THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Hon. DeAndrea Gist Benjamin, Circuit Court Judge

C.A. No.: 2017-CP-40-06976
Appellate Case No. 2019-001231

Jefferson Davis, Jr. .....Appellant,

v.

South Carolina Educational Credit for Exceptional Needs Children Fund, ...Respondent.

RECORD ON APPEAL

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jeff@apogeetax.com
Appellant

Geoffrey Kelly Chambers, Esq.
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Green Cove Springs, FL 32043-3443
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g.k.chambers@gmail.com
Attorney for Respondent

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ELECTRONICALLY FILED - 2017 Nov 07 8:48 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304748

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP2304748

Jefferson Davis Jr		**Educational Credit For Exceptional Needs Children Fund South**	
PLAINTIFF(S)		**DEFENDANT(S)**	

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

2755

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Jefferson Davis Jr 403 Mccarter Avenue Greenville, SC 29615

Geoffrey Kelly Chambers 403 Holly Berry Lane Green Cove Springs, FL 32043-3

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This matter comes before the Court upon the Defendant's Motion to Dismiss. At the call of the Case, the attorney for Defendant withdrew his Motion to Dismiss under Rule 12(b)(6) and the parties consented to the case being transferred to Richland County as the Principal Place of Business for the Defendant. Therefore, venue is transferred to Richland County.

ELECTRONICALLY FILED - 2017 Nov 07 8:48 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304748

ELECTRONICALLY FILED - 2017 Nov 07 8:48 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304748

Greenville Common Pleas

Case Caption: Jefferson Davis Jr vs. Educational Credit For Exceptional Needs Children Fund South

Case Number: 2017CP2304748

Type: Order/Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4006976

Jefferson Davis, Jr
PLAINTIFF(S)

S C Educational Credit For Exceptional Needs Children Fund
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiff's Motion for Summary Judgment filed on 01/24/2018 is Denied.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/16/2018 .

Jefferson Davis, Jr for Jefferson Davis, Jr
Jefferson Davis, Jr for Jefferson Davis, Jr

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2018 May 16 11:47 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2018 May 16 11:47 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

ELECTRONICALLY FILED - 2018 May 16 11:47 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

Richland Common Pleas

Case Caption: Jefferson Davis Jr vs S C Educational Credit For Exceptional Needs Children Fund

Case Number: 2017CP4006976

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4006976

Jefferson Davis, Jr
PLAINTIFF(S)

S C Educational Credit For Exceptional Needs Children Fund
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

See Page 2

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☑ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/09/2018 .

Jefferson Davis, Jr for Jefferson Davis, Jr
Jefferson Davis, Jr for Jefferson Davis, Jr

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2018 Aug 09 4:08 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

On August 9, 2018, the Court entertained Defendant's Motion to Dismiss and Motion for Protection of Discovery and Plaintiff's Motion to Compel.

First, Defendant's Motion to Dismiss was filed pursuant to Rule 12(b)(6), SCRCP and filed well after the Answer was filed. Based on Rule 12(h)(2) such motions are limited to specific times and this Motion does not fall within those instances. Further, these matters would be more appropriately considered in a Motion for Summary Judgment or Motion on Judgment on the Pleadings. Therefore, Defendant's Motion is denied.

The parties also had a discovery issue as set out in Plaintiff's Motion to Compel and Defendant's Motion for Protection for certain information. Further, Defendant's counsel advised that he thought that discovery responses had been sent to the Plaintiff. In resolving this issue, the Court orders that Defendant provided responses to all discovery within 5 days which would include any objections to the discovery and the basis for said discovery.

It is so Ordered.

ELECTRONICALLY FILED - 2018 Aug 09 4:08 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

ELECTRONICALLY FILED - 2018 Aug 09 4:08 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

Richland Common Pleas

Case Caption: Jefferson Davis Jr vs S C Educational Credit For Exceptional Needs Children Fund

Case Number: 2017CP4006976

Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4006976

Jefferson Davis, Jr
PLAINTIFF(S)

S C Educational Credit For Exceptional Needs Children Fund
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Matter taken under advisement

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/08/2018 .

