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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
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.

Of whom Bettis C. Rainsford, Sr., and Greg W. Anderson are the Appellants

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INITIAL BRIEF OF RESPONDENTS EDGEFIELD CIVIC LEAGUE, BETH THORNTON, GEORGE THORNTON, J. DOUGLAS TIMMERMAN, JR., REBECCA TURNER, BETH CALI AND PATSY SMITH

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STATEMENT OF ISSUES ON APPEAL

I. Whether the Circuit Court correctly applied the standard of review required to dismiss a case pursuant to Rule 12(b) SCRCP by determining that Appellants failed to establish the threshold requirement of standing.

II. Whether the trial court abused its discretion in issuing its Order of Dismissal.

III. Whether the circuit court correctly found that public-importance or taxpayer standing does not apply to claims against a private nonprofit organization and private individuals who are not public officials and did not take governmental action.

IV. Whether arguments raised for the first time in Appellants' Initial Brief—including theories under FOIA, the Heritage Act, S.C. Code Ann. § 33-31-842, and Adams v. McMaster—should be excluded from appellate consideration because they were not raised to or ruled upon by the circuit court.

STATEMENT OF THE CASE

This appeal arises from the circuit court's July 29, 2025 Order of Dismissal (hereainfter "the Order of Dismissal", which granted Respondents' motion to dismiss for lack of standing. Appellants filed a Motion to Reconsider the Order of Dismissal pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure ("SCRCP") on August 8, 2025, which was denied by order dated November 4, 2025.

Appellants Bettis C. Rainsford, Sr. and Greg W. Anderson filed suit on December 27, 2024, asserting claims for breach of fiduciary duty against Respondents Edgefield Civic League (the "League" or "ECL"), a South Carolina nonprofit corporation, and Beth Thornton, George Thornton, J. Douglas Timmerman, Jr., Rebecca Turner, Beth Cali, and Patsy Smith, six of its current or former board members, (collectively, "Respondents"). (Compl. ¶¶ 1, 5-6.) The Complaint stems from Appellants' dissatisfaction with a confidential settlement agreement between the League and the Old Edgefield District Genealogical Society ("OEDGS") that resolved a prior lawsuit—one to which neither Appellant was a party and in which the court in fact denied Rainsford's attempts to intervene. (Compl. ¶ 39.)

That prior lawsuit bearing C/A No. 2023-CP-19-00058 was dismissed with prejudice on January 23, 2025. (Defs.' Mem. in Supp. of Mot. to Dismiss at 1 n.2.)

Respondents moved to dismiss under Rules 12(b)(1), 12(b)(6), and 23(b)(1), SCRCP, arguing Appellants lacked standing, the Complaint failed to state a cause of action for breach of fiduciary duty, and the derivative-action requirements were unsatisfied. The Honorable Martha M. Rivers held a hearing on Respondents' Motion to Dismiss on July 7, 2025. No witnesses were called and no exhibits were submitted. (Tr. at 2.) Appellant Anderson appeared *pro se*; Appellant Rainsford did not appear, did not file any independent opposition brief, and did not move for a continuance of the hearing. (Tr. at 3:11-25; 4:7-9, 22-24.)

In its Order of Dismissal, the Circuit Court found: (1) the League "is a private organization that receives grants and other monies and assistance from political subdivisions such as the City of Edgefield" and "is not a political subdivision or governmental entity or department"; (2) Appellants "were not board members for either the League or the Society" at the time of the events at issue; (3) "it is inappropriate to apply the law of taxpayer standing" because "these are private organizations"; and (4) "the court finds no basis upon which plaintiffs have a legal interest or other interest to confer proper standing upon plaintiffs regarding private organizations and agreements." (Order of Dismissal at 1-2.) Further, the Court found that Appellant "Rainsford was not present and presented no opposition to this motion at all". (Id, at 2.)

STANDARD OF REVIEW

Under Rule 12(b)(1) SCRCP, subject matter jurisdiction is a question of law, and appellate courts may decide questions of law de novo, without deference to the trial court. *See Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (2009). "We are free to decide questions of law with no deference to the trial court." *Id* (citing *Catawba Indian Tribe of S.C. v.*

State of South Carolina, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007)). "We review de novo the circuit court's ruling that there is no justiciable controversy." *Jowers v. S.C. Dep't of Health & Env't Control*, 423 S.C. 343, 354, 815 S.E.2d 446, 452 (2018) (citing *Ex parte State ex rel. Wilson*, 391 S.C. 565, 570, 707 S.E.2d 402, 405 (2011)).

In reviewing a motion to dismiss, this Court applies the same standard of review as the trial court. *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876, 878 (2012) (citing *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)). "In considering a motion to dismiss, the trial court must base its ruling solely on the allegations of the Complaint." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (S.C. 2007). The court must determine whether the allegations, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory asserted. *Id.* A "grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law." *McEachern v. Black*, 329 S.C. 642, 647, 496 S.E.2d 659, 661 (Ct. App. 1998).

