

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM DORCHESTER COUNTY
Edgar W. Dickson, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2018-000395

Gerard E. Ziegler; Brenda Barrington III; James Stephen Green, Jr.; William A. Harbeson;
David Messinger; South Carolina Public Interest Foundation; and Dorchester County
Taxpayers Association, individually, and on behalf of all others similarly situated
..... Appellants,

v.

Dorchester County; Dorchester County Council; Charles D. Chinnis, George H. Bailey,
Sr., Jay Byars, Willie R. Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn,
Jr., in their official capacities as members of Dorchester County Council, . Respondents.

**AMICUS BRIEF OF
EDWARD D. SLOAN, JR.**

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STATEMENT OF THE CASE

This Amicus adopts the Statement of the Case, the Statement of Facts, and the Statement of the Standard of Review submitted by the Appellants.

Taxpayers of Dorchester County brought this action for declaratory and injunctive relief alleging that County officials violated the South Carolina Constitution and statutes when they enacted an ordinance calling for a referendum with more than one subject in the question. The Circuit Court granted the Respondents' Motion for Judgment on the Pleadings. The taxpayers appeal.

STATEMENT OF THE ISSUE

After the briefs were filed, on September 24, 2018, this Court requested supplemental briefing on "whether this case involves a justiciable controversy." This Amicus learned of the Court's request on October 4, 2018. He submits this Amicus brief to address the Court's question: justiciability, including standing. The Appellants asserted both taxpayer and public importance standing.

ARGUMENT

The State created the Constitution to provide itself with a government and to protect the citizens of the State from abuse by that government.

Political subdivisions and agencies of the executive department of the State and officials thereof have demonstrated repeatedly their willingness and ability to violate the caps and limits established by the Constitution and statutes, thereby endangering the survival of the State and the well-being of its citizens. The Constitution wisely provides the judicial department to protect the State from such abuses by using judicial review.

Judicial review is initiated only by a complaint filed by a litigant with standing to sue. If standing is restricted, judicial review is restricted. If judicial review is restricted, the protective parts of the Constitution lapse to become a nullity.

South Carolina courts have addressed the issue of standing to sue many times, and often in relation to this Amicus and the Appellant, the South Carolina Public Interest Foundation (“SCPIF”). *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d. 854 (2017); *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), *American Petroleum Institute v. S.C. Dep’t of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608

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I. APPELLANTS POSSESS TAXPAYER STANDING.

The individual Appellants have paid County taxes. Respondents' unconstitutional conduct will cause these individual Appellants to be liable for significantly more County taxes. Accordingly, each individual Appellant possesses standing as a taxpayer to contest the unconstitutional act. The Appellant taxpayers association also possesses standing because of the standing of its members, who are Dorchester County taxpayers.

A. Taxpayer Standing Has Enjoyed a Long History in South Carolina.

Taxpayer standing has a long history in South Carolina, and an even longer history in other states and in federal courts. 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 against taxpayer standing: "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." *Id.*, 33 S.C. 1, 11 S.E. 434, 435 (1890). This Court rejected the city's argument 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. This Court, quoting a case from Maryland, 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 U.S. 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.

Accordingly, Appellants possess standing to seek an injunction against illegal acts affecting public funds and public assets.

The principle is **firmly settled in this State** that a taxpayer may maintain an action in equity, on behalf of himself and all other taxpayers, to restrain public officers from paying out public money for purposes unauthorized by law. *Sligh v. Bowers*, 62 S.C. 409, 40 S.E. 885; *Mauldin v. City Council of Greenville*, 33 S.C. 1, 11 S.E. 434, 8 L.R.A. 291; *McCullough v. Brown*, 41 S.C. 220, 19 S.E. 458, 23 L.R.A. 410; Pom.Eq.Jur., Page 277, Sec. 260; 2 Dill.Mun.Corp., Sec. 736.

Kirk v. Clark, 191 S.C. 205, 4 S.E.2d 13, 15 (1939).

The court in *Kirk v. Clark* also noted:

“Perhaps the most frequent ground of application for relief by injunction against municipal corporations is for the prevention of an illegal or unlawful diversion of public funds. . . . [Courts] will . . . relieve in behalf of citizens and taxpayers against such official acts on the part of such bodies, **when they move without authority or warrant of law** and in excess of the corporate powers. High on Injunctions, Vol. 2, Sec. 1237.”

Id. (emphasis added).

