THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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

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

v.

Oconee County, Respondent-Appellant,

FINAL BRIEF OF APPELLANTS-RESPONDENTS

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2. **When the County generates alleged "legislative history" of an ordinance more than a year after the enactment, after several months of litigation, and after an injunction had been issued, must the Court defer to the alleged "legislative history?"**

3. **When Taxpayers were denied basic discovery responses, but the County submitted exhibits and testimonial statements in support of its motions, should the Court have dismissed the case with prejudice?**

STATEMENT OF THE CASE

The South Carolina Constitution, Article 10, section 12 states:

> **No law** shall be enacted permitting the incurring of **bonded indebtedness** by any county for **sewage disposal or treatment**, fire protection, street lighting, garbage collection and disposal, water service or any other service or facility **benefitting only a particular geographical section of the county** unless a special assessment, **tax or service charge** in an amount designed to provide **debt service** on **bonded indebtedness** or revenue bonds incurred for such purposes shall be imposed **upon the area or persons receiving the benefit therefrom**.

Id., (emphasis added).

On March 17, 2024, Taxpayers filed suit (Complaint, R. pp. 52-60) against Oconee County seeking temporary and permanent injunctions to enforce and uphold the South Carolina Constitution, Article 10, section 12. On April 19, 2024, the County filed an Answer (Answer, R. pp. 61-104), and on April 24, 2024, the County filed a Motion to Dismiss (Motion to Dismiss, R. pp. 105-120) under Rule 12(b)(1), 12(c), and 12(h).

Also on April 24, 2024, Taxpayers served the County with Interrogatories, Requests for Production of Documents, and requests for admission (Discovery Requests, Supp. R. pp. 613 ff.). On May 24, 2024, the County objected to the Interrogatories, Requests for Production, and Requests for Admission, contending that because of its pending Motion to Dismiss, Taxpayers' discovery requests were improper (Motion to Dismiss, R. pp. 105-120; Discovery Requests, Supp. R. pp. 613 ff.). On June 29, 2024, Taxpayers filed a motion to compel discovery responses (Motion to Compel, pp. 169-177; R. pp. 144-168) .

July 3, 2024, Taxpayers filed a Motion for Temporary, Preliminary, and Permanent Injunctions and Memorandum of Law (R. pp. 178-203). On July 15, 2024, the County filed its Memorandum Opposing Taxpayers' Motion to Compel (R. pp. 169-177).

On July 17, 2024, the County filed its Memorandum Opposing Taxpayers' Motion for Injunctive Relief (R. pp. 187-203). Also on July 17, 2024, the Court held a hearing on the

various motions. The Court took the County's Motion to Dismiss under advisement. The Court ruled that if the County's Motion to Dismiss were denied, the County must respond to the discovery requests within 30 days (Order issued August 9, 2024; R. pp. 5-33). The Court took the Taxpayers' Motion for injunctive relief under advisement (Transcript, R. pp. 221-272; R. p. 238).

On July 22, 2024, Taxpayers filed an affidavit and verification of the Complaint (R. pp. 598-599) .

On July 29, 2024, the Court issued a Form 4 Order (R. pp. 1-4):

> PLAINTIFF DID NOT MEET THE REQUIREMENTS OF RULE 65 BUT HAS SUBSEQUENTLY DONE SO. THE ISSUE IN THIS CASE IS OF SUCH IMPORTANCE THAT THE COURT PROCEEDS TO MAKE A DETERMINATION. BASED UPON OUR STATE CONSTITUTION, SC CODE ANN SECTION 11-15-30, AND OUR CASE LAW, THE COUNTY MAY NOT USE BOND REVENUES FOR SEWER PROJECT(S) THAT WILL ONLY BENEFIT THE SOUTHERN PART OF THE COUNTY WHILE TAXING THE ENTIRE COUNTY. TO MEET OUR CONSTITUTION'S MANDATE, THE COUNTY MUST CREATE A SPECIAL TAX DISTRICT SPECIFIC TO THE AREA THAT STANDS TO BENEFIT.
>
> THIS CASE IS NOT ABOUT THE "ISSUANCE" OF BONDS WHICH WOULD BE BARRED BY § 11-15 30, BUT RATHER CONCERNS THE ISSUE OF THE "USE" OF BOND MONEY FOR UNCONSTITUTIONAL PURPOSES AFTER THE ISSUANCE OF THE BOND. THEREFORE, PLAINTIFFS REQUEST FOR A TEMPORARY INJUNCTION IS GRANTED PENDING FURTHER ORDER OF THE COURT. FURTHER, THIS MATTER NEEDS TO BE EXPEDITED FOR TRIAL. THE PARTIES HAVE STIPULATED AND AGREED THAT THIS MATTER WITH PROCEED AS A NON-JURY MATTER.
>
> PLAINTIFF SHALL PUT UP A BOND IN THE AMOUNT OF $1,000 WITH THE CLERK OF COURT SUBJECT TO THE RIGHT OF THE COUNTY TO DEMAND PAYMENT OF, AND ESTABLISH ENTITLEMENT TO, A HIGHER BOND AMOUNT. PLAINTIFF'S HAVE BOTH TAXPAYER AND IMPORTANT ISSUE STANDING.
>
> MR. CARPENTER IS TO PREPARE A FORMAL ORDER THAT IS CONSISTENT WITH THIS ORDER, BRIEFS, AND ARGUMENTS MADE. HE IS TO PROVIDE THE ORDER TO OPPOSING COUNSEL PRIOR TO SUBMITTING IT TO THE COURT.

