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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.

FINAL APPELLANT'S BRIEF OF RESPONDENT-APPELLANT

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STATEMENT OF ISSUES ON APPEAL

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II. Did the Circuit Court err in ruling that Plaintiffs have standing to maintain their lawsuit?

INTRODUCTION

This appeal arises out of Respondent-Appellant Oconee County's (the "County" or "Oconee County") issuing bonds to raise funds for capital projects to benefit its constituents. Appellants-Respondents, consisting of the South Carolina Public Interest Foundation ("SCPIF") and a number of individual plaintiffs (collectively, "Plaintiffs"), subsequently filed a lawsuit challenging the constitutionality of those bonds without standing to do so and at such time as the bonds had become uncontestable pursuant to a statutory time-bar.

Ultimately, the Circuit Court properly dismissed Plaintiffs' lawsuit and denied their request for injunctive relief, finding the County's bond ordinance did not violate the South Carolina Constitution. The parties are now before this Court because Plaintiffs have appealed the order issuing that ruling. But within the same order, despite reaching the correct conclusion, the Circuit Court rejected two threshold grounds for dismissal raised by the County: (1) the application of a statutory time-bar on the lawsuit; and (2) Plaintiffs' lack of standing. The County's cross-appeal challenges these two rulings.

STATEMENT OF THE CASE AND THE FACTS[1]

The Oconee County Council unanimously enacted Oconee County Ordinance 2023-13 ("Bond Ordinance") in duly called meetings respectively held on: July 18, 2023, August 15, 2023, and September 5, 2023. (R. pp. 71–98, 382–96 (Answer, Ex. B; Def.'s New & Revised Mot. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. D).) As authorized by the Bond Ordinance, on November 2, 2023, the County issued $25,000,000 in General Obligation Bonds, Series 2023 (the "2023 Bonds"), (*see* R. pp. 100–04 (Answer, Ex. C)), for the purpose of "(i) designing,

[1] Because the relevant facts and procedural history so closely intertwine, the County has consolidated the Statement of the Case and the Statement of the Facts under a single heading.

acquiring, constructing, installing, equipping or rehabilitating various capital projects, including wastewater improvements and related equipment, and other capital projects, together with all appurtenances necessary, useful or convenient for the maintenance and operation of the same, and (ii) paying the costs of issuance of the Bonds." (R. p. 56 (Compl. ¶ 15, n.1).) The County filed a true, correct, and full record of the bond issuance proceedings with the Office of the Clerk of Court for Oconee County on November 8, 2023, where it was indexed in a special book kept for that purpose. (R. p. 69 (Answer, Ex. A).)

More than four months later, on March 17, 2024, SCPIF, a non-profit entity, and the individual plaintiffs filed the underlying action seeking declaratory and injunctive relief (the "Action"). (R. p. 53 (Compl. ¶¶ 1–2).) According to Plaintiffs, the County violated the South Carolina Constitution because the sewer infrastructure contemplated for funding under the Bond Ordinance would only benefit a particular geographical section of Oconee County and, as a result, the County "cannot lawfully use the proceeds of the 2023 Bonds for wastewater improvements, and pledge the full faith, credit, and taxing power of the entire County." (R. pp. 56–59 (Compl. ¶¶ 16, 25, 29–31).) Should the County desire to provide the sewer services contemplated by the Bond Ordinance, Plaintiffs contend the County must first "create a special taxing district … [and] thereafter impose a uniform rate of taxation within the special taxing district." (R. p. 57 (Compl. ¶ 20).)

On April 19, 2024, the County filed its answer, followed by a motion to dismiss on April 24, 2024. (R. pp. 61–106 (Answer; Def.'s Mot. to Dismiss).) Relevant to this cross-appeal, the County sought dismissal of the Action because Plaintiffs lack standing and the Action is time barred under S.C. Code. Ann. § 11-15-30, among other reasons. (R. pp. 105–20 (Def.'s Mot. to Dismiss; Def.'s Mem. in Supp. of Mot. to Dismiss).)

Plaintiffs filed a motion for injunctive relief on July 3, 2024. (R. pp. 178–86 (Pls.' Mot. for Temp., Prelim., & Permanent Inj.).) Thereafter, the Honorable R. Lawton McIntosh held a hearing on July 17, 2024, and took the pending motions under advisement. (R. pp. 218–72 (Tr., July 17, 2024 Hearing).)

On July 29, 2024, the Circuit Court issued a Form 4 Order on the requested injunctions in Plaintiffs' favor (R. pp. 1–4 (Form 4 Order, July 29, 2024)), and on August 9, 2024, issued a more detailed order granting a temporary injunction (R. pp. 5–33 (Order, August 9, 2024)).