Jefferson Davis, Jr for Jefferson Davis, Jr
Jefferson Davis, Jr for Jefferson Davis, Jr

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2018 Oct 09 9:14 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2018 Oct 09 9:14 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

ELECTRONICALLY FILED - 2018 Oct 09 9:14 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

Richland Common Pleas

Case Caption: Jefferson Davis Jr vs S C Educational Credit For Exceptional Needs Children Fund

Case Number: 2017CP4006976

Type: Order/Electronic Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4006976

Jefferson Davis, Jr
PLAINTIFF(S)

S C Educational Credit For Exceptional Needs Children Fund
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

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☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☑ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Plaintiff's Renewed Motion for Summary Judgment, Plaintiff's Motion to Compel Discovery and Plaintiff's Motion for Contempt are denied. Defendant's Motion for Judgment on the Pleadings and Defendant's Motion for Summary Judgment are granted.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/21/2018 .

Jefferson Davis, Jr for Jefferson Davis, Jr
Jefferson Davis, Jr for Jefferson Davis, Jr

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2018 Dec 21 12:53 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2018 Dec 21 12:53 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

ELECTRONICALLY FILED - 2018 Dec 21 12:53 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

Richland Common Pleas

Case Caption: Jefferson Davis Jr vs S C Educational Credit For Exceptional Needs Children Fund

Case Number: 2017CP4006976

Type: Order/Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

ELECTRONICALLY FILED - 2018 Dec 21 12:55 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Civil Action No. 2017-CP-40-06976
Jefferson Davis, Jr.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**ORDER**
	)	
South Carolina Educational Credit for Exceptional Needs Child Fund	)	
	)	
Defendant.	)	
	)	
_____	)	

This matter came before the court on October 3, 2018 pursuant to Plaintiff's Renewed Motion for Summary Judgment, Plaintiff's Motion to Compel Discovery, Plaintiff's Motion for Contempt, Defendant's Motion for Judgment on the Pleadings and Defendant's Motion for Summary Judgment.

BRIEF HISTORY

Plaintiff filed a lawsuit requesting compliance with the Freedom of Information Act based on several requests for information sent to the Defendant.

The Defendant is a 501(c)3 which grants scholarships to special needs students who may be better helped by the services of a private institution. The program was created by a budget proviso which outlined reporting requirements for the Defendant. Funding for the Defendant comes from private donations for which the donor receives a tax credit on their South Carolina taxes.

ELECTRONICALLY FILED - 2018 Dec 21 12:55 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STANDARD OF REVIEW

Any party may move for a judgment on the pleadings under Rule 12(C), SCRCP. "A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint, which if resolved in favor of the plaintiff, would entitle him to judgment." Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991). "If, on a motion for judgment on the pleadings, matters outside of the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." Brown v. James, 389 S.C. 41, 47, 697 S.E.2d 604, 607 (Ct. App. 2010).

Summary judgment is appropriate when there is no genuine issue of material fact such that the nonmoving party must prevail as a matter of law. Rule 56(C), SCRCP. "When determining if any triable issue of fact exist, the evidence and all reasonable inferences must be viewed in a light most favorable to the nonmoving party." Fleming v. Rose, 350 S.C. 448, 493, 567 S.E.2d 857, 860 (2002).

LEGAL ANALYSIS

Public Bodies for purposes of application of the FOIA are defined in South Carolina Code § 30-4-20(a):

> "Public body" means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in § 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. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter. South Carolina Code Annotated 1976 § 30-4-20(a)

ELECTRONICALLY FILED - 2018 Dec 21 12:55 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

South Carolina Educational Credit for Exceptional Needs Children Fund is statutorily defined as a corporation that does not receive, have or spend public funds.

On May 23, 2018, the South Carolina Supreme Court held that the legislature did not intend FOIA to apply where a more specific reporting statute applies. DomainsNewMedia.com, LLC, v. Hilton Head Island-Bluffton Chamber of Commerce, 423 S.C. 295, 814 S.E.2D 513 (2018).

In DomainsNewMedia.com, the court held that the Chamber of Commerce was not subject to FOIA, that the governmental funds they received were subject to "narrow and targeted" reporting requirements outlined in two different statutes, and that because of this specialized reporting, the more general FOIA requirements did not apply.

Educational Credit for Exceptional Needs Children Fund registers with the Secretary of State as a public charity under Section 509 and reports to the Secretary of State as contemplated for entities not subject to FOIA. The funding is not state funding, but rather private donations. Exceptional SC receives no support from state funding. The State has provided an avenue for Exceptional SC to exist, and for that reason this program is highly regulated and reporting intensive, like the Chamber of Commerce.