Id.

On August 8, 2024, the County filed its first Motion to Alter or Amend (R. pp. 204-273).

On August 12, 2024, the Court issued its formal Order Granting Temporary Injunction (R. pp. 5-33). As part of the formal Order, the Court also granted Taxpayers' Motion to Compel and allowed the County 30 days from the entry of this Order to respond to the Taxpayers' interrogatories, requests for production, and requests for admission (Order issued August 12, 2024, R. pp. 5-33. Finally, the Court denied the County's Motion to Dismiss (Order issued August 12, 2024 , ;R. pp. 5-33).

Also, as part of the formal Order, the Court ruled that the Taxpayers possess public importance standing and taxpayer standing and ruled that the Taxpayers had stated a valid cause of action (Order issued August 12, 2024, pp. 6-13; R. pp. 10-17). The Court also ruled that South Carolina Code Ann. § 11-15-30 does not bar the Taxpayers' claims, because this case is not about the issuance of bonds but rather concerns the use of bond proceeds for unconstitutional purposes after the issuance of the bonds (Order issued August 12, 2024, p. 22 ; R. p. 26).

Finally, the Court ruled that the Taxpayers' claims are not barred by ripeness or mootness; that the Court possesses subject matter jurisdiction; and that the Taxpayers' claims have been stated with sufficient particularity (Order issued August 12, 2024, pp. 24-25; R. pp. 27-28).

Accordingly, the Court issued a temporary injunction to preserve the *status quo*, finding Taxpayers will suffer irreparable harm if the injunction is not granted, Taxpayers will likely succeed on the merits, and Taxpayers have no adequate remedy at law (Order issued August 12, 2024 pp. 25-28; R. pp. 29-32).

On August 22, 2024, the County filed a new and revised Motion to Alter or Amend (R. pp. 274-396).

On November 8, 2024, the County filed a Memorandum in Support of its motion and supported it with a County Council Resolution and three statements from County agents, all dated in November 2024 (R. pp. 397-468).

On January 24, 2025, the County filed another Supplemental Memorandum in support of its Motion to Alter or Amend (R. pp. 469-476). On January 28, 2025, Taxpayers filed their Memorandum in Opposition to the County's Motion to Alter or Amend (R. pp. 477-488).

On January 30, 2025, the Court held a hearing on the County's Motion to Alter or Amend and took the Motion under advisement (Transcript, R. pp. 556-597).

On February 3, 2025, the Court issued an email to counsel announcing that the Court had "erred in granting Plaintiff's a TRO and hereby reverse the same granting Defendant's motion for reconsideration" (Email of the Court, R. pp. 600-601). The Court requested a formal order from counsel for the County (Email of the Court, R. pp. 600-601).

On March 11, 2025, the Court issued a formal Order granting Oconee County's Motion to Alter or Amend, vacating its prior Order in its entirety, denying Plaintiff's Motion for Preliminary Injunction, and granting the County's Motion to Dismiss **with prejudice** (Order issued March 11, 2024, R. pp.34-48).

On March 21, 2025, Taxpayers filed their Motion to Alter or Amend, arguing that the provision of sewer services to the Southern part of the County was a particular benefit to a particular geographic section of the County, and that the general benefit that the County relies on is not a sufficient basis to tax the entire County, when a small portion of the County was receiving a distinguishable benefit, the sewer services (R. pp. 486-500). Accordingly, Taxpayers argued the County was required to create a tax district and tax that portion of the County that was receiving the distinguishable benefit (R. pp. 486-500).

On March 25, 2025, the Court issued a Form 4 Order stating, "PLAINTIFF'S MOTION IS DENIED WITHOUT THE NECESSITY OF A FORMAL HEARING. NO FORMAL ORDER REQUESTED. HOWEVER, IF A FORMAL ORDER IS REQUESTED, COUNSEL FOR THE DEFENDANT IS TO PREPARE THE ORDER" (Order issued March 25, 2025, R. pp. 49-51).

On April 24, 2025, Taxpayers filed and served their Notice of Appeal (R. pp. 607-608).

On April 25, 2025, the County filed its Notice of Appeal (R. pp. 609-612).

STATEMENT OF FACTS

The County does not dispute the basic facts of the case. The verified Complaint established the following facts (R. pp. 52-60):

Oconee County had implemented two phases of a three-phase sewer project in the Southern part of the County (Verified Complaint, par. 13; R. p. 56). State and federal grants and appropriations from general county funds paid for phases one and two (Verified Complaint, par. 13; R. p. 56).

This action addresses improvements or expansion of wastewater treatment beyond phases one and two, and it is funded by County General Obligation Bonds, thereby implicating Article X, Section 12 of the South Carolina Constitution (Verified Complaint, par. 14; R. p. 56).