The County moved for alteration or amendment of the Circuit Court's July 29 Form 4 Order and August 9 Order pursuant to Rules 52(b) and 59(e), SCRCP, specifically requesting the Circuit Court vacate its orders and enter judgment in the County's favor as a matter of law. (R. pp. 204–396 (Def.'s Mot. for Alteration & Amendment of the Ct.'s Order; Def.'s New & Revised Mot. for Alteration & Amendment of the Ct.'s Prior Orders).) A hearing was held on the motion before the Honorable R. Lawton McIntosh on January 30, 2025. (R. pp. 556–97 (Tr., January 30, 2025).)

On March 11, 2025, the Circuit Court entered an order granting the County's motion for alteration and amendment, vacating its prior orders, denying Plaintiffs' motion for injunctive relief, and granting the County's motion to dismiss (the "March 11 Order"). (R. pp. 34–48 (Order, March 11, 2025).) Plaintiffs filed a motion to alter or amend on March 21, 2025, which the Circuit Court denied in a Form 4 Order issued on March 25, 2025 (the "March 25 Order"). (R. pp. 49–51 (Form 4 Order, March 25, 2025).)

Plaintiffs appealed the March 11 Order and the March 25 Order on April 24, 2025. On April 25, 2025, the County filed the cross-appeal forming the subject of this brief.

STANDARD OF REVIEW

The County's cross-appeal challenges whether Plaintiffs have standing and how S.C. Code Ann. § 11-15-30 applies to the Action. Both issues involve questions of law, which the Court reviews de novo. *See Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). First, the question of standing "challenges the court's subject matter jurisdiction." *S.C. Pub. Int. Found. v. Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022). "Whether subject matter jurisdiction exists is a question of law, which this Court is free to decide with no particular deference to the circuit court. Therefore, on appeal, [the Court] reviews the circuit court's findings de novo." *Id.* Second, "the interpretation of a statute is [likewise] a question of law for the Court to review de novo." *S.C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 495, 854 S.E.2d 836, 837 (2021); *see also Town of Summerville*, 378 S.C. at 110, 662 S.E.2d at 41 ("Determining the proper interpretation of a statute is a question of law….").

ARGUMENT

I. The Circuit Court Erred in Failing to Apply the Statute That Expressly Time-Bars the Action.

The Circuit Court erred as a matter of law by ruling the time-bar contained in S.C. Code Ann. § 11-15-30 ("Section 11-15-30")—which Plaintiffs failed to satisfy—did not apply to Plaintiffs' lawsuit, and therefore declining to dismiss their Action on that basis. (R. pp. 40–42 (March 11 Order, pp. 7–9).) This Court should reverse that ruling.

A. The Impact and Necessity of Section 11-15-30.

Section 11-15-30 unambiguously ***bars all lawsuits*** "on account of" a local government body's issuance of general obligation bonds after the expiration of "twenty days from the date of

the filing and indexing" of the underlying bond proceedings with "the office of the clerk of the county." S.C. Code Ann. §§ 11-15-10 & -30. More specifically, Section 11-15-30 states:

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

Although commonly referred to as a statute of limitations, the 20-day window set forth in Section 11-15-30 notably operates as a statute of creation. *See Crosby v. Glasscock Trucking Co.*, 340 S.C. 626, 628, 532 S.E.2d 856, 856–57 (2000) ("A statute creating a cause of action in derogation of common law is a statute of creation." (citing *Simpson v. Sanders*, 314 S.C. 413, 445 S.E.2d 93 (1994); *Hyder v. Jones*, 271 S.C. 85, 245 S.E.2d 123 (1978)).[2] Thus, strict compliance with its terms proves mandatory. *See Simpson*, 314 S.C. at 415, 445 S.E.2d at 94; *see also Davenport v. Summer*, 273 S.C. 771, 773, 259 S.E.2d 815, 816 (1979) (providing that such a statute must be strictly construed and its application must not be extended beyond the clear intent of the legislature).

Statutes setting forth timing limitations "embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). "One purpose of a statute of limitations is 'to relieve the courts "of the burden of trying stale claims when a plaintiff has slept on his rights."'" *Id*. (quoting *McKinney v. CSX Transp., Inc*., 298 S.C.

[2] Where a statute creates a new right to assert an action that did not previously exist at common law, and such statute includes a time limitation within which the action must be commenced, strict compliance with the statute's terms, including the applicable time limitation, is necessary to maintain the action created by the statute. *See Simpson*, 314 S.C. at 415, 445 S.E.2d at 94.

