THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2017-001726
Trial Court Case No. 2016-CP-40-01651

Sisters of Charity Providence Hospitals, ... Respondent,

v.

Palmetto Health, ... Appellant.

FINAL BRIEF OF RESPONDENT

James G. Carpenter, S.C. Bar No. 1136
THE CARPENTER LAW FIRM, PC
819 E. North Street
Greenville, South Carolina 29601
(864) 235-1269
(864) 331-3083 (facsimile)
Jim@CarpenterLawFirm.net
Attorney for Respondent

Other Counsel of Record:

Robert L. Widener
Celeste T. Jones
Jane W. Trinkley
MCNAIR LAW FIRM, PA
PO Box 11390
Columbia, SC 29211
(803) 799-9800 (Tel.)
(803) 753-3278 (Fax)
RWidener@McNair.net
CJones@McNair.net
JTrinkley@McNair.net
Attorneys for Appellant

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STATEMENT OF ISSUES

1. Is Appellant a "public body" as defined by FOIA: an "organization . . . supported in whole or in part by public funds, or expending public funds? S.C. Code Ann. § 30-4-20(a).
2. Are the documents requested under FOIA "public records?" (Appellant failed to raise this issue in the Circuit Court.)
3. Does Appellant have a history of complying with FOIA?

STATEMENT OF THE CASE

This is an action to enforce the Freedom of Information Act, S.C. Code Ann. § 30-4-10 ff. ("FOIA"). This matter came before the Circuit Court for a bench trial on February 7, 2017. James G. Carpenter, represented the Plaintiff-Respondent. Celeste Jones and Jane Trinkley, of the McNair Law Firm, represented the Defendant-Appellant.

The Court made findings of facts and conclusions of law, and ruled that the Appellant was a "public body" under FOIA, and that the FOIA requests should be enforced. Upon the Appellant's motion, the Court stayed the enforcement of its Order pending appeal.

The Court also awarded Plaintiff attorney's fees under FOIA.

STATEMENT OF FACTS

On February 8, 1998, Richland Memorial Hospital entered into a strategic affiliation with Baptist Healthcare System of South Carolina and formed Appellant Palmetto Health.

In 2015, Respondent served two FOIA requests for "public records," one on Charles D. Beaman, Jr., CEO of Palmetto Health (R. pp. 19-21) and one on John J. Singerling III, President of Palmetto Health Richland a/k/a Richland Memorial Hospital (R. pp. 22-24).

A few years ago, Appellant responded to two FOIA requests from the Respondent. For many years, Appellant has received millions of dollars in public funds and expended millions of dollars of public funds. For many years, Appellant has been complying with the "open meetings" provisions of FOIA.

However, in response to the FOIA requests in 2015, Appellant refused to answer and asserted that it was not a "public body" under FOIA.

Respondent filed this civil action to enforce FOIA.

ARGUMENT

I. APPELLANT IS A "PUBLIC BODY" UNDER FOIA.

Appellant Palmetto Health is a "Public Body" under FOIA, an "organization, corporation, or agency supported in whole or in part by public funds or expending public funds." S.C. Code Ann. § 30-4-20(a).

A. FOIA's Statutory Definitions are Binding.

The Supreme Court's seminal and most important case in the application of FOIA to a corporation is *Weston v Carolina Research and Development Foundation*, 303 S.C. 398, 401 S.E. 161 (1991). The Court first ruled that FOIA's statutory definitions are binding.

> It is "well settled that **a legislative body has the power** within reasonable limits **to prescribe legal definitions** of its own language, and **when an Act** passed by it **embodies the definition**, it **is generally binding upon the Courts**." *Windham v. Pace,* 192 S.C. 271, 283, 6 S.E.2d 270, 275 (1939). *See also Bell Finance v. South Carolina Dept. of Consumer Affairs,* 297 S.C. 111, 374 S.E.2d 918 (Ct.App.1988) (**statutory definitions should be followed** in interpreting the statute); *Fruehauf Trailer Co. v. South Carolina Electric Gas Co.,* 223 S.C. 320, 75 S.E.2d 688 (1953) (lawmaking body's construction of its language by means of **definitions of the terms employed should be followed in the interpretation of the act** to which it relates and is intended to apply).