The County does **not** contend the new phase three of the sewer project will provide sewer or wastewater services to the whole county. The County does **not** contend the three major cities of Seneca, Walhalla, and Westminster will use the new sewer; the County does **not** contend the upscale neighborhoods around Lake Keowee and Lake Jocassee will use the new sewer. The County does **not** contend the rural Northern parts of Oconee County will use the new sewer. The County does **not** contend that it created a special tax district to pay for the bonds. Despite multiple opportunities to do so, the County has not contradicted or disputed the basic factual allegations of the Complaint (Answer, R. pp. 61-104).

The County attached documentation to its Answer including documentation related to the General Obligation Bonds (R. pp. 68-104). 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, p. 1.[1] (emphasis added) (Verified Complaint, par. 15; R. p. 56).

> 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) (County Motion to Reconsider filed August 22, 2024, Exhibit D, p. 4; R. pp. 390).

The County contends that areas not receiving the new sewer services will receive a **general** or **incidental** benefit from the operation of the new sewer system (Order of August 9 2023, p. 2; R. p. 35; Ordinance, R. p. 385; Answer and Exhibits, R. pp. 63-64, pars. 15 and 22, (possible "general benefit"); Exhibits to Respondent-Appellant's New Motion for Alternation and Amendment, R. p. 447, par. (3)(A), R. p. 450 (B), R. p. 456, par. 12, R. p. 459, par. 22 (possibly "reaps benefits for all County citizens, not just those in close proximity"), R. p. 462, par. 7, R. p. 465, par. 13.)

However, South Carolina case law holds that such **general** or **incidental** 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.

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

STANDARD OF REVIEW

When seeking a temporary injunction, a plaintiff is not required to prove an absolute legal right, but the plaintiff must present a reasonable question as to the existence of such a right. *AJG Holdings LLC v. Dunn*, 382 S.C. 43, 50, 674 S.E.2d 505, 508 (Ct. App. 2009). When a court is considering a temporary injunction, it may consider the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate. *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992); *Compton v. S.C. Dept. of Corrections*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011). Once a *prima facie* showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate determination of the case on the merits. *Helsel*, 307 S.C. at 32, 413 S.E.2d at 826.

> In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court. *Williams v. Condon,* 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. *Spence v. Spence,* 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. *Baird v. Charleston County,* 333 S.C. 519, 511 S.E.2d 69 (1999); *Stiles v. Onorato,* 318 S.C. 297, 457 S.E.2d 601 (1995). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Gentry v. Yonce,* 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Toussaint v. Ham,* 292 S.C. 415, 357 S.E.2d 8 (1987).

Doe v. Marion, 373 S.C. 390, 395 645 S.E.2d 245, 247-48 (2007).

However, "appellate courts review questions of law *de novo*, with no deference to trial courts." *Mangal v. State*, 805 S.E.2d 568, 421 S.C. 85 (S.C. 2017).

ARGUMENT

LEGAL BACKGROUND

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

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

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

Id., Article VIII, Sec. 7

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

Article X, Section 12 of the S.C. Constitution recognized the counties' enhanced powers and the restriction on the creation of new special purpose districts, all of which arose from the Home Rule amendments to the State Constitution in the 1970s. Following the Home Rule amendments on March 7, 1973, the General Assembly was bound by Article VIII, Section 7, which prohibited laws applicable only to a specific county. The same section empowered the Legislature to enact general laws granting counties "the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided."

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

The services specified within South Carolina Constitution Article X, § 12: "fire protection," "street lighting," "garbage collection and disposal," "water service," and "sewage disposal" are tangible benefits that are physically limited to only a particular geographic area.

The municipalities of Seneca, Walhalla, and Westminster have the exclusive rights to provide sewer services within their municipal limits (Verified Complaint, par. 22; R. p. 58). 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 (Verified Complaint, par. 23; R. p. 23). The upscale neighborhoods around Lake Keowee and Lake Jocassee are served primarily by privately owned sewer systems (Verified Complaint, par. 24; R. p. 58). 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 county." 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'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 S.C. 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 will benefit from the wastewater treatment facilities, despite serving only a small portion of the Southern part of the county (Respondent-Appellant's Memorandum in Support of Its Motions for Alteration and Amendment, with exhibits, dated November 8, 2024; R. pp. 397-469; Exhibits to Respondent-Appellant's New Motion for Alternation and Amendment, R. p. 447, par. (3)(A), R. p. 450 (B), R. p. 456, par. 12, R. p. 459, par. 22 (possibly "reaps benefits for all County citizens, not just those in close proximity"), R. p. 462, par. 7, R. p. 465, par. 13.). Despite the County Council 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.

"Article X, § 12 of the Constitution *requires* the charge be assessed only on those who benefit from the new facilities." *Robinson v. Richland Cnty. Council,* 293 S.C. 27, 32, (S.C. 1987) (emphasis in original). The County cannot lawfully use the proceeds of the 2023 Bonds for wastewater improvements for a small area, and pledge the full faith, credit, and taxing power of the entire County. Rather it must impose and pledge "a special assessment, tax or service charge in an amount designed to provide debt service on [the 2023 Bonds]" in an area of the County that benefits from the new sewer service.

I. WHEN THE COUNTY USES BONDED INDEBTEDNESS TO PROVIDE SEWAGE DISPOSAL OR TREATMENT TO ONE SMALL AREA, AN INCIDENTAL BENEFIT DOES NOT MAKE THE WHOLE COUNTY "THE AREA OR PERSONS RECEIVING THE BENEFIT THEREFROM."