47, 49–50, 378 S.E.2d 69, 70 (Ct. App. 1989)). Relevant to this matter, "short statutes of limitation, applicable to actions which question the proceedings upon the issuance of municipal and other bonds have been of force in this State for many years." *Morgan v. Feagin*, 230 S.C. 315, 317, 95 S.E.2d 621, 622 (1956). The "practical necessity of them is obvious" for two reasons. *Id.* First, "[p]urchasers of bonds could hardly be found if the bonds were subject in their hands to attack for alleged illegality in the proceedings upon the issuance of them." *Id.* Second, "it is within common knowledge that sales of bonds are frequently timed to take advantage of a favorable market, which might well be hindered by long delay." *Id*.

It is well-established that "if an action is 'commenced on account of the issuance' of a bond within the meaning of S.C. Code Ann. § 11–15–30, the action ***must*** be commenced within twenty days of the date that the documents related to the bond were filed pursuant to S.C. Code Ann. § 11-15-10." *Berry v. McLeod*, 328 S.C. 435, 443, 492 S.E.2d 794, 798 (Ct. App. 1997) (emphasis added) (dismissing town residents' lawsuit because they failed to comply with Section 11-15-30).

Ignoring the time-bar of Section 11-15-30 would jeopardize the ability of the County, along with local government bodies throughout this State, from viably using bonded indebtedness as a needed tool to finance the public services required by constituents. The uncertainty resulting from protracted legal battles ensuing after closure of the 20-day contestability period imposed by Section 11-15-30 would both chill prospective bond purchasers and also impede local governments from availing themselves of favorable bond markets in the exact manner the General Assembly unambiguously sought to foreclose. *See Morgan*, 230 S.C. at 317, 95 S.E.2d at 622.

B. Section 11-15-30 Bars Plaintiffs' Action.

In the proceedings below, Plaintiffs attempted to circumvent Section 11-15-30 and thereby avoid the repercussions of their untimely challenge to the Bond Ordinance by arguing the Action falls outside of the scope of Section 11-15-30 because the Action does not challenge the ***issuance*** of the bonds, which Plaintiffs admit would be barred by Section 11-15-30, but rather, challenges the County's ***use*** of the bond proceeds. (R. p. 40 (March 11 Order, p. 7).) Accepting Plaintiffs' flawed reasoning, the Circuit Court erred by refusing to apply Section 11-15-30 to the Action. (R. pp. 40–42 (March 11 Order, pp. 7–9).)

1. The Circuit Court Erred in Creating a Distinction Where One Does Not Exist.

Sound principles of statutory construction require application of Section 11-15-30 to the Action. "The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly." *Amisub of S.C., Inc. v. S.C. Dep't of Health & Env't Control*, 407 S.C. 583, 597, 757 S.E.2d 408, 416 (2014). "Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). Accordingly, courts will "give words 'their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.'" *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (citation omitted).

On its face, the timing limitation of Section 11-15-30 applies to actions "commenced ***on account of the issuance of*** any such [local government's general obligation] bonds . . . ." S.C. Code Ann. § 11-15-30 (emphasis added). The Circuit Court declined to apply Section 11-15-30 to Plaintiffs' lawsuit, reasoning the Action instead "challenges the use of bond proceeds, not the

issuance of the bonds themselves," and a "plain reading" of Section 11-15-30 indicates the statute does not apply to the "'use' of bond proceeds." (R. pp. 40, 42 (March 11 Order, pp. 7, 9) (internal marks omitted).) This finding violates the principles of statutory construction.

First, the Circuit Court impermissibly limited application of the statute by injecting a distinction nowhere found in the language of Section 11-15-30. *See Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) ("When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language . . . ." (citing *Timmons v. S.C. Tricentennial Comm'n*, 254 S.C. 378, 175 S.E.2d 805 (1970)). Here, the South Carolina General Assembly intentionally chose not to include any exceptions in the Section 11-15-30 limitations period. *Compare* S.C. Code Ann. § 11-15-30, *with, e.g.*, S.C. Code Ann. § 15-48-130(b) (carving out certain circumstances from statute of limitation on arbitration awards). It would be "improvident [for this Court] to judicially engraft extra requirements," such as the "use" versus "issuance" limitation applied by the Circuit Court. *S.C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 497, 854 S.E.2d 836, 838 (2021) (quoting *Grier v. AMISUB of S.C., Inc*., 397 S.C. 532, 540, 725 S.E.2d 693, 698 (2012)).

