographical locations outside the sewer district will receive a **general** benefit from the operation of the sewer system. However, South Carolina case law holds that such **general** benefits do not justify taxing the whole County to pay for a sewer system that will serve only a small geographical section. The language of South Carolina Constitution Article X, § 12 prohibits a general taxation of the entire county for any service or facility benefitting only a particular geographical section of the county.

The services specified within South Carolina Constitution Article X, § 12: "Fire Protection," "Steet Lighting," "Garbage Collection and Disposal," "Water Service," and "Sewage Disposal" are **tangible** benefits that are physically **limited** to only a **particular geographic** area.

Oconee County recently recognized the authority of Article X, § 12 by voting to approve Resolution 2024-12/13 on May 21, 2024 allowing the voters to approve creating a special purpose tax district for Fire Protection:

> RESOLUTION 2024-12 RESOLUTION REQUESTING AND DIRECTING THAT THE OCONEE COUNTY BOARD OF ELECTIONS AND VOTER REGISTRATION HOLD THE ELECTION REGARDING THE CREATION OF THE CORINTH-SHILOH SPECIAL PURPOSE TAX DISTRICT FOR FIRE PROTECTION ON THE SAME DAY AS THE 2024 GENERAL ELECTION; AND OTHER RELATED MATTERS.

The County recently followed Article X, § 12 in another instance and allowed voters to approve the Corinth-Shiloh Special Purpose Tax District for Fire Protection. "Fire Protection" and "Sewage Disposal" are both governed by Article X, § 12 as services benefiting only a **particular geographic** section. By enacting this recent resolution, the Oconee County Council acknowledged the rule of Article X, § 12 and common law distinction of "general" benefit versus "distinguishable" benefit. *See* Affidavit of Jim Mann.

Accordingly, a "countywide general benefit" does not cure unconstitutional taxation outside the geographical area that receives the specific property benefit. Ultimately, the South Carolina Constitution protects taxpayers from being charged for localized services or facilities from which they will not directly benefit.

Accordingly, Plaintiffs move the Court to alter or amend its most recent Order of March 11, 2025, and reinstate the findings and conclusions of the Order granting the preliminary injunction.

LEGAL DISCUSSION

I. THE SEWER SERVICE IS A "DISTINGUISHABLE" BENEFIT.

"To be an assessment, the improvement must confer a **benefit** on property **distinguishable** from the **general benefit** enjoyed by surrounding areas." *Robinson v. Richland County Council*, 293 S.C. 27, 32-33, 358 S.E.2d 392, 395-96 (S.C. 1987) (emphasis added). In the case at bar, the provision of sewer services to the southern part of the County is a **benefit distinguishable** from the **general benefit** to the rest of the County. Accordingly, the South Carolina Constitution requires the County to make a new taxing district and **assesses the residents** of the taxing district to pay for the sewer services, and not tax the entire county. South Carolina Constitution art. X, 12.

II. THE SEWER FACILITIES WILL PROVIDE A "DISTINGUISHABLE" BENEFIT DIRECTED TO A "PARTICULAR GEOGRAPHICAL SECTION OF THE COUNTY," IN VIOLATION OF SOUTH CAROLINA CONSTITUTION, ARTICLE X, § 12.

A. The sewer services will benefit only a "particular geographical section of the county," distinguishable from the general benefit.

As described above, the County intends to use the 2023 Bond proceeds for wastewater improvements that serve only a **small geographical location** in the County, and it has pledged the full faith, credit, and taxing power of the **entire** County, in violation of the South Carolina Constitution, Article X, § 12. However, the County must assess "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 served by the new sewer service. S.C. Const., Art. X, 12.

Furthermore, the County has not adopted a budget for spending the bond proceeds, nor provided any project scope, other than spending all the bond money on sewer expansion, which violates the South Carolina Constitution, Article X, § 12.

Accordingly, the proposed sewer services will provide a "distinguishable" benefit to a "particular geographical section of the [C]ounty." S.C. Const. art. X, 12. The South Carolina Constitution forbids the County from using bond revenues for sewer projects that will provide a "distinguishable" benefit to a "particular geographical section of the County," while taxing the entire County to pay for the bonds.

The municipalities of Seneca, Walhalla, and Westminster have the exclusive rights to provide sewer services within their municipal limits. Likewise, the rural, Northern part of the County will not receive a direct benefit. That part of the County is served primarily by private septic tanks, septic fields, and septic systems. Furthermore, the luxury neighborhoods around Lake Keowee and Lake Jocassee are served primarily by privately owned sewer systems. Accordingly, the new sewer services in the Southern part of the County will not serve these neighborhoods.

Even so, the County argues that although the new sewer system will serve only a small portion of the County, the wastewater treatment system provides general benefits to the entire County. This argument, and the resulting decision that reversed the original order by the Court, disregards the distinction between "general" and "distinguishable" drawn by the Court in *Robinson v. Richland County Council*. *Id*. at 293 S.C. 27, 32, 358 S.E.2d 392 (S.C. 1987).

B. Defendants argue that the sewer project will create several <u>general</u> benefits to the County as a whole.

Following litigation, the County attached Exhibit F to its legal memorandum filed November 8, 2024, (Resolution 2024-18 of Oconee County Council), asserting that the bond ordinance would secure "benefits for the whole of the County's citizenry." *Id*., p. 2. This Resolution was enacted **<u>more than a year</u>** after the enactment of the ordinance issuing the bonds, more than a year after the bonds were actually issued. The Resolution was also enacted

after the Court had issued an injunction on the expenditure of the proceeds of the bonds for the unconstitutional provision of sewer services supported by a countywide taxation. Finally, the resolution was also enacted after the County had filed a motion to alter or amend the judgment of this Court. Defendant County seeks to create evidence that rewrites history through its transparent, self-serving Resolution.

Furthermore, despite the grand promises and prophecies of the County, this provision of sewer services may or may not provide any economic benefit to the County generally. Phase I of Sewer South ran sewer infrastructure to Golden Corner Commerce Park on Hwy. 59 in the Southern part of the county. That project was completed in 2015. The County Council funded that project through a standard tax levy, without a bond, at a cost of $8.1M. Although the project finish date was 10 years ago, the Commerce Park **still sits vacant today,** with NO industry, NO occupants, and with **zero economies of scale or other benefit to the taxpayers**. The project represents bad decision-making and poor planning at the taxpayers' expense. Yet in 2024, the County Council approved spending an **additional** ~$1.2M to regrade and dress up the very same property, again **without any contractual agreement for occupancy**. *See* Affidavit of Jim Mann.

Nevertheless, the County continues to promise and predict that the coming benefits include "engineering benefits," *Id.*, p. 3, "environmental benefits," *Id.*, p. 3, "economies of scale," *Id.*, pp. 4-5, "likely . . . commercial or industrial utility users," *Id.*, p. 5, and "economic benefits." *Id.*, p. 6-7.

Regardless of these promises, all the benefits named by the County in its Exhibit F are **general** benefits, which are not sufficient to tax the general public, when one "particular geographical section," receives a **distinguishable** benefit, funded by bonds. These general benefits do not satisfy the standard of Article 10, § 12.

The South Carolina Supreme Court has ruled repeatedly distinguishing between "general benefits" and "distinguishable benefits," and has ruled that "general benefits" are not sufficient to create an assessment in the entire County.

C. A health benefit for the general public is not a "benefit" under South Carolina Constitution, Article X, § 12.

Defendants argue that the County as a whole will receive health benefits from the new sewer system in the Southern part of the County, however, the South Carolina Constitution prohibits taxation without taxpayer benefit of the service of the utility itself. Even so, under the heading "**Environmental Benefits"** in Exhibit F, Defendants argue that the new sewer system will 1) improve the groundwater, 2) minimize contamination to the drinking water, and 3) minimize sewage effluent being discharged into Lake Hartwell and reduce contaminants reaching Lake Hartwell which would benefit all the taxpayers of the County. However, these benefits resemble the analogous benefits in *Robinson*, and as in *Robinson,* they do not exempt the County from the South Carolina Consitution's prohibition. *Id.*

Furthermore, the *Robinson* Court specifically ruled that a health benefit to the general public of the county arising out of the new sewer system was **not** a sufficient benefit to support a general taxation.

> The charge imposed here is clearly **an assessment**. It **does not become a tax merely because the general public obtains a health benefit** from the elimination of the sewage problem. *Casey v. Richland County Council, supra.*

Id. at 293 S.C. 27, 32-33, 358 S.E.2d 392, 395-96 (1984) (emphasis added). In the case at bar, the southern part of the County **did receive** a benefit (the new sewer system) that is "**distinguishable** from the **general benefit** [the health benefit] enjoyed by the surrounding areas." Accordingly, taxpayers of this particular geographical location in the County must pay for it, and

taxpayers who do not enjoy that unique benefit must not. Significantly, the Defendant has misrepresented the legal facts of this case and led the Court to err by incorrectly amending the previous order.

D. Improved sanitary conditions and enhanced property values are not a "benefit" under the South Carolina Constitution, Article X, § 12.

The environmental benefits discussed above also resemble the general benefits of the improvement of sanitary conditions addressed in *Casey v. Richland County Council. Id*. at. 293 S.C. 27, 32-33, 358 S.E.2d 392, 395-96 (1984). In *Casey*, the Supreme Court ruled that improved sanitary conditions and the resultant enhancement of property values are **not** a benefit under South Carolina Constitution, Article X, § 12.

> We recognize the proposed system **will improve sanitary conditions** in the unincorporated area which would **enhance property values** but **disagree** with Appellant's claim **that this generalized benefit is sufficient to make the surcharge an assessment**. *Wright v. Proffitt*, 261 S.C. 68, 198 S.E.2d 275 (1973), *Mills Mill v. Hawkins*, 232 S.C. 515, 103 S.E.2d 14 (1957).

Id. The Court in *Casey*, also distinguished assessments from taxes. When the "particular geographical section" (Article X, § 12) receives a **benefit distinguishable** from the general benefit, a targeted geographical an **assessment** is required.

> To be an assessment, the improvement must confer a **benefit on property distinguishable from the general benefit enjoyed by surrounding areas**. *Wright, supra.* **The benefit of improved sanitary conditions would inure to all** . . . . We hold **the asserted benefit is general in nature and cannot be labeled an assessment**.

Id., 282 S.C. 387, 389-90, 320 S.E.2d 443 (1984).

Finally, a "distinguishable" benefit received by some taxpayers does not equate to a substantial, general benefit for all taxpayers. Accordingly, the County attempts to assess the entire County with a **general** taxation to pay for sewer system facilities and service that provide a

"**distinguishable" benefit** for only a small portion of the County. This is unconstitutional under *Robinson v. Richland Cnty. Council* and *Casey v. Richland County Council*. *Id.*

E. An increase in adjoining property values is not a "benefit" under South Carolina Constitution, Article X, § 12.

The *Robinson* Court ruled that an increase in adjoining property values is **not** a "benefit" under Article X, § 12.

> Taxpayers' argument that neighboring property owners should be required to pay capital sewer charges **is without merit**.
>
> * * *
>
> 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.

Robinson., 293 S.C. 27, 32-33, 358 S.E.2d 392, 395-96, (emphasis added). Accordingly, *Robinson* held that increased property values were **not** sufficient general benefit to support a general taxation. Instead, a benefit to a particular geographic area requires a special assessment.

> **Article X, § 12 . . . requires** the funding for a sewerage facility which will **benefit only a particular geographical area** come from a **special assessment** on those persons **benefited**.
>
> **Article X, § 12 limits the power** of counties to impose **general taxes** to defray the cost of bonded indebtedness incurred **to build local improvements**.

Robinson, 293 S.C. 27, 32-33, 358 S.E.2d 392, 395-96 (emphasis added). In the case at bar, the new sewer system is a "local improvement," for which counties may not impose "general taxes." *Id.*

> Finally, taxes are to be distinguished from assessments.
>
> **Taxes are imposed on all property** for the maintenance of government while **assessments are placed only on the property to be benefited**. *Casey v. Richland County Council*, [282 S.C. 387, 320 S.E.2d 443 (1984)] To be an **assessment**, the **improvement** must confer a benefit on property **distinguishable from the general**

benefit enjoyed by surrounding areas. *Id.*

Robinson, 293 S.C. 27, 32-33, 358 S.E.2d 392, 395-96 (emphasis added). In the case at bar, the southern part of the County **received a benefit** (the new sewer system) that is "**distinguishable from the general benefit** enjoyed by the surrounding areas." Accordingly, the property that received the "distinguishable" benefit must pay an **assessment** to cover the cost of the "benefit," and the general tax is unconstitutional.

CONCLUSION

The southern part of the County is receiving a "distinguishable" benefit from the provision of sewer facilities. An increase in adjoining property values is not a taxable "benefit" under Article X, § 12; a health benefit to the general public is not a taxable "benefit" under Article X, § 12; and improved sanitary conditions is not a taxable "benefit" under Article X, § 12. Instead, the "particular geographical section of the County" that receives the "distinguishable" benefit, the sewer services, must pay for it under Article X, 12.

Accordingly, Plaintiffs pray the Court to Alter or Amend the Court's second Order and rule in favor of the Plaintiffs, reinstating the original August 12, 2024 Order of this Court providing temporary injunctive relief against the Defendant's unconstitutional conduct, and correctly discerning "that spending the bond proceeds in a way that benefits "only a particular geographical section of the County" (sewer expansion), and is "distinguishable from the general benefit" which may be enjoyed by the remaining citizens within the County, violates South Carolina Constitution Article X, § 12. *Robinson,* 293 S.C. 27, 33, 358 S.E.2d 392, 396.

Accordingly, Plaintiffs, the taxpayers, pray the Court to return to its original ruling that upholds the South Carolina Constitution.

Respectfully submitted,

THE CARPENTER LAW FIRM, PC

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Attorney for the Plaintiffs

March 21, 2025

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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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.)

P R O C E E D I N G S

THE COURT: I hear motion to -- for injunction ---

UNIDENTIFIED SPEAKER: There are cross motions. There are multiple motions. We have a motion for injunction, we have a motion to compel, they have motion to dismiss.

THE COURT: Okay. Would you and (indiscernible) put that into reference, what order we go in?

UNIDENTIFIED SPEAKER: Your Honor, ours was the first file.

THE COURT: (Indiscernible) take care of them in that order so if y'all can't agree (indiscernible) what we're going to do.

UNIDENTIFIED SPEAKER: Yes, Your Honor. That'd be great.

MR. WILKINS: May I please The Court?

THE COURT: Yes, sir.

MR. WILKINS: (Indiscernible) Billy Wilkins and Lane Davis (indiscernible) I'm a (indiscernible) and I grew up in Oconee County. Got off a number of years ago planning again for a 280 acre industrial park to be located in close proximity to I-85.