"A motion to dismiss for lack 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). Subject matter jurisdiction may be raised at any time and cannot be waived. *Earthscapes Unlimited Inc. v. Ulbrich*, 390 S.C. 609, 614, 703 S.E.2d 221, 224 (2010).

Under Rule 220(c), SCACR, the appellate court may affirm a lower court's ruling on any ground appearing in the Record on Appeal.

STATEMENT OF FACTS

I. THE PARTIES.

The League is a private South Carolina nonprofit corporation formed in 1928. (Compl. ¶ 15; Tr. at 13:15-16.) The League owns two buildings in Edgefield: the Tompkins Library and the

Lynch Building. (Compl. ¶ 5.) As alleged by the Appellants, the League's primary mission, as set forth in the will of D.A. Tompkins, was to maintain a library. (Tr. at 17:12-14.) Respondents Beth Thornton, George Thornton, J. Douglas Timmerman, Jr., Rebecca Turner, Beth Cali, and Patsy Smith (the "Board Member Respondents") are current or former members of the League's board of directors and residents of Edgefield County. (Compl. ¶¶ 1, 4, 6.)

Appellant Bettis C. Rainsford, Sr. served on the League's board at one time, but his board membership expired in 2012—twelve years before this action was filed. (Compl. ¶ 1; Tr. at 5:25-6:1.) Appellant Greg W. Anderson is a retired attorney and sitting Probate Judge who has never served on the League's board. (Tr. at 12:10-15; 22:2.) Neither Appellant is currently a member of the League or of OEDGS. (Tr. at 5:20-22; 6:1-4.)

II. THE PRIOR LAWSUIT

The Old Edgefield District Genealogical Society ("OEDGS") was formed in 1985 as a separate nonprofit and moved into the League's buildings where the Tompkins Library was located. (Tr. at 13:19-22.) Appellants detailed the history of the League and the OEDGS and emergence of certain disputes that led to the OEDGS filing a lawsuit against the League in Circuit Court in 2023. (Compl. ¶¶ 19-39.) That prior lawsuit—*Old Edgefield District Genealogical Society v. The Edgefield Civic League*, Case No. 2023-CP-19-00058—was filed February 24, 2023 and resolved by confidential settlement agreement. (Defs.' Mem. in Supp. of Mot. to Dismiss at 1 n.2; Tr. at 13:3-4, 14:14-16.) The settlement resulted in genealogical items being removed from the Tompkins Library by the OEDGS. (Compl. ¶ 39.) The Court dismissed the prior lawsuit, with prejudice, on January 23, 2025. (Defs.' Mem. in Supp. of Mot. to Dismiss at 1 n.2.)

Neither Appellant was a party to that prior lawsuit. (Compl. ¶ 39; Tr. at 5:6-8.) Rainsford nonetheless sought to insert himself into it, filing a Motion for Leave to Appear as Amicus Curiae on September 5, 2023, which the court treated as a motion to intervene under Rule 24, SCRCP. (Defs.' Mem. in Supp. of Mot. to Dismiss at 6.) Following a hearing on April 17, 2024, the court denied the motion by Order dated April 29, 2024, rejecting both intervention as of right under Rule 24(a)(2) and permissive intervention under Rule 24(b)(2). (Id.) The court found "no evidence of [Rainsford's] retention of an ownership interest" and held that, even if such an interest existed, it was "adequately protected by the parties." (Id., quoting Order at 2.) The court further held that "[t]he questions of law and fact with regard to the ownership of documents, etc. are to be litigated between the plaintiff and defendant which entities clearly have an ownership interest in the documents in the case and not Rainsford." (Id. (emphasis in original).) Rainsford's claimed interest in the very assets at issue was therefore litigated and rejected before he and Anderson filed the instant action.

III. APPELLANTS' COMPLAINT AND THE ALLEGATIONS

Appellants filed the instant Complaint on December 27, 2024, asserting a single cause of action for breach of fiduciary duty against all Respondents. The Complaint alleged that "ECL and each individual defendant directors each owed a fiduciary duty of care, loyalty and good faith to the general public, including the Plaintiffs." (Compl. ¶ 40.) The Complaint described Appellants' contributions of monetary and documentary items to the Tompkins Library over the years, but did not allege that either Appellant retained ownership of those contributions. (Compl. ¶ 4; Tr. at 7:7-15.) The Complaint alleged that the League received funding from the Town of Edgefield and Edgefield County. (Compl. ¶¶ 18, 20, 30.) The Complaint sought to void the settlement agreement, retrieve the League's assets, remove the board of directors, require merger of the League and the Edgefield County Historical Society, and award unspecified monetary damages. (Compl., Prayer for Relief.) The Complaint was not verified. (Tr. at 9:7.)

IV. THE HEARING

The Honorable Martha M. Rivers heard argument on Respondents' Motion to Dismiss on July 7, 2025. (Tr. at 1.) Neither Respondents nor Appellants called any witnesses or submitted any exhibits. (Tr. at 2.) Appellant Anderson appeared *pro se* and argued on his own behalf; he confirmed that he was not representing Rainsford. (Tr. at 3:11-15, 4:12-17.) Appellant Rainsford was absent, had not filed an opposing brief prior to the hearing, and did not move for a continuance. (Tr. at 4:22-24; 5:1-5.)