Id., 303 S.C. 398, 403-404, 401 S.E. 161, 164-165 (emphasis added). The FOIA "embodies the definition" of "public body" and "public record." Accordingly, those statutory definitions are binding.

In *Weston*, the Court applied the statutory definition of a "public body" to a corporation, a Foundation affiliated with the University of South Carolina. The statutory definition at issue was "public body," defined as "any organization . . . **supported in whole or in part** by public funds or **expending** public funds." The Court found that the Foundation

was "supported . . . [at least] in part by public funds," and that the Foundation was "expending public funds." Accordingly, it was a "public body," even though it was a corporation.

The *Weston* Court distinguished the Foundation from corporations that were merely providing goods or services on an arm's length basis. An entity that provides goods or services to a public body on an arm's length basis receives public funds in exchange for those goods or services, but is not "supported" by public funds, nor is it "expending" public funds. Accordingly, it does not become a "public body" under FOIA.

This example of an arm's length, *quid pro quo* supplier was merely an analytical tool to help determine whether an organization met the **statutory** definition, an organization supported by public funds or expending public funds. It was not a judicial amendment of the statute. The Court held in *Weston* that the statutory definition controlled.

The rules of statutory construction do not allow an inquiry into the legislative intent of a statute unless there is some ambiguity. "As **always**, our inquiry into the meaning of the statute's text ceases when 'the statutory language is unambiguous and the statutory scheme is coherent and consistent.' *Barnhart v. Sigmon Coal Co.,* 534 U.S. 438, 450, 122 S.Ct. 941, 151 L.Ed.2d 908 (2002) (internal quotation marks omitted)." *Matal v. Tam*, 137 S.Ct. 1744, 1756, 198 L.Ed.2d 366, 95 USLW 4389 (2017) (emphasis added). The FOIA definition of "public body" is clear. There is nothing incoherent or inconsistent in the FOIA statutory definition.

B. FOIA's Statutory Definitions are Deliberately Broad.

FOIA is not limited to traditional governmental bodies. FOIA applies to "Public Bodies," defined as:

> any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority.

S.C. Code Ann. § 30-4-20(a) (emphasis added).

This definition of "public body" is deliberately broad and encompassing: "**any** department of the State;" "**any** state board, commission, agency, and authority;" **any** public or governmental body or political subdivision;" "**any** organization, **corporation**, or agency . . . **including** committees, subcommittees, advisory committees, **and the like** . . . by **whatever** name known, and includes **any quasi-governmental body** . . . including **without limitation** . . . ."

This definition plainly was intended to be broadly *inclusive*, not exclusive. Furthermore, that broad inclusiveness is required by the remedial nature of FOIA. "FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature." *South Carolina Dep't of Mental Health v. Hanna*, 270 S.C. 210, 241 S.E.2d 563 (1978). Courts must apply this expansive, inclusive definition of "public body."

Similarly, FOIA contains an expansive definition of "public record." "'Public record' includes **all** books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials **regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body**." S.C. Code Ann. § 30-4-

20(c)(emphasis added). The definition also contains a limited list of exceptions, primarily related to personal, private information, financial records related to the founding of banks, and security plans and devices, which can be protected from disclosure.1 Aside from these statutory exceptions, all "public records" of all "public bodies" must be disclosed under FOIA.

Appellant would have this Court craft a new definition of "public record" limited to those documents that relate solely to the public funding. Appellant argues:

> [I]f and when the receipt of public funds makes a private entity subject to FOIA, the public may follow the public money into the private entity [only] to the extent necessary to achieve the purposes and goals of FOIA, i.e., to prevent secret government activity, promote an informed electorate, and detect/prevent corruption and the expenditure of those public funds.