In order to complete installation of a sewer system and related work, which would

(indiscernible) within the surrounding area, the county

Counsel has to, under the law of procedural and substitute requirements, unanimously pass ordinance (indiscernible). Which authorize the issuance of the bonds not to exceed (indiscernible).

A full record of these proceedings that we'll file with the (indiscernible) office on November the 8th of 2023. And when was filing occurred? A 20 page statute of limitations contestability period started to (indiscernible).

THE COURT: Tell me about that. I'm not familiar with that, Mr. Wilkins. Once you file the plan, they have 20 days to contest. And when it's resulted, if you're not timely in your contest ---

MR. WILKINS: Cannot bring a lawsuit. Can not bring any suit. No suit. No action may be commenced after the issuance of the bonds after the 20 day period is over. Again, that's code -- section 11-15-30 this action was filed months after this contestability period had expired.

THE COURT: Does that also include constitutional issues as well, sir?

MR. WILKINS: (Indiscernible) The case law was very clear on this (indiscernible) some of the leading cases, Your Honor.

THE COURT: Okay.

MR. WILKINS: This complaint should be dismissed for several reasons. First, section 11-15-30 is an absolutely

horrible (indiscernible) as I mentioned, because it provides an (indiscernible) 20 days, no action may be commenced.

60 years ago The Supreme Court (indiscernible) Morgan versus (indiscernible) case involving (indiscernible) county school bonds. That case is Circuit Court focused on whoever (indiscernible) the publication requirements (indiscernible) before the referendum was held (indiscernible).

It just missed law student in beautiful (indiscernible) County. Our Supreme Court said no, you should not even address that issue because the 20 day statute of limitations contestability period can expire (indiscernible). Do not address any of the other issues.

And the fact they would (indiscernible). If you don't meet contestability expiration in the time of limitation. And in that 20 page memorandum, (indiscernible) do not contest the validity of the appropriateness of this statute. But tell me they do not site to a single case supporting their proposition.

That the Plaintiffs are not contesting the issues of the bonds, they are not contesting as a county authority and power. The Plaintiffs say we are just challenging the proper use of the bond proceeds. Well, 40 years later, after the Morgan decision, (indiscernible) appeal to a case I'm very (indiscernible) issued an opinion that reinforced this absolute horror.

To bring the lawsuit on a count of issues of any bonds by government authority. In this case, it was a town in (indiscernible) South Carolina. 17 (indiscernible) not against the town, not even against the town counsel, it was a lawsuit against the bond attorneys, claiming that the bond attorneys (indiscernible) and was a private (indiscernible).

If you missed the town counsel, the (indiscernible) bonds still provide (indiscernible). (Indiscernible) the action was not within the 20 day contestability period. And (indiscernible) they are (indiscernible) the statute does not apply. Because they (indiscernible).

They were just contesting the bond obligations (indiscernible) County to repay the bonds. So I (indiscernible) the Morgan decision (indiscernible). The Court of appeals (indiscernible) the Circuit Court. Told them that the 20 day contestability period applied, and that consequently, Plaintiffs were now barred from attacking the legality of the bond proceedures.

(Indiscernible) came before The Court today, the Plaintiffs made essentially the same argument. Same (indiscernible). (Indiscernible) these last 2 cases I just mentioned. On paragraph 29 (indiscernible), the Plaintiff attacks the legality of the use of the proceeds of (indiscernible) papers.

The legality of the use and the proceeds of

(indiscernible) bond. The (indiscernible) improved and plead that the (indiscernible) taxing power of the county. And just three years ago, in another unanimous decision about the Supreme Court entitled *South Carolina Public Interest Foundation versus Calhoun County Counsel*.

Which again, affirm they've all (indiscernible) regarding the legislative inactive contestability period. (Indiscernible) Plaintiff, in that case (indiscernible) in this case (indiscernible) century (indiscernible). The Calhoun County Counsel imposed a one percent sales tax to fund 15 projects.

The lawsuit that was brought into this full of (indiscernible) funded, it's inappropriate. Therefore, we object to any funds being used to fund these projects, and if you do that -- if you don't do that, Judge, it's going to be misuse, that was the charge, misuse of the county counsel's tax paying money.

They maintain that the statute of limitations contestability period only applied to procedural issues and not to any substitutions like this. Paid 14 of the opposition through our motion to dismiss, the Plaintiff makes the same claim, and I quote, this case at far involves expenditure and the misuse of tax paying money.

The Calhoun County case I just mentioned. The Supreme Court (indiscernible) rejected this argument and

(indiscernible) through for the statute of limitations contestability period barred that lawsuit. The Court's made it -- our conclusion is further (indiscernible) prior decision including the cases I just mentioned.

That the short statute of limitations contestability period does not distinguish between procedural and substitute challenges. (Indiscernible) that the wisdom of the short statute of limitations period is not (indiscernible) as the Supreme Court observed in Morgan, the (indiscernible) short contestability period, it's obvious The Court (indiscernible).

And if (indiscernible) in full force in this state for many years. It said it was obvious 60 years ago. The position the Plaintiff (indiscernible) or it was Plaintiff's decision (indiscernible) after the Morgan case (indiscernible) by this Plaintiff is the docket.

It would have an immediate devastating effect on every city and county in the state as far as ability to raise money by the sale of (indiscernible) County office. I'm sure investors (indiscernible) in South Carolina. That's the reason the legislature passed in section 11-15-30.

The Plaintiffs made no mention, zero, in their complaint of the contestability period set forth in that statute. And the 23 page memorandum in opposition, it was the Defendant's motion to dismiss (indiscernible) less than

a single page to address this threshold issue. (Indiscernible) site no cases to any court in South Carolina, or any court in the nation that would support their opposition. (Indiscernible) critical legislative activist does not apply. And it does not apply because the Plaintiffs are not contesting the issues of the bond, they say, but only the bond proceeds are being misused.

This threshold issue, Your Honor must decide (indiscernible) this lawsuit from Oconee County from spending the funds that have been raised to the sale of these bonds. Here's the question, is it an action commenced on a count of the issuance of the bonds?

THE COURT: Say that again?

MR. WILKINS: The statute says no action shall be brought -- shall be commenced on account of the issuance of the bonds. Which is just another way to say (indiscernible) the Genesis of which is by reason of (indiscernible) the result of the issuance of the bonds.

That's the words the Supreme Court used in the Calhoun case. The Plaintiff, -- (indiscernible) the expenditure of claims, the expenditure of funds was a misuse of the county's funds. And in fact, challenged the results of the (indiscernible).

(Indiscernible) misuse because they were challenging the results of the reference -- reference which led to the

issuance of the bond, and thus, is barred (indiscernible) period. In this lawsuit, this Plaintiff claims that the expenditure of the funds is a misuse of Oconee County's money.

It is a challenge to (indiscernible) of the enactment of the county ordinance of Oconee County which authorized the issuance of these bonds and is likewise barred by the statute of limitations contestability period. Had these bonds not been issued, Your Honor, there would have been no proceeds generated.

If there had been no proceeds generated, there would be no claim of misusing any of our county tax payers money. So I say it again, the statutes are clear, the case law is clear, the issues of (indiscernible) in just a minute, really don't need to be heard. If you really in (indiscernible) County, dismiss the (indiscernible) because all the other issues automatically (indiscernible). I'd be glad to answer any questions you may have, Your Honor.

THE COURT: Thank you, sir. I appreciate it. It's good to see you. All right. Mr. Carpenter.

MR. CARPENTER: Thank you, Your Honor. This case is about Oconee County violating the constitution. The Plaintiff is asking this Court to stop the constitutional violation. My opposing Counsel has made this argument about South Carolina code annotative 11-15-30, it seems to

me that they were trying to put a square opinion through a round hole.

If you read the statute, it's focused on the (indiscernible) of the bonds. No action shall be commenced on account of the issuance of any such bonds after the expiration of 20 days (indiscernible) index and such records, as prescribed by 11-15-10 -- 11-15-20. (Indiscernible) issue went in the hands of a bonified purchaser for value shall be incontestable. But if the period (indiscernible) which actions may be commenced, shall not begin to run (indiscernible). We don't have any objection to the issuance of the bonds.

Issuance with bonds is done in New York -- the issuance with the bonds, they came home with $25,000,000. The issue is, what are they going to do with that $25,000,000? I know Mr. Wilkins said what they're going to do is put it towards waste water treatment, sewer, for a small part of Oconee County down around Fair Play, down by I-85, down by the welcome center, maybe up to exit 4, a small part of Oconee County.

We alleged in the complaint that when they issued these bonds, under ordinance itself, pledged full faith in credit or taxing power of Oconee County. These are general obligation bonds, these are not revenue bonds, those are another thing.

They're going to take the taxing power of Oconee County and tax -- and it says in the ordinance every single taxable piece of property in Oconee County is going to be taxable to pay back these funds. And that's the heart of the problem because the constitution says that when you do a certain number of services, one of which is waste water treatment and management, and it only benefits a small part of the county, you have to make a special tax district.

And you have to recess the people living in that district who are going to benefit from those services to -- to support and pay back the bonds that will give these services for that small group of people. In other words, this is down in the southern part of the county. The constitution -- and we (indiscernible) assume (indiscernible)

THE COURT: Correct.

MR. CARPENTER: The constitution says that you can't do that. You have to -- if you're going to -- if you're going to issue bonds, (indiscernible) general obligation bonds, you can't tax the whole county when the benefit of the bond is only going to a small portion of the county.

And that's the constitutional violation and that's what (indiscernible) here today. In the (indiscernible) this 11-15-30, the focus of this statute is protecting the bonified purchasers for value. These bonds were sold back in the

fall. The purchaser (indiscernible) we're not contesting the bonds. The bonds are valid as far as I know, and eventually they'll be paid back with Oconee County tax payers in dollars.

THE COURT: Well, let me ask you this, Mr. Carpenter. Mr. Wilkins says that the South Carolina Public Interest Foundation filed the exact same claim earlier, which was denied by the Supreme Court saying its not the bond issue, it's the use of the proceeds that were contested (indiscernible).

MR. CARPENTER: There is a -- there is a surface of similarity between the two cases, can I talk a little bit about both cases?

THE COURT: Sure.

MR. CARPENTER: They are distinguishable that (indiscernible) was on the statute had to do with counties getting money in another way. It didn't have anything to do with this statute, this statute was never brought up and it's a completely different statute with some similarity, but it's completely different.

And this statute focuses on the people who buy the bonds getting good value for their money. That after 20 days when they put millions of dollars into these bonds, we can't have somebody coming in way after the fact and contesting those bonds because as Mr. Wilkins said, nobody

could buy our bonds.

But that's not what's going on here. Those bonds are valid, we're not touching those bonds. We are focusing, as he said, on the proceeds of the bonds. And he constitutional violation (indiscernible) when you take those proceeds and certain and numerated functions, sewer, lighting, a few other things, you have to make a taxing district, and tax those people for the benefit to payback those funds. Now, ---

THE COURT: Wasn't there a case, I think in Anderson County some years ago, (indiscernible) taxable fees?

MR. CARPENTER: There is one out of Richland County that I've read in preparation for this (indiscernible) fees or assessments that they've distinguished between. It had to do with sewer and (indiscernible).

THE COURT: (Indiscernible) is that relevant to this case?

MR. CARPENTER: I don't think so. I read it again this morning. Taxes are spread evenly among all tax payers and they get general benefits. Assessments of fees are charged to people who are getting the specific benefit from the expenditure of the money.

THE COURT: Okay. (Indiscernible) it has been a long time since (indiscernible) across the board whereas, you don't have to have a special tax district (indiscernible).

MR. CARPENTER: As I recall, the taxpayers were arguing what the county is arguing. They wanted to charge everybody for a benefit that (indiscernible) a few people. And The Court rejected that, which you can't charge everybody for a benefit that's only being given to a few people. I think it's called *Casey versus Richland County* (indiscernible). But if you want me to go into ---

THE COURT: Go ahead.

MR. CARPENTER: But if you want me to stop with my discussion of 11-15-30, I'll do that. If you want me to bring the other motions up, I'll be happy to do that.

THE COURT: (Indiscernible) hear you on 11-15-30.

MR. CARPENTER: 11-15-30 is focusing on the security of the bond (indiscernible). We're not challenging that in the least. We are taking (indiscernible) the proceeds -- misuse of the proceeds, that's a constitutional violation of the section that we quoted, that requires the creation of a special taxing district to (indiscernible) the bonds, and that didn't happen here.

Now, the county had said well, we'll make the county (indiscernible) general benefit. There's a case that we sighted that says that the general benefit that the neighboring properties might get because of this particular section, I assume, is not the kind of benefit that allows the county to tax them under this constitutional

(indiscernible), and I'll address that more (indiscernible)

THE COURT: Mr. Wilkins.

MR. WILKINS: Just very briefly, Your Honor, let me just emphasize that the *Public Interest Foundation versus Calhoun County,* they made the same claim in that case. Calhoun County passed an ordinance (indiscernible) sales tax was going to fund 15 projects.

This Plaintiff automatically says no, you can't do that (indiscernible) not authorized to be funded. To do so (indiscernible) would be a misuse of tax payers money. That's the same thing they're saying here. We're not challenging the bonds, they're fine, we're just challenging the proceeds and how they're going to be used.

The Supreme Court was very clear, that is a challenge -- a lawsuit brought challenging the result of the issuance of the bonds. Because if it had not been for the bonds, there'd be no proceeds.

THE COURT: So whether that was under 11-15-30 or some other statute, it doesn't really matter? Or was it under 11-15-30? (Indiscernible) Mr. Carpenter says it was under a different statute.

MR. WILKINS: It was under a different statute. But it (indiscernible) the same thing (indiscernible) statute of limitations contestability period. There's a 20 day period under this statute, a 30 day period on another statute,

there's a six month period under another statute depending on whether you do sales tax, bonds, or what not.

I'd like The Courts attention to *Casey versus Richland Count Counsel* that is (indiscernible). And in that case The Court says this was a (indiscernible) Richland County was going to put sewer system in this unincorporated area and they charged an assessment which is one way that you can impose the tax burden on the citizens to think it's some public maintenance of the sewer system and so forth.

The problem in that case is they place this assessment on individuals in that district who will receive sewer from another place. So they (indiscernible) twice. They had to pay the sewer assessment for Richland County, -- charged for Richland County, now they're paying (indiscernible) but you could impose a tax county-wide.

Indeed, they claimed -- they stated here, the benefit of an unimproved sanitary condition will (indiscernible) the benefit of all of the citizens of Richland County. So there are three ways you can impose a sales tax, you can impose an assessment, or you can impose a county-wide tax (indiscernible) in this case, but I'll go back to it.

What does it mean to commence an action on account of the issuance of bonds? It does not mean the case is appropriate. We're not just talking about problems, we're talking about -- the Supreme Court says this applies to when

public notice wasn't given. You can't -- if public notice isn't given, you can't bring a lawsuit after the 20 days. The (indiscernible) of the facility, that's the charge. You've got to (indiscernible) within that 20 day period. A lawsuit made to get money raised, is not (indiscernible) allocated. You can't do that. You do it within the 20 days. The lawsuit alleged misuse of public funds.