Respondents' counsel argued that both Appellants lacked constitutional standing because they had no personal stake in the litigation, no injury-in-fact, no retained ownership interest, and no membership in the League. (Tr. at 6:13-7:25.) Counsel asserted that the Complaint failed to state a claim for breach of fiduciary duty owed to Appellants personally and that it did not satisfy derivative-action requirements under Rule 23(b)(1), SCRCP. (Tr. at 8:13-9:10.) Further, Respondents' counsel disputed that the Appellants could assert any taxpayer citizen standing because the two relevant entities were non-profit organizations. (Tr. at 9:23-25.)

Anderson argued that the League was a "public entity" under the public-importance standing doctrine set forth in *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999) because the Town of Edgefield had given the League $400,000 over thirty years. (Tr. at 15:20-24; 17:8-18.) The circuit court questioned whether the League was a governmental entity and Anderson conceded that the League and OEDGS are nonprofit corporations with their own bylaws but contended they were "political subdivision[s] under the Baird decision." (Tr. at 15:8-11; 16:1-4; 21:22-24.) When the court asked for evidence of public benefit beyond anecdotal accounts, Anderson stated: "We do. They kept records of who came in to research. I don't have those with me." (Tr. at 18:13-25; 19:1-3.) Anderson presented no documentary evidence supporting his public-entity or public-importance theory, and the Complaint contains no such allegations.

On rebuttal, Respondents' counsel argued that all cases cited by Appellants involved public entities, that the League is a private nonprofit registered with the Secretary of State, and that receipt of public funds does not convert a private entity into a public corporation. (Tr. at 25:10-26:1.) Counsel further noted that in Appellants' oral argument and Anderson's brief submitted at the hearing, Respondents attempted to assert facts not alleged in the Complaint. (Tr. at 26:2-16.)

V. THE ORDER OF DISMISSAL AND POST-DISMISSAL PROCEEDINGS

On July 29, 2025, the Circuit Court issued an Order of Dismissal, dismissing the action with prejudice. On August 8, 2025, Appellants filed a Motion to Reconsider pursuant to Rule 59(e), SCRCP. By order dated November 4, 2025, and without hearing, the Circuit Court denied the motion. Appellants subsequently appealed.

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY DISMISSED THE CASE PURSUANT TO RULE 12(b)(1) SCRCP BY DETERMINING THAT APPELLANTS FAILED TO ESTABLISH THE THRESHOLD REQUIREMENT OF STANDING.

The Appellants claim that the trial Court failed to apply the proper Rule 12(b) standard by characterizing Appellant's allegations about tourism and community benefit as 'anecdotal only,' rather than accepting all well-pleaded allegations as true and construing them in the light most favorable to the Appellants. Appellants contend that through discovery they would be able to provide substantial data to support these assertions, and that the court's failure to apply the correct standard constitutes reversible error. However, in order to consider any facts alleged by the Appellants in the Complaint, the Court must determine that there is a justiciable controversy.

“Standing is a threshold legal question that courts may resolve at the Rule 12 stage based on the sufficiency of the allegations as pled. Our courts will not address the merits of any case unless it presents a justiciable controversy.” *Jowers*, 423 S.C. at 353, 815 S.E.2d at 451 (citing *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430-31, 468 S.E.2d 861, 864 (1996). “In *Byrd*, we stated, ‘Before any action can be maintained, there must exist a justiciable controversy, and, ‘This Court will not ... make an adjudication where there remains no actual controversy’.” *Id (citing Byrd* 321 S.C. 430-31.; *citing Peoples Fed. Sav. & Loan Ass'n v. Res. Planning Corp.*, 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004) (“A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy.”). “Justiciability encompasses ... ripeness ... and standing.” *Id*, (quoting *James v. Anne's Inc.*, 390 S.C. 188, 193, 701 S.E.2d 730, 732 (2010)). Appellants’ theory collapses under its own premise. Their promise from Appellants that they “would be able to provide” data through future discovery does not cure a deficient pleading. To the contrary, it concedes deficiency. The burden to allege facts sufficient to establish standing rests on the plaintiff and must be carried in the complaint itself, not deferred to the speculative hope that discovery will later supply what the pleading omits. A litigant who must look to discovery to establish standing has, by definition, failed to plead it.

Nor did the circuit court engage in any improper weighing of the evidence. The court's ruling did not turn on the credibility or persuasive force of the tourism allegations; it turned on the purely legal question whether those allegations, accepted as true, articulated a cognizable basis for standing. That inquiry requires no fact-finding, and characterizing the allegations as “anecdotal only” was simply a description of their legal insufficiency, a recognition that generalized assertions of community benefit do not supply the concrete, particularized injury standing demands. Far from converting the motion into one for summary judgment, the court did precisely what Rule 12 requires: it tested the sufficiency of the pleadings and found them lacking.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ISSUING ITS ORDER OF DISMISSAL

Appellants contend that the circuit court abused its discretion by "declining to consider" all of their arguments. This contention fails, as it misstates South Carolina law, misidentifies the applicable standard of review, and cannot establish prejudice. Appellants essentially ask this Court to reverse a legally correct judgment simply because the order resolving it was concise. The law does not permit that result.

