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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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Case No. 2012-CP-40-1560

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South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated, ..... Appellants,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering,..... Respondents.

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# APPELLANTS' REPLY BRIEF

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James G. Carpenter S.C. Bar No. 1136
Jennifer J. Miller S.C. Bar No. 13611

819 East North Street
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Appellants

Other Counsel of Record:

Beacham O. Brooker, Jr. S.C. Bar No. 909
Assistant Chief Counsel,
Department of Transportation
P.O. Box 191
Columbia, SC 29202
Tel. (803) 737-1347
Fax (803) 737-2071
Attorney for Respondents

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## STATEMENT OF FACTS

Respondents' Brief asserts many facts for the first time that do not appear in the record or that the trial court record does not support. Some of the assertions relate to background matters that merely set up a discussion of the issue.[1] Some unsupported assertions relate to Department of Transportation budgetary matters that the record does not support.[2] Many of the Respondents' unsupported assertions are more serious and consequential, which the trial court record refutes. Appellants will deal with them in more detail below.

"This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered." *McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E. 473,475 (1933). *See also* Rule 210(h), SCACR (stating an appellate court may not consider a fact that does not appear in the record).

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[1] "SCDOT's bridge inspection forms are designed for use by its inspectors in completing their functions under the federal bridge inspection program" (Respondents' Br., p. 2).
"That program . . . requires state departments of transportation to conduct periodic inspections of all publicly-owned bridges in the state, regardless of whether or not they are on the state system" (Respondents' Br., pp. 2-3).
"In order to use the computerized form, a bridge number must first be entered" (Respondents' Br., p. 3).
"Because the bridges at issue were not a part of the program, numbers had to be created" (Respondents' Br., p. 3).
"There is no requirement that South Carolina comply with the [Federal Highway Act] and create a bridge inspection program, only that it be penalized by withdrawal of federal matching funds for failure to do so." (Respondents' Br., p. 3, n. 2).

[2] "The lack of resources to maintain SCDOT bridges has been well reported" (Respondents' Br., p. 5).
"[The State Highway Engineer] would have no interest in spending, the scarce resources available on non-SCDOT bridges" (Respondents' Br., p. 5).

## ARGUMENT

### I. RESPONDENTS FAILED TO DISTINGUISH MANY IMPORTANT CASES ON STANDING RELATED TO THE EXPENDITURE OF PUBLIC FUNDS.

In their initial brief, Appellants South Carolina Public Interest Foundation and Edward D Sloan, Jr. relied on many South Carolina cases in support of their arguments that the court should grant them both taxpayer standing and public importance standing. Respondents failed to address or distinguish these important cases.

#### A. Respondents Failed to Distinguish Cases Granting Public Importance Standing.

Appellants cited the *Ladson Road* case, which analyzed the great public importance of an expenditure of public funds under an emergency exception:

> This Court has noted "the limited nature of the exception for questions of 'imperative and manifest urgency.'" *Sloan v. Greenville County,* 361 S.C. 568, 571, 606 S.E.2d 464, 466 (2004) (*Greenville County II*). In *Greenville County II,* we held that ***where judicial guidance exists*** on the legal issue presented, ***there is no imperative and manifest urgency*** for an advisory opinion.
>
> ***In the instant case, however, there is no case law*** specifically addressing the DOT's authorization of an emergency procurement. Because this is a matter of public importance which ***could occur*** at any time (given the inherent unpredictability of emergencies), we find there is an urgent nature to this issue.
>
> Accordingly, even though the Ladson Road Project was completed in 2005, we will address the other issues raised in the case.

*Sloan v. Dept. of Transportation*, 379 S.C. 160, 169, 666 S.E.2d 236, 240 (2008) (*Ladson Road*). The key factor in analyzing the "public importance" issue in *Ladson Road* was the lack of "case law specifically addressing" the legal issues of the case. In the case before the Court now, there is no case law addressing a governmental official's decision

to expend public funds for a private purpose. Respondents addressed *Ladson Road* only fleetingly, and failed to address its application to the public importance basis for standing or the public importance exception to mootness in this case.