It has to be within the contestability period. And even if the lawsuit is claiming that the bond (indiscernible) to get the county to issue bonds to raise money, you've got to challenge that even if you challenge the allocation of those funds and how they're being spent within the 20 day contestability period.

THE COURT: If you've (indiscernible) disagree, please.

MR. CARPENTER: Yes. Under the Calhoun County Counsel case, the statute was the capitol project sales tax act. It had nothing to do with the statute given here. And the Casey case was the one with the (indiscernible) that distinguished between the fees or assessment, and the taxes and how they distinguish between the two of them.

THE COURT: All right. What's the next motion?

MR. CARPENTER: The next two motions are ours. This case was -- in the beginning we issued some discovery quest and (indiscernible) production. Requests for admission, we served them properly, they wrote back to us and didn't

answer a single interrogatory, they didn't answer a single request for admission, didn't answer a single request for production.

They said oh, we've got motion to dismiss in here, we don't think we have to answer discovery when we've got a motion to dismiss. I think they filed a motion for protective order, but we think that we have a good case here and we want our discovery responded to within 24 months. That's -- that's the essence of our motion to compel. On our discovery responses, we didn't get anything.

THE COURT: Was the protective order signed?

MR. CARPENTER: Not -- I don't think it was.

MR. DAVIS: Your Honor, the protective order was actually embedded in the motion to dismiss. We were saying hey, look, the statute extinguishes your ability to bring this lawsuit and taxpayers shouldn't have to pay for really expensive discovery in a lawsuit Mr. Carpenter shouldn't have filed.

So if we go to The Court and Judge McIntosh says yeah, you're wrong minded, we're going forward, we'll give you your discovery, but it's not true that we didn't respond. We did, in fact, file objections and serve objections that were responses, and when we did that I specifically wrote to Jim and said Jim, if we go after our dispositive motion, and The Court says we're going forward, of course we're going to

supplement, but we don't think the taxpayers should have to incur that burden because we really do not believe we should have ever been here.

And that was the basis of it. It was nothing nefarious. It wasn't trying to keep anything from them. And of course, we will supplement if Your Honor tells us we're wrong, but we -- we pretty earnestly don't believe we should be here.

THE COURT: If I were to (indiscernible) deny your motion to dismiss, how long would it take you to get this discovery (indiscernible)?

MR. DAVIS: 30 days, Your Honor.

THE COURT: Mr. Carpenter, (Indiscernible)

UNIDENTIFIED SPEAKER: We would be happy if they responded in 30 days, Your Honor.

THE COURT: Anything further as far as that (indiscernible) as well?

MR. CARPENTER: The -- the main motion is our motion for injunctive relief, yes. (Indiscernible) motion for injunctive relief is that we're requesting temporary, preliminary, and eventually permanent injunctive relief and we've briefed this thing extensively with (indiscernible) pages of argument I'm going to site.

We've sighted 15 or 20 cases that say when a taxpaying citizen sees that county or city government misusing

taxpayer money and spending it unlawfully, the tax paying citizen has a right to apply to The Court inequity to stop the unlawful expenditure of taxpayer money.

And that's the nature of our case here. The constitution has, as we have sited and alluded to, no law should be enacted preventing the incurring of bonded in debt, that's for any county for sewage disposal or treatment, and several other things, or any other service or facility benefitting only a particular geographical section of the county unless special assessment, tax, or service charge in an amount designed to provide debt service on bonded indebtedness revenue bonds incurred for such purposes shall be imposed upon the area or persons receiving the benefit therefrom.

We respectfully suggest that the county is clearly in violation of this constitutional provision. They have borrowed $25,000,000 in bonds and they have said over, and over again their intent is to use it for sewage and waste water treatment down in the lower part of the county, down around Fair Play, down -- like -- like Mr. Wilkins said, down along the interstate down there.

Talked about the -- the welcome center and maybe up to exit 4. But they have not created a special taxing district down for that area. They have said in their ordinance, we're going to put the full faith and credit of the entire

Oconee County and every single piece of taxable property in Oconee County is going to be answerable to respond to the payment of these bonds.

And this is a violation of article 10, section 12 of the constitution. And the county has said in their answer well, the issue is who is going to benefit from this? And they have said that they think the whole county is going to benefit because they're putting sewer down in this one small part of the county.

And they think that might generate some economic stimulus and might bring in some industry and so on. There's one case that has addressed this issue, and it's called *Robinson versus Richland County*. (Indiscernible) opposing counsel, they probably have it already. Do y'all need a copy?

In my research, I believe this is the only case that specifically oppresses this constitutional provision in South Carolina. And I've highlighted what seems to be the important points of the case. This is a case where two tax paying citizens sued Richland County Counsel over the provision of sewer services and so on.

The Court sited article 10, section 12 of the constitution, which is the one we've been relying on. If you look at the 3rd page of the opinion, the right column, towards the top of the page, article 10, section 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.

So the issue is, who is going to benefit from the service? Is it only those people in the service area? Or does it include people on the adjacent properties? If you look over at the next page, top of the page, tax payers argument that neighboring property owners should be -- oh, I'm sorry.

Second paragraph -- in addition to article 10, section 12, the constitution requires the charge be assessed only on those who will benefit from the new facilities. And here's the critical ruling, an increase in property values in the adjoining area, because of the new sewer lines, is not sufficient to putting adjacent landowners within the class of those who benefit from the project.

And if you look at the bottom of the column there, article 10, section 12 limits the power of counties to impose general taxes to (indiscernible) the cost upon the indebtedness incurred to build local improvements. As I said, this case, as far as I know, is the only one that has addressed this article 10, section 12 of South Carolina

constitution.

And The Court said it three different ways, if you're going to have bonded indebtedness benefitting a small part of the county, then you've got to make a special tax district and tax those people, and you can't tax the adjoining landowners because that -- that -- being close to a new sewer is not the kind of benefit that this provision of the constitution contemplates as they make those people taxable for the sewer services provided to one particular designated part of the county.

And if -- if an increase in the property value is in the adjoining area because of the new sewer lines, it's not sufficient to bring adjacent landowners within the class of those who've benefitted from the project. Then, even more so, some generic benefit of possible prosperity to the county as a whole, is even more attenuated than the adjoining landowners.

So you can't tax the people up in the northern part of the county. You can't tax the people in the three cities that have their own sewer systems. You can't tax the people that are around the lakes of Keowee, Jocasee they have their own sewer system.

You can't tax them to put in a sewer system down in the lower part of the county and it's only going to be localized down there at the supposed continuous possible benefit is

not sufficient to justify taxing the whole county. We have a constitutional violation here. We're asking The Court to issue a temporary and preliminary injunction to stop the expenditure of this $25,000,000 for that sewer project. Now, if you look closely at the fourth instance and so on, ---

THE COURT: Let me ask you this, how would you grant your motion on what kind of bond would your foundation be willing to (indiscernible) it's going to be a (indiscernible) bond (indiscernible), don't you think?

MR. CARPENTER: We've faced that issue before and many courts will tell you that because of the public interest nature of this, and we're not causing any kind of expenditure. We're stopping the use of these proceeds for one particular purpose, because it violates the constitution.

They can still use the proceeds to build roads, to build schools, to build things that benefit the whole county that are not in that list of enumerated kinds of contracts. I think it was the lights, sewer, and garbage collection, that sort of thing.

If the expenditure is not in that list, they can still use the bonds for general county expenditures and county improvements. Now, the ordinance that (indiscernible) the bonds, specifically listed the sewer project, but they also

said and other projects.

So they can use the bonds on other projects, whatever they are, provided those don't violate article 10, section 12. They would only stop the expenditure on this -- this one project that violates the constitution. So I don't think a bond would be appropriate when they can still spend the money constitutionally.

THE COURT: The rule (indiscernible) the bond.

MR. CARPENTER: Well, then I ---

THE COURT: Discretionary, but it (indiscernible) the bond.

MR. CARPENTER: I don't think that a fairly nominal fund would be sufficient because there's no real risk to the county. They're simply being prohibited from violating the constitution. Which they should've been anyway. And they can still spend the money other ways, and they can spend it constitutionally, they just have to refrain from spending it unconstitutionally.

So a nominal bond would be appropriate. I don't know how much this matters, but a lot of people have the idea that the South Carolina Public Interest Foundation is an endowed foundation, it is not. We live hand to mouth on periodic contributions.

So we wouldn't be able to put up a bond anywhere near the million dollar mark, we just don't have it. It's just

not -- it's not an endowed foundation. Mr. (Indiscernible) funded it when he was living and unfortunately, when he died, he didn't fund it with his will in the state and other people had come in and tried to help pick up the vision and carry on, but it is -- it is not an endowed foundation, so we would not be able to fund any sizable bonds, but a nominal bond if that's required by The Court. That is possible. But the point is, the county is not suffering any real loss. They're just being prohibited from violating the constitution.

MR. DAVIS: Trying to put my pen top back on without my glasses, Your Honor. I'm sorry. (Indiscernible) Respectfully, the Plaintiff's motion for preliminary injunction is dead on arrival.

THE COURT: Let me ask you a question.

MR. DAVIS: Yes, sir.

THE COURT: If it weren't for the time frame of (indiscernible) that you (indiscernible) from section 11-15-30, on the requirements of section 10 -- article 10, section 12 of this South Carolina constitution?

MR. DAVIS: That's the ultimate -- that was actually the argument -- the ultimate argument in this case is the conclusion that -- Mr. Carpenter assumes (indiscernible) arguments. In other words, hey, once we get to the merits on this case I'm going to win and because I'm going to win,

we should have injunction relief issued.

(Indiscernible) contribution to his (indiscernible) take out this most extraordinary explicable remedy and injunction, and shoot it based upon the (indiscernible) Plaintiffs because they're saying they're right, the county's wrong, and that ultimately, the -- there's unconstitutional infractions that remains, as of this date, (indiscernible) proof and without a scratch of evidence in the record.

So my preliminary thing that I would say to Your Honor about the (indiscernible) injunction, you can deny it right now because it's not supported by an affidavit. It's not supported by a declaration. It's not supported by any testimony.

It's not supported by a verified complaint. In the record right now, the Plaintiffs have put zero evidence to support their burden of proof on this motion, which is to carry the prime (indiscernible) elements of injunction. The three that we know well, irreparable harm, (indiscernible) remedy by clear showing, with no clear showing.

No showing, whatsoever. So it's facially defective and dead on arrival. And that's fairly significant because within their complaint -- within their motion there are at least 17 different factual premises that they have to actually show The Court in order to be entitled to the

relief they seek.

For example, without representing any specific infrastructure at all, -- okay, what sort of infrastructure are we talking about? What does it do? How does it upgrade? Is it a pump station? Is it trump (indiscernible). Is it a treatment facility? We don't know that.

If you look at the record right now, you couldn't tell me that. Do you know why? They didn't (indiscernible) the burden. That's why they lose immediately. Without knowing what that infrastructure is, Your Honor can't assess or allocate the metrics between what that infrastructure would do, and what benefit would be conferred on what class of people.

Whether it would be county-wide or a street driven in the county. You just couldn't do it. You know why? There's no evidence. So this motion fails off the top. But those are not insignificant deficits, right? So if you don't know how the funds under bond ordinance are -- are really outdated.

And I would note for Your Honor, it's better that underneath that ordinance, there's actually a specific discretion inferred upon county counsel, a legislative body that allows you to tug on how those are allocated (indiscernible).

So what Mr. Carpenter's really asking you to do is to invade the province of a legislative body, doing legislative things, under a legislative enactment in respect to a government service that's uniquely within his province. You can't do that. That's called violation and separation of powers.

THE COURT: Going back to my original question.

MR. DAVIS: Yes, sir.

THE COURT: Tell us the bond is issued and the Plaintiff wrote this sewer improvement, whatever level or part of it may be. Southern part of the county meet the requirements of article 10, section 12 of our constitution.

MR. DAVIS: Yes, sir. (Indiscernible), Your Honor.

THE COURT: Tell me how it does.

MR. DAVIS: We think it confers a general benefit among tax payers of Oconee County for a number of reasons. One, is the health safety and welfare benefit, I mean, it's obviously a health concern.

THE COURT: (Indiscernible)

MR. DAVIS: Well, I think that's what they were saying in (indiscernible). You know, one of the primary principal (indiscernible) of (indiscernible) we were talking about with Mr. Wilkins and Mr. Carpenter. Number two, if you think about what happens with respect to infrastructure, it's basically any type of utility, where the number of

users increases, the economy of scales increase, the incremental cost per user goes down, it creates a larger group of people and a stronger utility base across the county, it will invite economic development into the county (indiscernible).

Everybody knows, in this space it's an accepted premiss that if you built sewer, economic development follows it. Economic development means more jobs, means more people living here, more businesses, businesses paying business licenses, people paying taxes, the tax base goes up.

These are not individualized, discrete benefits to specific persons in the county, these are benefits that get spread around the entire county. Look, all of these are factual issues that we will show, but we shouldn't have to show because underneath the statute that we're talking about, 11-15-30, it cancels any basis to bring that challenge here for us to reach those merits.

The general assembly decided this for you. And why did they do that? It's not necessarily what Mr. Carpenter's saying, that's not -- it wasn't solely based to protect the holders of (indiscernible), if you think about what has to happen for this to be an effective public finance mechanism for local government, the local government's got to be able to get the money and be able to use it for the things that the tax payers need in a period of time that it actually

gets them what they need.

So if there's a public health issue or crisis, that has to be addressed. And the county has to act. The fact the South Carolina Public Interest Foundation can file a lawsuit and hold those funds hostage for four years, that's no bueno.

The local government body, you can't rely on that as a public local source of financing to address the needs -- the continuous needs now. They have no concrete time line. General assembly said look, here's what we're going to do, we're going to have this processed.

In order to have bond ordinance, we have to have, you know this -- three (indiscernible), right? So we have a public process, publically known as meeting agenda, public is invited, they can come. They participate in the legislative process.

There are elected officials, hear their concerns. There's a debate, there's a discourse that goes on in public, it happened once, it happened twice, it happened three times. Legislative process happens. Then that bond and it's transcript gets put on a guy with a bicycle who rides over the (indiscernible) Court.

They file it. And in that point in time, when (indiscernible) enacted of the bond to that filing of the transcript, plus 20, they have an opportunity through an

(indiscernible) party by what the county just did, they can file a lawsuit. And they can bring any substance of issue out in the world, into the lawsuit.

They can challenge it however they want. All of the remedies, they have plenty of remedies (indiscernible) that they want to assert. There are remedies for (indiscernible). The problem is, the standing commences when the bond is enacted -- bond ordinance is enacted, it is a (indiscernible) 20 days after the transcript arrived in it's spot.