This Court has repeatedly acknowledged that a private citizen has standing to contest an illegal action by a governmental body. *Shillito v. City of Spartanburg*, 214 S.C. 11, 51 S.E.2d 95 (1948). In *Shillito*, the plaintiff sued for declaratory and injunctive relief when a tax was illegally collected. Shillito’s action was aimed “(a) against the illegality of the tax; (b) against the levying of subsequent assessments under the alleged unlawful tax; and (c) against the disbursement of funds collected from such tax.” The Court found that the plaintiff had standing for all three purposes.

As a rule, private citizens may not restrain official acts when they fail to allege and prove damage to themselves different in character from that sustained by the public generally. An apparent exception to this rule exists when the Act sought to be enjoined is an unlawful diversion of public funds. 52 Am. Jur., Sec. 3, Page 3. **In such cases, a taxpayer who may be compelled to pay the assessment, or who has contributed to the sum jeopardized, is considered to have sufficient interest to enjoin the illegal Act.** The decided preponderance of authority holds that **a taxpayer** singly or in a class suit, may maintain a suit in equity to **restrain unlawful municipal action** which leads, directly or indirectly, to taxation, and that **a taxpayer**, as specially damaged by the increase of the burden of taxation on

his property, **has a special interest**, distinct from the general public, in the subject matter of such a suit **which entitles him to relief**. 52 Am. Jur., Sec. 3, Page 3.

A citizen and taxpayer has standing as such to contest the expenditure of public funds under an alleged unconstitutional statute. 52 Am. Jur., Sec. 15, Page 11. Under the foregoing authorities, we are satisfied that the action as brought can be maintained to challenge the validity of this special law **and the alleged unlawful diversion of public funds** to the designated beneficiary.

Id. at 22. (Emphasis added.) Thus, under *Shillito*, the Appellants, as taxpayers, have standing to seek declaratory and injunctive relief against an illegal collection and expenditure of public funds.

In *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985), two taxpayers sued the Mayor and the City Council of Greenwood because they had spent public money for expenses incurred by spouses of the Council members on a trip to the National League of Cities Convention. The taxpayers sought declaratory relief. Council members argued that the taxpayers lacked standing. The court found that the taxpayers had standing to contest the unlawful expenditure. “As in *Lee [v. Clark]*, 224 S.C. 138, 77 S.E.2d 485 (1953)], respondents, as taxpayers, have an interest in seeing that city officials disburse funds in a lawful manner. They have presented a justiciable controversy under the [Declaratory Judgment] Act, and the demurrer was properly overruled.” 285 S.C. at 480.

Myers v. Patterson, 315 S.C. 248, 433 S.E.2d 841 (1993) has a similar holding. A plaintiff had standing as a taxpayer to contest the allegedly unlawful transfer of money collected for one purpose to a fund set up to address another purpose. This Court ruled, “A taxpayer who . . . has contributed to the sum jeopardized, is considered to have sufficient interest to enjoin the illegal act.” The Court ruled against the plaintiffs on the merits, but

nevertheless found that they had standing as taxpayers to contest the illegal diversion of funds.

These cases finding taxpayer standing were not limited to acts and disbursements which violate some specific provision of the Constitution. These rulings dealt in broad terms with the illegality of the actions, or the unlawful manner in which the funds were spent.

Not only does such a taxpayer have standing; such civil actions are commended by this Court: "It is very commendable that public-spirited citizens should endeavor to protect the taxpayers of a county from the efforts of an accommodating fiscal court to make unauthorized and unlawful appropriations of public funds." *Shillito v. City of Spartanburg*, 214 S.C. 11, 26, 51 S.E.2d 95 (1948). *Quoting Fox v. Lantrip*, 169 Ky. 759, 185 S.W. 136, 139.

"A taxpayer's standing to challenge unauthorized or illegal governmental acts has been repeatedly recognized in South Carolina." *Sloan v. School District of Greenville County*, 342 S.C. 515, 520, 537 S.E.2d 299, 301 (Ct. App. 2000). Appellants have standing, under the common law, as taxpayers and citizens to seek declaratory and injunctive relief against an illegal act of the Respondents.

Appellants do not need a statutory right of action to challenge an *ultra vires* act. Appellants' standing does not originate in a statute; it arises from the equitable principles of the common law. *Shillito v. City of Spartanburg* ruled that the action was equitable, and analogous to a shareholders' derivative action. *Id.* at 214 S.C. 11, 51 S.E.2d 95 (1948),

Suits by **tax-payers** against towns and their officers to prevent or remedy misapplication of town funds, are not only allowed by statute, but it is the prevailing doctrine in America that **tax-payers** may maintain them in the

absence of a statute. Their relations to the municipality are analogous to those of stockholders to a private corporation

Id. at 28, quoting *Russell v. Tate*, 52 Ark. 541, 13 S.W. 130, 132, 7 R.L.A. 180, 20 Am. St. Rep. 193 (emphasis added). Appellants need not assert a statutory right of action; they may rely on the foregoing cases, and they should be granted standing.