Appellants also cited *Sloan v. Greenville County:* "***There is a keen public interest in the stewardship of public funds and a strong need to provide guidance for future procurement decisions.***" *Id.*, 356 S.C. 531, 554, 590 S.E.2d 338, 350 (Ct. App. 2003). Respondents failed to address *Sloan v. Greenville County* and the public importance of the stewardship of public funds.

> Under the public importance exception, standing may be conferred upon a party "when an issue is of such public importance as to require its resolution ***for future guidance***." *Baird v. Charleston Cty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999). This Court has never held that there must be no other potential plaintiffs with a greater interest in the case or some other nexus, as the respondents now argue.

*Sloan v. Dept. of Transportation,* 365 S.C. 299, 303, 618 S.E.2d 876, 878 (2005) (emphasis added) (*Ravenel Bridge*). In *Ravenel Bridge*, the Court ruled that the issue of the method of selecting the source of procurement with public funds was a matter of great public importance. In *Ravenel Bridge*, Sloan did not argue that the procuring of the construction of a bridge was unlawful *per se;* Sloan argued that selecting the source of the procurement through requests for proposals was unlawful when the statute specifically called for competitive sealed bidding. In the case at bar, ***the expenditure itself*** is unlawful, not just the means of procurement, and therefore the issue is of even greater public importance. Respondents also failed to distinguish the *Ravenel Bridge* case and the effect of its holding on public importance standing.

The South Carolina Supreme Court granted Mr. Sloan public importance standing in *Sloan v. Hardee*, and accepted the matter in its "original jurisdiction to address

whether Respondents, Commissioners for the South Carolina Department of Transportation (DOT), were appointed in violation of S.C. Code Ann. § 57-1-330(A) (2006)." *Id.*, 371 S.C. 495, 497, 640 S.E.2d 457, 458 (2007). In *Hardee*, the issue was whether certain DOT Commissioners were serving more than "one consecutive term." The Supreme Court ruled,

> We find this matter of sufficient public interest as to confer standing on Petitioners. *Sloan v. Wilkins,* 362 S.C. 430, 608 S.E.2d 579 (2005); *Baird v. Charleston Cty.,* 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999) (standing is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its ***resolution for future guidance***).

*Id.* 371 S.C. 495, 497, 640 S.E.2d 457, 458 (2007) (emphasis added). Respondents also failed to address *Hardee* and its holding on the public importance of the issues.

The legal issues raised by the Appellants are novel and require resolution for future guidance. Neither Appellants nor Respondents cite any case law addressing the expenditure of public funds on behalf of a private citizen, or in connection with a dispute between two private parties. The lack of case law on point indicates that this issue calls for judicial guidance.

**B. Respondents Failed to Distinguish Cases Granting Taxpayer Standing.**

"Taxpayers must have ***some mechanism of enforcing the law***." *Sloan v. School District of Greenville County*, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (2000 Ct. App.) (emphasis added) *quoting Eastern Missouri Laborers Dist. Council,* 781 S.W.2d at 47. That "mechanism of enforcing the law" is a taxpayer civil action. As demonstrated in Appellants' Initial Brief, many South Carolina cases have recognized that right.

In the *Ladson Road* case, the Supreme Court recognized that Sloan was entitled not only to public importance standing, but also to taxpayer standing in his case against

the Department of Transportation. The Court ruled,

> "A ***taxpayer's standing*** to challenge unauthorized or illegal governmental acts ***has been repeatedly recognized*** in South Carolina," *Sloan v. School Dist. of Greenville County,* 342 S.C. 515, 520, 537 S.E.2d 299, 301 (Ct.App.2000), and indeed has been repeatedly recognized ***as to Sloan himself.*** *See, e.g., id.; Sloan v. Department of Transp.,* 365 S.C. at 304, 618 S.E.2d at 878-79; *Greenville County I,* 356 S.C. at 548, 590 S.E.2d at 347.
>
> * * *
>
> Likewise, in this case, ***Sloan has standing because he has alleged*** a misuse of the statutory emergency procurement provision and therefore ***an unlawful expenditure by public officials***.