Appellants' frame the issue as an alleged abuse of discretion based on the court's failure to address, discuss, or cite every argument and authority Appellants submitted in opposition to dismissal. South Carolina law imposes no such requirement. When ruling on a Rule 12 motion a circuit court need not author an opinion addressing each argument raised by the non-moving party *See* Rule 52(a), SCRCP ("Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)."). Nor does a concise order constitute an abuse of discretion merely because the losing party believes the court should have engaged its response brief in greater detail.

The premise of Appellants' argument additionally fails because the relevant ruling was a dismissal for lack of standing under Rule 12(b), SCRCP. Standing presents a legal issue reviewed *de novo*. Appellants themselves acknowledge that the circuit court dismissed the action for lack of standing under Rule 12(b)(1), SCRCP, and that standing is treated as a legal question receiving *de novo* review on appeal. (Initial Brief of Appellants at 3). Having conceded that the operative ruling is a legal determination reviewed without deference, Appellants cannot manufacture a path to reversal by recasting an adverse legal ruling as an "abuse of discretion."

The Order reflects that the circuit court resolved the dispositive issue before it: standing. Appellants state that Respondents moved to dismiss on the ground that Appellants lacked standing because ECL was a nonprofit entity rather than a governmental entity. (Order of Dismissal at 2.) Appellants further state that the circuit court granted dismissal after concluding that "because these are private organizations, it is inappropriate to apply the law of taxpayer standing." (Order of Dismissal at 2.) That ruling necessarily rejected Appellants' public-importance-standing argument, even if the order did not separately analyze every case or sub-argument Appellants cited. A trial court's order is not reversible merely because it is terse; the question is whether the judgment is legally correct.

South Carolina appellate law also defeats Appellants' request for reversal based solely on disagreement with the trial court's reasoning. Under Rule 220(c), SCACR, an appellate court may affirm "upon any ground(s) appearing in the Record on Appeal." Consistent with that rule, the Supreme Court has held that a respondent may defend a judgment on any ground appearing in the record, even if the trial court did not rely on those grounds. *I'On, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000). Thus, even assuming the circuit court's order could have provided more analysis, that omission would not establish reversible error because the judgment may be affirmed on any ground appearing in the record, including Appellant's lack of standing.

The authorities Appellants cite concern situations in which a court fails to exercise its discretion or fails to consider legally required factors. (App. Br. at 10). The circuit court here made no discretionary ruling requiring a balancing test or the weighing of facts; it decided a purely legal question—whether Appellants had standing to sue. The court exercised its judicial function by granting dismissal on that issue, and Appellants' disagreement with the result does not transform a legal conclusion into an abuse of discretion. *See Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) (an abuse of discretion occurs when a ruling is controlled by an error of law or lacks evidentiary support).

Appellants also cannot show prejudice from the alleged lack of discussion. Their appellate brief fully presents the public-importance-standing theory to the Court of Appeals, including their contentions that ECL should be treated as a "quasi-public" entity, that the matter involves public funding and public assets, and that judicial resolution is needed for future guidance. (App. Br. at 10-17). Because the appellate court reviews the legal standing question de novo, Appellants have the same opportunity on appeal to argue the legal sufficiency of their standing theory. A remand for the circuit court to write a more detailed order would serve no purpose where the dispositive legal issue is already before the appellate court and the judgment can be affirmed on any basis appearing in the record. *See I'On*, 338 S.C. at 421, 526 S.E.2d at 724; Rule 220(c), SCACR.

Accordingly, Appellants' "failure to consider" argument provides no independent basis for reversal. The proper inquiry is not whether the circuit court expressly discussed every argument in Appellants' response brief, but whether Appellants had standing as a matter of law. Because Rule 52(a), SCRCP did not require detailed findings on a Rule 12 motion, standing is reviewed de novo, and the Court of Appeals may affirm on any ground appearing in the record, Appellants have not shown that the circuit court committed reversible error by issuing a concise dismissal order.

III. PUBLIC-IMPORTANCE STANDING DOES NOT APPLY TO CLAIMS AGAINST A PRIVATE NONPROFIT CORPORATION AND ITS INDIVIDUAL BOARD MEMBERS.

A. The Substantial Public Importance Exception does not apply.

Appellants' argue that the circuit court erred in declining to apply public-importance or "taxpayer" standing. The Circuit Court expressly addressed and rejected this theory, finding:

"There is no evidence that League is a political subdivision or governmental department or entity. The court finds that because these are private organizations, it is inappropriate to apply the law of taxpayer standing." (Order of Dismissal at 2.) This ruling was correct, because the public-importance doctrine exists to hold government accountable—not to create a cause of action against private parties.