B. This Court Should Preserve Taxpayer Standing for City and County Taxpayers.

This friend of the court is informed and believes that this Court may have been looking for justifiable ways to limit or curtail taxpayer standing. This Amicus respectfully suggests that if the Court is determined to curtail taxpayer standing, that it should preserve taxpayer standing for county and municipal taxpayers. This Amicus further suggests that a historical review of the cases addressing the subject seems to draw a line between State taxpayer standing, which is rarely granted, and city and county taxpayer standing, which has been granted often.

While it has not been perfectly clear—there are some exceptions—in general, a line has been drawn fairly consistently between State taxpayer standing versus city and county taxpayer standing, especially when an issue of taxation or public funds is involved.

In *ATC South v. Charleston County*, the plaintiff attempted to assert taxpayer standing to object to a zoning ruling, granting a favorable decision to a competitor. This Court ruled he did not have statutory standing to challenge the zoning ruling because he was not neighboring landowner. The Court further rejected his claim to standing because he was a competitor. Finally, the Court ruled he lacked standing as a county taxpayer. *Id.*, 380 S.C. 191, 198, 669 S.E.2d 337, 340-41 (2008). In *ATC*, the plaintiff raised no issue

of unlawful taxation or of unlawful expenditure of public funds. The Court found that the plaintiff's alleged injury was

common to all property owners in Charleston County. This feature of commonality defeats the constitutional requirement of a concrete and particularized injury. As the United States Supreme Court observed, a taxpayer lacks standing when he "suffers in some indefinite way in common with people generally." *Frothingham v. Mellon*, 262 U.S. 447, 488, 43 S.Ct. 597, 67 L.Ed. 1078 (1923). We reject ATC's claim of taxpayer standing under constitutional standing principles.

Id. However, this Amicus respectfully suggests that it is the lack of a claim of unlawful taxation or unlawful spending of public funds, that leads to the conclusion that the Plaintiff lacked a "concrete and particularized injury" and therefore lacked taxpayer standing.

In *Bodeman v. State*, this Court ruled that a taxpayer challenging the sheer number of myriad exemptions to the tax code would not be granted taxpayer standing, because "to the extent Bodman has suffered or will suffer any harm as a result of this tax scheme, this harm is shared by all taxpayers in the State." 403 S.C. 60, 67, 742 S.E.2d 363, 366 (2013). In *Bodeman*, the Court ruled that the Plaintiff's claims failed on the merits and declined to address public importance standing in any detail. *Id.* 403 S.C. 60, 69, 742 S.E.2d 363, 367 (2013).

Similarly, in *Sloan v. Department of Transportation*, ("Ravenel Bridge"), both the Circuit Court and the Court of Appeals rejected Sloan's claim of taxpayer standing, but this Court granted Sloan public importance standing, because he raised an issue of great public importance: DOT's granting of construction contracts worth millions of dollars in violation of competitive bidding statutes. *Id.* 365 S.C. 29, 618 S.E.2d 876 (2005).

Recently, the South Carolina Public Interest Foundation and Mr. Sloan filed suit to contest the DOT's unconstitutional use of public funds to inspect bridges on private property. *South Carolina Public Interest Foundation v. South Carolina Department of*

Transportation, 421 S.C. 110, 804 S.E.2d 854 (2017) (“*Bridge Inspection*”). The Court ruled that the plaintiffs lacked constitutional standing as State taxpayers, because they had not “suffered a concrete and particularized injury.” However, the Court granted the plaintiffs public importance standing, finding that the case raised issues of great public importance, which called for judicial guidance. *Id.*, 421 S.C. at 119, 804 S.E.2d at 859 (2017).