*Sloan v. Dept. of Transportation*, 379 S.C. 160, 169-171, 666 S.E.2d 236, 241 (2008) (emphasis added) (*Ladson Road*).

In this case, as in *Ladson Road*, Appellants have "alleged . . . an unlawful expenditure by public officials." If Sloan's payment of gasoline taxes was sufficient to give him taxpayer standing in *Ladson Road*, his payment of gasoline taxes should be sufficient to grant him taxpayer standing in this case. Respondents have failed to distinguish *Ladson Road*, or explain why that holding should not govern here.

Appellants also cited *Myers v. Patterson*, in which plaintiff DOT taxpayers who had contributed to the sum at issue were granted standing. The Court ruled, "***[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." *Id.,* 315 S.C. 248, 251, 433 S.E.2d 841, 843 (1993) (emphasis added). Respondents likewise failed to distinguish *Myers* or explain why its holding should not apply to this case. Again, the government agency in this case is the same as in *Myers* and *Ladson Road.*

## II. RESPONDENTS FAILED TO DISTINGUISH IMPORTANT CASES ON MOOTNESS.

Appellants South Carolina Public Interest Foundation and Edward D Sloan, Jr. relied on many South Carolina cases supporting their arguments that exceptions to the doctrine of mootness applied to this case.

### A. Respondents Failed to Distinguish Cases Finding Issues Cases Capable of Repetition, yet Evading Review.

Our Supreme Court ruled in *Ladson Road* that the issue of the misuse of the emergency procurement exception was capable of repetition but would evade review when the Department of Transportation took six months to complete the construction project. *Sloan v. Dept. of Transportation*, 379 S.C. 160, 169-171, 666 S.E.2d 236, 241 (2008).

In this case, the core issue is a State agency expending public funds for private purposes. That issue is certainly capable of repetition. As explained in the Appellants' Initial Brief, the standard is ***capable*** of repetition, not ***likelihood*** of repetition. However, without judicial guidance, there is not only a capability, but also a likelihood of repetition. The DOT Commission's Chief Internal Auditor found, "Some employees indicated that ***they have received requests to do work on private property before***" (R. p. 172) (emphasis added). Such requests are capable of repetition. Speaking hypothetically, a DOT employee asking other DOT employees to grade or work on the employee's residential driveway in the Fall of 2012 would be an expenditure of public funds for a private purpose. Hypothetically, DOT employees' using DOT equipment to set up a private hunting club would be an expenditure of public funds for private purposes. Similarly, a government official expending public funds to take a trip to visit a

mistress would be an expenditure of public funds for private purposes. Likewise, hypothetically, use of a State airplane to recruit college athletes could be an expenditure of public funds for private purposes. There are many other possible examples. Clearly, the issue is ***capable*** of repetition, and even ***likely*** to be repeated.

Second, such an issue is likely to evade judicial review. Such unconstitutional expenditures are not likely to be made in the open, but rather covertly. By the time the expenditure is discovered, any claim to enjoin the expenditure is moot. The Court in *Ladson Road* ruled that the six months it took to complete a construction project made it likely that the legal issue—unlawful use of the procurement code's emergency exception—would evade review. If six months is short enough to evade review, then certainly the one day to inspect these bridges is a short enough time period so that the conduct would evade review. Respondents have failed to explain why *Ladson Road's* analysis of this exception to the doctrine of mootness does not control this case.