Public-importance standing does relax the ordinary injury requirement. " "Unlike with constitutional standing, a party is not required to show he has suffered a concrete or particularized injury in order to obtain public importance standing. *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013). Nor must he 'show he has an interest greater than other potential plaintiffs.' *Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 742 (2007). Requiring otherwise would undermine the purpose of public importance standing, which is to '[a]llow[ ] interested citizens a right of action in our judicial system when issues are of significant public importance to ensure[ ] ... accountability and the concomitant integrity of government action. *Sloan v. Greenville Cnty.*, 356 S.C. 531, 551, 590 S.E.2d, 338, 349 (2003)." *Id*, 421 S.C. 110, 118, 804 S.E.2d 854, 858–59. "For a plaintiff to have taxpayer standing, the party must demonstrate some overriding public purpose or concern to confer standing to sue on behalf of her fellow taxpayers." *Sloan*, 356 S.C. at 549, 590 S.E.2d at 347–48 (citing *Beaufort County v. Trask*, 349 S.C. 522, 529, 563 S.E.2d 660, 664 (Ct.App.2002). The purpose of public-importance standing is to "[a]llow[ ] interested citizens a right of action in our judicial system when issues are of significant public importance to ensure[ ] . . . accountability and the concomitant integrity of government action." *Sloan v. Greenville Cnty.*, 356 S.C. at 551, 590 S.E.2d at 349 (2003) (emphasis added). In every formulation, the doctrine's object is *governmental* action.

The case law confirms this limitation. Every case in which South Carolina courts have recognized public-importance standing involved a challenge to the actions of a governmental entity or public official. See *S.C. Pub. Interest Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 804 S.E.2d 854 (2017) (Department of Transportation); *ATC South, Inc. v. Charleston Cnty.*, 380 S.C. 191, 669 S.E.2d 337 (2008) (Charleston County); *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013) (state infrastructure bank); *Davis v. Richland Cnty. Council*, 372 S.C. 497, 642 S.E.2d 740 (2007) (county council); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999) (Charleston County's issuance of bonds).

Appellants principally rely on *Baird*, but *Baird* is readily distinguishable. In *Baird*, doctors sued Charleston County to enjoin the County's issuance of $85 million in hospital revenue bonds for a medical care facility. *Baird*, 333 S.C. at 522, 511 S.E.2d at 70. The public importance issue therefore arose in the context of a challenge to governmental action. Here, by contrast, Appellants sued no public entity and challenged no governmental action. They sued the League—a private South Carolina nonprofit corporation—and six of its current or former board members in their individual capacities. The Complaint itself identifies the League as a nonprofit corporation. (Compl. ¶ 15.) The League's receipt of public grants—even the purported $400,000 over thirty years, a figure that appears nowhere in the Complaint—does not transform a private nonprofit into a governmental entity. No South Carolina authority supports that proposition. To the contrary, Appellants' own Complaint alleges that the League is a nonprofit corporation and sought to merge it with the Edgefield County Historical Society—a relief incompatible with their appellate characterization of the League as a "quasi-public entity." (Compl. ¶¶ 15, 57, Prayer for Relief.) Not once in the Complaint does the term "quasi-public entity" appear. Nevertheless, the Appellants frequently use this fictious, undefined term throughout their Brief, attempting to create a type of entity that could serve their purposes to establish public importance standing without contradicting their allegations that the League is a private, nonprofit corporation in their Complaint. The mere receipt of some public funding over a period of years does not transform a private corporation into a public entity for standing purposes. If receipt of public funds were sufficient to trigger the public importance exception, virtually every private non-profit, school, or contractor receiving government grants would be subject to public importance standing challenges—an outcome that would eviscerate the standing doctrine entirely.

Appellants' reliance on *Evins v. Richland County Historic Preservation Commission*, 341 S.C. 15, 532 S.E.2d 876 (2000), is misplaced. *Evins* involved a challenge to the actions of the Richland County Historic Preservation Commission, a public commission created by legislative act and exercising authority within South Carolina's historic-preservation framework. Appellants contend that the only meaningful distinction—that the Richland County Historic Preservation Commission was created by legislative act while the ECL was created by a Secretary of State charter—is not a principled distinction, because both organizations were created for similar purposes and both received substantial, almost total, public funding support.

The distinction between a body created by legislative act and a private non-profit corporation chartered through the Secretary of State is legally significant, not merely formal. A body created by legislative act is a creature of the state, exercises delegated public authority, and is directly accountable to the legislature and the public in ways that a private corporation is not. The Richland County Historic Preservation Commission in *Evins* was a public commission created by legislative act and operating in the field of historic preservation pursuant to public authority. *Evins*, 341 S.C. at 18–19, 532 S.E.2d at 877–78. The League, by contrast, is a private charitable organization that accepted voluntary donations and chose to apply for and accept public grants.