Although this Court has often declined to grant taxpayer standing to State taxpayers, many times this Court has recognized taxpayer standing on behalf of municipal or county taxpayers: *Mauldin v City Council of Greenville*, 33 S.C. 1, 11 S.E. 434 (1890) (city taxpayer granted taxpayer standing); *Kirk v. Clark*, 191 S.C. 205, 4 S.E.2d 13, 15 (1939) (County bondholder and taxpayer granted taxpayer standing); *Shillito v. City of Spartanburg*, 214 S.C. 11, 51 S.E.2d 95 (1948) (city taxpayer granted taxpayer standing); *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985) (city taxpayer granted taxpayer standing); *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000); (taxpayer of County school district granted taxpayer standing); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003) (County taxpayer granted taxpayer standing); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006) (County taxpayer). Based on these cases, and the distinctions between State taxpayers and municipal or county taxpayers, this Court should preserve taxpayer standing for city and county taxpayers.

II. APPELLANTS POSSESS PUBLIC IMPORTANCE STANDING.

When a plaintiff has challenged State action (as opposed to municipal or county action) and asserted both taxpayer standing and public importance standing, and the Court has granted standing, it usually grants public importance standing, rather than taxpayer standing. See *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004) (public importance standing to challenge the Governor’s unconstitutional possession of a commission from another power); *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005) (public importance standing to challenge the constitutionality of the Life Sciences Act); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005) (*Ravenel Bridge*—public importance standing to challenge DOT’s statutory violation, failure to use competitive sealed bidding); *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007) (public importance standing when DOT commissioners violated statute limiting them to no more than “one consecutive term”); *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008) (original jurisdiction or public importance to address legislative violations of the Constitutional “one subject” rule); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008) (*Ladson Road*, public importance standing to address DOT’s violation of emergency procurement statute), *American Petroleum Institute v. S.C. Dep’t of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009) (original jurisdiction or public importance to address violations of the Constitutional “one subject” rule); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013) (original jurisdiction and public importance standing as to the constitutionality of the Infrastructure Bank board), *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016) (original jurisdiction or public importance to address legislative violations of the Constitutional “one subject” rule); *South*

Carolina Public Interest Foundation v. South Carolina Department of Transportation, 421 S.C. 110, 804 S.E.2d. 854 (2017) (*Bridge Inspection*—public importance standing to challenge DOT’s unconstitutional inspection of private bridges at public expense). These Appellants have made a plausible case that County officials committed statutory and Constitutional violations, and these violations support the granting of public importance standing. Accordingly, this Court should grant Appellants public importance standing.

A. Public Importance Standing Has Enjoyed a Long History in South Carolina.

The doctrine of public importance standing has a long history in South Carolina. In 1873, this Court addressed an indictment for practicing law without a license. The Court ruled that defects in the indictment disposed of the case, but then reasoned:

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 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 this 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).

This Court rendered a holding similar to *Ashmore* in *City of Columbia v. Sanders*, 231 S.C. 61, 97 S.E.2d 210 (1957). *Sanders* was a declaratory judgment action addressing the municipal merger of Columbia and Eau Claire and their water systems. The case raised questions about Columbia's revenue bonds issued to fund further expansion of the water system. At the conclusion of the opinion, this Court stated:

We have been in considerable doubt as to whether the pleadings present a proper case for any kind of declaratory relief. But since **the rule requiring the existence of a justiciable controversy is somewhat relaxed where the public interest is involved**, Anderson, Declaratory Judgments, Second Edition, Volume I, Section 63, and Volume II, Sections 686, 707, 709 and 714, we have decided to make the foregoing limited declaration with respect to the issuance of further revenue bonds.

97 S.E.2d 213 (emphasis added). This Court repeated this holding in *State ex rel McLeod v. McGinnis*, 278 S.C. 307, 311, 295 S.E.2d 633, 635 (1982): "We held that where the public interest is involved, the rule requiring the existence of a justiciable controversy is somewhat relaxed." 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”).

The doctrine that this Court should decide questions of public importance has been recognized at least as far back as 1873. By 1947 the principle was “generally established,” and since 1947, South Carolina Courts have repeatedly applied the doctrine, particularly when a civil action alleges the unconstitutionality of an Act or governmental action. *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d. 854 (2017) (unconstitutional inspection of private bridges at public expense); *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016) (an Act of the General Assembly violated the Constitution by relating to more than one subject); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013) (unconstitutionality of the governance of the State Transportation Infrastructure Bank); *American Petroleum Institute v. S.C. Dep’t of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009) (an Act of the General Assembly violated the Constitution by relating to more than one subject); *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008) (an Act of the General Assembly violated the Constitution by relating to more than one subject); *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005) (an Act of the General Assembly violated the Constitution by relating to than one subject); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004) (allegation that the Governor violated the Constitution by possession of a commission from another power).