Appellants' Brief, p. 9. Thus, Appellant contends that the statutory definition of a "public record" is simply too broad. Appellant also calls the clear, statutory definition "a perversion of FOIA and its underlying policy." Appellants' Brief, p. 10. Through this argument,

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1 Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records, records related to registration, and circulation of library materials which contain names or other personally identifying details regarding the users of public, private, school, college, technical college, university, and state institutional libraries and library systems, supported in whole or in part by public funds or expending public funds, or records which reveal the identity of the library patron checking out or requesting an item from the library or using other library services, except nonidentifying administrative and statistical reports of registration and circulation, and other records which by law are required to be closed to the public are not considered to be made open to the public under the provisions of this act; nothing herein authorizes or requires the disclosure of those records where the public body, prior to January 20, 1987, by a favorable vote of three-fourths of the membership, taken after receipt of a written request, concluded that the public interest was best served by not disclosing them. Nothing herein authorizes or requires the disclosure of records of the Board of Financial Institutions pertaining to applications and surveys for charters and branches of banks and savings and loan associations or surveys and examinations of the institutions required to be made by law. Information relating to security plans and devices proposed, adopted, installed, or utilized by a public body, other than amounts expended for adoption, implementation, or installation of these plans and devices, is required to be closed to the public and is not considered to be made open to the public under the provisions of this act.

S.C. Code Ann. § 30-4-20(c).

Appellant invites the Court to rewrite the statutory definition of "public record." Respondent has confidence that this Court will decline Appellant's improper invitation.

The Supreme Court reasoned that FOIA's statutory definitions would impact a "public body," and that the statutory definition was not limited in the manner that Appellant advocates. "By requiring that **all meetings** be open to the public, the FOIA **prevents private oral communication** among SCASA's members. The records disclosure requirement **prevents private written communications** because **any such communications are subject to public disclosure**." *Disabato v. S.C. Ass'n. of Sch. Admin.*, 404 S.C. 433, 444, 746 S.E.2d 329, 334-35 (2013) (emphasis added).

The Court in *Disabato* reasoned that the specific statutory exceptions to FOIA prove that all "public records" of a "public body" **not** within the statutory exceptions are subject to disclosure, as FOIA rightly requires.

> We also find the FOIA does not burden substantially more speech than necessary to further those interests. The **FOIA exempts certain sensitive records** and meetings from public disclosure, and thus attempts to only implicate that speech and association **necessary to serve its purposes**. *See* S.C.Code Ann. § 30–4–40 (Supp.2011) (exempting certain records from public disclosure); S.C.Code Ann. § 30-4-70 (exempting certain meetings from the open meetings requirement). For example, "correspondence or work products of legal counsel for a public body" are **exempted** from public disclosure, S.C.Code Ann. § 30-4-40(a)(7), and "[d]iscussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee" is **exempted** from the open meetings requirement, S.C.Code Ann. § 30-4-70(a)(1).
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> Of course, **the main thrust of SCASA's challenge to the FOIA is that it applies beyond traditional governmental entities** to all public bodies, including non-profit corporations engaged in political advocacy. However, the application of the FOIA beyond traditional governmental entities is limited to **statutorily defined public bodies**, which are only those **entities supported by public funds**. *Weston,* 303 S.C. at 403, 401 S.E.2d at 164. The FOIA also serves these important governmental interests when applied to such entities due to the importance of **ensuring transparency and ac-**

> countability in the expenditure of public funds. We previously recognized in *Weston* that the FOIA is ineffectual if it does not extend to such bodies, explaining that when an entity receives public funds *en masse* or manages the expenditure of public funds, "the only way that the public can determine with specificity how those funds were spent is through access to the records and affairs of the organization receiving and spending the funds." *Id.* at 404, 401 S.E.2d at 165. If public bodies were not subject to the FOIA, governmental bodies could subvert the FOIA by funneling State funds to nonprofit corporations so that those corporations could act, outside the public's view, as proxies for the State. Moreover, South Carolina is not alone in extending its FOIA to cover entities beyond the traditional governmental entities based on the receipt of public funds.[7] Several states—Arkansas, Kansas, North Dakota, Virginia, and West Virginia—use nearly identical language in providing that any entity that receives public funds is subject to their freedom of information laws.

Id., 404 S.C. 433, 453-55, 746 S.E.2d 329, 340-41 (2013) (emphasis added). As shown herein, Appellant meets the statutory definition of "public body," and FOIA applies to the Appellant.