Using this Court's terminology, the Circuit Court's application of the distinction urged by Plaintiffs—which uses too narrow of an interpretation of language denoting broader application—provides for "too technical" a reading of the express language of the legislature. *See Hite v. Town of W. Columbia*, 220 S.C. 59, 64–65, 66 S.E.2d 427, 429 (1951) (holding ninety-day statute of limitations barred landowner's suit because the landowner's interpretation of the statute was "too technical" and the limitations period was not confined to a challenge of the "casting and counting of ballots," but instead to the entire annexation process). The statute's application is simply not

bound by the Circuit Court's impermissible reading of its plain language.[3]

Moreover, the Circuit Court failed to recognize the General Assembly's inclusion of the phrase "on account of" on the face of Section 11-15-30. When used as in the statute, *Merriam-Webster* broadly defines the phrase as "for the sake of" or "because of." *See On Account Of*, Merriam-Webster Online, https://www.merriam-webster.com/dictionary/on%20account%20of (last visited July 29, 2025); *see also Books-A-Million, Inc. v. S.C. Dep't of Revenue*, 437 S.C. 640, 643, 880 S.E.2d 476, 477 (2022) (relying on Merriam-Webster's definition of a term, noting that "the best evidence of legislative intent is the text of the statute") (citation omitted). Plaintiffs' Action, without doubt, arose "on account of" the issuance of the 2023 Bonds.

Plaintiffs challenge the bond issuance process, not merely the legality of the subsequent

[3] Other states with similarly short statutes of limitations for contesting the issuance of bonds have interpreted similar statutory language and have rejected Plaintiffs' proposed distinction. *See, e.g.*, *Naquin v. Lafayette City-Par. Consol. Gov't*, 950 So. 2d 657, 669 (La. 2007) (finding that "[t]he intent of the framers of the Constitution to prohibit ***any challenge*** not raised within the constitutional time limitations is clear and unambiguous" and "once the 30–day period from publication of the [bond] ordinance in the local newspaper expired, no one had 'any cause of action to test the regularity, formality, legality, or effectiveness of the ordinance or resolution, and provisions thereof ***for any cause whatever***,'" and therefore, "neither this court nor the court of appeal has 'authority to inquire' into any issue not timely raised in the plaintiffs' motion for judgment to the bond ordinance" (emphasis added) (citations omitted)); *Harper v. City Council of City of Richmond*, 220 Va. 727, 735–36, 261 S.E.2d 560, 565 (Va. 1980) (finding the thirty-day statute of limitations to contest the issuance of a bond "is applicable and that the defendants waited too long to attack the validity of the bond ordinances"); *Citizens Ass'n for Reasonable Growth of Washington, N.C. v. City of Washington*, 45 N.C. App. 7, 10, 262 S.E.2d 343, 345 (N.C. 1980) (holding that claims for relief based on alleged errors in the bond orders as adopted by the city council were barred by the applicable statute of limitation because "[a]ny action or proceeding in any court to set aside a bond order, ***or to obtain any other relief***, upon the ground that the order is invalid, must be begun within 30 days after the date of publication of the bond order as adopted" (emphasis added)); *id*., 45 N.C. App. at 12, 262 S.E.2d at 346–47 (finding that the statute is different from other statutes of limitations because "by providing actions 'must be begun' within the prescribed period, 'no right of action . . . shall be asserted' and the 'validity of the referendum' shall not be questioned after the prescribed period, this statute provides ***any claim*** not prosecuted within 30 days of the date of publication is extinguished" (emphasis added)).

"use" of bond monies. Under the instant facts, the issuance of bonds and their subsequent use inextricably tie together. The link between the bonds' issuance and use is demonstrated by the fact that the Bond Ordinance authorizes specific uses of the bond proceeds, and identifies and approves the very "uses" that Plaintiffs now challenge. (R. p. 394 (Def.'s New & Revised Mot. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. D, p. 8).)

Oconee County could not issue the bonds in question without first enacting the Bond Ordinance; likewise, it could not ***use*** the bonds absent the Bond Ordinance and subsequent issuance of the bonds. (R. pp. 382–96 (Def.'s New & Revised Mot. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. D).) And, seeking an adjudication about the unconstitutionality of the "use" of bond proceeds ***necessarily*** directly challenges the Bond Ordinance specifically authorizing such challenged use—the keystone of the bond issuance process. Plaintiffs' Action was inescapably filed "on account of the issuance of" the bonds, and therefore, is subject to Section 11-15-30.

2. This Court Has Already Rejected a Distinction Similar to the One Urged by Plaintiffs and Applied by the Circuit Court.

