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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Circuit Court

Martha M. Rivers, Circuit Court Judge

Appellate Case No. 2025-002347

Bettis C. Rainsford, Sr. and Greg W. Anderson, Appellants,

v.

Edgefield Civic League, Beth Thornton,
George Thornton, J. Douglas Timmerman, Jr.,
Rebecca Turner, Beth Cali, and Patsy Smith, Respondents.

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

- 1) The trial judge wrongly dismissed the Complaint because she incorrectly thought that the doctrine of public importance standing applies only to cases that involve *de jure* governmental defendants.
- 2) The trial judge wrongly dismissed the Complaint because she misconstrued it as not alleging facts which showed that the matter involved a *de facto* governmental defendant or “public body” and its board members, thereby making the case subject to the doctrine of public importance standing.
- 3) The trial judge wrongly dismissed the Complaint because she incorrectly thought that it is not a matter of public importance for there to be, as alleged in the Complaint: (1) the funneling of hundreds of thousands of dollars over decades to an entity to provide government services and receive public property, and (2) the subsequent transfer of that property without consideration to a private organization in secret and in a manner that involved a conflict of interest by the person who was president of both organizations.

STATEMENT OF THE CASE

On December 27, 2024, Appellants, Bettis C. Rainsford, Sr. and Greg W. Anderson, a member of the South Carolina bar, brought this suit against the Edgefield Civic League (“ECL”) and certain members of its board of directors alleging *inter alia* breach of fiduciary duty,

On February 27, 2025 the Respondents moved to dismiss, arguing that the Appellants lacked standing to file a lawsuit against the Respondents because the Respondent ECL was a non-profit entity – not a government entity.

A hearing was held on July 7, 2025 at the Edgefield County Courthouse with the Honorable Martha M. Rivers presiding. The Court issued its order on July 29, 2025 concluding that the plaintiffs lacked standing.

The Appellants timely filed a motion on August 8, 2025 for the court to reconsider its decision. On November 4, 2025 the court denied the motion for reconsideration.

The only monetary damages being sought are “monetary damages as determined by the Court.”

The Appellants then timely filed this appeal on November 18, 2025.

STANDARD OF REVIEW

The trial court dismissed the Appellants’ action for lack of standing under Rule 12(b)(6), SCRPC. This dismissal is appealable. *Williams v. Ham*, 292 S.C. 415, 357 S.E.2nd at 500. On review, the Court of Appeals applies the same standard of review that was implemented by the trial court. *Id.* In determining whether the trial court properly granted the motion to dismiss, the Court of Appeals must consider whether the Complaint, viewed in light most favorable to the plaintiff, states any valid claim for relief. *Bergstrom v. Palmetto Health Alliance*, 358 S.C. at 388, 596 S.E.2d 42 (2004). *Brazell v. Windsor*, 384 S.C. 512,515, 682 S.E.2d 824, 826 (2009). “The trial court and this Court on appeal must presume all well pled facts to be true.” *Morrow Crane Co. v. T.R. Tucker Construction Co.* 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct. App. 1988). Pleadings in a case should be construed liberally so that substantial justice is done between the parties. Further a judgment on the pleadings is considered a drastic measure by our courts.” *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991). The Complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Doe v. Marion*,

373 S.C. 395, 645 S.E2d 248. Most importantly, since standing is treated as a legal question, not a factual one, it shall receive *de novo* review by the Court of Appeals. The appellate court is free to decide questions of law with no particular deference to the trial court.

FACTS

In an unprecedented and deeply troubling action, the directors of the Edgefield Civic League (“the ECL”), a South Carolina non-profit corporation, which had subsisted almost entirely on public funding for thirty years, thus becoming a quasi-public organization, approved a document titled “Settlement and Release of All Claims,” effectively conveying nearly all contents of the Tompkins Library to the Old Edgefield District Genealogy Society (“OEDGS”), a strictly private non-profit organization which had never had any public funding. The collections have already been removed, leaving two largely empty buildings where a historic institution once stood. This extraordinary event necessitated the present action.