The County will provide new sewer services to a small area in the southern part of the County. The proposed sewer services will only benefit a "particular geographical section of the [C]ounty." S.C. Constitution, art, X, § 12. 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 to repay the bonds (Verified Complaint, pp. 7-8, R. p. 58-59). If the incidental benefit is sufficient to deem the whole county "the area or persons receiving the benefit therefrom," the exception swallows the rule. The Circuit Court erred in finding that the entire County population will benefit from the wastewater treatment facilities, when the new facilities will provide services only to a small portion of the Southern part of the County (Verified Complaint, pp. 7-8, R. p. 58-59).

A. The Circuit Court Finding Disregards the Analysis of *Robinson v. Richland County Council.*

In *Robinson v. Richland County Council*, 293 S.C. 27, 32, 358 S.E.2d 392 (S.C. 1987), Walter Robinson and Harold Murray, "individually and as taxpayers," brought a declaratory judgment action that challenged certain statutes and ordinances that provided for the creation and installation of public sewer systems in parts of Richland County. *Id.* The case was appealed to the South Carolina Supreme Court. The Supreme Court addressed Article X, § 12 at some length. Based on the research of the undersigned attorney, *Robinson* is the **only** case that addresses Article X, § 12 in a substantive manner. The Court ruled:

> Article X, § 12 of the Constitution prohibits counties from incurring bonded indebtedness for sewage disposal or treatment **which benefits only a particular area** unless a special assessment, tax or service charge, adequate to provide debt

> service on the bonds, is imposed on those persons **who will benefit** from the service.
>
> * * *
>
> In addition, Article X, § 12 of the Constitution *requires* the charge be assessed only on **those who will benefit** from the new facilities. **An increase in property values in the adjoining area** because of the new sewer lines **is not sufficient** to bring adjacent landowners within the class of **those who "benefit"** from the project.

Id., 293 S.C. 27, 31-33, 358 S.E.2d 392, 395-396 (emphasis added). This analysis is controlling for the case at bar. The vague, general benefit to the middle and northern parts of Oconee County is not sufficient to justify taxing those portions to pay for bonds that fund sewer and wastewater projects distinctly in the Southern part of the County (Verified Complaint, p. 7-8, R. p. 58-59). It is unconstitutional for Oconee County to tax the entire County to pay for bonds that will fund sewer and wastewater facilities in only one small area in the Southern part of the County.

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 . . . 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).

The Circuit Court erred in upholding a general taxation to provide a **distinguishable** benefit only a small portion of the County (Order issued , pp. ; R. pp.). This is unconstitutional and contrary to the ruling of *Robinson v. Richland Cnty. Council* and *Casey v. Richland County Council*.

The County relies on *Casey v. Richland County Council*, for the proposition that funding a sewer system for only part of the county benefits the whole county (Memorandum in Support of Motion to Dismiss, R. pp. 107-120). *Casey* is distinguishable from the case at bar. First, *Casey* did not address the constitutional provision at issue in this case.

Second, in *Casey* the sewer services were not funded by bonds, but rather by taxes. The issue in *Casey* was whether a tax was legal or illegal. The Court ruled that the funding was a tax and not an assessment; however, it was an unconstitutional tax because it was charged to only certain parts of the county and not to other parts, in contravention of the constitutional provision that required taxation to be uniform across the county.

Nevertheless, the Supreme Court in *Casey v. Richland County Council*, observed:

> 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).

The County violated the clear, plain language of the South Carolina Constitution, Article X, § 12: The Circuit Court erred in finding that the whole County will "receive the benefit" if the project provides sewer services to the Southern part of the County (Order issued March 11, 2025, R. pp. 34-48). The County attempted to justify imposing taxes on the whole County. The South Carolina Supreme Court has ruled that such a vague, intangible benefit is **not sufficient** to impose a tax on the whole county to pay for sewer system that is installed in one distinct portion of the county.

B. Taxpayers Will Suffer Irreparable Harm Without the Injunction.

If the taxes are collected throughout the County, it would be extremely difficult to reestablish the *status quo ante*. It would be practically impossible to refund the wrongful taxation to the Taxpayers. The Taxpayers will be immediately and irreparably impaired by the County's Constitutional violations. No adequate remedy would be available to the Taxpayers once the money was taken. Accordingly, the Court properly issued a temporary injunction to preserve the *status quo ante* while the legal issues are decided in this case. Otherwise, any remedy will be illusory. Furthermore, the County will not suffer any material damages if it is not allowed to collect an unconstitutional tax.

II. THE COURT NEED NOT DEFER TO ALLEGED "LEGISLATIVE HISTORY" WHEN IT IS GENERATED MORE THAN A YEAR AFTER THE ENACTMENT OF THE ORDINANCE, SEVERAL MONTHS AFTER LITIGATION WAS FILED, AND AFTER AN INJUNCTION WAS ISSUED.

On November 8, 2024, the County filed a 25-page Memorandum in Support of its Motions for Alteration and Amendment of the Court's Prior Orders Pursuant to Rules 52(B), 59(E), SCRCP & the Court's Inherent Authority (R. pp. 397-468).