In reaching its decision on the application of Section 11-15-30, the Circuit Court erred by failing to apply the holding of this Court's decision in *S.C. Public Interest Foundation v. Calhoun County Council*, 432 S.C. 492, 854 S.E.2d 836 (2021) ("Calhoun Lawsuit" or "*Calhoun*").

The Calhoun Lawsuit and this Action share a common plaintiff, SCPIF. In both lawsuits, SCPIF sought to halt a county's use of monies. Calhoun County, like Oconee County in this Action, secured funding for various local projects in accordance with a state-authorized financing mechanism. 432 S.C. at 494, 854 S.E.2d at 837. Calhoun County utilized the one-cent sales tax permitted under the "Capital Project Sales Tax Act," *id.* at 494, 854 S.E.2d at 836–37, 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. 432 S.C. at 494, 854 S.E.2d at 837. Oconee County's bonds were issued pursuant to the Bond Ordinance authorizing use of the bond proceeds to fund various projects such as sewer and wastewater improvements (notably memorialized as conferring countywide benefits pursuant to County Resolution 2024-18). (R. pp. 445–68 (Def.'s Mem. in Support of its Mots. for Alteration & Amendment of the Ct.'s Prior Orders, Ex. F).)

The plaintiffs in both lawsuits challenged the *Calhoun* tax and the 2023 Bonds under the same basic theory—principally, the respective counties' intention to ***use*** monies for certain specified projects would violate state law. In *Calhoun*, 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, 854 S.E.2d at 837. In this Action, 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 in 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).[4]

The South Carolina General Assembly intentionally established short temporal windows whereupon both the Calhoun County tax and the Oconee County bonds could be challenged. *Compare* S.C. Code Ann. § 4-10-330(F) (30 days to challenge Calhoun County's tax), *with* S.C. Code Ann. § 11-15-30 (20 days to challenge Oconee County's bonds). The same public policy

[4] The County's briefing submitted in connection with Plaintiffs' appeal will address the benefits conferred on all County citizens.

underlies both truncated time periods. *See 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 S.C. Code Ann. § 4-10-310). In both cases, plaintiffs did not file within the legislatively established timeframe but instead delayed for over four months after each limitations period expired before filing.

SCPIF contended in *Calhoun*, just as Plaintiffs do in this Action, that the limitations period affixed by the statute to challenge the proceeds at issue did not apply to suits against the County's ***use*** of the funds ("substantive challenges") but only to suits against the ***creation*** of the bond or tax funding mechanism ("procedural challenges"). 432 S.C. at 496, 854 S.E.2d at 837–38. 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, 854 S.E.2d at 838.

As the *Calhoun* Court emphasized, "when a statute is clear on its face, it is 'improvident to judicially engraft extra requirements,'" including, as here, a claimed "procedural" limitation. *Id.* (quoting *Grier*, 397 S.C. at 540, 725 S.E.2d at 698). The *Calhoun* Court found SCPIF's attack against Calhoun County's "use of funds" was a "direct challenge" to the substance of the referendum and, thus, the statutory limitations period applied. 432 S.C. at 500, 854 S.E.2d at 840. 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 (an annexation case) and *Morgan v. Feagin*, 230 S.C. 315, 95 S.E.2d 621 (a lawsuit attacking a county's decision to issue bonds).[5] *Calhoun* held that these cases, applying various limitation periods, do not support

[5] The Circuit Court relied on *Morgan* in agreeing with Plaintiffs' interpretation of Section 11-15-30. (R. p. 42 (March 11 Order, p. 9).) The reasoning behind the Circuit Court's reliance on the case is unclear, but in any event, *Morgan* supports the application of Section 11-15-30 to this Action.

deviating from the legislature's short limitations periods on procedural versus substantive grounds. 432 S.C. at 499, 854 S.E.2d at 839.[6]

Under *Calhoun*, courts lack authority to engraft a procedural limitation onto the clear language of Section 11-15-30. But, even if they somehow could, under *Calhoun*'s reasoning, 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. Cnty. 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 in the statute at issue). The Calhoun Lawsuit and this Action are identical in every material legal respect. The Court's March 11 Order manifestly erred by ignoring *Calhoun* and other well-established South Carolina law rejecting the procedural versus substantive distinction urged by Plaintiffs.

In sum, the Circuit Court overlooked the internal analysis of the *Calhoun* decision and read Section 11-15-30 in an impermissible fashion so as to engraft an exception to the statute's unambiguous incontestability provision. In doing so, the lower court committed reversible error.