The Appellants are exactly the type of citizens the public importance doctrine exists to empower. They are long-time Edgefield residents with a sustained record of involvement in the preservation, oversight, and lawful stewardship of the very public assets implicated in this case. As detailed in the Complaint (paragraphs 1-4), they have spent years working to preserve the county’s historical institutions, especially the Tompkins Library. Their motivations are civic rather than personal; their interest is the integrity of public or quasi-public institutions, not private gain. The questions they raise – concerning fiduciary duty, transparency, and the proper governance of an entity which has subsisted almost entirely on public funding for thirty years and holding assets of public significance – are precisely the type that require judicial resolution for future guidance and justify standing under the Supreme Court’s public importance doctrine.

This case is about the Respondents' very negligent management of the Tompkins Library, a very important institution in the Town of Edgefield which was founded more than a century ago, when an Edgefield native and Southern industrialist left a bequest to the Town of Edgefield for the purpose of establishing a library. The ECL was chartered in 1928 by the South Carolina Secretary of State for the purpose of acquiring a building for the library on the Court House Square with the proceeds of the Tompkins bequest. By 1985 the Tompkins Library had evolved into a genealogical and historical library. In that same year, the Old Edgefield District Genealogical Society ("the OEDGS") was founded as a separate organization to work with the ECL in developing the historical and genealogical collections. Over the next nearly forty years hundreds of donors contributed substantial amounts of historical and genealogical materials to the Tompkins Library.

Sometime after 1990, the Town of Edgefield and Edgefield County began to provide ongoing operational funding for the Tompkins Library, with approximately \$500,000 in public funds being channeled through the ECL for the director's salary and utilities over the ensuing thirty years. The Town and County councils clearly conceived of the Tompkins Library as a public, or quasi-public, institution, with substantially all of the operating costs of the library being borne by public funds.

Within just a few years after public funding was committed, friction began to develop between the ECL and the OEDGS. Indeed, by 1994, this friction had blown up to the point that both the councils of Edgefield County and the Town of Edgefield, which had only several years before committed to provide operational funding for the Tompkins Library, had been drawn into the controversy between the two organizations. Finally, under threat from both the County and Town Councils that they would cease their funding for the Tompkins Library, an arbitration

committee of the County, the Town, the ECL and the OEDGS reached an agreement, dated June 5, 1994, under which the two organizations agreed to cooperate.

During the period from 1994 to 2021, much progress was made in developing the Tompkins Library. Significant physical improvements were made to the buildings, thousands of books and documents were contributed to the library and thousands of files of families, places and subjects were developed, primarily by the efforts of the director of the library who was paid by public funds. Many volunteers also donated thousands of hours of their time to building this institution.

As a result of all of this hard work and dedication over many decades, the Tompkins Library had acquired a reputation as one of the finest historical and genealogical libraries in the nation. People from all over the nation and a number of foreign countries visited Edgefield each year doing historical and genealogical research. This activity of the Tompkins Library was a major boon for the local Edgefield economy, particularly for the restaurants, bed & breakfasts, hotel and specialty retailers.

Beginning in late 2021, renewed friction began to develop between the Respondent, J. Douglas Timmerman, Jr., who had been the longtime president of both the ECL and the OEDGS, and the other members of the board of the OEDGS. As a result of his desire to control the OEDGS, Mr. Timmerman unilaterally added, in violation of the provisions of ECL's By-Laws, a number of new members to the board of the ECL who were not properly briefed on the history, mission, structure and operations of the Tompkins Library. They were given to understand that the OEDGS board members were adversaries, and that they, as board members of the ECL, had the power and responsibility to dominate and dictate terms under which the OEDGS operated in the Tompkins Library. This petty attitude resulted in a number of very high-handed and poorly-considered

actions by the newly-constituted board of the ECL. The dual presidency of Timmerman at both organizations created an inherent conflict of interest between the two organizations, and he clearly failed to perform his fiduciary duties.