The South Carolina Supreme Court has ruled many times that public interest standing should be granted to address issues of great public importance. *South Carolina*

Public Interest Foundation v. South Carolina Transportation Infrastructure Bank, 403 S.C. 640, 744 S.E.2d 521 (2013). Respondents' alleged constitutional violations in putting two questions into a single public referendum make this an issue of great public importance.

B. Appellants Possess Public Importance Standing to Challenge *Ultra Vires* Acts, which Require Judicial Guidance.

Appellants possess standing as citizens and taxpayers to seek declaratory and injunctive relief for an *ultra vires* act. One clear statement of this rule of standing is Justice Toal's dissenting opinion in *Newman v. Richland County Historic Preservation Comm'n.*, 325 S.C. 79, 480 S.E.2d 72 (1997). The majority ruled that because the plaintiff was a member of the Commission whose actions she was attacking in court, she had no standing. If she had not been a member of the Commission whose decision she was attacking, the Supreme Court would likely have found that she had standing. The majority reasoned that other citizens' right to sue would protect the public and denied standing to Ms. Newman. The court quoted from *Control Data Corporation v. Controlling Board*, 16 Ohio App. 3d 30, 16 Ohio B. Rep. 32, 474 N.E.2d 336 (Oh. App. 1983). "Sufficient representation of the public's interest could be provided by a citizen affected by the decision of the Controlling Board and not by allowing a member of the Board to take a partisan position and challenge the outcome." *Newman*, at 83. The dissent would have granted plaintiff standing even though she was a member of the Commission.

Apart from this issue of Commission membership, Justice Toal's dissent provides a clarifying discussion of the history of citizen standing to seek declaratory and injunctive relief for *ultra vires* acts:

Generally, a private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is

in danger of sustaining, prejudice therefrom. *Florence Morning News, Inc. v. Building Comm'n*, 265 S.C. 389, 218 S.E.2d 881 (1975). . . . **However, an exception to this rule exists for *ultra vires* acts by government officials.** For example, we have said that a court will not . . . interfere, by means of a taxpayer suit, to restrain the authorities of a county board from the exercise of their discretionary power . . . in the absence of illegality, fraud, or clear abuse of authority. *Owens v. Magill*, 308 S.C. 556, 419 S.E.2d 786 (1992) (emphasis added); *see also Ex Parte Hart*, 190 S.C. 473, 477, 2 S.E.2d 52, 53-54.

* * *

As with most things, moderation is required. A moderate balance is achieved by granting citizens standing when they bring actions **alleging *ultra vires* acts by a governmental agency,** while denying citizens standing to challenge discretionary actions. Thus, I would find that an individual has standing to contest a governmental action if he alleges particularized *ultra vires* acts by the governmental entity. The complaint cannot be a general assertion of *ultra vires* action on the part of the governmental actor, but must identify (1) the specific act or acts that have exceeded the actor's authority, and (2) the specific constitutional, statutory, or other law that has been exceeded.

Newman v. Richland County Historic Preservation Comm'n., 325 S.C. 79, 84-85, 480 S.E.2d 72, 75-76 (1997) (emphasis added).

An authoritative case on this kind of standing is *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). Several doctors sued Charleston County alleging that the manner in which Charleston County had voted to fund the acquisition and renovation of a hospital for the Medical University of South Carolina was *ultra vires*. The doctors alleged that to use tax exempt bonds for this purpose would violate the authorizing statutes. Charleston County moved to dismiss, arguing among other things, that the doctors lacked standing to bring the action. The trial court granted the County's motion, and the doctors appealed.

The Supreme Court, in a unanimous decision, reversed the ruling on standing. Justice Toal, writing for the court, ruled that when an issue was "of such public importance

as to require its resolution for **future guidance**,” then “a court may confer standing upon a party.” 333 S.C. 519, 531, 511 S.E.2d 69, 75 (emphasis added).

In this case, Doctors have specifically alleged that **County committed an ultra vires act** by exceeding its statutory authority to issue the hospital bonds. Moreover, the issuance of the hospital bonds clearly impacts a profound public interest--the public health and welfare. In fact, the express purpose of the Act is to promote the public health and welfare. See S.C. Code Ann. § 44-7-1420 (1985). It is hard to conceive of any greater societal interest [*16] than this one. Thus, **as citizens of Charleston County, Doctors have a significant interest in ensuring that their county acts within the legal parameters established by the legislature** for funding hospital development. Thus, by virtue of the immense public interest at stake here, Doctors have standing to bring the present action, and any further determination of imminent prejudice is unnecessary.