A. The County and the Court Relied on Improper Alleged "Legislative History."

The County attached to this Memorandum **Exhibit F**, which included a 9-page County Council Resolution 2024-18, adopted **November 4, 2024**, that appeared to have been drafted by lawyers, and provided an after-the-fact justification for the enabling Ordinance and the issuance of the General Obligation Bonds that had been issued more than a year earlier, on **September 5, 2023** (Exhibit F, R. pp. 444-468).

Exhibit F also included a declaration by Richard Blackwell, dated **November 1, 2024**, a declaration of Amanda Brock, Oconee County Administrator, dated **November 2, 2024**, and a declaration from civil engineer Ryan Page, dated **November 4, 2024 (**Memorandum in Support of its Motions for Alteration and Amendment of the Court's Prior Orders Pursuant to Rules 52(B), 59(E), SCRCP & the Court's Inherent Authority ; R. pp. 397-468; (Exhibit F, R. pp. 444-468). **)**. All three statements appeared to have been drafted by lawyers, probably by the same person, justifying the issuance of General Obligation Bonds.

The County Council Resolution states that County Council credited the three contemporaneous declarations **(**Memorandum in Support of its Motions for Alteration and Amendment of the Court's Prior Orders Pursuant to Rules 52(B), 59(E), SCRCP & the Court's Inherent Authority; R. pp. 397-468; (Exhibit F, R. pp. 444-468).). The County Council Resolution references the Page Declaration in detail on pages 3-8, the Blackwell Declaration on

pages 4-5, and the Brock Declaration on page 6 **(**Memorandum in Support of its Motions for Alteration and Amendment of the Court's Prior Orders Pursuant to Rules 52(B), 59(E), SCRCP & the Court's Inherent Authority; R. pp. 397-468; (Exhibit F, R. pp. 444-468). **)**. Essentially, the Resolution and the declarations amount to lawyers attempting to create legislative history to justify the County Council General Obligation Bonds more than a year after the Ordinance and bonds were issued (Exhibit F, Resolutions and Declarations, R. pp. 444-468).

On January 30, 2025, in the hearing on the County's Motion to Alter or Amend, the County argued that the County Council Resolution had made a "legislative determination" that the whole County would benefit from the sewer services in the Southern part of the County Transcript of hearing dated January 30, 2025, page 13, line 21--page 15, line 20 (emphasis added) R. pp. 568-570).

The County argued that the Court was **obligated** to give credence and deference to the "finding" of the County Council.

> 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 they constituted legislative body sits down and says, "We understand are constraints that we need to use these bond proceeds in a way that confers a countrywide benefit," when they sit down the various scenarios, County-white benefit? And they conclude, based on the evidence before them, that, yeah, it does, 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 that 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** adopted a resolution to explain exactly why the 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 on 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 had commissioned multiple studies, 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 the enacted the resolution or the ordinance to the extent that there was any doubt about that, resolution removes it. And they went back, they debated it, and they passed the resolution, and they said, "yeah, it does do this."
>
> So, all I would say to Your Honor is, if the litmus test here is what makes a constitutional or unconstitutional terms on the issue of "does it confer a countywide benefit," this County Council determined, after reviewing evidence and having a debate in an open meeting in the publicly noticed meeting as they did, and they found that it did, I don't think this court gets to go behind them and say, "I'm greeting 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 of the elected officials who are elected to decide that. They did that when they passed the ordinance. They did it again with the resolution where they were saying, "okay, unless 25 million, what we going to do? What are we going to use these monies for these projects four – the certain projects?"

Transcript of hearing dated January 30, 2025, page 13, line 21-page 15, line 20 (emphasis added); R. pp. 568-570).

In its oral argument, the County relied extensively on the case of *Bear Enterprises v. County of Greenville*, 319 S.C. 137, 459 S.E.2d 883 (Ct. App. 1996). The County also cited *Bear Enterprises* (Memo in Support of Motion to Alter or Amend, filed November 8, 2024, (p. 17, n. 22, R. p. 413) and in its Supplemental Memorandum filed January 24, 2025, (p. 7); R. p. 475). The County repeatedly cited the rule that as long as the legislative finding was "fairly debatable," it was beyond the power of the Court to review or disagree.

On February 3, 2025, the Court issued an email to counsel, finding that the Court had "erred in granting Plaintiffs a TRO and hereby reverse the same granting Defendant's motion for reconsideration" (February 3, 2025 email; R. pp. 600-601).

The Court again found that the Plaintiffs possessed public importance standing and that the Court had correctly ruled that South Carolina Code Annotated § 11-15-30 did not apply to the case at bar, because it did not involve the issuance of the bonds, but rather the use of the bond revenues (February 3, 2025 email; R. pp. 600-601).

The Court's email continued:

> 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 [sic] 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 [sic] 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

(February 3, 2025 email; R. pp. 600-601 (emphasis added)). Taxpayers respectfully suggest that the Court's email contains a significant **factual** misstatement or error. The Court states:

> However, **the counties [sic] 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.

(February 3, 2025 email; R. pp. 600-601 (emphasis added)). It was **not** the "**enabling ordinance** authorizing the issuance of the subject bonds" that found "that the project generally benefits all of the citizens of Oconee County." That enabling Ordinance was attached as Exhibit D to the County's Memorandum of Law filed August 22, 2024 (R. pp. 380-396).