Beginning in January 2022, the ECL, acting through its president, the Respondent Timmerman, unilaterally issued a series of purported “Commercial Lease Agreements” to the OEDGS. Timmerman’s role in this action clearly constituted a violation of his fiduciary duty. These leases demanded that the OEDGS pay rent to the ECL, in direct violation of the binding 1994 Agreement. The OEDGS was informed, in no uncertain terms, that it must either execute the proposed leases or vacate the premises. When the OEDGS refused to sign the lease agreements, officers of the OEDGS were charged with trespass and escorted out of the building by the Edgefield police. Subsequently, the ECL had the locks on the building changed to ensure that the OEDGS board members could no longer access the building. When the OEDGS board members demanded their right to remove what they claimed to be their property, the ECL arrogantly refused to allow them to take anything away.

The OEDGS board then decided to find another location from which to operate. Various options were considered, but they ultimately chose to locate in a building in Johnston owned by the Town of Johnston which had offered to upfit the building for the OEDGS. That work on the building is now complete and the OEDGS has moved into its new home.

In the interim, the OEDGS filed suit seeking entry to retrieve the property it claimed to own. Over the next eighteen months, the ECL board failed to hold public meetings, failed to consult donors or the community, failed to provide evidence to their attorneys and in depositions to support their defense in the OEDGS suit, and failed to provide any transparency to the public regarding the litigation.

Without public notice, without presenting any meaningful defenses in the litigation (which was readily available as fully set forth in paragraph 52 of the Complaint), and without so much as requesting that the matter be heard in open court, the ECL board abruptly capitulated and executed the Settlement Agreement, transferring substantially all of the quasi-public collections to the OEDGS, a private company. Many of these materials were donated to the ECL decades before the OEDGS even existed, including important and valuable newspaper files contributed to the ECL in 1928. Donors had entrusted these materials to the ECL with the expectation that they would remain in the Tompkins Library on the Edgefield Town Square for public benefit. No inventory of assets transferred was released to the public, no public debate occurred, and no explanation was given for the board's sudden reversal of the decades of cooperative practice it had enjoyed with the OEDGS.

The Settlement Agreement also contains a sweeping confidentiality clause designed to prevent disclosure of its terms to the public, to hide the ineptness and transgressions of the fiduciary duties of the board members and to keep from public view the extreme conflict of interest exercised by Timmerman who occupied the presidency of both organizations. This confidentiality clause underscores the board's desire to conceal its actions and avoid public accountability. The public is now confronted with two empty buildings where a nationally-recognized research institution once stood, and no explanation has been provided for the loss of nearly a century's worth of historical and genealogical materials.

Astoundingly, the Settlement Agreement also provided for a payment to the OEDGS of \$30,000. This \$30,000 cash payment, combined with approximately \$500,000 in public funding from the Town and County of Edgefield paid over thirty years (which constituted the vast majority of the ECL's revenue over the period) clearly makes this an issue of public importance.

Given the ECL's abandonment of its mission, its disregard for its founder donor's intent and the intent of subsequent donors, its failure to protect the interests of the intended beneficiaries, its failure to protect the assets entrusted to it, and its lack of transparency, the Appellants have brought this action to uncover the truth, protect the public interest, and remedy the serious breaches of fiduciary duty committed by the Respondents. The Appellants further allege that the cumulative conduct of certain board members constitutes a clear breach of the fiduciary duties imposed upon them under South Carolina law.

The Respondents moved to dismiss the action on the ground that the Appellants lacked standing. In response, the Appellants demonstrated that they fall squarely within South Carolina's long-recognized "public importance" exception to traditional standing articulated in *Baird v. Charleston County*, 333 S.C. 519 (1999) and confirmed in many subsequent cases.