C. Appellant Is Supported by Public Funds.

Palmetto Health has been receiving millions of dollars in government grants each year for many years. Appellant is "supported in whole or in part by public funds." Each year, Appellant is required to file a federal tax Form 990. The IRS Instructions for Form 990 state the following with regard to line 1.e. of Part VIII, Statement of Revenue:

> Enter the total amount of **contributions** in the form of **grants** or similar payments from local, state, or federal **government sources**, as well as foreign governments. Include grant amounts from **U.S. possessions**.
>
> Whether a payment from a **governmental unit** is labeled a "grant" or a "contract" does not determine where the payment should be reported on part VIII. Rather, a grant or other payment from a governmental unit is reported here **if its primary purpose is to enable the organization to provide a service to, or maintain a facility for, the direct benefit of the public rather than to serve the direct and immediate needs of the governmental unit**. In other words, the payment is recorded on line 1e **if the general public receives the primary and direct benefit from the payment** and any benefit to the government unit is indirect and insubstantial as compared to the public benefit.

The following are examples of governmental grants and other payments that are treated as contributions and reported on line 1.e.

- **Payments** by a governmental unit **for the construction or maintenance of a library or museum facilities** open to the public.
- **Payments** by governmental unit **to nursing homes to provide care to the residents** (but not Medicare/Medicaid or similar payments made on behalf of the residents).
- **Payments** by governmental unit to child placement or child guidance organizations **under government programs to better serve children** in the community.

(R. pp. 194-95) (bold in original, bold and underlining added).

Appellant's Form 990s, filed from 2008 to 2014, reported the following on Part VIII line 1.e., entitled "government grants (contributions):"

2008: $4,183,656.
2009: $5,910,902.
2010: $5,695,423.
2011: $4,021,062.
2012: $1,861,225.
2013: $1,728,643.
2014: $3,266,825.

(R. pp. 179-192).

In addition, the Palmetto Health Consolidated Statements of Changes in Net Assets show "contributions and grants" as follows:

2009: $7,121,000.
2010: $7,727,000.
2011: $8,648,000.
2012: $8,946,000.
2013: $9,953,000.

(R. pp. 198-202).

Appellant produced two pages of information, SCPH_001750-51, including a detailed chart of the source of government grants for the year ending September 30, 2015. (R. pp. 207-208). It shows twenty-three separate government grants totaling $2,068,401.

These pages demonstrate that these government grants are for the benefit of the public and not for the benefit of the governmental unit. Appellant has received millions of dollars in government grants each year for many years. Accordingly, the Circuit Court properly found that Appellant is an "organization . . . supported in whole or in part by public funds." S.C. Code Ann. § 30-4-20(a).

D. Appellant Expends Public Funds and Manages Their Expenditure.

David F. Lee, Palmetto Health's director for financial forecasting, testified that his department provides financial record management for the expenditure of funds from governmental grants. Lee testified that Palmetto Health expends government funds and manages their expenditure:

1. "One of my responsibilities was reporting -- documentation reporting of grants and other services that we do back to the funding source."[2]

2. He and his department use a record-keeping system to "report expenditures related to this grant . . . To make sure that the grant obligations are met, . . . and the expenditures have been spent in order for us to release the funds and record them as revenue."[3]

3. The documentation provided by his department is "a requirement of the funding. When we receive the funding, we're required to keep the documentation of those expenditures and then report them back."[4]

4. He and his staff "oversee those expenditures to make sure they comply with the purposes of the grant."[5]

5. "It is fair to say that [he] manage[s] and oversee[s] the financial justifications for the expenditures."[6]

6. The Sexual Assault Nurse Examiner (or "SANE") program is a grant or program

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[2] (R. p.136, lines 2-5).
[3] (R. p.141, lines 12-22).
[4] (R. p.144, lines 16-18).
[5] (R. p. 144, lines 19-23).
[6] (R. p. 147, lines 9-11).

that has been going on since 1999.[7]

7. His department would have the responsibility for all the financial paperwork, and to make sure that the financial documentation matches up to the budget and the purposes of the grant.[8]

8. His department oversees the expenditure of the money to make sure it is spent as was intended . . . "[a]nd before we request reimbursement for it."[9]