The enabling Ordinance does not address this issue at all (R. pp. 380-396). No form of the word "benefit" appears in that enabling Ordinance (R. pp. 380-396). No form of the word "environment" appears in that enabling Ordinance (R. pp. 380-396). No form of the word "condition" appears in the enabling Ordinance (R. pp. 380-396). No form of the word "sanitary" appears in that enabling Ordinance (R. pp. 380-396). No form of the word "property" appears in that enabling Ordinance (R. pp. 380-396). No form of the word "value" appears in that enabling Ordinance (R. pp. 380-396). No form of the word "economy" appears in that enabling Ordinance (R. pp. 380-396). No form of the word "price" appears in that enabling Ordinance (R. pp. 380-396). No form of the word "industry" appears in that enabling Ordinance (R. pp. 380-396). In short, the enabling Ordinance made no such finding, as stated in the Court's email dated February 3, 2025 (R. pp. 380-396).

All that discussion, about all those topics, was created more than a year **after** the enabling Ordinance was enacted (Exhibit F to the County's Memorandum of Law filed August 22, 2024; R. pp. 445-468). All of that discussion came from the County's attempt to create "legislative history," more than a year after the legislation (Exhibit F to the County's Memorandum of Law filed August 22, 2024; R. pp. 445-468).

In its email decision, and in its formal Order, the Court seemed to accept the argument of the County. The Court cited *Bear Enterprises*, 319 S.C. 137, 459 S.E. 2d 883 (Ct. App 1995), on

page 13 of its formal Order entered March 11, 2025 (R. p. 46). The Court also repeatedly cited the rule that if a legislative decision is "fairly debatable," it must remain undisturbed by the Court (Order entered March 11, 2025 (pp. 5, 13, 14); R. pp. 38, 45-46).

The Court concluded, "the Court finds the legislative decision-making of the County Council was, at a minimum, 'fairly debatable,' and, therefore, declines to second-guess to legislative decisions and acts made by public officials, duly elected to make such decisions, while sitting on a constituted public body during successive public meetings" (Order entered March 11, 2025, p. 14; R. p. 46).

So, the Circuit Court relied on **Exhibit F**, which included the County Council Resolution, and the three declarations, all drafted and signed in November 2024, more than a year after the enactment of the Ordinance, as the basis for reversing its prior ruling, and denying the Taxpayers the injunction, and **dismissing the case with prejudice** (Exhibit F to the County's Memorandum of Law filed November 8, 2024; R. pp. 444-468).

Taxpayers respectfully suggest that Exhibit F is **not** analogous to the legislative decision in *Bear Enterprises*. *Id.* at 319 S.C. 137, 459 S.E. 2d 883 (Ct. App 1995). *Bear Enterprises* was an appeal of a Greenville County Council decision overruling the decision of the Board of Zoning Appeals, with the 9 to 3 vote. *Id.* at 319 S.C. 137, 459 S.E. 2d 883 (Ct. App 1995). The Developer owned 23 acres just off Highway 123 in Greenville County between Greenville and Easley. *Id.* The developer advocated a change of zoning classification that would have allowed him to put 211 mobile homes on the 23 acres as opposed to 30 to 35 mobile homes under the then-current zoning classification. *Id.* County Council rejected the change. *Id.* The Circuit Court found the County Council vote to be arbitrary and ordered the decision reversed. *Id.* The County appealed. *Id.* The South Carolina Court of Appeals reversed the decision of the Circuit Court. *Id.* It ruled that the

County Council decision on a zoning issue was a legislative matter, "and the court has no power to zone property." *Id.,* 319 S.C. 137, 140, 459 S.E.2d 883, 885 (Ct. App. 1996).

In *Bear Enterprises*, the County Council vote was indeed a legislative decision. *Id.* at 319 S.C. 137, 459 S.E. 2d 883 (Ct. App 1995). In the case at bar, the Oconee County Council Resolution was an after-the-fact attempt at justification of a decision made more than a year earlier.

B. The Court Cannot Rely on Subsequent Statements of Legislators.

The South Carolina Supreme Court has ruled that subsequent statements of legislators cannot be used to determine the meaning of an enactment. *Creswick v. University of South Carolina,* 434 S.C. 77, 83-84, 862 S.E.2d 706, 709-710 (2021). *Creswick* was a case in the original jurisdiction of the Supreme Court addressing the issue of face masks during the Covid crisis of 2021. The General Assembly had adopted Proviso 117.190 that prohibited the use of state funds to require the wearing of face masks at public institutions of higher learning. The University president announced that masks would be required. The Attorney General wrote to the University president, telling him that the requiring of face masks was disallowed by Proviso 117.190. A professor at the University of South Carolina sought declaratory judgment in the Court's original jurisdiction regarding the meaning of Proviso 117.190. The Attorney General attempted to use "subsequent statements by individual legislators" to "give evidence of the legislative intent" of the Proviso. The Supreme Court disallowed that effort.