Despite this extensive and controlling body of law, the trial court granted the motion to dismiss without addressing, analyzing, or even acknowledging the Appellants' arguments concerning the public importance doctrine. The order contains no discussion of *Baird*, no reference to the line of cases applying the doctrine, and no explanation for disregarding the only legal basis upon which standing was contested. It simply states that "The court finds that because these are private organizations, it is inappropriate to apply the law of taxpayer standing." The omission of discussing the case law presented is not merely an oversight – it is an error of law.

The Appellants filed a timely motion asking the court to reconsider its ruling. Yet, in denying that motion, the trial court again failed to address the public importance exception, failed to cite a single case governing the doctrine, and failed to articulate any reasoning for rejecting the Appellants' standing argument. The court's silence on the dispositive legal issue – twice –

constitutes a textbook error of law. A court cannot dismiss a case for lack of standing while simultaneously refusing to consider the very doctrine that confers standing.

This omission is not harmless. It deprived the Appellants of a ruling grounded in law, deprived the public of judicial review of a matter of profound community importance, and deprived the appellate courts of a reasoned order capable of meaningful review. Under South Carolina precedent, such a failure requires reversal.

ARGUMENT

I. THE ALLEGATIONS IN THE COMPLAINT SHOULD BE READ IN A LIGHT MOST FAVORABLE TO THE PLAINTIFFS AND PRESUME ALL WELL-PLED FACTS TO BE TRUE.

South Carolina law requires courts to accept all well-pleaded allegations as true at the Rule 12 stage and to construe them liberally in favor of the plaintiff. Yet, in its order, the court below stated “In his argument, [Appellant] asserted the location of the library items substantially increased tourism and was a benefit to all citizens in the city. Unfortunately, plaintiff’s accounts were anecdotal only.” Although the court dismissed Appellant’s allegation, characterizing it as “anecdotal only,” there is no doubt that through discovery Appellant would, and will, be able to provide a tremendous amount of data to back up this assertion. Thus, the court did not read the Appellant’s allegations in a light most favorable to the Appellant and did not presume all well-pled facts to be true as required by law. In addition, the court apparently *sua sponte* converted the motion to dismiss into a motion for summary judgment. This was error, as well.

II. BY DECLINING TO CONSIDER THE SUBSTANTIAL ARGUMENTS SUBMITTED BY THE APPELLANTS, THE TRIAL COURT ABUSED ITS DISCRETION.

South Carolina appellate courts have long held that a trial court commits reversible error when it fails to exercise its discretion or fails to consider the factors necessary to an informed decision. See, e.g., *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 658 S.E.2d 80 (2008) (“A failure to exercise discretion amounts to an abuse of discretion.”); *State v. Brown*, 389 S.C. 473, 698 S.E.2d 811 (2010) (“An abuse of discretion occurs when the judge fails to consider the relevant factors before making a decision.”). By declining to engage the controlling doctrine that governs the standing analysis, the trial court did not merely misapply the law – it failed to apply the law at all.

III. THE APPELLANTS HAVE STANDING BASED UPON THE PUBLIC IMPORTANCE EXCEPTION.

The Appellants have standing under South Carolina’s long-recognized public importance exception, first articulated in *Baird v. Charleston County*, 333 S.C. 519 (1999), and reaffirmed in *Evins v. Richland County Historic Preservation Commission*, 341 S.C. 15 (2000); *Sloan v. Sanford*, 357 S.C. 431 (2004); *Davis v. Richland County Council*, 372 S.C. 497 (2007); *ATC South, Inc. v. Charleston County*, 380 S.C. 191 (2008); *SC Public Interest Foundation v. SCDOT*, 421 S.C. 110 (2017); *Adams v. McMaster*, 432 S.C. 225 (2020); and *Eidson v. SCDE* (2024). No longer is a litigant required to have a personal stake in the outcome of the litigation. Under this doctrine, standing exists when (1) the issue is of substantial public importance, and (2) judicial resolution is required for future guidance. Both prongs are overwhelmingly satisfied here.