9. His office would make sure that the expenditures are in keeping with the budget narrative and the purposes.[10]

10. Palmetto Health has been receiving money under a grant from The Health Resources and Services Administration in the United States Department of Health and Human Services from July 1, 2001 up through May 31, 2019. They receive about $1.2 million a year.[11]

11. If his office did not "meet obligations," Palmetto Health would, "at some point in time, need to refund the money to the government."[12]

12. Palmetto Health also receives a grant from the Department of Veterans' Administration, equal to the expenditures they incur, to supply the Veterans' Administration and the Veterans' Hospital with residents, and his office makes sure that the documentation is there to validate those expenditures and those actions being taken.[13]

13. Palmetto Health also receives funds from the State of South Carolina each year for the expansion of Palmetto Health's family practice residents, and his office oversees financial aspects or the accounting for the distribution of those funds, amounting to "[a]bout $800,000 a year."[14]

The Circuit Court properly found that Appellant has expended and managed the expenditure of millions of dollars of public funds for a variety of public grantors for many years. Accordingly, Appellant is a "public body" under FOIA.

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[7] (R. p.147, line 22—R. p. 148, line 3).
[8] (R. p. 148, line 21—R. p. 149, line 2).
[9] (R. p. 153, lines 8-11).
[10] (R. p. 153, lines 22-25).
[11] (R. p. 155, line 16—R. p. 156, line 16).
[12] (R. p. 157, lines 1-5).
[13] (R. p. 157, line 19—R. p. 158, line 9).
[14] (R. p. 160, line 5 – R. p. 161, line 1).

E. Appellant Has a History of Complying with FOIA.

Appellant is an affiliation of Richland Memorial Hospital and Baptist Hospital. Appellant has a history of complying with FOIA, both in requests for public records and in the open meetings law sections of FOIA. But in this case, Appellant refused these FOIA requests.

Paul Duane, Appellant's Chief Financial Officer, testified that he had been attending board meetings sixteen years, and all that time, Appellant has conducted its board meetings as public meetings giving public notice, which would be in compliance with the open meetings provisions of FOIA, S.C. Code Ann. § 30-4-60.[15] Duane testified that, from time to time, there would be a motion and a vote to go into "executive session" to discuss contracts, strategies, legal matters, and to obtain legal advice from lawyers, in accord with S.C. Code Ann. § 30-4-70.[16] The most recent executive session was within the last quarter.[17]

Appellant has responded positively to FOIA requests in the past, including FOIA requests from Respondent. Exhibits 20 and 21 are letters from March and April of 2002, in which Appellant responded to FOIA requests from Respondent and copied its outside counsel on the letter.[18] The Circuit Court properly found that Appellant rightly believed itself subject to FOIA, and conducted itself accordingly.

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[15] (R. p. 96, lines 7-19).
[16] (R. p. 97, lines 1-16).
[17] (R. p. 98, lines 2-9).
[18] (R. p. 98, line 20—R. p. 106, line 23); (R. pp. 209-219).

II. APPELLANT'S DEFENSES ARE UNAVAILING.

Appellant contends it is not a "public body" under FOIA because FOIA does not apply "to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arm's length basis." *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 404, 401 S.E.2d 161, 165 (1991). Appellant's Brief, pp. 14-19. The Circuit Court properly found that the arm's length transaction exception does not apply to Appellant.

A. The Grants Were Not Arm's Length Transactions.

The *Weston* court explained that in an arm's length transaction, a supplier of a *quid pro quo* transaction does not meet the definition of a "public body." An arm's length supplier is not "supported in whole or in part by public funds," nor is it "expending public funds."

> In that situation, there is an **exchange** of money for identifiable goods or services and access to the public body's records would show how the money was spent. However, when a block of public funds is diverted *en masse* from a public body to a related organization, or when the related organization undertakes **the management of the expenditure of public funds**, the only way that the public can determine with specificity how those funds were spent is through access to the records and affairs of the organization receiving and spending the funds.