Similarly, in the *Ravenel Bridge* case, the Court found that the issue was capable of repetition, yet evading review when the Department of Transportation used the request for proposals process in order to accelerate the construction time. *Sloan v. Dept. of Transportation*, 365 S.C. 299, 303, 618 S.E.2d 876, 878 (2005). The Court ruled,

> The DOT contends this case should be dismissed as moot because the construction contracts have been awarded and fully performed. We disagree.
>
> "[A]n appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review." *Curtis v. State,* 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). Additionally, "if a decision by the trial court may affect future events, ... an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case." *Id.* Clearly, this issue is capable of repetition, yet will usually evade review. Accordingly, despite mootness, we will address the merits.

*Id.* Procuring construction of the Ravenel Bridge—even using requests for proposals—took much longer than inspecting the bridges in Woodside Plantation. If the legal issue in *Ravenel Bridge* was capable of repetition, yet evading review, then certainly the inspection of the bridges in this case was capable of repetition, yet evading review. Respondents do not distinguish the *Ravenel Bridge* case.

### B. Respondents Failed to Distinguish Cases Finding a Public Importance Exception to the Doctrine of Mootness.

Appellants also cited cases holding that the public importance of the legal issue creates an exception to the doctrine of mootness. The analysis for the exception to the doctrine of mootness is the same as the analysis for public importance standing. Again, Respondents failed to distinguish these important cases or indicate why their holdings should not apply to this case.

## III. RESPONDENTS PROFFER AN INVALID QUESTION ON THE MERITS.

As to the merits of the case, Respondents framed the following question: "The only relevant question is whether [State Highway Engineer] Mr. [John V.] Walsh . . . believed at the time that the request [for the bridge inspections] was from the city" (Respondents' Br. p. 8). This is not a valid statement of the issue. Walsh's belief is not relevant. This case is not a criminal case in which the Appellants must prove the Respondents' *mens rea.* It is not an employment disciplinary matter in which an employee's allegedly pure motives might make a difference. It is a citizen and taxpayer action alleging a Constitutional violation. The proper question is whether the expenditure of public funds was for a public purpose or for the benefit of private persons and private purposes. The standard is objective, not subjective. Respondents clearly failed the test.

However, even if the Respondents' proffered statement of the issue were relevant, Respondents would also need to demonstrate that Mr. Walsh's belief was ***reasonable***. As demonstrated herein, Mr. Walsh did ***not*** believe he was assisting the City of Aiken, and considering these facts, such a belief would not have been reasonable.

The evidence discussed herein demonstrates overwhelmingly that Mr. Walsh knew the request to inspect the bridges in a private, gated community did not come from the City. It came from Mr. Ebner, a private citizen, who was pursuing this issue for his own personal reasons. Furthermore, Ebner suggested to Walsh the specter of litigation between himself and the developers of the private, gated community. He wanted SCDOT's free, expert opinion on the structural soundness of the three bridges (R. pp. 36-37). Walsh was well aware of all these facts, but he ordered the expenditure of public funds for private purposes, nonetheless.

## IV. RESPONDENTS WERE NOT ASSISTING THE CITY OF AIKEN.

Respondents spend most of their effort revisiting the merits of the case. Respondents make many new and unsupported assertions of fact to support the argument that they were assisting the City of Aiken with the bridge inspections. The unsupported assertions of fact include the following:

1. "Here, the State Highway Engineer, decided that a minimal amount of the Department's resources be used to assist the city in a bridge engineering matter" (Respondents' Br., p. 6).
2. "Mr. Walsh's report back to the local authorities followed shortly thereafter" (Respondents' Br., p. 6).
3. "[T]his decision by the State Highway Engineer was a routine decision to assist a local government" (Respondents' Br., p. 7).
4. "The General Assembly has conferred this discretion on [the State Highway Engineer] and the Department" (Respondents' Br., p. 7).

5. "The Department was authorized to assist the city under its general enabling statute" (Respondents' Br., p. 10).