The legislator told you that hey, look, you don't have standing on the 21st day after that transcript is filed. It -- it doesn't make a difference what argument you want to make, how clever you want to be, however you want to collaterally attack that ordinance, it doesn't make a difference what direction.

You don't get to come here and make the argument. It's negated, it's extinguished. Incidentally, South Carolina's not unique in this, this is how it is uniformly handled around the Country. They do this because the local government body need to have consistent, stable, reliable access to capital markets in order to get the public financing they need to do what?

Discharge your judiciary obligations (indiscernible)? To get them the public service that they have to have,

right? We can't have sewer running down the middle of the street. And that's the elected officials job to get it. And this is one of the precious few public financing people that they have to deliver it.

And they want to upset. It is for that reason the South Carolina Supreme Court has consistently rejected these exact arguments over, and over, and over again. Because if you allow this, it does great violence to the public finance (indiscernible) for every local government body across the state. They also, in this case, they don't satisfy (indiscernible) submitted evidence that support their motion, which I don't see how we go up on appeal.

We say the Court of appeals and (indiscernible) immediately (indiscernible) if Mr. Carpenter gets what he wants, and leave it up to court of appeals and say okay, show me the evidence in the record to support your (indiscernible) elements, Jim. (Indiscernible).

Rule 65 is clear, you have to (indiscernible) if not, it's open. But, in any event, if your irreparable harm that they're siting in this case, it doesn't pass muster because irreparable harm, all they're talking about are financial funds, right?

Okay, well, you're going to pay these taxes (indiscernible) and there's no way for us to ever give them a refund. Why? Why is that so (indiscernible) if it

happens all the time? And incidentally, it is ---

THE COURT: What would be (indiscernible)?

MR. DAVIS: Well, you have to calculate what amount of the tax burden -- assuming -- if you assume the correctness of their argument, and you prevail at the end, you say okay, look, there was a certain amount of tax burden that was misallocated in use for this, and these people shouldn't have got it, they'd be entitled to a refund.

It's -- if we (indiscernible) burdensome, perhaps, to actually do -- but it's not (indiscernible) it's not impossible, it's something that happens, it happened before. It's a money (indiscernible) remedy, but it doesn't make a difference that they couldn't raise it anyway.

But the point is this, irreparable injury that they're claiming, with respect to the unconstitutional behavior, it assumes the conclusion, right? It assumes the unconstitutionality exists, and therefore, they're entitled to the injunctive relief to prevent it.

But we do not, by any stretch of imagination, can see that there's any unconstitutional infraction that's occurred. You don't conceive that there's been any illegal behavior that's occurred. In fact, we reject that and if we go to the merit, we think we are still going to (indiscernible).

But, in any event, it's not an appropriate argument the

(indiscernible) the cases that he sites with respect to those issues, they don't apply here. These are all public interest exception Plaintiff standing cases where The Court starts off with this premiss, what we're dealing with here is so important that we're going to lower the bar of individualized harm showing for the Plaintiff.

That -- we're just going to take a generalized showing that there's something really -- really important publically and therefore, you don't have to do it. Well, of course in those cases, where they've already decided that the issue is so important that they're going to waive the constitutional (indiscernible).

That they don't have to show an individualized showing. Of course, in those cases, what they found is that there isn't irreparable injury, because the irreparable injury doesn't have to be (indiscernible) in person. That can't happen.

Your Honor, it can't happen because there's a statute that the general assembly has already occupied the field, and it said on day 21, you don't have standing. The general assembly has already evaluated and allocated how they want the public policy to work here.

And what the general assembly said, as opposed to what the South Carolina Public Interest Foundation says, is that on 8/21, we have determined that the local governments

body's access to capital markets, so they can deliver the infrastructure that their citizens need, outweighs any challenges that weren't made within that window.

We're going to give them the chance to make those challenges, but we're going to extinguish them on day 21 because equally important and these competing balancing of the scales, we have to make sure that those elected officials can do their job and given the tools to do it. They've already cancelled that.

So you can't come into Court and invoke the public interest (indiscernible) standing when the statute has already said there is no standing, right? It's circulant and nonsensical. The -- (indiscernible) the adjudication that they assume, is the one the statute forecloses, right?

You can't come in on day 21 and ask for that communication, but yet, Mr. Carpenter comes in and assumes that (indiscernible) you can get in the lawsuit you shouldn't have brought in a courtroom you shouldn't be in. The next part is the likelihood of success in the merits, and this is a little easier because obviously a lot of that is grounded in the two arguments we've already talked about.

Section 11-15-30 is an absolute part of this lawsuit. One thing I would like to add though is this, 11-15-30 is a different species of statute of limitations. In South Carolina the statute of limitations (indiscernible) it's

really a statute of creation, right?

The statute of creation being when the statute itself gives you the right to challenge, to come into court, within that statute there is a time frame imbedded, that's a statute of creation. It is strictly construed under South Carolina law, it is strictly construed around (indiscernible).

The cases we have sited in our brief are the Knight case, the Simpson case, the Merchant's case, the (indiscernible) case, they're all on page 11. What we have before The Court today is a statute of creation. It requires that that 20 day period is an indispensable component of their private (indiscernible).

In other words, if they don't actually file it in 20 days, they don't have a claim. They don't have standing. And that's what all of this goes to say. I'll give you a comparable example that you probably know. Foya, right? Foya has the same thing, it has a really -- it's a one year statute.

If you don't file that within one year, the Knight case says that's the statute of creation. That's not something that gets told, that's not something that can be waived, it is something that is imbedded in the right to bring the action in the first instance.

And that's what the Plaintiffs are doing here where

they're going outside of the time frame that's necessary to bring the claim, it is a (indiscernible) argument, they cannot get passed it. Your Honor, the standing argument we just talked about, also (indiscernible) match.

If they don't have standing for those (indiscernible) controversy for you to hear, or to issue any relief (indiscernible) cases, if Mr. Carpenter is so confident is his position, This Court should protect local government bodies state-wide by not interfering with the public finance.

You could dismiss this case, let them take their immediate appeal, they can file petition for supercilious on their preliminary injunction motion. We will get fairly (indiscernible) in Columbia as to whether what they're saying is so crystal clear that they're entitled to the injunctive relief that they're getting.

I predict that they will fail. And they will also find out pretty quickly that these public findings provisions are bedrock and they cannot be circumvented in the way that they're trying to do. They're not telling you the correct application involved.

Finally, with respect to the (indiscernible) showing, Your Honor, -- I won't say finally, there's another two things (indiscernible). Because it's an injunctive, injunctive (indiscernible), it's subject to equitable

maximums, and they violate two here.

Every (indiscernible) by case, it doesn't help those who (indiscernible) in their rights. The statute says 20 days, they waited four months. After they filed four months too late, they waited another four months to file this lawsuit.

And there's a string of cases again, in our debrief that say in addition to a (indiscernible) bar, the fact that you waited that long is evidence in and of itself that The Court should take notice of that the irreparable nature of the harm isn't one that supports preliminary injunctive relief because if what you're saying was true, was truly irreparable harm by nature, that could support the relief (indiscernible), you would have been here a lot earlier. Because a (indiscernible).

With respect to the adequate remedies, it kind of goes back to what we were talking about all along here, Your Honor, which is, we have a statute that gave them an actual adequate remedy. There is a process where they can participate in the political process that went along a train of first meeting, second meeting, third meeting, 30 days apart, over a 90 day window.

They could participate in that political process, they could try to convince their elected officials of how they should go forward, if they don't prevail there, and the

elected officials try to do something they should not do, then they have this window as the caboose on that train of a process to bring it to you.

But after that caboose goes down the track, there's no train left. There's nothing here to see. And that is an adequate legal remedy, they just didn't (indiscernible) themselves of it. And that's why (indiscernible) of this case.

Second equitable (indiscernible) is equity follows the law, and the law here says that they had to bring this case in 20 days, and they didn't. Either equity follows the law, and the law is saying 20 days, then that is a complete bar for them to be able to come to this Court and ask for injunctive relief.

The last thing I would say is, Your Honor, you picked up on something that I likely didn't. This lawsuit serves the prospect of highjacking public's funds, let's say that the ordinance is unconstitutional, and I know Mr. Carpenter wants to say no, it is about (indiscernible), it's not, right?

Because what does the bond ordinance do? You, and I, and the American people all know, on the base of that bond ordinance there are specific sets of authorized uses, right? So if Mr. Carpenter comes in here and (indiscernible) the territory relief action that says that one of those uses is

unconstitutional, what does it do?

It renders by way of collateral pack, the bond ordinance is unconstitutional. He wants you to believe in horsey things while disavowing the horse, right? That's what's happening. Well, I'm not doing that, I'm not challenging the bond proceedings.

That's exactly what he's doing. The bond ordinance authorizes the use he's challenging. If he challenges the use and is successful, (indiscernible) is you're (indiscernible) has gone and challenged the cause and the adjudication of the ordinance that is specifically disallowed by the statute.

There's only one applicant here, Your Honor, and we respectfully ask that you -- you bring us to that place to protect the county and to protect all these local government bodies, this case should be dismissed. Even if we're so wrong, I'm sure we'll be back soon, but we're not.

With respect to the bond, there's no prospect here that the capital infrastructure equal to $25,000,000 is going to be basically highjacking an undetermined period of time. All of the benefits that were intended from that capital projects, the public health, the economic benefits, all of the things that we are describing, and you're saying what are the general benefits to the county?

The increase in business license revenue, the increased

population, the increase in new business, jobs, everything that would be county-wide, including the health and safety benefits are going to be highjacked in an undetermined period of time.

Mr. Carpenter doesn't want just a one million dollar bond, probably because the one million dollar bond is way, way shy for anything he's (indiscernible) in this case. It's a $25,000,000 bond appropriation that they're trying to get you to invade legislative bodies province and (indiscernible) their uses, we would respectfully ask for a $25,000,000 bond, if we get it -- but there's no possible way, in my view, that this motion should ever be printed. And I appreciate your time and your patience, thank you.

THE COURT: Thank you.

MR. CARPENTER: Thank you, Your Honor. I'd like to briefly address the three elements necessary for an issuance of an injunction, irreparable harm, success of merits, and no adequate remedy of law. Several cases have ruled, as we've sited in our brief, that the violation of the constitution, in and of itself, is irreparable harm to the citizens of this county. The violation of the constitution, in and of itself, is irreparable harm.

THE COURT: (Indiscernible) this in the Casey case, except article 10, section 12 of my county-wide says they give benefit.

MR. CARPENTER: The Casey case didn't have anything to do with article 10, section 12. The case that did that was ---

THE COURT: Well, (indiscernible) am I wrong there?

MR. DAVIS: No, Your Honor. What I was trying to say was that the Casey case stands for the proposition that sewer infrastructure in a discrete part of the county, in fact, does, or possibly could confer a county-wide benefit that is directly contrary to what Mr. Carpenter has represented to you.

And so what we know from that is, that factually, when we get to the case -- if this case goes forward and we go to trial, there is definitely a scenario where the county could present facts into the record where that outcome could be true. This kind of idea that oh, well, if it's just infrastructure here, it can't happen.

MR. CARPENTER: The Casey case dealt with is this a tax, or is this a fee? That's what they were analyzing there when they were talking about the sewer, whether it was a general benefit. (Indiscernible) more important was the Robinson case and it says that the general benefits to the neighboring landowners, because the sewer went in down the road, that is not the kind of benefit that justifies taxing those neighbors.

THE COURT: (Indiscernible) because you've got

increasing value of the properties it's not a sufficient benefit to the entire county (indiscernible).

MR. CARPENTER: Well, we might be talking out of two sides of the same coin. What it says -- the language of The Court was an increase of property value from the adjoining areas because of the new sewer lines, is not sufficient to bring adjacent landowners within the class of those who benefit from the project. And the benefit is (indiscernible) there because that's language from the constitutional provision. You have to tax those who are going to benefit, pay for the -- the sewer lines being put in there.

THE COURT: Those who benefit in the case?

MR. CARPENTER: Well, Casey was a different issue -- couple different -- it didn't deal with this -- this constitutional provision at all

THE COURT: Okay.

MR. CARPENTER: It was -- the issue was, is this a tax or is this a fee? And can you charge people fees for this or is it a general benefit that you can give us?

THE COURT: (Indiscernible)

MR. CARPENTER: (Indiscernible) so the violation of the constitution is the irreparable harm, in and of itself. The length of (indiscernible) success on merit, The Court asks opposing Counsel (indiscernible) article 10, section 12, and

he immediately went into argument about the general benefit of the county, and the possible additional taxes and the possible industry coming in.

And all that stuff which is even more attenuated than the benefit referenced in the Robinson case. And if the neighboring landowners of the Robinson case are not benefitted by the neighboring sewer coming in, then certainly, people in the other parts of the county are not within the realm of those who benefit, and they cannot be taxed to pay for this infrastructure that's in a discrete area of the county.

So the likelihood of success of the merits, I would suggest is pretty high. And the no adequate remedy at law he was talking about, well, if you tax all these people, then you can reverse that taxation and give everybody a tax refund, which is a cumbersome prospect and I would respectfully submit not an adequate remedy at law because it could be years down the road and (indiscernible) nightmare and would likely not get done.

THE COURT: Well, let be ask you just a more basic question, ordinance 65, did you file a verified complaint? Did you file a sworn affidavit to support the complaint?

MR. CARPENTER: No, but in the answer ---

THE COURT: (Indiscernible) required by rule 65(d).

MR. CARPENTER: I don't have my book with me, but there

are admissions in the answer that establish what the facts are. There are exhibits to the answer that establish what the facts are.

THE COURT: I would think that the rule provides for looking at (indiscernible) but it will set you (indiscernible) itself. I would like to take a look at (indiscernible) affidavit (indiscernible) before you can be granted any kind of -- especially TRO or temporary relief.

MR. CARPENTER: I'd have to read it again, but I was thinking the admissions of the Defendants in the answer, along with their exhibits to the answer, established pretty clear what the facts are. And they can't come in here and debate and say the facts haven't been established when they admit them in their answer.

And they attached the exhibits to their answer that show that they have passed this ordinance, the $25,000,000 to do sewer work. And they admit in their answer, they're talking about a general benefit to the whole county, which is not allowed under Robinson.

And these kind of admissions, it seems to me, demonstrate that there's no (indiscernible) to speak about what the facts are. It is simply a question of applying the law to the facts as the Defendants have admitted (indiscernible).

Now, if The Court reads it differently, then we would

request an opportunity to submit an adequate affidavit then. But we think with the constitutional violation, they made it pretty clear to the pleadings and the admissions on file. And we ask The Court to ---

THE COURT: (Indiscernible) so you have a chance to (indiscernible).

MR. CARPENTER: Well, I'm hoping we got past that.

THE COURT: I understand.