The receipt of public grants does not confer governmental character on a private entity. “[M]ere receipt of some public funding does not make a corporation public. *Trs. of Columbia Acad. v. Bd. of Trs. of Richland Cnty. Sch. Dist. No. 1*, 262 S.C. 117, 126, 202 S.E.2d 860, 864 (1974) (citing 18 Am.Jur. (2d), Corporations, Sec. 8, p. 555 (1965)). The test to determine if a corporation is public is whether “the government (has) the sole right . . . to regulate, control and direct the corporation, and its funds and its franchises, at its own will and pleasure.” *Trs. of Columbia, 262 S.C. at 126–27, 202 S.E.2d at 864* (1974) (quoting *Strauss v. Marlboro County General Hospital*, 185 S.C. 425, 426, 194 S.E. 65 (1937), quoting from *Dartmouth College v. Woodward*, 4 Wheat 518, 4 L.Ed. 629 (1819), supra. No governmental entity has the sole right to regulate, control and direct the League and the Appellants do not allege that one does. Appellants' own complaint acknowledges that the Town and County channeled funds ‘through the ECL’—a characterization that confirms the ECL was an independent intermediary, not a governmental body. (Compl. ¶ 18.) Treating the receipt of public funding as sufficient to trigger public importance standing would create an unworkable standard with no limiting principle, and the courts in *Evins* and its progeny have not adopted such an expansive reading.

B. There is no need for future guidance.

“[A] court may confer standing upon a party when an issue is of such public importance as to require its resolution for future guidance.” *Baird*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999) (citing *Thompson v. South Carolina Comm'n on Alcohol and Drug Abuse,* 267 S.C. 463, 229 S.E.2d 718 (1976), *Berry v. Zahler*, 220 S.C. 86, 66 S.E.2d 459 (1951), *Ashmore v. Greater Greenville Sewer Dist.*, 211 S.C. 77, 44 S.E.2d 88 (1947) (same); *cf. Quinn v. City of Columbia*, 303 S.C. 405, 401 S.E.2d 165 (1991)). “The key to the public importance analysis is whether a resolution is needed for future guidance. 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." *ATC South*, 380 S.C. at 199, 669 S.E.2d at 341 (2008) (citing *Baird*, 333 S.C. at 531, 511 S.E.2d at 75.) Under *ATC South*, the matter of importance must be "inextricably connected to the public need for court resolution for future guidance". *Id*, 380 S.C. at 199, 669 S.E.2d 341.

This standard is not met here. This case presents ordinary breach of fiduciary duty and corporate governance disputes between two private entities that could be brought by parties with traditional standing. The issues Appellants identify—fiduciary duties of non-profit directors, conflicts of interest, confidentiality clauses, and donor restrictions—are well-established areas of corporate and non-profit law that courts routinely adjudicate in private litigation brought by proper parties such as the Attorney General, members, or donors with direct standing. The existence of S.C. Code § 33-31-842 itself demonstrates that the legislature has already addressed the conflict-of-interest issue Appellants raise, and that statute provides its own enforcement mechanisms. The fact that these issues "may recur" does not satisfy the future guidance prong; virtually any legal dispute could be framed as having future implications.

Appellants' invocation of the *Adams v. McMaster* four-factor test mischaracterizes both the facts and the legal standard. In *Adams*, the factors to determine whether future guidance is needed is whether the case "involves the conduct of government entities and the expenditure of public funds, a prompt decision is necessary, and it is likely the situation will occur in the future". *Adams v. McMaster*, 432 S.C. 225, 236, 851 S.E.2d 703, 708 (2020). Those factors were satisfied in *Adams* because the case directly involved the legality of government conduct by a sitting governor and the expenditure of public funds by a government official—circumstances fundamentally different from a dispute between two private non-profit corporations. Appellants' characterization of the ECL as a 'quasi-public entity' is a legal conclusion unsupported by the pleadings. The ECL is a privately chartered non-profit corporation, and labeling it 'quasi-public' does not make it so. With respect to urgency, the library's contents have already been transferred pursuant to a settlement agreement in prior litigation, meaning there is no emergent situation that requires immediate judicial intervention through these Appellants. As to recurrence, the specific factual circumstances of this case—a century-old library, a particular arbitration agreement, and a specific settlement—are highly idiosyncratic and unlikely to recur in a form that would benefit from this Court's guidance. The *Adams* factors, properly applied, do not support extending the public importance exception to private non-profit governance disputes.

This Court has repeatedly cautioned against the casual use of the doctrine. "The linchpin of the public importance exception is the need for future guidance. In ascertaining the parameters of such need, while noting that the framework is not inflexible, we have repeatedly cautioned against its routine use." *Vicary v. Town of Awendaw*, 425 S.C. 350, 359, 822 S.E.2d 600, 604 (2018). Many private disputes may disappoint the public, but that alone does not create standing: "[T]here are a lot of private entities that have disputes. The results disappoint the public, but that is not—" a basis for standing. (Tr. at 27:3-5.) Appellants are essentially asking this Court to create an unprecedented expansion of public-importance standing to reach private settlements between private nonprofits—a step no South Carolina court has taken. This Court should decline that invitation and affirm.