A. SUBSTANTIAL PUBLIC IMPORTANCE

The Tompkins Library has served the public for nearly a century, and was supported almost entirely by public funding over the last thirty years. This library was founded by a bequest in 1914 and contained valuable collections which were donated for public benefit by hundreds of donors.

The ECL's decision to transfer nearly the entire collection to OEDGS – much of it donated decades before OEDGS existed – constitutes the loss of a very valuable and historically-significant community asset. The transfer was executed without public notice, without hearings, without transparency, and under a sweeping confidentiality clause designed to conceal the disposition of these assets and the ineptitude and violations of the fiduciary duties of the ECL board members. Since the ECL's board is self-perpetuating, with no membership and no elections, there is no mechanism for public accountability. Under the cases cited below, these factors place the matter squarely within the realm of public importance.

In the landmark case of *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2nd 69 (1999), the South Carolina Supreme Court stated that “standing may be conferred upon a party when an issue is of such public importance as to require its resolutions for future guidance.” No longer is a litigant required to have a personal stake in the outcome of the litigation. The public importance rule set forth in *Baird* is not isolated to the facts of that case. On the contrary, it has been applied in over 100 cases since 1999, almost invariably used to support and enhance this type of standing.

The case of *Evins v. Richland County Historic Preservation Commission*, 341 S.C. 15, 532 S.E.2d 876, (2000) is particularly instructive for this case. The profile of the plaintiff is exactly as the profile of the Appellants in this case: Evins was an ordinary citizen seeking to reverse actions taken by a board that were “of such public importance as to require its resolution for future guidance.” The principal defendant in the *Evins* case, the Richland County Historic Preservation Commission, was presumably created as an entity by act of the legislature, while in this case before the Court, the ECL was created by a charter issued by the South Carolina Secretary of State (Paragraphs 10, 15 and Exhibit A of the Complaint). However, both organizations were created for the same sort of purposes and both received substantial – almost total – public funding support

(which was more than adequately claimed for the ECL in paragraphs 18, 20 & 30 of the Complaint). The Appellants see no reason why, under circumstances where both defendants have each been funded primarily by public support, the plaintiff in the *Evins* case should be afforded public importance standing, while the Appellants in this action are denied such standing.

Given the complete dereliction of the fiduciary duties of the Respondents in this case which resulted in the complete loss of Tompkins Library in violation of the intent of the founding donor, D.A. Tompkins, the intentions of hundreds of donors to the library over the years and more than thirty years of public funding (which constituted the vast majority of the ECL's total annual revenue), the Appellants in this action certainly deserve the benefit of the public importance exception to standing. Otherwise, there is no other remedy for the destruction of one of the most significant institutions in the history of Edgefield County. There are no other "parties who can show the required injury" and no remedy "at the ballot box."

Another clear example of the concept of "public importance" is found in *South Carolina Public Interest Foundation v. South Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017). After the SCDOT inspected bridges in the private, gated Aiken County Woodside Plantation development, petitioners initiated a declaratory judgment action, seeking a court declaration that SCDOT's inspection of the privately-owned bridges violated the constitutional requirement that public funds be expended only for a public purpose. The South Carolina Supreme Court concluded: "The issue of whether SCDOT may inspect bridges within private, gated communities is one of public importance as it involves both the conduct of a government entity and the expenditure of public funds."

Another case on point is the case of the *South Carolina Public Interest Foundation & Sloan v. the South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013). In

this case the petitioners were challenging the constitutionality of provisions of the act establishing the Infrastructure Bank. The court ruled: “Sloan presents a colorable claim that the Board is unconstitutionally comprised, casting a cloud of illegitimacy which could marginalize the important decisions of the Board. We find resolution of this question is certainly of importance and concern to the public and therefore hold Sloan has standing to bring this challenge.” *Id.* at S.C. 646.