MR. CARPENTER: Now, the other side talked about standing, we have alleged two kinds of standing. One is taxpayer standing, and the other is public importance standing. And I think he might've confused the two. Taxpayer standing has been established in a number of cases that we've sited.

That's where a taxpayer comes in and says you're taking taxpayer funds and you're spending them unlawfully. And there's -- I think we sited 15 cases that allowed taxpayer standing when a city or county illegally spent taxpayer funds.

And we've viewed that on many occasions. (Indiscernible) The second kind of standing is what he referred to, is public importance standing, which is a different analytical frame work. But then the taxpayer standing -- the cases ruled that a taxpayer, taxpaying citizen, has an adequate interest by the fact that he's

paying taxes and his tax money is being taken and misused, he has standing to be here and ask The Court to not allow the misuse of taxpayer money. Public importance standing is an exception to the requirement of constitutional standing. And The Court grants standing ---

THE COURT: How does this case (indiscernible)?

MR. CARPENTER: Well, the most recent case that comes to mind that dealt with public importance standing, was the one where the governor wanted to take $40,000,000 and give it to private schools. It took people (indiscernible) the Supreme Court, and The Court granted taxpayer standing to those people and granted original jurisdiction to them.

And then the two factors were improper conduct of public officials, and misuse of public moneys. And The Court found that when those two factors were present, -- or the presence of those two factors created an issue of great public importance.

And that is -- that has been -- The Court has wrestled with this issue of great public importance over the last 15 or 20 years. The case I just mentioned, I think is the most recent, and the most comprehensive recent statement of what the standard is.

When there's misconduct by public officials, and the use of public moneys, then that creates an issue of great public importance. That's not the only way to do it, but

that's one way to do it, and that would apply here because you have $25,000,000 of public moneys and unconstitutional conduct on the part of the public's officials. That would create issues of great public importance in addition to supporting taxpayer (indiscernible). I'll be happy to address any questions that The Court has.

THE COURT: I don't have any at this moment.

MR. DAVIS: Your Honor, I just want to say one thing. That taxpayer standing was overruled in the ATC opinions sited in our -- taxpayer standing was overruled in our -- in the ATC opinions sited in our brief. And I'll rely upon my analysis about the public interest exception as being extinguished by the statute that we're siting in the attempt to (indiscernible) the judicial exception on a statute that says no. Thank you.

THE COURT: Any other motions (indiscernible)?

MR. DIAMADUROS: Now, I just want to make one comment, Judge.

THE COURT: Yes, sir?

MR. DIAMADUROS: Mr. Carpenter passed up the Robinson case to The Court. It sites to the Casey case that I mentioned, *Casey versus Richland County*, and I think if you read those two cases in -- together, they -- they come to the conclusion that all of this business about -- you can't tax people that are not -- not hooked up to the sewer

system, it's not right.

You can not pose an assessment on those people, but as the Casey case says, the benefit of improved sanitary conditions, when they put sewer in this unincorporated area, The Court said well, renewal to the benefit of all citizens of Richland County, including those in the City of Columbia West, Columbia and so forth.

MR. WILKINS: Was that making distinction between assessment between assessments and taxes?

MR. DIAMADUROS: Yes, sir. That's -- that's -- if you read these two together, you have to come to conclusion. That you can either -- the county can impose a sales tax, but they have to do it county-wide. Or they could impose some type of special tax, not an assessment, but a tax like in this case that applies county-wide.

But if it's assessment, there's a distinction between a direct benefit from the sewer system, and the general benefit that all the citizens will benefit from. If it's a ---

THE COURT: Can I ask you this, wouldn't -- is the assessment not to be the method that go county-wide as opposed to having a specialty tax district?

MR. DIAMADUROS: No. You can't go County wide with assessment.

THE COURT: You can not?

MR. DIAMADUROS: You can not. No, you can't. But you can go county-wide with a tax, or a sales tax, or a special tax that applies to all property owners. But if you (indiscernible) pay for sewer by the assessment, you have to get the funding from those who are hooked up to that system. The direct benefit, as opposed to the general benefit.

THE COURT: Thank you. (Indiscernible)

MR. CARPENTER: There are a lot of different ways to pay for sewer systems, but this constitution says, (indiscernible) bonds, and you've got to follow this provision. If your going to pay off the bonds, you can only put the taxes on those who are getting the benefit from it. That's -- that's where we're going with this case.

THE COURT: All right. (Indiscernible) ask any of the Oconee County attorneys whether they believe that the response filed -- response to the filing (indiscernible) meet the requirements of rule of 65.

MR DAVIS: Absolutely not. And moreover, it's decidedly unsupporting, at least in my view, for Mr. Carpenter to say well, we're relying on the admissions in the answer. That's not what they ever wrote in -- anywhere in their paperwork or their motion to say like, oh, well, these facts have been established because of X, Y, Z paragraph.

It basically deprives us of our ability to even respond

to that and it's not true. And even to this day, I don't know exactly what provisions he's talking about so I could respond to it. The reality is, it's a defective motion. It's dead on arrival.

It should be -- and by the book, he shouldn't be able to submit a post facto motion or an affidavit to support his motion. It's specifically disallowed by rule 6(d). It has to be with the motion when filed. It wasn't. It loses. We -- we should go home. Thank you.

THE COURT: So let me go over with the Counsel. Is there any other motions here that (indiscernible)?

MR. DAVIS: Luckily, no.

THE COURT: Okay. So as the threshold question, one of the 11-15-30 barred (indiscernible). And two, whether article 10, section 12 of our constitution prohibits the issuance of bonds (indiscernible) taxable county-wide (indiscernible) county's improvement (indiscernible).

The Richland County Casey case say that extends because of that. (Indiscernible) County as a whole, so you are (indiscernible) the constitution. So (indiscernible) this issue (indiscernible) that's the issue I'm looking at, might as well (indiscernible) simplicity. Rule 65 issue.

MR. DAVIS: I -- I think that's right. I think that's what's presented by our motion to dismiss, is one, is this dead on arrival? And two, have they stated a claim for

relief in the sense that the county could have conferred a county-wide benefit, in any event, that would have not been an infraction.

I'm -- I'm not sure that we're asking The Court to decide that, that's an ultimate issue on the merits if the case went forward. But we're saying as they plead it, -- it's not correctly plead because that is a possibility that escapes the four corners of their pleading.

THE COURT: And in addition, taxpayers (indiscernible) constitutional (indiscernible)?

MR. DAVIS: Yes, Your Honor.

THE COURT: All right. Do you agree with that, Mr. Carpenter?

MR. CARPENTER: I disagree with one part when you were trying to get Casey mixed up with this constitutional provision because it -- the other case is the one that dealt with this constitutional provision (indiscernible) case. And Casey's a completely different analytical frame work and issues, and I would hope The Court wouldn't ---

THE COURT: (Indiscernible) going to go back and read all of this again (indiscernible) so (indiscernible). Is there anything further?

MR. DAVIS: No, Your Honor. We appreciate your time. 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 * COURT OF COMMON PLEAS
*
COUNTY OF OCONEE * TRANSCRIPT OF RECORD

----------X
SOUTH CAROLINA PUBLIC INTEREST*
FOUNDATION, et al., *
*
Plaintiffs, *
vs. * Case No. 2024-CP-37-00202
*
OCONEE COUNTY, *
*
Defendant. *
----------X

January 30, 2025

MOTION FOR RECONSIDERATION

B E F O R E:

The Honorable R. Lawton McIntosh, Presiding Judge

A P P E A R A N C E S:

James G. Carpenter, Esq.
Attorney for the Plaintiffs

Lane W. Davis, Esq.
William W. Wilkins, Esq.
Attorney for the Defendant

Recorded by: DCRP Court Monitor Anna Foster

Court Transcriber: Bobbi Fisher, RPR
SC Official Court Reporter III

I N D E X

E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(The following proceedings started at 9:50 a.m.:)

THE COURT: All right. We're back on the docket now. We have the first case up, which is South Carolina Public Interest Foundation versus Oconee County. This is a Motion for Reconsideration.

MR. DAVIS: Good morning, Your Honor.

THE COURT: Good morning.

MR. DAVIS: Do you mind if I move the podium up?

THE COURT: No.

All right. This is your Motion to Reconsider?

MR. DAVIS: Yes, Your Honor.

THE COURT: Okay.

MR. DAVIS: Your Honor, Lane Davis and Billy Wilkins for Defendant Oconee County. We come before you this morning always in the awkward posture of asking you to reconsider an Order that you issued. I assure you that we have nothing but the utmost respect for both this Court and Your Honor.

That having been said, we believe that the Order that was issued in this case in August granting a preliminary injunction and denying our Motion to Dismiss was infected by some errors that we're asking the Court to revisit and reconsider, and we think we have colorable grounds for a different outcome.

THE COURT: You have -- I'm sorry? You have what?

MR. DAVIS: Colorable grounds for a different outcome.

THE COURT: Okay.

MR. DAVIS: I'll try to move this a little closer to do better.

To the extent that we don't address every ground that's in our briefing, which we're going to try not to do, we will stand on our brief for any arguments in the brief that we don't specifically raise this morning, and we certainly will be happy to ask or answer any questions about those grounds.

But the first -- by way of framing, I think the first issue that we think that we'd like you to revisit, because I think there's error, is in relation to the standing portions of your ruling in the first instance. Obviously, as Your Honor knows, as the holding in Connor Holdings, LLC, v. Cousins, 373 S.C. 81, states, standing to sue is a fundamental requirement in instituting an action. It's a threshold issue. It's what triggers the Court's jurisdiction in the first instance. It's what implicates whether there's a case of controversy for the Court to decide. So it's the first building block of being here before we get to any other issue.

And, in that regard, the Court made two findings out of the options of potential bases for standing. Constitutional standing is not in play here. Nobody says it is. Plaintiffs don't say it is. But, instead, the Court's ruling said that standing should be based upon public interest exception for

standing or taxpayer standing. And I'll address those in reverse order.

Starting with the taxpayer standing, Your Honor, we think that the error started to seep into your Order when it didn't consider the more recent lines of standing cases starting with the holding of ATC South vs. Charleston County, 380 S.C. 191. That's a 2008 opinion. And in that case, they were very careful to say that taxpayer standing does not exist when the injury that is being pointed to is something that's common to all property owners.

So the commonality underneath that opinion with the holding is the commonality is what extinguishes the constitutional requirement of the concrete and particularized injury. And, therefore, with respect to taxpayer standing, you can't have -- you can't say, "I have taxpayer standing because I have an injury that all the other taxpayers have too." And that arose out of the ATC opinion because it was relying upon an underlying opinion that it cited --

THE COURT: Well, let me ask you this: Were any of the members of the plaintiff from the area that -- where this sewer project was supposed to be built?

MR. DAVIS: That, I don't know, Your Honor.

THE COURT: I mean, from an area that was outside where this project was being built? In other words, I'm trying to remember how it goes, but isn't the rule that you told me it

wasn't but it seemed like it was, if there's a specific project, say, in south Oconee, you can't charge the people in north Oconee as a general revenue tax burden on them; you have to have a special tax district or something along those lines pay for that project? And if people outside that area are paying for it, then wouldn't they have standing because they're being unlawfully taxed?

MR. DAVIS: No, Your Honor, because that injury that you're citing there is an injury that would be common to all of the taxpayers.

THE COURT: Well, it wouldn't be because the people within the area that's getting the benefit would not -- they would be -- they're going to get charged anyway, but the people outside are being -- they're being treated differently, wouldn't they?

MR. DAVIS: Well, they're not -- they're not an individualized, particularized injury. But that also will seep into the next part of the argument which is there is a generalized benefit, and we have some bases to show you in that respect.

THE COURT: Okay.

MR. DAVIS: But what the ATC Holding is premised on is a prior Supreme Court holding called Frothingham v. Mellon. And Frothingham stands for, and I quote, "The administration of any statute likely to produce additional taxation to be

imposed upon a vast number of taxpayers, the extent of whose several liability is indefinite and constantly changing, is essentially a matter of public and not individual concern," end quote.

So you have a situation where they're not -- to answer your question you just asked, there's a group of people or a vast group of people who, under this theory, would be imposed with this tax burden, but it's common to a large group of people. It's not individualized to individual people before you. And that's the litmus test for taxpayer standing in South Carolina, but it's not me saying that.

Four years after that, I'm sure Your Honor remembers the whole line of --

THE COURT: Don't count on me remembering it or not. I don't know if I do.

MR. DAVIS: Well, you might remember this one, but this whole line of Preston cases down in Anderson. And Freemantle v. Preston comes out about four years after ATC. And it is noteworthy that ATC relies upon Mellon's holding and rebuts some of the assertions about why they have taxpayer standing.

And then, in Freemantle, they repeat the same analysis, and they say there that Mr. Freemantle did not have standing because the injuries that he was citing were common to all citizens and taxpayers of Anderson. So we have the same thing.

And then, we go forward another couple of years and there's a decision called Bodman v. State, which is 403 S.C. 60. And in that case, a Richland County taxpayer was challenging exemptions on caps on sales tax as unconstitutional. And they repeat the same analysis again.

And I think that the Bodman case also addresses the issue that you pointed to where you're saying, "Well, isn't it true that there are some people who are paying taxes and getting a benefit and some people who don't?" We don't agree with that premise.

But assuming that we're correct, even in Bodman, if that were true, there were some people that were being advantaged by the challenged exemptions and there were some that weren't. But where it's really the litmus test of whether it's satisfied taxpayer standing is, is the individualized harm of this taxpayer sufficient to give them standing to come before the Court. They can't have something that a vast number of people have.

And so we now see this repeated in three different opinions that were sort of establishing what the contours of standing and taxpayers standing are in this state. And with all due respect, the plaintiffs in this case don't meet it. And, particularly, the South Carolina Public Interest Foundation cannot meet it because they don't pay taxes. So that's, in and of itself, sort of a challenge for them.

So what you would do then is say, "Okay, well, if they don't satisfy taxpayer standing, then we're going to append it to the other ground that the order says is the basis for standing," which is the public importance exception. And under the public importance exception, starting with ATC and then continuing through the Bodman decisions where the Supreme Court is trying very hard to clarify how some of these very tricky standing doctrines apply in different contexts, but they tell us the north star of public importance standing is that the ruling has to be needed for future guidance.

So now that we know in ATC, we know in Freemantle, we know in Bodman, that if we're going to invoke the public importance exception to standing --

THE COURT: Mr. Davis, let me ask you this: And I can't cite it off the top of my head very eloquently like you kind of pointed out in your motion about me not being the brightest bulb in the pack, but even so, that, if there was illegal use of public monies, that people have standing to challenge that. Isn't that a public importance standing or is that some other type of standing?

MR. DAVIS: That -- I believe -- yes, I would say, Your Honor, I think that's exactly the point I'm trying to make. I don't think --

THE COURT: Well, if you assume that there's illegal use of public monies, does that fall under the rubric of public

importance standings?