All of these assertions contend, in one way or another, that the Respondents were assisting the City of Aiken. This contention is simply false. The contention of Respondents' counsel are unsupported by the record. The court may not consider facts and evidence, not contained in the Record on Appeal. Rule 210(h), SCACR; *McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E. 473,475 (1933).

**A. Respondents Were Assisting a Private Citizen.**

Respondents were assisting Reggie Ebner, a private citizen and resident of Woodside Plantation. The record is quite clear on this point. Walsh testified in his affidavit that the "bridges were not owned and maintained by public authorities" (R. p. 133, par. 6). In his letter to Mr. Ebner dated September 22, 2011, Walsh identified the bridges as being "***inside*** the Woodside Plantation" (R. p. 137) (emphasis added). Again in his letter, Walsh told Ebner, "If the bridges have not been load rated, it is recommended that ***the appropriate owner of the bridges*** have them rated and post appropriate signage for vehicles using the bridges." (R. p. 137) (emphasis added). Walsh ***knew*** that the City of Aiken was not "the appropriate owner of the bridges." (R. p. 137).

Second, contrary to Respondents' assertion, State Highway Engineer Walsh did ***not*** decide "that a minimal amount of the Department's resources be used ***to assist the city***" (Respondents' Br., p. 6). Walsh knew he was helping Ebner, a private citizen in a private dispute with a private, gated community. Again, the record is clear. Walsh's affidavit states that the request came from ***Ebner***, **not** from the City of Aiken (R. p. 132). It was ***Ebner***, who requested the Department's assistance. It was ***Ebner***, who noted that the City did not have a bridge department nor standards for bridges (R. p. 135, I.2.).

### B. Respondent Walsh Knew He Was Helping a Private Citizen.

Ebner solicited the help of Representative Young to deliver his request for DOT assistance, but Walsh was not fooled. When Ebner sent his e-mail to Young, he identified himself simply as "Reggie Ebner" (R. p. 134). When Young sent Ebner's email to Walsh, he identified the source of the email as "my constituent, Reggie Ebner," not the City of Aiken (R. p. 134). The header of Ebner's initial email to Walsh likewise identifies the sender as "Reggie Ebner" (R. p. 135). Walsh did not respond to the City of Aiken. It was ***Ebner***, to whom Walsh forwarded copies of the inspectors' reports, not the City of Aiken, and not the city council (R. p. 132, par. 3). Likewise, SCDOT Commission's Chief Internal Auditor found, "Mr. Walsh determined from Representative Young that the bridges were on private property" (R. p. 173).

These facts, which ***are*** in the record, demonstrate that State Highway Engineer Walsh knew this inspection was ***not assisting the City of Aiken***, but was assisting Ebner, a private citizen.

### C. Respondent Walsh Did Not "Report Back to the Local Authorities."

In support of their argument that Respondents were assisting the City of Aiken, Respondents contend, "Mr. Walsh's report back ***to the local authorities*** followed shortly thereafter." (Respondents' Br., p. 6). Respondents cite the inspection document and the Walsh letter to support this assertion.

Walsh did ***not*** report to the City of Aiken, nor to Ebner in his official capacity as a City Councilman for the City of Aiken. When Walsh wrote back to Ebner, he sent the letter to Ebner's home address, not to the City of Aiken, nor to City Council (R. p. 137). He identified the request for inspection as "your request," not a request of the City of

Aiken or some committee of the City Council. (R. p. 137).

Walsh also reported back to Representative Young and Senator Ryberg, but Young and Ryberg were not "local authorities;" they were members of the General Assembly, a statewide legislative body that has no "local authority" since the enactment of Home Rule. Therefore, Respondents' assertion that Walsh reported back to "the local authorities" is likewise incorrect.