Id., 303 S.C. 398, 404, 401 S.E.2d 161, 165 (1991). Appellant contends it engaged in arm's length transactions. It did not. There was no "exchange" of money for goods and services. *Id.* The entity providing the public funds received no benefit in exchange for the funds. The money was grants, not purchases. Appellant managed the "expenditure of public funds." *Id.*

The *Weston* Court described four separate events that caused the Foundation to meet the statutory definition of "public body," and subjected the Foundation to FOIA. In

the "second transaction," the Foundation received $16,300,000 in federal grant money in connection with the construction of the Swearingen Engineering Center. The Foundation **managed the expenditure** of these funds in the construction of the engineering center. In so doing, the Foundation "received support from public funds and expended public funds." *Id.* 303 S.C. at 402, 401 S.E.2d at 163.

Just as the Foundation in *Weston* received and expended funds for the construction of an engineering center, so Appellant received and expended funds for various purposes, and managed the expenditure of such funds, thereby meeting the statutory definition of "public body." In *Weston*, the Court ruled, "**Each** of the above transactions **alone** would bring the Foundation within the FOIA's definition of 'public body.'" *Id.* 303 S.C. at 403, 401 S.E.2d at 164 (emphasis added).

In *Weston*, the Foundation argued "that the grant did not support the Foundation, but that the money went towards the cost of constructing the Swearingen Engineering Center." *Id.* 303 S.C. at 402, 401 S.E.2d at 163. The Supreme Court ruled, "[T]he Foundation clearly **directed the expenditure of the funds** it received." *Id.* (emphasis added). Thereby, it met the statutory definition of "expending public funds."

The Foundation made a similar argument regarding the receipt of $2 million from the City of Columbia and $3.75 million from Richland County to help develop the Koger Center. The Foundation argued that those funds were given to it "pursuant to a contractual agreement, and that once the City and County transferred the property and performance of their contractual agreement, the expenditure of public funds ended." *Id.* 303 S.C. at 402, 401 S.E.2d at 164. The Supreme Court rejected this argument as well. "This argument is not persuasive. Funds from the public coffer were given to the Foundation which **managed**

the expenditure of the funds and the development of the real estate. By these actions, the Foundation **received support from and expended public funds**." *Id.* 303 S.C. at 402, 401 S.E.2d at 164 (emphasis added).

The Foundation's argument in *Weston* (that the Court rejected) is the same argument Appellant makes. Appellant has received millions of dollars in public grants for many years, expended the public funds, and managed the expenditure of the funds, thereby meeting the definition of a "public body" and subjecting the Appellant to FOIA.

In the *Weston* case, all the transactions were in the past; yet the Court ruled that these transactions made the Foundation subject to FOIA in the present. Similarly, Appellant has been receiving millions of dollars in government grants from state and federal sources, each year since 1999.

Appellant contends that these grants are for a particular purpose and are not transferred *en masse*, but the Circuit Court properly found that the beneficiaries of these grants are the public at large, and that no benefit goes back to the granting authority. The grants are not a *quid pro quo*. In the language of *Weston*, they are not "an **exchange** of money for identifiable goods or services." *Id.*, 303 S.C. 398, 404, 401 S.E.2d 161, 165 (1991). They are not arm's length transactions, by which a supplier sells goods or services to the government. Instead, they represent the expenditure of public funds.

B. *Disabato* Did Not Change the Law.

Appellant argued that *Disabato v. S.C. Ass'n. of Sch. Admin.*, 404 S.C. 433, 746 S.E.2d 329 (2013), represented a "new holding" from the Supreme Court that hospitals are exempt from FOIA, even if they met the definition of a "public body." Appellant's argument is not well founded. The plain statutory language of FOIA provides no support for

it.

Disabato addressed the policies of FOIA competing with the First Amendment rights of school administrators to be a part of a school administrators' advocacy group, supported by public funds. The Supreme Court ruled that FOIA would affect First Amendment rights only in a minor way, because FOIA applies only to "public bodies." At the end of a lengthy opinion, the Court offered a general summary of the law:

> The FOIA would not apply to a private entity that receives public funds for a specific purpose. For example, the FOIA would not apply to a private organization that receives public funds to operate a childcare center or **healthcare clinic**. However, the FOIA does apply to any private organization that is generally supported by public funds.