On May 18, 2018, the Governor of South Carolina signed H. 4077 into law. South Carolina Code, Annotated 1976 Title 12, Chapter 6, Section 3790(B)(4):

> In concert with the public charity directors, the department shall administer the public charity including, but not limited to, the keeping of records, the management of accounts, and disbursement of the grants awarded pursuant to this section. The public charity may expend up to two percent of the fund for administration and related costs. The department and the public charity may not expend public funds to administer the program. Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the Department of Revenue or the public charity in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act. Personally identifiable information, as described in the Family Educational Rights and Privacy Act and individual health records, or the medical or wellness needs of children applying for or receiving grants

ELECTRONICALLY FILED - 2018 Dec 21 12:55 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

> must remain confidential and is not subject to disclosure pursuant to the Freedom of Information Act. [emphasis added]

This new bill is explicit instruction from the legislature that FOIA does not apply to the normal operations of the Defendant. Likewise, according to the South Carolina Freedom of Information Act, public meetings in which applications for scholarships are reviewed and scholarships are awarded are exempt from FOIA disclosure and can be closed meetings.

CONCLUSION

This Court finds there is no genuine issue of material fact, that Defendant, South Carolina Educational Credit for Exceptional Needs Children Fund, is not a "public body" as defined by South Carolina Freedom of Information Act. Therefore, FOIA does not apply to the defendant and the Defendant is entitled to summary judgment as a matter of law.

For the foregoing reasons, Plaintiff's Renewed Motion for Summary Judgment, Plaintiff's Motion to Compel Discovery and Plaintiff's Motion for Contempt are denied. Defendant's Motion for Judgment on the Pleadings and Defendant's Motion for Summary Judgment are granted.

AND IT IS SO ORDERED.

s/ The Honorable DeAndrea Gist Benjamin
Presiding Judge

Columbia, South Carolina
December 21, 2018

ELECTRONICALLY FILED - 2018 Dec 21 12:55 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

Richland Common Pleas

Case Caption: Jefferson Davis Jr vs S C Educational Credit For Exceptional Needs Children Fund

Case Number: 2017CP4006976

Type: Order/Other

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2018-12-21 12:41:35 page 5 of 5

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4006976

Jefferson Davis, Jr
PLAINTIFF(S)

S C Educational Credit For Exceptional Needs Children Fund
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiff's Motion for Reconsideration is denied.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/08/2019 .

Jefferson Davis, Jr for Jefferson Davis, Jr
Jefferson Davis, Jr for Jefferson Davis, Jr

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 Jul 08 12:14 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2019 Jul 08 12:14 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

ELECTRONICALLY FILED - 2019 Jul 08 12:14 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

Richland Common Pleas

Case Caption: Jefferson Davis Jr vs S C Educational Credit For Exceptional Needs Children Fund

Case Number: 2017CP4006976

Type: Order/Electronic Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
JEFFERSON DAVIS, JR.)
Plaintiff(s))
)
vs.)
SOUTH CAROLINA EDUCATIONAL CREDIT FOR)
EXCEPTIONAL NEEDS CHILDREN FUND)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017 -CP-23- 04748

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE, SC
2017 JUL 31 PM 1:

Submitted By: Jefferson Davis, Jr., Pro Se
Address: 403 McCarter Avenue
Greenville, SC 29615

SC Bar #: N/A - Pro Se
Telephone #: 843-901-8036 (cell)
Fax #:
Other:
E-mail: jdavis@apogeetax.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

☐ **JURY TRIAL** demanded in complaint. ☒ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199)_____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

_____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

_____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

_____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

_____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699) FOIA Freedom of Information Act
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____ **Date:** 7/31/2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS C.A. NO. 2017-CP-23-04748
Jefferson Davis, Jr., Plaintiff, vs. South Carolina Educational Credit for Exceptional Needs Children Fund, Defendant.	)	**SUMMONS**

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE COUNTY
2017 JUL 31 PM 1:34

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com

PLAINTIFF AND TAXPAYER

July 31, 2017
Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS C.A. NO. 2017-CP-23-04748
Jefferson Davis, Jr., Plaintiff, vs. South Carolina Educational Credit for Exceptional Needs Children Fund, Defendant.	)	**COMPLAINT FOR FOIA ENFORCEMENT**

2017 JUL 31 PM 1:34
GREENVILLE COUNTY CLERK OF COURT

Jefferson Davis, Jr. (herein "Plaintiff") states his complaint as follows:

1. Plaintiff Jefferson Davis, Jr. is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina.

2. Defendant South Carolina Educational Credit for Exceptional Needs Children Fund is a public body of the State of South Carolina, operating in South Carolina with no known principal place of business, only a post office box with the address: P.O. Box 211847, Columbia, SC 29221.