> As to the Attorney General's insistence **that subsequent statements** by individual legislators evidence the legislative intent to ban all masks mandates, this Court has held **the Court may not look to the opinions of legislators** or others concerned in the enactment of the law—**expressed subsequent to enactment—to ascertain the intent of the legislature**. *Kennedy*, 345 S.C. at 353–54, 549 S.E.2d at 250 (quoting *Greenville Baseball, Inc. v. Bearden*, 200 S.C. 363, 371, 20 S.E.2d 813, 817 (1942)); *Bowaters Carolina Corp. v. Smith*, 257 S.C. 563, 572, 186 S.E.2d 761, 764 (1972) (holding the **testimony** of members of the legislative delegation who authored the statute as to its meaning **was inadmissible**). It is well established that **courts will disregard the subsequently expressed opinions of individual legislators as to the intent of the legislature as a whole when construing a**

> **statute**. *See, e.g.*, *Bread Pol. Action Comm. v. Fed. Election Comm'n*, 455 U.S. 577, 582 n.3, 102 S.Ct. 1235, 71 L.Ed.2d 432 (1982) ("**/*Plost hoc* observations** by a single member of Congress **carry little if any weight**." (quoting *Quern v. Mandley*, 436 U.S. 725, 736 n.10, 98 S.Ct. 2068, 56 L.Ed.2d 658 (1978))); *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 193, 98 S.Ct. 2279, 57 L.Ed.2d 117 (1978) (noting statements of Appropriations Committee members "represent only the personal views of these legislators," and, "however explicit, [they] cannot serve to change the legislative intent of Congress expressed before the Act's passage" (alteration in original) (quoting *Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 132, 95 S.Ct. 335, 42 L.Ed.2d 320 (1974))); 419 U.S. at 132, 95 S.Ct. 335 (holding **post-passage remarks of legislators cannot serve to change the legislative intent of Congress** expressed before the Act's passage as those statements represent only the personal views of the legislators); *Pa. Dep't of Pub. Welfare v. United States*, 781 F.2d 334, 341 n.10 (3d Cir. 1986) ("[**A] post hoc statement of a single legislator**, even of the bill's author, **is not entitled to probative weight** in the determination of legislative intent." (citations omitted)); *Cummings v. Mickelson*, 495 N.W.2d 493, 499 n.7 (S.D. 1993) (holding the views of individuals involved with the legislative process as to intent is of no assistance in construing statutory provisions because: (1) it is the intent of the legislature that is sought, not the intent of the individual members; and (2) it is "universally held" that "evidence of a ... draftsman of a statute is not a competent aid to a court in construing a statute" (quoting *Coop. Wool Growers of S.D. v. Bushfield*, 69 S.D. 172, 8 N.W.2d 1, 3 (1943))); *Cogan v. City of Wheeling*, 166 W.Va. 393, 274 S.E.2d 516, 518 (1981) (holding **a court cannot consider** the individual views of members of the legislature offered to prove the intent and meaning of a statute **after its passage and after litigation has arisen over its meaning and intent**). *See generally* Norman J. Singer & Shambie Singer, *Statutes and Statutory Construction* § 48.16 (7th ed. 2014) (citing cases in numerous jurisdictions holding courts should not consider testimony about legislative intent by members of the legislature that enacted a statute). **Accordingly**, even if the proviso were ambiguous, **we would not consider any post-passage statements by individual legislators or groups of legislators as to the intent of the proviso**.

Creswick v. University of South Carolina, 434 S.C. 77, 83-84, 862 S.E.2d 706, 709-710 (2021) (emphasis added).

Likewise, in *Greenville Baseball v. Bearden*, 200 S.C. 363, 20 S.E.2d 813 (1942) the Supreme Court considered the meaning of a statute that prohibited baseball games on Sunday afternoon in South Carolina counties where US military bases were established. The Supreme Court reasoned:

> Included in the record and attached to the return of the respondents are **affidavits from several State Senators** who were members of the State Senate when the Act

> of 1941 was adopted, which purport to show the construction placed by them upon the Bill in the course of its passage.
>
> It is a settled principle in the interpretation of statutes that even where there is some ambiguity or uncertainty in the language used, **resort cannot be had to the opinions of legislators or of others concerned in the enactment of the law, for the purpose of ascertaining the intent of the Legislature**. Tallevast v. Kaminski, 146 S.C 225, 143 S.E. 796.

Id., 200 S.C. 363, 20 S.E.2d 813, 817 (1942) (emphasis added).

In *Tallevast v. Kaminski*, 146 S.C. 225, 143 S.E. 796 (1928), taxpayers sued the County of Georgetown regarding the use of public funds to establish a ferry. The taxpayers attempted to use "sworn statements of certain members of the Georgetown County delegation." *Id.,* 146 S.C. 225, 143 S.E. 796, 798 (1928). The trial court did not consider the statements and ruled against the taxpayers. The taxpayers appealed, and the Supreme Court, after sufficient consideration, adopted the orders of the Circuit Court as the orders of the Supreme Court. Those orders contain the following analysis:

> The Act of 1927 must be read in the light of all cognate legislation, and **whatever the views of individual members of the Legislature may have been** or may be as to the precise purpose or scope of the statute, they and the court are **bound by the language used** and the reasonable interpretation of such language in the light of the manifest purpose of the Legislature as disclosed by the Act of 1926, and other applicable statutes.
>
> * * *
>
> "It is a settled principle in the interpretation of statutes that even where there is some ambiguity or uncertainty in the language used, **resort cannot be had to the opinions of legislators or of others** concerned in the enactment of the law for the purpose of ascertaining the intent of the Legislature. To resort to the views of individuals, even of legislators, after the legislation has been enacted, would involve the interpretation of the law in endless confusion and uncertainty. The rule is thus expressed in 25 R. C. L. 1037, 1038:
>
> * * *
>
> [T]he **rule** that the intention of the Legislature is the primary consideration in the construction of a statute **does not permit the courts to consider statements made**

> **by the author of a bill or by those interested in its passage, or by members of the Legislature adopting the bill**, showing the meaning or effect of the language used in the bill as understood by the person or persons making such statements. The reason for this is that it is impossible to determine with certainty what construction was put upon an act by the members of the legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other.'

