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January 13, 2016

Daniel E. Shearouse, Clerk
SC Supreme Court
PO Box 11330
Columbia, SC 29211

RECEIVED

JAN 14 2016

SC SUPREME COURT

Re: South Carolina Public Interest Foundation v. SCDOT
Appellate Case Number 2015-001175

Dear Mr. Shearouse:

We submit this letter as a citation of supplemental authorities pursuant to SCACR 208(b)(7).

At oral argument on January 12, 2016, the Court raised several questions regarding the origin and history of taxpayer standing and public importance standing, suggesting that the doctrines were of recent origin, and had been created by this Court seemingly out of whole cloth. The Court also raised questions suggesting a confluence between citizen standing and taxpayer standing.

History and origin of taxpayer standing

More than 125 years ago, in *Mauldin v City Council of Greenville*, this Court recognized taxpayers' standing to contest allegedly illegal or *ultra vires* actions of a city. 33 S.C. 1, 11 S.E. 434 (1890). The City argued, "The individual tax-payer, as such merely, can obtain a standing in court only by alleging and proving that the illegal act complained of will inflict damage special and peculiar to himself, etc."

This Court rejected that logic and reasoned,

Can it be that, in such case, a number of citizens, tax-payers of a city, cannot be heard against the corporate authorities in a court of equity asking for an injunction against the consummation of the contemplated wrongs, without alleging special damages to themselves individually? There is a certain relation in the nature of agency between the municipal authorities and all tax-payers of the corporation.

* * *

Here the tax-paying citizens of Greenville are not the whole public, but comparatively a small part of it. They are not strangers to the municipality. They, and they alone, are affected by their acts. As to them this is more in the nature of “a private” than “public” matter

Id. 33 S.C. 1, 11 S.E. 434, 435 (emphasis added). This Court ruled, “We think the plaintiffs had a standing in court, and were entitled to have their case heard on its merits.” *Id.* 11 S.E. at 436.

In Mauldin, this Court cited older South Carolina cases, and cases from Maryland, Connecticut, New Hampshire, Iowa, and Missouri, all acknowledging taxpayer standing. Finally, the Court cited Dillon on Municipal Corporations in support of taxpayer standing. Thus, the doctrine of taxpayer standing is not of recent origin, and was not just recently created out of whole cloth by this Court. In quoting a case from Maryland, this Court stated,

[T]he plaintiffs “as tax-payers of the city, and others similarly situated, *** constitute a class especially damaged by the alleged unlawful act of the corporation, in the alleged increase of the burden of taxation upon their property situated within the city. The complainants have therefore a special interest in the subject-matter of the suit, distinct from that of the general public;”

Id., quoting Mayor, etc., v. Gill, 31 Md. 375-394 (emphasis added).

The United States Supreme Court has also recognized taxpayer standing.

[R]esident taxpayers may sue to enjoin an illegal use of the moneys of a municipal corporation. Roberts v. Bradfield, 12 App. D. C. 453, 459, 460. The interest of a taxpayer of a municipality in the application of its moneys is direct and immediate and the remedy by injunction to prevent their misuse is not inappropriate. It is upheld by a large number of state cases and is the rule of this court. Crampton v. Zabriskie, 101 U. S. 601, 609, 25 L. Ed. 1070. Nevertheless, there are decisions to the contrary. See, for example, Miller v. Grandy, 13 Mich. 540, 550. The reasons which support the extension of the equitable remedy to a single taxpayer in such cases are based upon the peculiar relation of the corporate taxpayer to the corporation, which is not without some resemblance to that subsisting between stockholder and private corporation. 4 Dillon, Municipal Corporations (5th Ed.) § 1580 et seq.

Commonwealth of Massachusetts v. Mellon, 262 U.S. 447, 486-87, 43 S.Ct. 597, 601, 67 L.Ed. 1078 (1923) (emphasis added).

Nearly 50 years before Mellon, the Supreme Court recognized taxpayer standing as a question so settled that there was “no serious question.”

Of the right of resident tax-payers to invoke the interposition of a court of equity to prevent an illegal disposition of the moneys of the county or the illegal creation of a debt which they in common with other property-holders of the county may

otherwise be compelled to pay, there is at this day no serious question. The right has been recognized by the State courts in numerous cases; and from the nature of the powers exercised by municipal corporations, the great danger of their abuse and the necessity of prompt action to prevent irremediable injuries, it would seem eminently proper for courts of equity to interfere upon the application of the tax-payers of a county to prevent the consummation of a wrong, when the officers of those corporations assume, in excess of their powers, to create burdens upon property-holders. Certainly, in the absence of legislation restricting the right to interfere in such cases to public officers of the State or county, there would seem to be no substantial reason why a bill by or on behalf of individual tax-payers should not be entertained to prevent the misuse of corporate powers. The courts may be safely trusted to prevent the abuse of their process in such cases. Those who desire to consult the leading authorities on this subject will find them stated or referred to in Mr. Dillon's excellent treatise on the Law of Municipal Corporations.

Crampton v. Zabriskie, 101 S.Ct. 601, 609, 11 Otto 601, 25 L.Ed. 1070 (1879) (emphasis added). For more than 135 years, there has been "no serious question" concerning a taxpayer's standing to bring a civil action to prevent unlawful use of taxpayer funds.

Issues of great public importance

At oral argument, the Court raised questions about the origin and provenance of the doctrine that the Court should decide issues of great public importance. One member of the Court suggested that the doctrine had its origin in Baird v Charleston County 333 S.C. 519, 511 S.E.2d 59 (1999), and the Baird Court had simply "made up" the doctrine. Research since oral argument has disclosed that the doctrine is much older than that.