333 S.C. 519, 531, 511 S.E.2d 69, 75-76 (emphasis added).

The issue Appellants raise in this case—allegations of an unconstitutional act—is also an important public issue, which calls for judicial intervention.

In *Baird v. Charleston County*, the doctors were granted standing, not because they were physicians in competition with the clinic, but rather because they were citizens of Charleston County, they challenged an *ultra vires* act, and the matter was of profound public interest that required judicial guidance. “Thus, as citizens of Charleston County, Doctors have a significant interest in ensuring that their county acts within the legal parameters established by the legislature for funding hospital development.” *Id.*

In the language cited by the Court’s opinion in *Newman*, each individual Appellant is “a citizen affected by the decision of the [Respondent].” Lawsuits by such “citizens” provide “sufficient representation of the public’s interest.” *Newman, quoting Control Data Corporation v. Controlling Board*, 16 Ohio App. 3d 30, 16 Ohio B. Rep. 32, 474 N.E.2d 336 (Oh. App. 1983). Hence, each Appellant has standing as a citizen to represent the public’s interest and to contest the *ultra vires* acts alleged in the Complaint.

Appellants allege standing as citizens and taxpayers. They allege that the Respondents engaged in an *ultra vires* acts, in violation of the Constitution. Just as the doctors in Charleston possessed standing to argue that the funding of the hospital acquisition was *ultra vires*, because of the profound public interest involved, these Appellants should be granted standing to contest the unconstitutional act in this case; there is a profound public interest involved. A judicial decision is necessary for future guidance, “and any further determination of imminent prejudice is unnecessary.” *Id.*

In the case at bar, Appellants have met the burden set out in the *Newman* dissent and in *Baird*. They have identified the specific act that is unconstitutional and the nature of the constitutional violation that requires judicial guidance. They have stated a valid case.

CONCLUSION

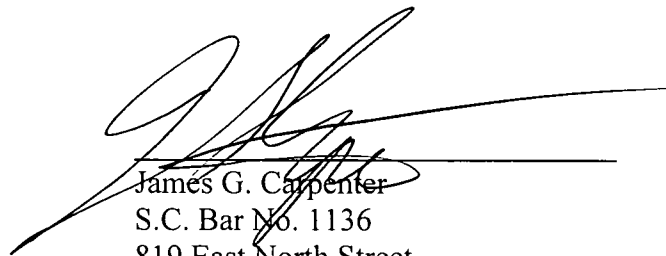
This Court should acknowledge these authorities articulating the doctrine of taxpayer standing, and the cases of great public importance that have been established in the jurisprudence of this Court, both of which have been repeatedly recognized in this Court for more than 100 years.

The Attorney General confirmed the validity of Appellants’ claims on the merits. Nevertheless, the Circuit Court granted judgment on the pleadings to the Respondents.

Accordingly, this Court should grant Appellants standing to pursue this case and reverse the judgment of the Circuit Court on the merits.

WHEREFORE, this Amicus prays the Court to uphold taxpayer standing for city and county taxpayers, grant Appellants public importance standing to enable them to contest unlawful, unconstitutional, and *ultra vires* acts of governmental officials, and to reverse the judgment of the Circuit Court on the merits, in accord with the opinion of the Attorney General.

Respectfully submitted,
THE CARPENTER LAW FIRM, PC

A handwritten signature in black ink, appearing to read 'J. G. Carpenter', is written over a horizontal line. The signature is stylized and cursive.

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OCT 12 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Edgar W. Dickson, Circuit Court Judge

Case No. 2018-000395

Gerard E. Ziegler; Brenda Barrington III; James Stephen Green, Jr.; William A. Harbeson; David Messinger; South Carolina Public Interest Foundation; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated Appellants,

v.

Dorchester County; Dorchester County Council; Charles D. Chinnis, George H. Bailey, Sr., Jay Byars, Willie R. Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council, Respondents.

PROOF OF SERVICE

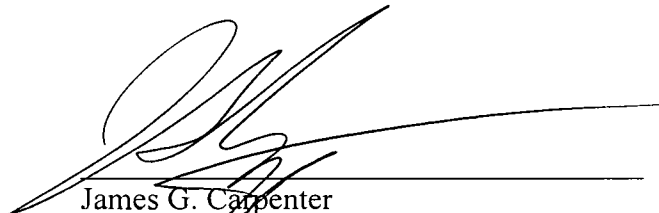
The undersigned attorney hereby certifies that he served a copy of the amicus brief of Edward D. Sloan Jr., this October 9, 2018, by first class mail, postage prepaid, addressed as follows:

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