3. As a public body, Defendant is subject to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 *et seq.* ("FOIA")

4. This Court has jurisdiction under FOIA.

5. Venue is properly placed in Greenville County. Plaintiff is a resident of Greenville County and upon information and belief, Defendant serves more K-12 students in Greenville County than any other county in the State of South Carolina.

FOIA VIOLATION #1 - Documents

6. On or about July 10, 2017, Plaintiff served a FOIA request on the Defendant via U.S. Mail, which was received shortly thereafter (Exhibit A).

7. Also on or about July 10, 2017, Plaintiff served the same FOIA request on the Defendant via Email, which was received shortly thereafter (Exhibit B).

8. The Dependent failed to respond to the July 10, 2017 FOIA request.

9. FOIA requires a "public body," in response to a request, to "notify" the Plaintiff "of its determination and the reasons for it" within 10 business days. S.C. Code Ann. § 30-4-30(c) (effective 5/19/2017).

10. More than 10 days passed, excluding weekends and holidays, but Defendants failed to respond to the Plaintiff's request in violation of § 30-4-30(c) (effective 5/19/2017).

11. As a result of the foregoing failure, Plaintiff's "request must be considered approved." *Id.*

FOIA VIOLATION #2 – Meeting Notifications

12. On or about December 14, 2016, Plaintiff served a FOIA request on the Defendant via U.S. Mail, which was received shortly thereafter (Exhibit C).

13. Also on or about December 14, 2016, Plaintiff served the same FOIA request on the Defendant via Email, which was received shortly thereafter (Exhibit D).

14. The Dependent failed to respond to the December 14, 2016 request.

15. FOIA requires "All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings." S.C. Code Ann. § 30-4-80(e)

16. FOIA requires a "public body," in response to a request, to "notify" the Plaintiff "of its determination and the reasons therefor" within 15 business days. S.C. Code Ann. § 30-4-30(c) (pre 5/19/2017).

17. More than 15 days passed, excluding weekends and holidays, but Defendants failed to respond to the Plaintiff's request in violation of § 30-4-30(c) (pre 5/19/2017).

18. As a result of the foregoing failure, Plaintiff's "request must be considered approved." *Id.*

19. Plaintiff has received no notification from Defendant of any meetings.

20. Upon information and belief, meetings requiring notice to Plaintiff have in fact occurred.

21. FOIA states:

> (a) **Any citizen of the State** may apply to the circuit court for either or both a **declaratory judgment and injunctive relief** to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.
>
> S.C. Code Ann. § 30-4-100 (emphasis added).

WHEREFORE, Plaintiff prays the Court for an Order:

1. Declaring that the Defendant has violated FOIA;
2. Declaring that the request are deemed approved;
3. Enjoining Defendant to provide Plaintiff a copy of all requested documents.
4. Enjoining Defendant to provide Plaintiff notice of all future meetings as well as meeting minutes, notes, and board actions from all previous meetings.
5. Awarding the Plaintiff costs of litigation (including any third party attorney fees) pursuant to S.C. Code Ann. § 30-4-100(b); and
6. Granting Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted,

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com

PLAINTIFF

July 31, 2017
Greenville, South Carolina

EXHIBIT A

JULY 10, 2017

FOIA VIA US MAIL

July 10, 2017

VIA US MAIL & email (tep@sctech.org)

ECENC Fund (*aka Exceptional SC*)
Attn: Tom Persons, Chairman
P.O. Box 211847
Columbia, SC 29221

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Mr. Persons:

Pursuant to the South Carolina Freedom of Information Act, § 30-4, and 5 U.S.C. § 552, I request that you email me a copy of the following public records:

- **2016-2017 DOR "report" / CPA audit regarding the ECENC Fund.**

Section (B)(5) of the 2016-2017 Proviso 109.15 requires a Department of Revenue "report" (including an audit) by June 30th. I presume you have been provided a copy via email and can easily forward me the requested document.