MR. DAVIS: It certainly could.

THE COURT: Okay.

MR. DAVIS: It wouldn't necessarily.

THE COURT: Okay.

MR. DAVIS: What I'm saying, though, is that doesn't fall under the rubric of taxpayer standing. So that's out and now we're down to public importance exception.

THE COURT: Okay.

MR. DAVIS: Now, when you do the public importance exception to standing, we have another problem in this case in invoking it, and that's particularly that, in this case, the General Assembly has already waived the public policy considerations and said, "Hey, after 20 days, you can't bring an action challenging the issuance of these bonds because the finality outweighs the north star."

THE COURT: Well, the argument was made by the Interest Foundation, the other plaintiffs that we're not challenging the issuance of these bonds; we're challenging your use of the money, which is in violation of the Constitution.

MR. DAVIS: And that was -- that was the very next thing I was about to say, which was that argument might be okay if, in this instance, the use they were challenging wasn't something authorized in the first -- by the ordinance in that that ordinance wasn't necessarily critical and required in the

process of the issuance of the bonds.

So let me give you an example. If you have a use where the bond ordinance said we're going to build a fire station, that's what we're going to use the money for. And then the bond proceeds came through, they're in the County's hands, and you bought a bunch of flat screen TVs for everybody's office with your Fire Department money. Well, that use would be challengeable.

But when the use that you're challenging is the use that is authorized in the first instance as required in the bond statute schema -- so we have to have a bond ordinance to authorize certain uses. You have to tell you what it's for, and we're going to enact it through the formality of an ordinance. It's right there in the face.

If the use you're challenging is the one that's authorized in the bond ordinance, which is integral to the issuance of the bonds, you are challenging the issuance of the bonds because you are challenging the use authorized in the bond ordinance, which is required for the issuance of the bonds.

THE COURT: This was that $30,000 -- $30 million bond issuance; is that correct?

MR. DAVIS: 25.

THE COURT: 25. Of that 25, was all of it to go to the southern part of the County sewer project?

MR. DAVIS: No, Your Honor. And just for purposes of the record, I don't want to -- I don't want to be stuck with a terminology of this southern --

THE COURT: That's my language, yeah.

MR. DAVIS: Because I think, if you looked at our memorandum when we had actually attached as Exhibit F to our memorandum a resolution -- Resolution 2024-18 -- there are specific County Council findings about exactly why these sewer project allocations confer a county-wide benefit on all the citizens in the county. And those include things like, "Hey, sewer infrastructure displaces septic tanks." Septic tanks are notorious for leaching into groundwater and causing county-wide issues with respect to the groundwater.

The sewer infrastructure will help improve the water quality and contaminants into Lake Hartwell. There are specific findings about why the sewer infrastructure will create county-wide economic benefits. And it goes through -- and there were -- the resolution reflects that these were the reasons why they had approved the bond proceeds in the first place and now specifies exactly what those allocations are and what they're for and why they do, in fact, create county-wide benefits.

And so this idea that, okay, just because it's in a specific part of the county, that everybody in the county is not receiving a benefit is a misnomer, which is also

consistent with what we ---

THE COURT: Well, then ---

MR. DAVIS: --- had earlier talked about in the Casey decision.

THE COURT: --- give me an example, if you would, under the Constitution when it says you can't use public monies for special areas, you have to do a -- whatever the terminology is but you can't do it and charge everybody for a specific project in a certain area. What would be an area that would -- that you're talking about that would be violative of the Constitution? What are you talking about?

MR. DAVIS: Well, I think you could have a situation, for example, if you had bond proceeds and you used it to run a sewer trunk line to a specific industry where that industry was already here, it wasn't going to create any sort of economic benefit --

THE COURT: Where they'll say that they got a -- people having jobs and people -- that's the economic benefit to the County, it increases the cost, like, the standard of living and all those things. Those are benefits.

MR. DAVIS: Sure. And I'll tell you what, Your Honor, here's the point that I'd like to make is, if a legislative body -- if a constituted legislative body sits down and says, "We understand our constraints that we need to use these bond proceeds in a way that confers a countrywide benefit," when

they sit down and they look at various scenarios, does this or does this not confer county-wide benefit? And they conclude, based upon the evidence before them, that, yeah, it does, and here are the reasons why.

Then, as long as those reasons are fairly debatable, then -- and I don't mean this disrespectfully at all ---

THE COURT: No, I'm not --

MR. DAVIS: --- but the Court doesn't get to raise its hand in the County Council meeting to cast a vote because those were the elected officials who were elected to make that judgment call as to whether that factual issue of "Does it create a benefit for all of our citizens or not?"

And, here, they did that. There was a basis for doing it. They had evidence. We went back and enacted a resolution or adopted a resolution to explain exactly why these specific allocations do that. It was based upon declarations they had from an engineer from the former Economic Development Director in Oconee. It was based upon the County Administrator.

And remember, prior to the enactment of this ordinance in the first instance, the County had been studying these issues for 20 years and had commissioned multiple studies, and that's what the declaration said that was before the County Council. They had a meeting. They had that in their mind because they had those studies in their hands all along before they enacted the resolution or the ordinance.

To the extent that there was any doubt about that, the resolution removes it. And they went back, they debated it, and they passed the resolution, and they said, "Yeah, it does do this."

And so, all I would say to Your Honor is, if the litmus test here is what makes it constitutional or unconstitutional turns on the issue of "Does it confer a county-wide benefit," if this County Council determined, after reviewing evidence and having a debate in an open meeting and a publicly noticed meeting as they did, and they found that it did, I don't think this Court gets to go behind then and say, "I'm grading your paper now; I disagree."

As long as it's -- under the Bear Enterprises case, as long as it's fairly debatable, that issue is what it is. Those are the elected officials who are elected to decide that. And they did that when they passed the ordinance. They did it again with the resolution where they were saying, "Okay, out of this 25 million, what are we going to do? What are we going to use these monies for these projects for -- these certain projects?"

They went through and listed them, specifically reviewed them. And if Your Honor looks at Exhibit E to our memorandum, it goes into significant detail as to why that is the case. You know, it had engineering benefits, it had economic benefits, it had recreational benefits, irrigation benefits,

water source benefits, redundancies benefits, economies of scale.

So even those entities that are -- the municipal entities that had sewer systems -- so there's a lot to be made about that in these briefings of, "Well, Seneca has a sewer system, Westminster has one, you're not going to get benefit." But that's not even really true because they're getting environmental benefits, they're getting Hartwell benefits, they're getting economic benefits.

But one of the other benefits they get is the ward users who are on that system creates an economy of scale. So the cost per user goes down as the number of users go up, and that's particularly true when your sewer infrastructure and support, industrial users, who pay a higher amount, it offsets, in a sense, subsidizes the residential users.

So there are rational, well-accepted bases for why this project -- these projects are going to confer county-wide benefits. And as long as those are fairly debatable in the record in what they did, there's no -- there's no role for us here to grade that paper. And that's the litmus test -- that's what they decided.

Constitutionality, legality, validity is presumed, as you know, with respect to the public actions of a constituted body, particularly when they're well situated in the legislative space, if they're acting legislatively, and nobody

ever -- in the State of South Carolina, no opinion has ever questioned whether sewer and water falls within the legislative discretion of a constituted body. That's a bedrock principle of law, and that's what we're talking about here.

So my point is, because of that, we are underneath the statutory provision with that 20-day time limit, and that 20-day time limit has already balanced whether we should invoke constitutional -- or judicial exception to constitutional standing because we need a north star principle for future guidance.

The General Assembly has entered the field and said, "Not after 20 days you don't, because we need finality as to these issues." The County has projects. They've taken out a bond for $25 million. They have an approximation of how much those projects are going to cost, if lawsuits like this can derail the timeline upon which they occur.

As Your Honor knows, gas prices go up and down and the economy changes and shifts. Now, all of a sudden, what you took out the indebtedness for no longer mirrors the project costs. The other problem is that there are contractors -- there are people with whom they're going to take out the project. Those people have to have assurances that lawsuits like this aren't going to upset their ability to get paid for their work.

And this is a much bigger scheme, and the General Assembly has already evaluated it. And this is not an uncommon -- this is not a South Carolina-specific thing. This is how these things work everywhere. They have local bond schemas like this for funding of critical infrastructure.

So I think the short of this section is the public importance exception -- the judicial-created public importance exception can't trump what the General Assembly already said. You don't review these things. You can't ingraft a judicial exception onto a statute where they've said, "No, we're closing the courthouse door. We've waived the public policy considerations. After 20 days, you shouldn't be reopening it." And so we think that is a problem.

Now, to the extent that I still haven't convinced you, as another attachment that we have on our brief is actually a memorandum from the Oconee Regional Sewer Authority. It's Exhibit E. And you'll see, if you compare that memorandum and compare it to the plaintiff's Complaint is that they duplicated their Complaint largely from that memorandum. So it goes through the analysis and says, "Here's how this works."

But one of the things that they omitted in their Complaint was the ultimate conclusion that it was time-barred so long as they confirm that the transcript was actually delivered to the Clerk of Court as contemplated by the

statute.

And so that is not in dispute. That is established by the documents we have attached to our Answer. And it's for certain that they have not filed this lawsuit within 20 days of the delivery of those transcripts to the Clerk of Court. They're out of time.

And so even under the opinion that they largely crutched on to bring this case and copied verbatim significantly, they still fail. And that's all consistent with what our analysis is for you this morning. The only thing they omitted was the time-barred part down at the bottom. And, you know, that's -- why they did that part, I can't really weigh in, but we find it somewhat curious that everything else was in play except for the part that says we shouldn't be here.

But in that same memorandum, I will note that it says that there were legislative findings that reflected that there was an actual county-wide benefit, that the analysis probably would be different. And one of the ones they specifically cited was economic development and growth. And the resolution that we have attached and I just referenced, in fact, establishes that pretty clearly and in great detail.

I would like to turn attention real quickly to -- we also think there's an error in relation to the affidavit that the Court credited with respect to the issuance of the preliminary injunction.

THE COURT: Which affidavit was that?

MR. DAVIS: It was the affidavit that was submitted seven days after the hearing. It was the affidavit of Jim Mann. It's actually a verification.

THE COURT: Of who?

MR. DAVIS: Jim Mann. He submitted the verification of their Complaint after the hearing ended.

I would just note that, in both our brief -- briefing prior to that hearing and at that hearing, we had objected to their submittal of evidence after the hearing ended. That evidence, obviously, has to be attached to the motion when you file it, and the reason for that is, we're procedurally entitled to respond to it. And if we don't have evidence to respond to, then we don't submit evidence to respond to it. There's no evidence to counter.

And, here, we objected at the hearing and in our memo. There was no motion to submit that evidence out of time as required under Rule 6, which would require a showing of good cause. If that motion had been filed, we would have responded to it. Your Honor would have issued an Order either allowing it or disallowing it. And if you allowed it, we would have asked for an opportunity to respond to it.

And so we were put in this position where, a week after the hearing ends, without a motion, a verification gets stuck in the record without any leave of Court granted by you to do

so.

And so the next thing we know, there's an Order issued accrediting that verification, which we never had a chance to do. Now, had that occurred pre-hearing and given us a chance to respond to it, what you would have received would have been a resolution like the one that you saw attached to our Memo as Exhibit E, which would have answered all of these riddles. But we didn't have to do that because there was nothing to respond to at the time.

So it effectively deprived us of the opportunity to respond in a meaningful way and then an Order issued without an Order allowing them to submit the evidence that the Order was based on. So, with all due respect, we don't really think it really should have unfolded like that.

Let me just look at my notes to see if there's anything else before I sit down. Mr. Wilkins would just like to address a little bit more with respect to this Calhoun County case, which intersects on the issue of whether this case is really about use or issuance, because the Calhoun County case follows and tracks the same general analysis.

But like I said, Your Honor, with respect to the other issues that are in our brief, it's not that they're not solid and correct and a basis for undoing the preliminary injunction and granting the Motion to Dismiss, it's just we'd like to be targeted in what we present to you. But for purposes of the

record, we'd like to just stand on our brief with those and answer any questions you have about them, if any, but preserve them for purposes of argument.

Thank you.

THE COURT: Thank you, sir.

Good morning.

MR. WILKINS: Good morning, Your Honor. For the record, I'm Billy Wilkins. I won't talk about the cases again we talked about the last time we had a hearing with Your Honor, but I would like to mention the one case of -- that I think has principles that are directly applicable to the issues before this Court, and that's the Calhoun County case.

Pursuant to a state statute known as the Sales Tax Act, the County Council and the residents of Calhoun County voted to impose a one-cent sales tax to fund 15 separate projects that were listed in the ordinance and in the referendum. Five months after the resolution was passed and the levy imposed, this lawsuit was brought by the Foundation long after the statute of limitations had run.

The applicable statute of limitations in that case said this, Your Honor: The results of the referendum are not open to question except by lawsuit within 30 days from a certain date. The plaintiff attempted to get around this 30-day limitation by saying, "Wait a minute, that limitation only applies to procedural matters, and we're not challenging

anything involving the ordinance or the referendum or the levy or the taxes from a procedural standpoint. We're challenging the substance of the projects." That is, we're challenging -- in fact, it's in four of the 15 projects that the ordinance and referendum authorized, were not authorized by the State Sales Tax Act, which was the authority given to the County Council to do what it did.

In essence, the plaintiff was saying this is about the misuse of taxpayer dollars that were raised pursuant to this tax levy imposed pursuant to this state's statute, and indeed, the projects listed for them are in violation of the state statute.

Here, of course, the key event in that case was the referendum because it said the results of the referendum is the key event. In this case, the key event, of course, is the issuance of the bonds. While the referendum and the issuance of the bonds are, of course, two separate events, there is no meaningful difference between them.

Without that referendum in Calhoun County and without the issuance of the bonds in this case, there would not be any taxpayer money available to misuse or to spend in accordance with the ordinance of the state statute.

In the Calhoun County case, the Supreme Court said its unanimous decision, that statute of limitations, that 30-day statute in that case, has no limitations on it. And it also

said it applies to the entire process.

But what is the entire process in the Calhoun County case? Well, that was the ordinance passing the tax. That was the resolution -- the referendum approving it, that was the levy of the tax, and that was the collection of the money. All of that was the entire process.

Here, the statute of limitations in our case before the Court is 11-15-30. It does not include any limitation language, and the entire process in this case includes the issuance of the ordinance, the issuance of the bonds, the setting of the bonds, and the collection of the funds that are going to be used for the sewer and waterworks project.

Just like the key language in the Calhoun County case, the results of the referendum, here, the key language is, "No action shall be commenced on account of the issuance of the bonds." If this does not encompass a challenge to the use of the money that was raised from the issuance of the bonds, it would be ingrafting new language under this legislation that our Supreme Court has said time and time again it is not the province of our courts to change the language and ingraft new language on statutes passed by the General Assembly.