C. Plaintiffs Irrefutably Failed to Satisfy the 20-Day Timing Requirement of Section 11-15-30.

Despite erroneously refusing to apply the statute to this Action, the Circuit Court correctly found Plaintiffs ***do not*** and ***cannot*** contest that they brought the Action well after expiration of the time period specified by Section 11-15-30. (R. p. 40 (March 11 Order, p. 7).) Indeed, the County properly indexed and filed the bond materials on November 8, 2023. (R. p. 69 (Answer, Ex. A).)

[6] Underscoring the definiteness of its ruling, *Calhoun* noted that there is just one potential exception to the statute of limitations—not procedural versus substantive, but rather the occurrence of "deceit or nefarious conduct." 432 S.C. at 499, 854 S.E.2d at 839 n.2. Such exception does not apply here, as Plaintiffs have made no such allegations.

Plaintiffs were, therefore, required to—but did not—file their lawsuit by November 28, 2023. When they did eventually file their Complaint on March 17, 2024, Plaintiffs' lawsuit had already been time-barred under Section 11-15-30 ***for nearly four months***.

The Court cannot depart from the rules of statutory construction, which require application of Section 11-15-30 to the Action. Accordingly, this Court should reverse the Circuit Court's refusal to apply Section 11-15-30, and hold, as a matter of law and as an additional sustaining ground for the Circuit Court's dismissal of the Action, that the Action was time-barred under Section 11-15-30.

II. The Circuit Court Erred in Ruling that Plaintiffs Have Standing to Pursue the Action.

The lower court similarly erred in finding Plaintiffs possessed standing to bring the Action. Specifically, the Circuit Court erred as a matter of law when it held that the common law public importance exception confers standing upon Plaintiffs in this Action. (R. p. 40 (March 11 Order, p. 7).)

A. The Fundamental Requirement of Standing.

"Standing to sue is a fundamental requirement in instituting an action." *Blandon v. Coleman*, 285 S.C. 472, 475, 330 S.E.2d 298, 299 (1985). In short, "[n]o justiciable controversy is presented unless [Plaintiffs have] standing to maintain the action." *Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct. App. 1994) (citation omitted). In this regard, it is well-settled that ***each*** plaintiff must ***both*** plead in his complaint ***and*** thereafter prove the basis upon which he relies to maintain his civil action. *See Beaufort Cnty. v. Trask*, 349 S.C. 522, 528 n.14, 563 S.E.2d 660, 663 (Ct. App. 2002) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). When, as here, Plaintiffs have "no standing to prosecute, the court must dismiss the action." *Brock*, 313 S.C. at 519, 443 S.E.2d at 413.

This Court reconciled standing precedent in its modern formulation for standing analysis in *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 669 S.E.2d 337 (2008). In a unanimous decision, the Court held that a litigant may plead and prove standing in one of only three ways: (a) by establishing the particularized harms needed to show constitutional standing; (b) by invoking a statute conferring standing; or (c) by fulfilling the rigorous showing needed to satisfy the public importance exception. *Id.* at 195, 669 S.E.2d at 339; *see also Freemantle v. Preston*, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012).

Standing requirements apply even where the complaint is for declaratory relief because the Uniform Declaratory Judgments Act (S.C. Code §§ 15-53-10, *et seq.*) does not create standing where none otherwise exists. *See Trask*, 349 S.C. at 523, 563 S.E.2d at 661; *see also Tourism Expenditure Review Comm. v. City of Myrtle Beach*, 403 S.C. 76, 81, 742 S.E.2d 371, 374 (2013) ("[I]t is fundamental that the Declaratory Judgments Act does not eliminate the case-or-controversy requirement.").

Because Plaintiffs' Complaint fails to plead sufficient facts to establish standing as to each Plaintiff, the Circuit Court erred in failing to dismiss Plaintiffs' lawsuit for that reason. *See S.C. Pub. Int. Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013) ("A party seeking to establish standing bears the burden of proving it.").

B. The Circuit Court Manifestly Erred by Relying Upon Plaintiffs' Faulty Invocation of the Public Importance Exception to Standing.

Without further explanation, the Circuit Court concluded that Plaintiffs' Action "raises an issue of such public importance as to necessitate its resolution for future guidance," thereby relying on the public importance exception in finding Plaintiffs possessed standing to maintain the Action. (R. p. 40 (March 11 Order, p. 7).) The Circuit Court's Order constitutes manifest error, however,

because Plaintiffs cannot invoke the public importance exception.