This request for disclosure of these public records is primarily to benefit the general public; I request that you waive the fees, if any, pursuant to§ 30-4-30(b). I will pay the reasonable and direct costs of locating and reproducing the requested public records to the extent required by § 30-4-30(b). However, I request prior notice should you determine that such costs will exceed $10.

Best,

Jeff Davis, *JD, MBA, CPA*
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com

cc Geoffrey K. Chambers, Esq. (*geoffrey@CPERLGroup.com*)

Jeff Davis, *JD, MBA, CPA*
403 McCarter Avenue
Greenville, SC 29615

PRIVATE & CONFIDENTIAL

ECENC Fund (*aka Exceptional SC*)
Attn: Tom Persons, *Chairman*
P.O. Box 211847
Columbia, SC 29221

EXHIBIT B

JULY 10, 2017

FOIA VIA EMAIL

Gmail by Google

Jeff Davis <jdavis@apogeetax.com>

ECENC - FOIA Request

1 message

Jeff Davis <jdavis@apogeetax.com> Mon, Jul 10, 2017 at 4:19 PM
To: Tom Persons <tepsr@att.net>, Tom Persons <tep@sctech.org>
Cc: geoffrey@cperlgroup.com, Administrator@exceptionalsc.org

Please Confirm Receipt

Dear Mr. Persons,

Please see the attached letter that was mailed to you today.

Best,

Jeff Davis

Jeff Davis, JD, MBA, CPA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jdavis@apogeetax.com*

Attention: The information contained in this E-mail message is attorney privileged and confidential information intended only for the use of the individual(s) named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please contact the sender by reply E-mail and destroy all copies of the original message. Active and licensed attorney and CPA in Georgia (not SC). Thank you.

2017-07-10 - ECENC FOIA request.pdf
531K

EXHIBIT C

DECEMBER 14, 2016

FOIA VIA US MAIL

December 14th, 2016

VIA US MAIL & email (tep@sctech.org)

ECENC Fund (*aka Exceptional SC*)
Attn: Tom Persons, Chairman
P.O. Box 211847
Columbia, SC 29221

RE: ECENC Fund Meeting Notification Request

Dear Mr. Persons:

For your reference, below is § 30-4-80 (e) of the South Carolina Freedom of Information Act. The italicized portion is from the Public Official's Guide to Compliance with South Carolina's Freedom of Information Act (August 2014).

Here's where some public bodies cross swords with citizens and the press. This area of the law requires that public bodies notify those who ask for notification and that they record, in their minutes, that such efforts were made and how they were made. Public bodies that ignore or forget this requirement can expect to hear from aggravated citizens and reporters.

(e) All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

Pursuant to the above, I hereby request such notifications of any and all meetings involving the ECENC Fund. I request such notifications to be made as soon as possible and as required by law via email, phone and mail. Contact information below.

Thank you,

Jeff Davis, *JD, MBA, CPA*
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com & *jdavis@wtcarolina.org*

Jeff Davis, *JD, MBA, CPA*
403 McCarter Avenue
Greenville, SC 29615

ECENC Fund (aka Exceptional SC)
Attn: Tom Persons, Chairman
P.O. Box 211847
Columbia, SC 29221

2016-12-14 - Notify

EXHIBIT D

DECEMBER 14, 2016

FOIA VIA EMAIL

Gmail by Google

Jeff Davis <jdavis@wtcarolina.org>

ECENC Fund FOIA Request (#1 documents & #2 meetings)

Jeff Davis <jdavis@wtcarolina.org> Wed, Dec 14, 2016 at 8:25 AM
To: tep@sctech.org
Cc: Tom Persons <tepsr@att.net>, "Michael Acquilano Esq." <macquilano@catholic-doc.org>, Betsy Fanning <bfanning@tridentacademy.com>, Edward Earwood <eearwood@christianeducation.org>, "Dr. Spencer A. Jordan" <sjordan@lmaedu.org>, Tom Davis <tdavis@harveyandbattey.com>

Dear Mr. Persons,

The children of SC are hurting. I hope you of all people would work cooperatively in order to help our K-12 kids with "special needs". I implore you not to be the roadblock to innovation and improvement in education now that YOU are in power.

Please find attached 2 FOIA requests that were also mailed to you this morning:

#1. FOIA request for various ECENC Fund documentation.