B. THE NEED FOR FUTURE GUIDANCE

The emphasis on “future guidance” was solidified in *ATC South, Inc. v. Charleston County*, 380 S.C. 191 (2008), where the Court stated: “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.”

This case before the Court presents issues that require judicial clarification for future guidance. These issues include: (1) the fiduciary duties owed by self-perpetuating non-profit boards that subsist almost entirely on public funding and which create and manage publicly-funded assets like the historical and genealogical collections of the Tompkins Library; (2) the legal limits on transferring historically-significant or donor-restricted materials held for public benefit; (3) the effect of conflicts of interest, including the dual office holding in two separate, but related non-profit entities; (4) the violations of fiduciary duties by officers and directors (5) the permissibility of confidentiality clauses designed to conceal the disposition of quasi-public assets and the breaches of fiduciary duties of board members of non-profit entities; and, most importantly, (6) the obligations of non-profit entities that subsist almost entirely on public funds while serving a public mission.

The most significant issue in this case for which future guidance is needed is whether, in non-profit organizations which subsist largely or almost entirely on public funding, the officers

and directors are answerable for their actions. There are hundreds, if not thousands, of such non-profit entities in South Carolina that oversee the expenditure of public funds with which they are entrusted each year. To the extent that these officers and directors are not held responsible for their illegal actions or their violations of fiduciary duties, the public and the taxpayers will be greatly compromised.

Appellants have pled serious allegations about the conduct of the Respondents, specifically (1) the addition of board members of the ECL in violation of its By-Laws, (2) the breaches of the Respondent, J. Douglas Timmerman, Jr., of his fiduciary duties while he served as president of both organizations, (3) the failure of all of the Respondents to protect and fight for the quasi-public historical and genealogical collections which had been accumulated over many decades as a result of being publicly-funded for thirty years. Timmerman's scheme to add board members to the ECL in violation of the ECL's own By-Laws cannot be allowed to stand. Additionally, Timmerman's violation of Section 33-31-842 of the South Carolina Code is something for which he should be held accountable. His fiduciary duties of loyalty and good faith run separately and independently to each corporation. When he violated those duties in a manner that potentially benefits one corporation at the expense of the other, the public that relies on each of those corporations is harmed. This is a uniquely "public importance" pattern of misconduct that transcends any single private dispute.

The need for future guidance as a requirement for providing standing in matters of public importance was further considered in the case of *Adams v. McMaster*, 2020 WL 5939936 (S.C. 2020). In that case the court articulated a four-factor test to assess whether the "future guidance" prong of the public importance exception was satisfied. The court explained that this issue implicated a need for future guidance because it involved (1) the legality of government conduct,

(2) the expenditure of public funds, (3) a matter of urgency, and (4) the issue was likely to reoccur in the future.

In the case before this Court, these four factors are very appropriate to consider and confirms that the Court should provide standing for the Appellants. These four factors for this case are: (1) the legality of conduct of ECL as a quasi-public entity, (2) which has subsisted almost entirely on public funding for thirty years, (3) a matter of urgency to retrieve a large, valuable and unique collection of historical and genealogical documents, and (4) this issue is likely to reoccur in the future unless quasi-public entities like ECL, subsisting on public funding, are given notice that their actions in matters of public importance are subject to challenges and judicial review.

The Appellants believe that the applicability of this public importance exception to the standing requirement is particularly important when boards of non-profit institutions are self-perpetuating – that is, when the organization has no members to elect or otherwise fill vacancies on the board, no other mechanism to provide input from the public, and the power to fill vacancies is left entirely to the discretion of current board members. Under this structure, boards can, and often do, completely abandon the purpose and mission of the organization and completely ignore the intent of the founding donors and other donors who have made the organization a success. Without providing standing to members of the public or to intended beneficiaries in cases like this one before the Court, there is no other mechanism to hold board members accountable. Justice requires that standing be provided to plaintiffs who are seeking to uphold the standards of publicly-funded non-profit organizations for the benefit of the public and the intended beneficiaries. Otherwise, the public and the intended beneficiaries will have no relief.