C. The Public Importance Exception does not apply to individual current or former members of the League.

Even if *Baird* applied to the League, which it does not, it would not create a cause of action against the individual board member Respondents. None of the cases cited involve individual persons serving as board members of a private, non-profit corporation subject to the public importance exception to standing and no such case law or statutory authority exists for such a proposition. There is no language in the Appellants' Brief distinctly applying the public-importance standing doctrine to "individual current or former members" as a distinct category. Furthermore, Appellants fail to expressly argue that the doctrine applies separately to individual ECL members in their personal capacities.

IV. ARGUMENTS RAISED FOR THE FIRST TIME IN APPELLANTS' INITIAL BRIEF ARE NOT PRESERVED FOR APPELLATE REVIEW.

Throughout their Response to the Motion to Dismiss, their Rule 59(e) Motion, and their Initial Brief before this Court, Appellants repeatedly allege facts and advance arguments that appear nowhere within the four corners of the Complaint. South Carolina law forecloses this approach.

"It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). "[I]f the trial court does not explicitly rule on an argument and the appellant does not make a Rule 59(e) motion to preserve the issue, it is not preserved for appellate review." *I'On,* 338 S.C. at 421-22, 526 S.E.2d at 724. These rules exist for good reason. "The purpose of issue preservation rules is to give the lower court a fair opportunity to rule on the issue and to avoid 'appellate ambush.'" *Herron v. Century BMW,* 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011). Furthermore, a party "may not argue one ground at trial and an alternate ground on appeal." *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003); *Patterson v. Reid,* 318 S.C. 183, 185-86, 456 S.E.2d 436, 437 (Ct. App. 1995).

Measured against these settled principles, Appellants' Initial Brief raises multiple theories and authorities that do not appear in the transcript of the July 7, 2025 hearing, were not raised to or ruled upon by the circuit court, and were not preserved via Rule 59(e) motion. These arguments should be excluded from appellate consideration.[1]

A. FOIA Public-Body Theory Under S.C. Code Ann. § 30-4-20 and *Weston v. Carolina Research & Development Foundation*.

For the first time on appeal, Appellants argue that the League qualifies as a "public body" subject to the Freedom of Information Act under S.C. Code Ann. § 30-4-20, citing *Weston v. Carolina Research & Development Foundation,* 303 S.C. 398, 401 S.E.2d 161 (1991). (App. Br. at 16). This theory does not appear anywhere in the Complaint, the hearing transcript or briefing. Respondents' Reply noted that, in their Response to the Motion to Dismiss, Appellants cited no authority beyond public funding to support their claim that the League is a public entity. To the extent this theory was not raised in Appellants' Response and ruled upon below, it is not preserved. *Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733.

Should the Court consider this argument, FOIA's statutory definition of 'public body' is a legislative creation specific to that statute's transparency and open-meetings purposes, and it cannot be judicially transplanted into the entirely separate common law doctrine of standing. Courts interpret statutes according to their specific purpose and context. The General Assembly's decision to define "public body" broadly for FOIA purposes does not reflect a legislative judgment that such entities should be treated as governmental for all legal purposes, including standing doctrine. *Weston* addressed only whether FOIA's disclosure requirements applied to a particular entity—it said nothing about standing to sue that entity.

In *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce*, 423 S.C. 295, 814 S.E.2d 513 (2018), the Supreme Court determined that Defendant Chamber of

[1] In the alternative, even if the Court reaches them, each fails on the merits, as addressed herein.

Commerce was not a public body within the statutory FOIA language. The Supreme Court stated "[w]e rejected the suggestion that the mere receipt or expenditure of public funds automatically and categorically transformed an otherwise private entity into a public body triggering the full panoply of FOIA requirements" in *Weston*. *DomainsNewMedia.com, LLC*, 423 S.C. at 305, 814 S.E.2d at 518 (2018). In *Domains*, the Court found that it was "not the situation found in *Weston* wherein the funds were intended to be given to a public body and, instead, were diverted to a private organization to be spent without oversight." *Id.*, 423 S.C. at 306, 814 S.E.2d at 519.

Extending FOIA's functional definition to the standing doctrine would create an unprincipled and sweeping expansion of public importance standing that the South Carolina Supreme Court has never endorsed. Moreover, if the ECL is subject to FOIA as Appellants implicitly suggest, then FOIA itself provides an existing legal mechanism for the transparency and accountability Appellants seek—undermining their argument that judicial resolution through this lawsuit is the only available remedy.

B. Senate Bill S-508 / Heritage Act Standing Proposal.

Appellants cite Senate Bill S-508 and the Heritage Act as support for standing. (App. Br. at 17). Proposed legislation that has not been enacted is not authority, and this argument was never raised to the circuit court, appears nowhere in the transcript, and was not asserted in the Rule 59(e) motion. It is therefore not preserved and should not be considered. *Herron*, 395 S.C. at 466, 719 S.E.2d at 642.