**D. Respondent Walsh's Decision Was Not "A Routine Decision."**

Respondents assert that Walsh's decision was "a routine decision to assist a local government" (Respondents' Br., p. 7). Again, the evidence demonstrates that this assertion is false. Walsh admitted in his affidavit that the bridges were "***not owned and maintained by public authorities***" (R. p. 133, Par. 6). He also said this inspection of privately owned bridges was the ***first*** such inspection ***since 2006***. *Id.* There was nothing routine about it; it was extraordinary.

Similarly, the SCDOT's Chief Internal Auditor reported that the decision to inspect these privately owned bridges was not a routine matter:

> Prior to the e-mailed request from [Chief Engineer for Operations Clem] Watson, ***several conversations about the inspections occurred*** and some employees warned Mr. Watson that ***it was wrong to inspect privately owned bridges***. Some employees indicated that ***they have received requests to do work on private property before*** and informed the requesting party that ***it was against policy***. Mr. Watson ***discussed the concerns with Mr. Walsh*** but Mr. Walsh directed the inspections take place.
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> * * *
>
> [The Office of the Chief Internal Auditor] interviewed various personnel under the Chief Engineer for operations. Without any reservation, all personnel were certain the activity was wrong, stated that ***they expressed reluctance to their supervisor***, and knew it would later resurface because ***it was against established policy***. Both Mr. Watson and Mr. Walsh

maintained there was a ***grey area***.

(R. p. 172). (emphasis added).

The Chief Internal Auditor further found, "During our discussions with Mr. Watson and Mr. Walsh, they both indicated that these inspections were ***in a grey area***. They both indicated that the request and subsequent action by SCDOT were ***outside of the norm***" (R. p. 173) (emphasis added). If this decision was "in a grey area" and "outside the norm," it was not a "routine decision."

This decision was deliberate, improper, and far from routine. The Respondents deliberately decided to circumvent the law and inspect privately owned bridges in a gated community, knowing that the inspection was contrary to departmental policies and regulations, and without seeking legal counsel from the SCDOT's lawyers.

### E. Respondents' Decision Was Not a Valid Exercise of Discretion.

Respondents argue that the expenditure of public funds to inspect privately owned bridges was not an unconstitutional expenditure of public funds. Instead, Respondents argue that they were assisting the City of Aiken, and therefore the expenditure was a legal and valid exercise of discretion. The overwhelming evidence in this case shows otherwise. The General Assembly has ***not*** "conferred this discretion on the State Highway Engineer or the Department of Transportation" (Respondents' Br., p. 7). This expenditure of public funds for a private purpose violates the South Carolina Constitution, as demonstrated in Appellants' Initial Brief. The General Assembly may not confer what the Constitution forbids.

### F. Respondents Did "Create Fake Bridge ID Numbers."

Respondents object to the factual statement that their inspection staff had to

"create fake bridge ID numbers" (Respondents' Br., p. 2). SCDOT's Chief Internal Auditor made the statement. He is Respondents' agent or employee. The Auditor's Report is an admission of a party opponent. Respondents can have no valid objection to Appellants' use of the phrase. Finally, the statement is true; they did create fake bridge ID numbers. Appellants lifted the offending phrase directly from the Auditor's Report.

> Since the bridges were off system, employees expressed confusion over which allotment code to use for recording the inspections. They were instructed to not use the federal charge code as these bridges were not on the state's system. Inspection staff also had to ***create fake bridge ID numbers*** because the bridges were ***off system***.

(R. p. 172) (emphasis added).

## V. RESPONDENTS WRONGLY DISPARAGED THE CHIEF INTERNAL AUDITOR.

In attempting to justify their unconstitutional activity, Respondents resort to "shooting the messenger" through unprofessional, unsupported, condescending, and disparaging assertions against the Chief Internal Auditor. Respondents opined: "[The Chief Internal Auditor] is not a lawyer; nor does he appear to be particularly well-versed in the arts of reason and logic" (Respondents' Br., p. 9). This condescending, *ad hominem* attack is not appropriate for an appellate brief, and does not merit further response. *See Ford Motor Co. v. EEOC*, 458 U.S. 219, 220, n. 1, 102 S.Ct. 3057, 3060 (1982) (denying, but declining to respond further to an *ad hominem* attack from the dissent).