Id., 146 S.C. 225, 143 S.E. 796, 799-800 (1928) (emphasis added).

Accordingly, in the case at bar, it was improper for the Court to consider the County Council Resolution as to the meaning of the enabling Ordinance, especially when it was adopted more than a year after the enabling Ordinance was enacted.

C. The Court Cannot Rely on Subsequent Statements of Executives.

Similarly, statements of executive branch personnel and others, issued after the fact, are **not admissible** to testify about the meaning of a statute, particularly when generated in the course of litigation concerning the meaning of the statute. *Kennedy v. South Carolina Retirement System*, 345 S.C. 339, 549 S.E.2d 243 (2001).

In *Kennedy*, retired state employees sued the South Carolina Retirement System and the South Carolina Budget and Control Board alleging their retirement benefits had been miscalculated. *Id.,* 345 S.C. 339, 353-54, 549 S.E.2d 243, 250 (2001). The Circuit Court ruled for the Retirement System, and the employees appealed. The Supreme Court affirmed. *Id.,* 345 S.C. 339, 353-54, 549 S.E.2d 243, 250 (2001). One of the issues was admissibility of the testimony of Purvis Collins, former director of the Retirement System for 24 years. *Id.,* 345 S.C. 339, 353-54, 549 S.E.2d 243, 250 (2001). He was the primary "author" of the statute in question. *Id.,* 345 S.C. 339, 353-54, 549 S.E.2d 243, 250 (2001). The Supreme Court ruled that his testimony was **inadmissible** on the issue of the meaning of the statute that he authored.

> Purvis Collins, who at the time of this case was retired and is now deceased, was the director of the Retirement System for 24 years. Mr. Collins has been recognized nationally as one of the country's leading governmental retirement system administrators. This Court has the highest respect for Mr. Collins' knowledge, ability, and integrity. **Nevertheless, as a matter of law, the testimony of Mr. Collins, an executive branch officer, as the "author" of a legislative amendment, is not admissible as evidence of legislative intent**. Not even members of the General Assembly are permitted to so testify. "It is a settled principle in the interpretation of statutes that even where there is some ambiguity or some uncertainty in the language used, ***resort cannot be had to the opinions of legislators or of others concerned in the enactment of the law,*** for the purpose of ascertaining the intent of the legislature." *Greenville Baseball, Inc. v. Bearden,* 200 S.C. 363, 371, 20 S.E.2d 813, 817 (1942)(emphasis added).

Id., 345 S.C. 339, 353-54, 549 S.E.2d 243, 250 (2001) (*bold and underlining added; italics in the Kennedy opinion*).

Accordingly, the Court erred in allowing the admissibility of and granting credence to both the declarations of the County agents and to the County Council Resolution, when they all were adopted more than a year after the Ordinance was enacted. Without that evidence, the outcome is different.

III. THE COURT ERRED IN DISMISSING THE CASE WITH PREJUDICE.

Finally, the County prevented Taxpayers from obtaining even the most basic discovery: answers to interrogatories, responses to requests for production of documents, and requests for admission, to say nothing of depositions of the potential witnesses (Appellants-Respondents' Discovery Requests, Supp. Record on Appeal. pp.613, ff.; Respondent-Appellant's Discovery Responses, R. pp. 147-168). Nevertheless, the County submitted multiple documents and exhibits, and the Court accepted them, and accepted the three declarations from County agents and the after-the-fact County Council Resolution and considered them as a basis for its ruling.

The Court allowed evidence from only one side, the County, with the Taxpayers being prohibited from securing any discovery, and then the Court **dismissed** the case **with prejudic*e***. The Court erred in denying Taxpayers a fair chance at discovery, particularly in this case with constitutional implications, and dismissing the case with prejudice.

Conclusion

The Circuit Court properly issued a preliminary injunction (Order issued August 9, 2024, R. pp. 5-33). The Circuit Court properly ruled that Taxpayers possess both public importance standing and taxpayer standing Order issued August 9, 2024, R. pp. 10-24). Taxpayers have stated a valid claim for violation of the South Carolina Constitution Article X, Section 12.

The Circuit Court then erred in reversing itself and granting the motion to dismiss **with prejudice**, relying on alleged "legislative history" created more than a year after the enabling Ordinance was enacted (Order issued March 11, 2024, R. pp. 34-48; R. pp. 444-468).

Accordingly, this Court should reverse the Circuit Court's dismissal with prejudice, reverse the reversal of its earlier opinion, and re-issue the preliminary injunction against the Constitutional violation.

Respectfully submitted,

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