In 1873, this Court was confronted with an indictment against a defendant for practicing law without a license. The Court found defects in the indictment sufficient to dispose of the case, but then reasoned as follows:

This view is sufficient to dispose of the whole case, but as both the defendant and the Attorney General have pressed this Court for a decision on the question whether the Legislature had constitutional authority to enact a tax law imposing taxes of the character imposed by the license law, and as the question is of public importance, we will consider and decide it.

State v. Hayne, 4 S.C. 403, 411, 4 Rich. 403 (1873) (emphasis added). The Court addressed the question because of its great public importance, and found several aspects of the statute unconstitutional.

Similarly, in Ashmore v Greater Greenville Sewer District, this Court ruled that the board established to govern the Greenville Memorial Auditorium District was unconstitutionally composed. That ruling was sufficient to dispose of the case, but the Court continued:

If this were an ordinary case, our opinion might well stop here. The Board of Trustees of the projected Auditorium District has been held invalid in toto. The district is a headless body and cannot function under the present legislation. But the case is not an ordinary one; it is not a private controversy between individuals, as such. On the contrary, it is defended by an intended governmental agency which the legislature undertook to create by their enactments; and raised on the record are earnestly argued **public questions of importance**. The last stated factor brings into play the principle, **now generally established, that questions of public interest originally encompassed in an action should be decided for future guidance**, however abstract or moot they may have become in the immediate contest. 3 Am.Jur. 310, Annotation, 132 A.L.R. 1185.

Id. 211 S. C. 77, 95, 44 S.E.2d 88, 96-97 (1947) (emphasis added). See also, *Palmer v. Dunn*, 216 S.C. 558, 559, 59 S.E.2d 158, 159 (1950) (“This Court took original jurisdiction of the controversy because of its urgency and public importance”); *Thompson v. South Carolina Commission on Alcohol and Drug Abuse*, 267 S.C. 463, 467, 229 S.E.2d 718, 719, 85 A.L.R.3d 692 (1976) (“the rule [of standing] is not an inflexible one and we are of the opinion that the questions involved are of such wide concern, both to law enforcement personnel and to the public, that the court should determine the issues in this declaratory judgment action”); *Gilstrap v. South Carolina Budget & Control Bd.*, 310 S.C. 210, 213, 423 S.E.2d 101, 103 (1992) (“[T]he questions involved here are of such wide concern that the rules on standing will not be inflexibly applied”).

Thus, the doctrine that the Court should decide questions of public importance has been recognized at least as far back as 1873, by 1947 the principal was “generally established,” and since 1947, Courts have applied the doctrine in numerous cases.

Citizen standing and taxpayer standing

Finally, in oral argument, the Court articulated a rule equating citizen and taxpayer standing, and requiring some personalized injury. This rule might be gathered from *Crews v. Beatty*, in which this Court stated the following:

Does petitioner have the legal capacity to maintain this action? The general rule is that a taxpayer may not maintain a suit to enjoin the action of State officers when he has no special interest and his only standing is the exceedingly small interest of a general taxpayer. This doctrine is founded upon the salutary public policy of limiting the judicial process to real controversies between the parties to the proceeding. The mere fact that the issue is one of public importance does not confer upon any citizen or taxpayer the right to invoke per se a judicial determination of the issue. In the instant case petitioner has no special or peculiar interest to protect. **The funds in question never accrued from taxation**, but from the operation of an electric system by a public corporation.

Id., 197 S.C. 32, 14 S.E.2d 351, 357-358 (1941) (emphasis added). Although the Court in *Crews v. Beatty* referred to taxpayer standing, the emphasized words demonstrate that no taxpayer funds

were at issue, which provides the factual context, and distinguishes Crews v. Beatty from normal taxpayer actions.

Later in the opinion, this Court emphasized that it was not forbidding taxpayer standing under the appropriate circumstances.

The petitioner's interest as taxpayer is highly contingent, remote and infinitesimal. No monies can ever accrue to the State treasury until the Authority has ceased to exist and all of its obligations satisfied. Neither of these contingencies has happened or is contemplated. To grant this petitioner the right to sue would be to **broaden the scope of taxpayers' suits far beyond anything that has been recognized** in this court or in the courts generally throughout the country.

Id. 197 S.C. 32, 14 S.E.2d 351, 358 (1941). The Court was ruling that taxpayer funds must be at issue to support taxpayer standing.

The Court further distinguished the facts of Crews v. Beatty from a typical case of taxpayer standing: "the instant case involves the operation of a public utility system for which **the State has no financial responsibility and with which the plaintiff has no connection even as consumer.**" *Id.* (emphasis added).

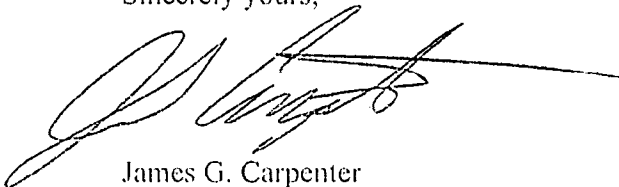
In Crews v. Beatty, this Court cited many taxpayer cases from South Carolina and the United States Supreme Court, and found them to be distinguishable, due to the fact that Crews v. Beatty involved no taxpayer funds.

The rule endorsing taxpayer standing has existed for well over 100 years, and in the 75 years since Crews v. Beatty, it has continued to undergo refinement, as demonstrated by the many cases cited in the Petitioners' briefs.

If the Court is inclined to change the doctrines of taxpayer standing and to refuse to accept cases of great public importance, it will be changing doctrines that have been established in the jurisprudence of this Court and repeatedly recognized for more than 100 years.

If the Court desires the parties to address any other question, Petitioners will be pleased to do so.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James G. Carpenter", with a long horizontal flourish extending to the right.

James G. Carpenter

CC: Beach Brooker