Respondents also falsely alleged, "[the Chief Internal Auditor] did not seek legal advice" (Respondents' Br., p. 9). They further confidently asserted, "Had [the Chief Internal Auditor] asked, he would have been told that it is perfectly proper for the State Highway Engineer to respond to requests for assistance from local governments." *Id.*

Again, Respondents are incorrect. As part of his investigation, the Chief Internal Auditor not only researched the law, but also ***sought legal advice*** from SCDOT's Chief Legal Counsel. Furthermore, he ***obtained sound legal advice***, and he recorded it in his Report:

> [The Office of the Chief Internal Auditor] researched applicable laws to determine if the inspections were proper. According to 23 CFR 650, SCDOT must inspect all highway bridges located on public roads. 23 USC 101 defines a public road as any road or street under the jurisdiction and maintained by a public authority and open to the public. ***We confirmed our interpretation of the law with SCDOT's Chief Legal Counsel, who stated that SCDOT has no obligation to inspect bridges on private property.***

(R. p. 172) (emphasis added).

It was the ***Respondents*** who failed to seek and obtain sound legal advice. The Chief Internal Auditor reports:

> During our discussions with Mr. Watson and Mr. Walsh, they both indicated that these inspections were in a grey area. They both indicated that the request and subsequent action by SCDOT were outside of the norm. ***We did not find where they sought the legal department's clarification on the grey area.*** Additionally, SCDOT has not verified with legal counsel whether liability exists to SCDOT.

(R. p. 173) (emphasis added).

The condescending, disparaging and false accusations against the SCDOT Commission's Chief Internal Auditor are a desperate attempt to discredit the damning evidence against them. The comments evidence a brief void of legal arguments or a comprehensive legal position. Here, it was easier to attack a person than to refute his findings.

## CONCLUSION

Respondents decided ***unilaterally*** to expend public funds for a purely private and personal purpose. The inspectors created fake bridge numbers. The City of Aiken did not request assistance from the DOT. Respondents did not believe—and could not have reasonably believed—that they were assisting the City of Aiken. The inspection and report of these three privately built and privately owned bridges in a private, gated community did not serve a public purpose. Their inspection at public expense violated South Carolina Constitution Article X, §§ 5 and 11.

Appellants are taxpayers objecting to an illegal, unconstitutional expenditure of public funds to which they have contributed. This Court should hold that possess standing to litigate this issue as taxpayers.

Second, when a government official assumes that he possesses authority to use public funds for private purposes, that is a matter of great public importance and concern sufficient to justify the Appellants' standing.

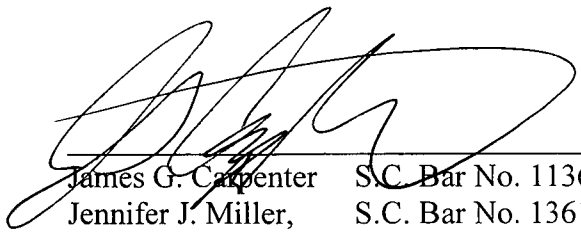
Third, judicial guidance on this issue would have great relevance to similar situations statewide.

Fourth, this kind of unconstitutional act is also capable of repetition, yet evading review, because such acts are ordinarily performed quickly and quietly, not in public. The bridge inspections were completed in one day.

Accordingly, this Court should reverse the Order and Judgment of the Circuit Court and award Appellants declaratory judgment on the merits.

Respectfully submitted,

THE CARPENTER LAW FIRM, P.C.



James G. Carpenter S.C. Bar No. 1136
Jennifer J. Miller, S.C. Bar No. 13611
L. Warren Clayton III S.C. Bar No. 72500
819 East North Street, Suite 230
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Appellants

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