In our case today, there are no limitations placed on the language on account of the issuance of the bonds, and the entire process includes what I've just enumerated, which include not only the issuance of the bonds but then the

subsequent election of the money from its sale.

But I guess it comes down to this, Your Honor, in the final analysis: The basic question is, what does the key language mean? What does the language "on account of the issuance of the bonds" mean?

Well, there are several well-recognized synonymous phrases, and they include "on account of" also means as a consequence of. "On account of" also means resulting from. "On account of" also means the result of.

So, in this case, the statute could actually be changed to say, "No action shall be commenced as a consequence of the issuance of the bonds, and no action shall be commenced resulting from the issuance of the bonds." From a result of the issuance of the bonds.

The critical act necessary to raise the money that Plaintiffs -- as the Court pointed out in saying has been misused or is going to be misused in violation of the Constitution was from directly the issuance of the bonds. Had the bonds not been issued, there would be no funds available for the plaintiff to accuse and claim of being misused.

It is critical to recognize that the Section 11-15-30 does not state that the 20-day limitation period applies to acts before -- only before the issuance of the bonds nor does it state, Your Honor, that it does not apply to acts after the issuance of the bonds. It contains no limiting language.

And the statute does not say "except for an action alleging a constitutional violation." The words "no action shall be commenced" mean exactly what those words say: No action shall be commenced based on the common law, case law, statutory law, or any constitution.

Under the theory that the plaintiffs are urging this Court to adopt, Your Honor, in any case involving an ordinance that has alleged irregularities in it or a resolution by a County Council or the levy of taxes on the issuance of bonds that are certainly going to be restrained and limited by the applicable limitations period of 20 days, 30 days, or, in some cases, the statute says 60 days. But, in any event, that statute of limitations is going to apply without question.

But now the plaintiff says, "Well, we're not challenging that ordinance. We're not challenging that resolution of that levy of taxes. We're not challenging the issuance of bonds. We're challenging the misuse of the money. So the statute of limitations does not apply."

If that is the case, Your Honor, then the statute of limitations throughout our Code -- and I don't know how many statues there are dealing with these very limited statute of limitations, but I've began to count it; there are at least 15 to 20 -- are going to be just erased from the books.

I don't care what the County Council does with an ordinance, with a levy, with a bond issuance. They're going

to allege they're misusing the money so that statute of limitations does not limit me from bringing my action. It can't be the law, Your Honor.

Thank you.

THE COURT: Thank you, Mr. Wilkins.

Mr. Carpenter?

MR. CARPENTER: May it please the Court. I'm Jim Carpenter. I represent the plaintiffs.

This is a Motion to Reconsider the Court's Order. I would respectfully suggest that the Court got it right the first time. There is a constitutional provision that says that "no law shall be enacted permitting the current bonded indebtedness by any county pursuant to disposal or treatment benefiting only a particular geographical section unless the County -- unless the special assessment, tax, or service charge shall be imposed upon the area receiving the benefit therefrom." And I edited that for brevity.

In this argument today, I was listening for new arguments, and I didn't hear any. These are the same arguments they made the last time. They just repeated them and emphasized them a little bit, but it's the same arguments.

One thing that I would like to invite the Court to think about is, they don't dispute the basic facts of the case. We allege they're using county-wide taxation. Every piece of property in the county is being taxed to pay for these bonds,

and these bonds are only going to benefit a small area in the southern part of the county.

THE COURT: Well, isn't it only just a partial use of the bonds? I mean, the bonds are going other places too, aren't they?

MR. CARPENTER: Well, they said that, but does the main -- well, I'll let them answer. But from the history of this ---

THE COURT: I mean, it doesn't matter, one way or the other.

MR. CARPENTER: --- series of events, there is language in the bond that could be read to allow the bonds to be used for other things. This use of the bonds for the sewer in the southern part of the county is, as I recall, the only thing specifically listed in the bonds. It says that and other uses or something to that effect.

So the main purpose of these bonds is to pay for that sewer service down the southern part of the county. They don't dispute the fact that the three main cities are not going to use this sewer system. The neighborhoods up and around the lakes are not going to use this sewer system. The rural area up in the northern part of the county is not going to use this sewer system. They don't dispute the basic facts. They don't say, "Oh, we did a tax district, there is a tax district." They don't say any of that. They don't say

anything to contest the very clear violation of this constitutional provision, Article 10, Section 12.

THE COURT: Well, let me ask you this: What about the argument Mr. Davis is saying, look, this is our governing body. They have made these findings that it is a benefit to the entire -- to the taxpayers of Oconee County, and that's based on extensive work that we've done, and we are the elected body and so those findings that it does not just benefit one section is in the issuance of this bond, that it goes to everybody.

MR. CARPENTER: The defendants attached a number of things to their Motion to Reconsider. One of them was a resolution of the County that was enacted long after this litigation had begun. And then they attached three more statements of various individuals associated with the County. All these documents look to me like they were drafted by the same person. But that's -- that's just an incidental observation.

The important point is --

THE COURT: Well, it doesn't matter if it was drafted by 1 or 100. They passed it. They're the body; right?

MR. CARPENTER: That's right. But the important point is, there are two cases from the Supreme Court that say the kind of incidental benefits that this resolution talks about, that the three sworn statements talk about, the incidental

benefits and the other parts of the county are not sufficient to fix the constitutional problem. And we have listed those two cases in our Memorandum in Opposition to the motion.

THE COURT: Well, did they describe or give you examples of what incidental benefits would constitute -- what would constitute incidental benefits?

MR. CARPENTER: I quoted the case extensively in the memo.

THE COURT: And, look, guys ---

MR. CARPENTER: I understand you've got a hundred cases.

THE COURT: --- I have not read your stuff yet. I will. I promise you I will read it again, but I just have not today.

MR. CARPENTER: From my brief, the Supreme Court said, Article 10, Section 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" --

THE COURT: Well, what about the other benefits? You have environmental benefits and you have economies of scales. He's saying you have multiple other benefits that are -- have been found by the body to exist that seems like they're more than just incidental benefits.

MR. CARPENTER: Well, there's the Robinson case and also the Casey case. The Casey case says, "We recognize the proposed system will improve sanitary conditions in

unincorporated areas, which would enhance property values, but disagree with the appellants' claim that this generalized benefit is sufficient to make this surcharge an assessment." On that case, it was the same concept. The dispute was whether it was an assessment or a tax.

THE COURT: Do you have any cases from South Carolina or other where -- somewhere else that would tell us or give us guidance when an incidental benefit or when something goes from being an incidental benefit to one that does actually benefit that would be allowable under the Constitution?

MR. CARPENTER: Well, these two cases are prime -- and they -- I haven't quoted everything from those two cases, but they do talk at a pretty good length --

THE COURT: Cite those cases again. I think I read them before.

MR. CARPENTER: Yeah, one of them is called ---

THE COURT: Is it a Columbia case or something?

MR. CARPENTER: --- Robinson vs. Richland County Council. The other is Casey vs. Richland County Council. And the Robinson case cites the Casey case and says it does not become a tax merely because the general public obtains a health benefit from the elimination of the sewage problem.

So it talks about several incidental benefits that would go to the whole -- county as a whole and all the rural areas, but he said that is not sufficient.

What the benefit they're talking about there is the sewer service itself. That's what this constitutional provision is talking about. Who is getting the benefit of the sewer service? And those people who are getting the benefit of sewer service have to be put into a tax district, and their taxes have to pay the bonds back that funded putting the sewer service in their area. And those two cases stand for that proposition.

And they did the best they could by getting the County to do their resolution and getting three other people unassociated with the county to file statements, but they're all talking about these incidental benefits that the Supreme Court twice has said is not what this constitutional provision is talking about.

THE COURT: Again, do you have any cases that tell us when something goes from being an incidental to a general benefit to the entire county so you can distinguish between the two? Or is it just based on the actual project itself?

MR. CARPENTER: I think it's just based on the project itself. The benefit from the project, the sewer service, is that the people getting sewer service have to pay for it, is what -- is what these two cases stand for.

And the incidental benefits for the other parts of the county are not sufficient to tax the other parts of the county to pay for sewer service in this area. And that's what these

two cases stand for, as I read them. And I've quoted them extensively in the brief.

THE COURT: All right.

MR. CARPENTER: In response to other arguments they made, as the Court found earlier, we're not challenging the issuance of the bonds. Those bonds --

THE COURT: Well, what about what Mr. Wilkins says, Look, there's got to be a cutoff. We're going out to the market. We've got people who are putting money in this. We have people who are providing services. And that's why we have a statute of limitations there. And if you're going to challenge this, you need to do it within the time frame, but you didn't. So why aren't you time-barred under the statute even though you are trying to phrase it as we're not trying to do anything about the issuance but only the use of the monies?

MR. CARPENTER: Well, I think that's a critical distinction.

THE COURT: Is there anything out there that says that's a critical distinction?

MR. CARPENTER: I would argue that the language in the statute itself makes that distinction.

THE COURT: What language is that?

MR. CARPENTER: "No action shall be commenced on account of the issuance of any such bonds after the expiration of 20 days." Those bonds were issued -- we're not challenging

the bonds. We're not challenging --

THE COURT: But if you issue bonds, you've got to spend it. I mean, you've got money there, because that's the purpose of it.

MR. CARPENTER: Well, the money is sitting there --

THE COURT: Right?

MR. CARPENTER: It hasn't been spent yet. It's been sitting there for months.

THE COURT: Well, I mean, any time you raise monies for a bond, it's for the purpose of doing something; right?

MR. CARPENTER: That's right.

THE COURT: So you're going to spend it, and that's anticipated when you raise the money. So when you say it's issued and it's raised, isn't that anticipating spending those monies?

MR. CARPENTER: Absolutely.

THE COURT: So then why would that not be barred time [sic] by the statute?

MR. CARPENTER: Well, there's the constitutional provision that governs how the money is spent, not how the money is raised. But the statute that they're talking about here talks about bonds so issued in the hands of a bona fide purchaser for value. They're worried about the validity of the bonds. We're not challenging the bonds. Those bonds went in the marketplace a long time ago, and they're presumably

circulating or sitting in somebody's drawer, paying interest to somebody who bought them.

It says that shall be incontestable. We're not contesting the bonds. The bonds are issued, and they're fine, as far as I know, and they'll be paid off eventually. And we're not -- that's not our case. And the Court, in the earlier ruling, made a distinction between the issuance of the bonds and spending the proceeds, and I think that was a correct distinction. And this 20-day challenge has to do with the issuance of the bonds because those bonds, you know, they go to New York and they get sold. You've got people all over the world buying Anderson County bonds.

But those bonds are out there, and nothing has happened to them, and there's no challenge to any of those bonds. It's just $25 million they've got and whether they're going to spend $25 million in keeping with the constitution or in violation of the constitution, and that's what this case is about. And if the Court wants me to address public importance standing, I'll be happy to do that.

Opposing counsel talked about the outlying cases that are the exceptions to the rule. Case after case after case talked about public importance standing when you've got a constitutional violation or an illegal action on the part of the government and it involves spending taxpayer money, that is sufficient to support public importance standing.

And it also is sufficient to support taxpayer standing, as they pointed out. The Foundation is not a taxpayer here but all the rest of them are. So we've got taxpayers standing and public importance standing, and the Court properly found that.

The cases they talked about, the ATC case, that didn't have anything to do with spending taxpayer money. That was somebody objecting to putting a radio tower in his neighborhood when he wanted it someplace else. It didn't involve the unlawful issuance of spending taxpayer money.

The Freemantle case from over in Anderson County, that involved the plaintiff trying to sue the County and collect damages for himself, and the Supreme Court said that's not what taxpayer standing is all about.

So those two cases are outlier cases. They don't have -- they're not in the long line of accepted taxpayer public importance standing that the Supreme Court has recognized over and over and over again.

The Calhoun County case, Mr. Wilkins argued that before, and he argued it again, but he didn't come up with anything new. As he said, this is about the Capital Project Sales Tax Act. I looked at the case -- the Calhoun County case. I did a word search for "constitution," and it didn't come up. It doesn't address the constitution. We've got a constitutional issue. He's talking about a statutory issue, and he's trying

to put a square peg in a round hole. And the Calhoun County case doesn't have an impact on the case at bar.

We've got a constitutional provision that says you can't -- when you raise money by bonding and you want to spend it for sewer, you've got to tax people who are getting the sewer to pay for the bonds, so you can't tax the whole county; it is an unconstitutional use of the bonding process and unconstitutional use of the expenditure. The bonds were fine but the expenditure of the proceeds is unconstitutional. And that's what the Court stopped, and that was a proper ruling, and we ask the Court to uphold its prior ruling with an injunction.

THE COURT: All right.

MR. CARPENTER: Incidentally, the Court asked last time, "If I issue an injunction, if I make a ruling, how soon can you get your discovery responses in?" And they said 30 days. It's been a long, long time, and we still don't have discovery responses that we issued back in April. And we made a Motion to Compel back in June, and we'd ask the Court to address that as well.

THE COURT: Well, that's not before me today, but we'll take it from there.

Mr. Davis or Mr. Wilkins, either one of you?

MR. DAVIS: Your Honor, I would just point out a couple of things. No. 1, the ATC case, the Bodman case, the

Freemantle case, they're not outliers.

No. 2, ATC -- what I was trying to point out to Your Honor was ATC was bottomed on the Frothingham United States Supreme Court case. That was the case where they were challenging the appropriation of money. By the way --

THE COURT: Which case was that?

MR. DAVIS: The Frothingham case, which was the basis for the ATC holding.

So the distinctions that Mr. Carpenter is making are, with all due respect to him, not real. The same with the Bodman case. There was also a challenge to exemptions to tax issues. It was an unconstitutional challenge. They were saying it was unconstitutional what they were doing. It was inappropriate and it was affecting specific people's monies; right?

I would like to turn your attention, though, about this issue relating to the generalized versus attenuated benefit. All of the modifiers that Mr. Carpenter snuck in there don't actually exist in the provision that he's talking about. It doesn't say "direct benefit," you know, or incidental benefits were disallowed.

What we see and what we glean from the cases -- and we have cited originally in our Motion to Dismiss, the cases that went the opposite direction saying, sewer infrastructure, in fact, created a county-wide benefit. If we can discern

anything from them, there are fact-specific inquiries that the Court is taking on a case-by-case basis to determine whether this particular set of projects creates a county-wide basis.

Here, the County did quite a good job of going through and listing five or six in detail in the resolution. And when Your Honor has an opportunity to look at, it's Exhibit E to our memorandum. I mean, it goes through in gross detail and explains how there's leachate into the water tables which creates clean water for the entire county. It impacts the water -- Lake Hartwell. This will create jobs and industries. Those industries will increase the tax base. The tax base will allow other companies to come in to support those industries.