404 S.C. 433, 456, 746 S.E.2d 329, 341 (2013) (emphasis added)

The remark about a "healthcare clinic" was not a holding of the Court (there was no healthcare clinic involved), and it did not represent any change in statutory definitions. *Disabato* does not mean that all hospitals are exempt from FOIA. The clause upon which Appellant relies begins with the introductory phrase, "For example." This generalization does not break any new ground, it does not change the FOIA statutory language, nor does it change the definition of "public body." The statute still holds that "public body" means . . . **any organization**, corporation, or agency **supported in whole or in part by public funds or expending public funds**. S.C. Code Ann. § 30-4-20(a) (emphasis added).

FOIA clearly lists those "Matters exempt from disclosure." Under S.C. Code Section 30-4-40, the Legislature provided the exclusive list of exceptions to the public disclosure requirements. Nothing in Section 30-4-40 says "hospitals" are exempt from FOIA. Appellant has cited no language in FOIA that exempts "hospitals" from FOIA.

To read *Disabato* as Appellant has suggested would mean that the Supreme Court,

in a general summary or restating of the statutory definition, intended to create a new judicial exemption to FOIA for a healthcare clinic that is not in the plain language of the Act. Further, Appellant is a hospital, not a healthcare clinic; accordingly, even if the Supreme Court had intended to create a new common law exemption to FOIA, it did not do so for hospitals.

A hospital can be a "public body" just like any organization supported by public funds. *See Campbell v. Marion Cnty. Hosp. Dist., d/b/a the Mullins Hosp.*, 354 S.C. 274, 580 S.E.2d 163 (2003). Appellant is a combination of public and private organizations, "supported in whole or in part by public funds, or expending public funds." S.C. Code Ann. § 30-4-20(a)

C. The *Domainsnewmedia* Case is Distinguishable.

In *Domainsnewmedia.Com, LLC, v. Hilton Head Island-Bluffton Chamber of Commerce,* the Supreme Court ruled that the "A-Tax statute," S.C. Code Ann. §§ 6-4-5 to -35, created an implied exception to FOIA because of the statutory requirements of public disclosure unique to A-Tax funds. *Id.,* 423 S.C. 295, 814 S.E.2d 513 (2018). The Court ruled that FOIA was a general statute, and the A-Tax statute was a specific statute, and its public disclosure and public oversight provision controlled over the general requirements of FOIA. 423 S.C. at 304, 814 S.E.2d at 518. The Court asserted that it was "remaining faithful to this Court's decisional framework in *Weston*," *Id,* n. 7. The Court ruled, "[T]he General Assembly did not intend the Chamber to be considered a public body for FOIA purposes based upon its receipt and expenditure of accommodation tax funds" (emphasis added). 423 S.C. at 297, 814 S.E.2d at 514. This conclusion was based upon a comparison of FOIA and the A-Tax statute. The case at bar contains no subsequent statute that would

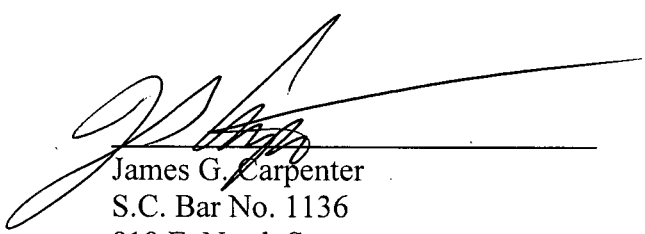
modify FOIA for these circumstances.

CONCLUSION

Based upon trial testimony and exhibits, the Circuit Court properly found that Appellant is a "public body." Appellant violated FOIA by its failure to produce the requested "public records." Accordingly, Respondent prays the Court to Affirm the Judgment of the Circuit Court, and:

1. Declare that Appellant is a "public body" under FOIA;
2. Declare that Respondent's requests are deemed approved;
3. Enjoin Appellant to provide Respondent a copy of all requested "public records;"
4. Grant Respondent its attorneys' fees and costs pursuant to S.C. Code Ann. Section 30-4-100(b); and
5. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



James G. Carpenter
S.C. Bar No. 1136
819 E. North Street
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorney for Respondent

CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

Respectfully submitted,
THE CARPENTER LAW FIRM, PC

James C. Carpenter
S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
(864) 235-1269
Attorney for the Respondents