In any event, Senate Bill S-508 actually undermines rather than supports Appellants' position. The fact that the General Assembly found it necessary to pass legislation specifically extending standing to heritage organizations confirms that such standing does not currently exist under South Carolina common law without explicit legislative authorization. If the public importance exception already conferred standing as broadly as Appellants claim, no legislation would be needed. Moreover, S-508 creates a carefully defined category of 'affinity organizations' and 'monument preservation organizations'—not a general grant of standing to any citizen with an interest in publicly-funded institutions. The bill's targeted, legislative approach to expanding standing in a specific context is the proper mechanism for such expansion, not judicial extension of a common law doctrine. This Court should not use a pending, unenacted bill as authority for a sweeping judicial expansion of standing doctrine that the legislature itself has not yet completed through the proper legislative process.

C. S.C. Code Ann. § 33-31-842 Conflict-of-Interest Argument.

Appellants argue that S.C. Code Ann. § 33-31-842 imposes a fiduciary-duty or conflict-based theory supporting their standing. (App. Br. at 14). But while the Complaint references § 33-31-808 generally, Appellants did not present § 33-31-842 as a distinct basis for standing or reversal in the Complaint or at the hearing, and the circuit court did not rule on that theory. To the extent Appellants rely on that statutory provision as a new appellate ground, it is not preserved and should not be considered. *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 694.

D. Summary-Judgment Conversion Argument.

Appellants contend the trial court improperly converted the Rule 12 motion into summary judgment by referencing that Appellants' tourism accounts were "anecdotal." (App. Br. at 9). This characterization misreads the Order. The court ruled on standing—a jurisdictional prerequisite—not on the merits. No witnesses were called and no exhibits were admitted. (Tr. at 2.) The court's passing observation about the anecdotal nature of unsupported assertions addressed the legal insufficiency of Appellants' standing theory, not merits facts requiring Rule 56 treatment.

The argument is also unpreserved. If Appellants believed the trial court converted the motion, they were required to raise that contention in their Rule 59(e) motion. This Motion challenged the court's private-entity finding and revisited public-importance standing but did not clearly assert improper conversion to summary judgment. "[I]f the trial court does not explicitly rule on an argument and the appellant does not make a Rule 59(e) motion to preserve the issue, it is not preserved." *I'On*, 338 S.C. at 421-22, 526 S.E.2d at 724.

V. APPELLANTS FAILED TO PRESERVE ADDITIONAL ISSUES FOR APPEAL.

Beyond the newly raised theories identified in Section III above, Appellants failed to preserve their appellate claims in several additional respects.

A. Rainsford Presented No Opposition and Failed to Preserve Any Issue.

Appellant Rainsford was not present at the July 7, 2025 hearing and "did not present any independent filing or evidence to the court." (Order of Dismissal at 1.) He did not move for a continuance. (Tr. at 4:22-24.) Respondents argued that "the fact that Mr. Rainsford is here and representing himself—is not here and representing himself is a concern" and that "at the very least, Your Honor, that the matter be dismissed as to him surely by a matter of default." (Tr. at 3:11-14; 10:10-12.) Because Rainsford presented no argument to the trial court, he preserved nothing for appellate review. *Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733.

B. Appellants' Broad Assertions Are Unsupported by the Record.

Appellants assert in their Initial Brief that there are "hundreds, if not thousands" of publicly funded nonprofits requiring appellate guidance and that the League "subsisted almost entirely" on public funds for thirty years. (App. Br. at various pages). These factual assertions were not supported by evidence at the motion hearing—no witnesses were called and no exhibits were admitted. (Tr. at 2.) They constitute argument outside the record and should be disregarded.

At the hearing, the circuit court specifically asked Appellants whether they had "anything to show me as to that argument" regarding public benefit and importance. (Tr. at 18:13-15.) Appellant Anderson responded with anecdotal accounts but conceded: "I don't have those with me." (Tr. at 19:1-2.) The circuit court found the accounts were "anecdotal only." (Order of Dismissal at 2.) Appellants may not now supply on appeal the evidentiary support they failed to provide to the trial court.

C. New Allegations in the Response Brief Below Cannot Cure a Deficient Complaint.

As Respondents argued both in their Reply and at the hearing, Appellants attempted to supplement their deficient Complaint by introducing new factual allegations in their Response Brief below—including the specific $400,000 funding figure and the assertion that the League is a "public entity." (Defs.' Reply at 4-5; Tr. at 25:1-6, 26:2-6.) "In considering a motion to dismiss, the trial court must base its ruling solely on the allegations of the Complaint." *Doe,* 373 S.C. at 395, 645 S.E.2d at 247 (S.C. 2007). Allegations first raised in a response memorandum are not part of the Complaint and cannot rescue it from dismissal.

CONCLUSION

The Trial Court properly applied the standard of review pursuant to 12(b)(1) and did not abuse its discretion in ruling in favor of the Respondents. The Circuit Court correctly found that Appellants lacked public importance standing to bring claims against a private nonprofit corporation and its individual board members over a private settlement to which Appellants were not parties. Further, the Court should decline to consider arguments raised for the first time in Appellants' Initial Brief that were not presented to or ruled upon by the Circuit Court and are therefore not preserved for appellate review.

For the foregoing reasons, Respondents respectfully request that this Court affirm the circuit court's July 29, 2025 Order of Dismissal in all respects.

Dated: June 25, 2026

RESPECTFULLY SUBMITTED,

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