1. Invocation of the Public Importance Exception Requires a Need for Future Guidance.

"For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance." *ATC South*, 380 S.C. at 199, 669 S.E.2d at 341. "It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance." *Id*. (quoting *Baird v. Charleston Cnty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999) ("[A] court may confer standing upon a party when an issue is of such public importance as to require its resolution for future guidance.")); *see also Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004) ("[U]nder certain circumstances, standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance.") (citations omitted). In performing the public importance analysis, "[a]n appropriate balance between the competing policy concerns underlying the issue of standing must be realized." *Sloan*, 357 S.C. at 434, 593 S.E.2d at 472.

This Court has, since *ATC South*, emphasized that trial courts must cautiously invoke the doctrine "lest [the exception] swallow the rule." *Jowers v. S.C. Dep't of Health & Env't Control*, 423 S.C. 343, 360, 815 S.E.2d 446, 455 (2018) (citation omitted) (declining to apply the exception where there was no need for future guidance). "[S]tanding cannot be granted to every individual who has a grievance"; rather, the dispositive consideration is "whether a resolution is needed for future guidance." *ATC South*, 380 S.C. at 199, 669 S.E.2d at 341 (citation omitted).[7]

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

2. The South Carolina General Assembly Has Already Provided Relevant Guidance and Legislatively Offered Plaintiffs a Brief Window of Standing, Which Plaintiffs Missed.

Notwithstanding Plaintiffs' failure to plead facts showing a need for future guidance or otherwise sufficient to invoke the public importance exception, as discussed in greater detail below, no public importance standing can exist in this Action because Section 11-15-30 categorically extinguished Plaintiffs' standing after the 20-day window expired and they had not commenced suit. Indeed, that is exactly what the South Carolina General Assembly meant when it unambiguously stated: "[n]o action shall be commenced . . ." after the 20-day window ends. *See* S.C. Code Ann. § 11-15-30.

The General Assembly articulates public policy in South Carolina through the enactment of legislation. *See Taghivand v. Rite Aid Corp.*, 411 S.C. 240, 244, 768 S.E.2d 385, 387 (2015) ("[T]he primary source of the declaration of the public policy of the state is the General Assembly; the courts assume this prerogative only in the absence of legislative declaration.") (citation omitted). Here, the General Assembly has weighed competing public policy considerations and—without exception—has closed the courthouse doors to bond challenges after the statutory, twenty-day window expires. *See* S.C. Code Ann. § 11-15-30. In other words, the South Carolina General Assembly has ***already*** answered the question of whether the public need for court resolution for

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

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

future guidance outweighs the need for finality in the context of bonds after the expiration of twenty days from the date of the filing and indexing of bond transcript records. *See id.* And the answer is 'no.'

Where, as here, a contrary "legislative declaration" exists, this Court must decline to invoke the judicially fashioned public importance exception to standing for purpose of "future guidance." *See Meier v. Burnsed*, 438 S.C. 362, 371, 882 S.E.2d 863, 867 (Ct. App. 2022) ("Once the Legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy." (quoting *S.C. Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 20, 382 S.E.2d 11, 14 (Ct. App. 1989))); *see also Town of Leesburg v. Giordano*, 276 Va. 318, 323, 667 S.E.2d 552, 553–54 (2008) ("Our duty in applying this provision is to construe the law as it is written, and we are also mindful that to depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret." (internal marks and citation omitted)).

In light of the mandate enacted by the General Assembly in Section 11-15-30, no public importance exception standing exists, and it was improper for the Circuit Court to find that Plaintiffs have standing to maintain the Action pursuant to the public importance exception.

3. Even if Section 11-15-30 Does Not Preclude a Finding of Standing, Plaintiffs Fail to Demonstrate a Need for Future Guidance Sufficient to Invoke the Public Importance Exception.

According to Plaintiffs' Complaint, the County cannot use proceeds of the 2023 Bonds according to the terms agreed upon by and with the bonds' investors. (R. p. 59 (Compl. ¶¶ 29–30).) Plaintiffs further requested in their Complaint that the Circuit Court prevent the County from using bond proceeds to fund the final phase of a sewer project. (R. pp. 59–60 (Compl. pp. 8–9).)

Plaintiffs' allegations altogether fail to demonstrate any need for future guidance.

The bonds about which Plaintiffs complain have already issued. (R. p. 56 (Compl. ¶ 15).) Nowhere do Plaintiffs contend the County intends to pursue similar bonds for the same purpose in the future. Nowhere do Plaintiffs contend the alleged problems they sue over occurred before. To the contrary, Plaintiffs very narrowly assert—under a unique, one-time-only fact pattern—that the County intends to use bond proceeds to build infrastructure in a southern portion of Oconee County presently lacking sewer service. (R. p. 58 (Compl. ¶ 25).)