It goes into detail as to why this is creating county-wide benefits. And they are far from being incidental. And even the people inside of the areas that he's talking about, you know, Seneca, Westminster, Walhalla, that have existing sewer systems are still gaining those benefits and economies of scale.

So there is more in the bucket of direct benefit than any of the cases that Mr. Carpenter has cited, and I would just respectfully say, under the Bear Enterprises case, it's very clear that, if it's fairly debatable -- if you look at it and say, "Yeah, that's fairly debatable, I can see how that could -- what they did there was either right or it could go both

ways." If you say it could go both ways, it's over.

THE COURT: Right.

MR. DAVIS: One of the things, there's going to be large industrial growth from that infrastructure, which is key to the County. I mean, that's what Oconee County has been looking to try to do for 20 years now. So I just don't think that what he's arguing is borne out by the cases that he's citing. But, at any rate, those -- the distinctions that he is trying to make about constitutionality versus statutory prohibitions and that's just because it's somehow constitutional challenge, that it allows him to end run what the statute says, listen, what the General Assembly said was no action shall be brought.

So if Your Honor determines that the issuance of these bonds or that the use argument they're making implicates the issuance of these bonds, and, therefore, falls underneath that statute, which I would just respectfully suggest to you is inescapable, when you determine that, then it falls underneath the statute, also inescapable.

And then it's also inescapable that the plain language of the statute puts a hard 20-day time limit. And it's uncontested in this case -- if Mr. Carpenter wants to talk about things that were uncontested and then listed a bunch of things that were contested, one of the things that's uncontested in this case, they didn't file in 20 days. Game,

set, match. That ends the standing. That ends the lawsuit. Period.

And even if we got to the merits, they would still win because the ordinance is presumed valid, the bonds are presumed valid, the issuance required the ordinance, the ordinance specified a use, the use that they're challenging is embedded in the ordinance. It's challenging the issuance. You're under the statute. This case shouldn't be here.

With respect to discovery, Your Honor, I acknowledge --

THE COURT: I'm not worried about discovery.

MR. DAVIS: I appreciate your time, Your Honor, and we know this is a lot. Thank you.

THE COURT: Gentlemen, I will go back and read it. I have not, as I've said. I will read everything and look at your cases again. If I'm wrong, I'll admit it. If I'm not, I'll admit that too.

Thank you. Y'all have a good day.

(The hearing concluded at 10:48 a.m.)

Certificate of Transcriber

CASE NAME: SC Public Interest Foundation v. Oconee County

DATE OF HEARING: 1/30/25

RECORDING METHOD: DCRP Court Monitor Anna Foster

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; *that I was not present for the live proceeding; and that said proceedings were transcribed to the best of my ability from the audio and/or video recording and supporting information*; and that I am neither counsel for, related to, nor employed by any of the parties to this case; and I have no interest, financial or otherwise, in its outcome.

Bobbi Fisher

/s/ Bobbi Fisher

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 5/12/25

NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT REPORTER SHALL RECEIVE THE FEE OF $1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES OF THE ATTACHED TRANSCRIPT (FORM 800) FROM OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO THIS REPORTER AT BFISHER@SCCOURTS.ORG.

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 **AFFIDAVIT AND VERIFICATION**

Jim Mann, being first duly sworn on oath, deposes and says that he is one of the Plaintiffs in this action, that he has read the Complaint and knows the contents thereof, and that the allegations in the Complaint are true to his own knowledge, except those matters therein stated on information and belief, and as to those items, he believes them to be true.

He also submits this Affidavit in support of the Motion for injunctive relief in this action.

Jim Mann

Jim Mann

Subscribed and sworn to before me this
22 day of July, 2024.

James G. Carpenter, Notary Public
My commission expires: February 26, 2026

James Carpenter

From: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>
Sent: Monday, February 3, 2025 11:04 AM
To: Lane W Davis; James Carpenter; Amanda Watkins; Frances Smith; debra@billywilkinslaw.com; Konstantine P Diamaduros; Tori L. Davis; billy@billywilkinslaw.com
Cc: McIntosh, Lawton Law Clerk (Kjursten Collier)
Subject: RE: 2024CP3700202 South Carolina Public Interest Foundation , et al VS Oconee County

All,

Please see the email from Judge McIntosh concerning this case:

Re: Order Reversing prior grant of TRO to Plaintiffs and Granting Defendant's Motion for Reconsideration (Mr. Davis to prepare a formal order)

Counsel,

After review of your submissions, the oral arguments, the Court's prior Order and after researching the issues further, I find that I erred in granting Plaintiff's a TRO and hereby reverse the same granting Defendant's motion for reconsideration. As such, I find that the Plaintiff's do not have a likelihood of success on the merits.

Based on the allegations of the illegal use of public monies, I find that Plaintiff did have public importance standing to commence this action.

Plaintiffs assert that SC Code Ann. Section 11-15-30 only applies to the "issuance" of the subject bonds in question but that this section does not apply to the County's "use" of the bond revenues. Plaintiffs' further assert that the county's intended use of the bond revenues violates Article 10, Section 12 of the South Carolina Constitution which prohibits a counties enactment of laws permitting the incurring of bond indebtedness for any sewer project…which benefits only a particular geographical area of the county unless a special assessment to provide for debt serviced is imposed.

Considering the "issuance" versus "use" argument, I find that a plain reading of section 11-15-30 would seem to indicate that this section only applies to the issuance and not the use of the bond revenues. The terms are not defined in the statute.
Oxford dictionary defines "issuance" as " the action of supplying or distributing something available or giving something to people to be used'. "issue" is defined as "the action of supplying or distributing an item for use, sale or official purposes". The remaining language in section 11-15-30 that "bonds, so issued, when in the hands of a bona fide purchaser for value, shall be incontestable…" seems validate this construction. Morgan -v- Feagin,230 SC 315, 95 SE2d 621 (1956) referring to the short limitations period of section 11-15-30 (then 1952, Sec. 1-645) also seems to do so by providing:

…The practical necessity of them (short limitations periods) is obvious. 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. Further 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 delay.

Plaintiffs' assert that the County's having the subject bonds payment out of the general revenues based on a tax assessed equally to all citizens violates Article 10, Section 12 of the South Carolina Constitution. Plaintiffs' in effect argue that Oconee County is required to create a special tax district and assess only the persons that are specially benefitted by the project in southern Oconee county. Plaintiff would be correct if the project only benefitted the people in southern Oconee County. However , the counties enabling ordinance authorizing the issuance of the subject bonds finds that the project generally benefits all of the citizens of Oconee county by creating more environmentally favorable conditions, better sanitary conditions, the increase in property values, an increase in the economies of scale resulting in lower prices and more favorable conditions for new industry to move into the county, inter alia. In Casey -v- Richland County Council, 282 SC 387, 390, 320 SE2d 443, 444 (1984), the Supreme Court found that a prosed sewer system would benefit each and every citizen of Richland county, all of the citizens of the city of Columbia and elsewhere. Because the benefit was all encompassing, the Court held that the charge was a tax and not an assessment (which would need have a more particularized benefit to a smaller group of people).

In this case, Plaintiffs' argument of a violation of Article 10, Section 12 fails because as a threshold matter, the project generally benefits all of Oconee county. Because there is a countywide general benefit and because the project will be paid by general revenue taxes applied equally across the board, Article 10, Section 12 is not implicated.

Accordingly, I find that I was mistaken and in error in granting Plaintiffs' a TRO and I hereby reverse my prior order. In doing so, I find that Plaintiffs' do not have a likelihood of success of the merits. Therefore , I grant Defendant's motion for reconsideration.

Lawton McIntosh

(Note: I am sure the plaintiffs' will seek a reconsideration of this order. To avoid further delay, I will make myself available at the convenience of counsel's schedules. If necessary, I will schedule Plaintiffs' motion virtually if everyone is in agreement.
Note: THIS IS NOT A FINAL ORDER UNTIL I FILE THE REQUESTED ORDER FROM MR DAVIS.)

-----Original Message-----

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 **AFFIDAVIT OF JIM MANN**

Jim Mann, being first duly sworn on oath, deposes and says that he is one of the Plaintiffs in this action, and that he submits this Affidavit in support of the Plaintiffs' Motion to Alter or Amend in this action.

HISTORY OF THE BOND ORDINANCE

1. During the public hearings for the bond, no spending details ever presented to the taxpayers showing how the $25M was to be spent, nor was it included in the backup materials.
2. From July through September 2023 there were three public hearings on the Bond Ordinance. Citizens called for a public town hall to discuss both the $25M Bond details and the 2024-25 Fiscal Budget, because no spending details were being provided. Only two council members attended. Those members had no part in writing the Bond Ordinance, nor could they answer how the $25M bond proceeds would be spent.
3. Public outcry continued into 2024, and the County Council called a special meeting on January 23, 2024, for "Discussion of the $25M Bond." The only financial details disclosed at that meeting were the payback schedule and accrued costs.

4. In February 2024, the Seneca Journal ran a series on Sewer South. These articles published the first spending details that the public had seen. Prior to that time, the public had only a hunch that the bond proceeds would be spent on sewer expansion.
5. Plaintiffs contend that the targeted spending of the bond money was redirected to be 100% allocated to sewer and wastewater expansion projects. This goal was never presented at any public meeting or hearings for the 2023 Bond Ordinance. Only after public outcry forced a special called meeting by County Council in January 2024, and the local paper ran a "Sewer South Series" in February to clear-up the "sewer bond" issue and to cover OJRSA meeting topics, was it actually revealed that 100% of the bond proceeds would be used to fund sewer expansion.
6. Plaintiffs filed their Summons and Complaint March 17, 2024.

FIRE DISTRICT RESOLUTION

7. On May 21, 2024, Oconee County voted to approve Resolution 2024-12/13 that allowed the voters to approve creating a special purpose tax district for Fire Protection.

> RESOLUTION 2024-12 RESOLUTION REQUESTING AND DIRECTING THAT THE OCONEE COUNTY BOARD OF ELECTIONS AND VOTER REGISTRATION HOLD THE ELECTION REGARDING THE CREATION OF THE CORINTH-SHILOH SPECIAL PURPOSE TAX DISTRICT FOR FIRE PROTECTION ON THE SAME DAY AS THE 2024 GENERAL ELECTION; AND OTHER RELATED MATTERS.

8. This Resolution allowed voters to approve the Corinth-Shiloh Special Purpose Tax District for Fire Protection.

OJRSA SURVEY

9. In 2024, the Oconee Joint Regional Sewer Authority ("OJRSA") commissioned a survey of county residents and taxpayers called the Sewer Master Plan Survey. The results are posted on the OJRSA website and show the following:
    a. Only 3% of respondents support any growth that increases tax base, regardless of location

b. Only 16% of respondents support growth that steers development along main I-85 corridors

c. The majority 34% of respondents support growth that drives development both within and around the municipalities (Seneca, Walhalla, Westminster, West Union, Salem, etc. where sewer currently exists) without significant change to rural areas (Mountain Rest, Fair Play, Tamassee, etc.)

d. 19% of respondents oppose most or all growth

10. The Sewer Master Plan Survey rated the following factors the highest in importance to the citizens and taxpayers of Oconee County with respect to public sewer growth:

    a. The location of new public sewer – 65%

    b. The cost to taxpayers and rate payers – 63%

    c. Current public sewer infrastructure maintenance – 63%

    d. The organization in charge of sewer collection and treatment – 57%

11. "The emphasis on "current public sewer infrastructure maintenance" is based on the fact the County has leaks in the sewer system all over the County.

12. Oconee County Council is ignoring the results of this independent survey that shows that most taxpayers and Oconee County do not want to pay for the sewer in the southern part of the County, nor are they interested in the speculative set of general benefits touted by the County Council.

THE COUNTY'S MOTION TO ALTER OR AMEND

13. All individuals submitting affidavits in support of the County's bond ordinance have a vested career or financial interest in the bond money being spent on sewer. No affidavit was submitted from a disinterested or objective source.

14. The County intends to spend the bond money for pipes, pumps, valves, and so on. The localized infrastructure will be used directly by those within the specific geographic area, and that use defines who will receive the "distinguishable" benefit.

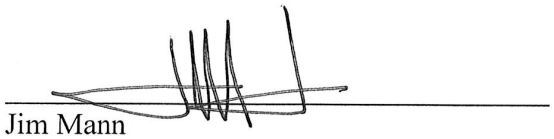
15. The County acknowledges that the entire population will not receive a specific benefit from the physical sewer infrastructure, but rather from the **possibility** of industrial growth, increased development, and other forecast general benefit.

16. Phase I of Sewer South ran sewer infrastructure to the Golden Corner Commerce Park on Hwy 59 in the Southern part of the County. That project was completed in 2015. The County Council funded that project through standard tax levy, without a bond, at a cost of $8.1M. Although the project finish date was 10 years ago, the Golden Corner Commerce Park still sits vacant today with no industry, no occupants, and with zero economies of scale or other benefit to the taxpayers. The project represents bad decision-making and poor planning at the taxpayers' expense. Nevertheless, in 2024, the County Council approved spending an additional ~$1.2M to regrade and dress up the very same property, again without any contractual agreement for occupancy.

CONCLUSION

Finally, the Oconee County taxpayers do not approve of spending the bond proceeds in violation of the South Carolina Constitution, Article X, § 12.

Further the affiant saith naught.



Jim Mann

Subscribed and sworn to before me this
21st day of March, 2025.

James G. Carpenter, Notary Public
My commission expires: February 26, 2026

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2024-CP-37-00202

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

v.

Oconee County, ... Respondents,

NOTICE OF APPEAL

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, appeal the Form 4 Order entered March 25, 2025, and the Order entered March 11, 2025, by the Honorable R. Lawton McIntosh.

Appellants received written notice of the entry of the final Order on March 25, 2025.

/S/ James G. Carpenter
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April 24, 2025

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Counsel for the Respondents

Certificate of Service

The undersigned attorney hereby certifies that he has served a copy of the foregoing Notice of Appeal on counsel for Defendants by US Mail, postage prepaid on Thursday, April 24, 2025, to the following persons:

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Attorneys for Appellants

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

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.

NOTICE OF APPEAL

Oconee County hereby appeals certain portions of the Order of the Honorable R. Lawton McIntosh filed on March 11, 2025, namely, the rulings set forth in subparts I and II of the Order's Conclusions of Law section. A copy of the Order is attached to this Notice. Oconee County received a notice of appeal from Appellants-Respondents on April 24, 2025.

[Signature Page Follows]

Respectfully submitted,

/s/ *Lane W. Davis*

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Attorneys for Respondent-Appellant Oconee County

April 25, 2025
Greenville, South Carolina

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

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.

PROOF OF SERVICE

The undersigned certifies serving the Notice of Appeal by Respondent-Appellant Oconee County on the following counsel of record for Appellants-Respondents via electronic mail on April 25, 2025:

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Respectfully submitted,

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Attorneys for Respondent-Appellant Oconee County

April 25, 2025
Greenville, South Carolina