The South Carolina Supreme Court has not hesitated to apply the law in a manner that guarantees proper oversight of public funds. Its application of the South Carolina Freedom of

Information Act (FOIA), S.C. Code Ann. § 30-4-20, a law which was specifically designed and drafted to ensure transparency and accountability in the use of public funds, included a clause which extends its provisions to “any organization, corporation, or agency supported in whole or in part by public funds or expending public funds.” In this act, a “public body” is defined to be “any department of the State, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, *or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds* [Emphasis added], including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions.”

In *Weston v. Carolina Research & Development Foundation*, 303 S.C. 398, 401 S.E.2d 161 (1991), the South Carolina Supreme Court rejected the argument that FOIA applies only to governmental or quasi-governmental bodies in form, holding that the Foundation's argument would effectively rewrite the statutory definition of “public body” by deleting the phrase, “or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds,” so that a corporation that cannot be labeled governmental or quasi-governmental would be exempt from the FOIA, regardless of whether it received support from public funds or expended public funds.

In this case before the court, where public funding has constituted almost the entire annual funding of a non-profit organization for nearly thirty years, the Appellants believe that the court should adopt, for purposes of “public importance” standing, the definition of “public entity” which was set forth in the South Carolina FOIA.

Just as the *Baird* court extended standing to promote justice, the South Carolina General Assembly has been recently considering the standing issue in a similar context: Under the South Carolina Heritage Act, it was assumed by many observers that the enforcement of this act was entirely up to the Attorney General of the state, and that heritage organizations did not have standing to bring civil litigation to enforce the act.

As a result of the frustration of many individuals and organizations in this state who have watched many names, monuments and memorials either being removed, or threatened to be removed, by the evolving ideologies in our modern world, the General Assembly is now addressing the issue of standing with respect to this act. An overwhelming majority of members of the Senate joined in sponsoring Senate Bill S-508 which provides that standing should be extended to “affinity organizations” and “monument preservation organizations” in bringing civil litigation under the Heritage Act.

This bill passed the full Senate overwhelmingly several weeks ago, thus indicating strong support for providing standing to affinity or monument preservation organizations. The bill has recently been approved by vote of the House Judiciary Committee and it is expected that it will be approved by the full House in the near future. Thus, the General Assembly will have joined the *Baird* court in extending standing to parties who may not have previously enjoyed standing under the common law, but who, the General Assembly believes, should have the right to bring civil actions.

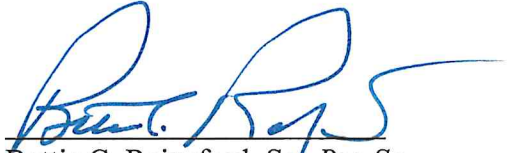
CONCLUSION

This case before the Court is precisely the type of controversy for which the public importance exception exists. The destruction of a publicly-funded, historically-significant

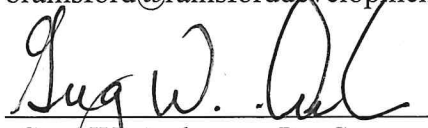
institution; the transfer of assets held in trust for the community; the absence of any public oversight; and the need for judicial clarification of non-profit fiduciary duties; all compel the conclusion that Appellants have standing. Without standing here, no mechanism exists to hold the Respondents accountable, and no guidance will be provided to prevent similar violations of law and transgressions of fiduciary duties by other non-profit entities which subsist on public funding. A sentence which has often been included in cases related to the public importance exception to the traditional standing doctrine is “Citizens must be afforded access to the judicial process to address alleged injustices.” *ATC South, Inc. v. Charleston County*, 380 S.C. 191 (2008), *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 69, (2014), *Adams v. McMaster*, 432 S.C. 225 (2020).

Signatures appear on the next page.

Respectfully submitted,



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