Accepting Plaintiffs' allegations as true, their Complaint simply articulates generalized grievances about the County's legislative decisions absent any showing of a risk of repetition. Such grievances do not necessitate further guidance. *See Ballard v. Newberry Cnty.*, 432 S.C. 526, 534, 854 S.E.2d 848, 852 (Ct. App. 2021) (finding that there was not "an urgent need for future guidance" as "[n]othing distinguishes this case from any other conceivable case a citizen could bring challenging" a type of governmental act); *see also, e.g.*, *Freemantle v. Preston*, 398 S.C. 186, 194, 728 S.E.2d 40, 44 (2012) ("[T]he personnel choices of Anderson County, even in the face of a seemingly excessive severance package, do not necessitate further guidance."); *Quinn v. City of Columbia*, 303 S.C. 405, 401 S.E.2d 165 (1991) (challenge to method of annexation does not give rise to public importance standing), *overruled on other grounds*, *St. Andrews Pub. Serv. Dist. v. City Council of City of Charleston*, 564 S.E.2d 647 (S.C. 2002).

For these reasons, Plaintiffs failed to plead sufficient facts to invoke the public importance exception to standing, and the Circuit Court erred in relying on the exception to find standing.

C. There Is No Other Basis for Plaintiffs to Establish Standing.

As noted by the Circuit Court, Plaintiffs do not claim to possess either constitutional standing or statutory standing. (R. p. 39 (March 11 Order, p. 6).) They instead seek to invoke

standing under the public importance exception, as discussed above, and predicated upon their status as "taxpayers." (R. pp. 129–35 (Pls.' Mem. in Opp. to Def.'s Mot. to Dismiss, pp. 9–15).) Under South Carolina law, however, Plaintiffs have standing under neither.

Despite Plaintiffs' urgings, so-called "taxpayer standing" does not exist in South Carolina. While a plaintiff's status as a taxpayer may be a consideration in establishing standing, it does not inherently grant standing. *See ATC South*, 380 S.C. at 198, 669 S.E.2d at 340–41 (holding that when the injury to a taxpayer is common to all property owners in the county, this commonality defeats the constitutional requirement of a concrete and particularized injury); *Freemantle*, 398 S.C. at 193, 728 S.E.2d at 44 (rejecting the claim of "taxpayer standing under constitutional standing principles" because the injury as a taxpayer was common to all citizens and taxpayers of the county); *Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923) (holding a taxpayer lacks standing when he "suffers in some indefinite way in common with people generally"). As a result, Plaintiffs ***must*** establish standing ***via*** the rubric of constitutional standing, the public importance exception, or by statute.

Under their flawed "taxpayer standing" analysis, Plaintiffs have not and cannot articulate any concrete, particularized injuries they have individually sustained. They have not articulated any injuries they have sustained, let alone injuries which, if true, would somehow differ from any other member of the public. And, while Plaintiff SCPIF, a serial litigant,[8] has frequently sought

[8] Plaintiff SCPIF suffers from an additional standing problem. As a non-profit entity, SCPIF does not even pay taxes. Predictably, then, the Complaint fails to allege any facts to support constitutional standing. (R. pp. 53–60 (Compl.).) SCPIF likewise fails to allege any facts to sustain associational standing on behalf of any of its members, as required. *See Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 75–76, 753 S.E.2d 846, 851 (2014) ("Here, Plaintiffs fail to allege a particularized injury either to themselves or their members. Rather, they assert only generalized grievances suffered by the public as a whole which are insufficient to establish standing.").

recognition of the concept of taxpayer standing, its efforts have been roundly and repeatedly rejected by South Carolina appellate courts. *See, e.g.*, *S.C. Pub. Int. Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 118, 804 S.E.2d 854, 858 (2017) ("Petitioners are unable to show they suffered a concrete and particularized injury distinct from that shared by other taxpayers; therefore, we find Petitioners do not have constitutional standing.").

Therefore, because Plaintiffs cannot establish standing under any theory, the Circuit Court should have found, as an additional sustaining ground for dismissal, that Plaintiffs' Action was subject to dismissal due to their lack of standing.

CONCLUSION

This Court should affirm the Circuit Court's dismissal of the Action. For the reasons set forth above, Respondent-Appellant Oconee County respectfully requests that the Court hold, as additional sustaining grounds for dismissal, that the Action is time-barred by S.C. Code Ann. § 11-15-30 and that Plaintiffs lack standing to maintain the Action.

Respectfully submitted,

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