#2. FOIA request for notification of meeting of the ECENC Fund.

Please confirm receipt.

Best,

Jeff Davis, JD, MBA, CPA
843-901-8036 (cell)

Working Together Carolina, Inc.
843-901-8036 (cell) | *jdavis@wtcarolina.org*
Website: *www.WorkingTogetherCarolina.org*

IMPORTANT NOTICE AND DISCLAIMER: Working Together Carolina, Inc. is a newly formed South Carolina nonprofit (*501(c)(3) application in process*) *which will serve as an independent and nonpartisan alternative to Access Opportunity South Carolina (aka IndependentED and now aka ECENC.org)*. The mission of Working Together Carolina is to assist schools, parents, donors, Scholarship Funding Organizations and any other interested parties in understanding and implementing South Carolina's Educational Credit for Exceptional Needs Children (ECENC). All information provided is for general informational purposes only, are the personal opinion of the writer, and should not be construed as legal or tax advice. Working Together Carolina does not provide legal or tax advice. All parties should consult their tax adviser or attorney.

2 attachments

2016-12-14 - ECENC FOIA for documents.pdf
1100K

2016-12-14 - ECENC FOIA re meetings.pdf
646K

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff v. South Carolina Educational Credit for Exceptional Needs Children Fund Defendant	)	Case No.: 2017-CP-40-06976 Answer

RICHLAND COUNTY
FILED
2017 NOV 20 PM 2:33
JEANETTE W. McBRIDE
C.C.P. & G.S.

Defendant South Carolina Educational Credit for Exceptional Needs Children Fund hereby answers the complaint of Jefferson Davis, Jr. and would show this Honorable Court as follows:

1. Defendant South Carolina Educational Credit for Exceptional Needs Children Fund would crave reference to the public record and neither admits nor denies the allegations of paragraph 1 of the complaint for lack of sufficient information to form a belief.
2. Admitted in part. Denied in part. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegation that it is a public body. South Carolina Educational Credit for Exceptional Needs Children admits that it has a post office box in Columbia, South Carolina. All other allegations of paragraph 2 are denied.
3. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of paragraph 3 of the Complaint.
4. South Carolina Educational Credit for Exceptional Needs Children Fund would crave reference to applicable law.
5. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of Paragraph 5.
6. South Carolina Educational Credit for Exceptional Needs Children Fund admits the allegations of paragraph 6.
7. South Carolina Educational Credit for Exceptional Needs Children Fund admits the allegations of paragraph 7.

8. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of paragraph 8.
9. South Carolina Educational Credit for Exceptional Needs Children Fund would crave reference to applicable law and neither admits nor denies the allegations of paragraph 9.
10. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of paragraph 10.
11. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of paragraph 11.
12. South Carolina Educational Credit for Exceptional Needs Children Fund admits the allegations of paragraph 12.
13. South Carolina Educational Credit for Exceptional Needs Children Fund admits the allegations of paragraph 13.
14. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of paragraph 14.
15. South Carolina Educational Credit for Exceptional Needs Children Fund neither admits nor denies the allegations of paragraph 15, but would crave reference to applicable law.
16. South Carolina Educational Credit for Exceptional Needs Children Fund neither admits nor denies the allegations of paragraph 16, but would crave reference to applicable law.
17. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of paragraph 17.
18. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of paragraph 18.
19. South Carolina Educational Credit for Exceptional Needs Children Fund admits the allegations of paragraph 19.
20. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of paragraph 20.
21. The allegations of paragraph 21 are neither admitted or denied. South Carolina Educational Credit for Exceptional Needs Children Fund would crave reference to applicable law.
22. The relief sought is denied.

(Signature on next page)

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 17th day of November, 2017.
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff v. South Carolina Educational Credit for Exceptional Needs Children Fund Defendant	)	Case No.: 2017-CP-40-06976 Certificate of Service

RICHLAND COUNTY
FILED
2017 NOV 20 PM 2:33
JEANETTE W. McBRIDE
C.C.P. & G.S.

On November 17, 2017, the Answer to the Summons and Complaint was served upon Jefferson Davis by placing a copy in the US Mail addressed to 403 McCarter Ave., Greenville, SC 29615

Respectfully Submitted:

Geoffrey K. Chandler
Marci Nations

Marci Nations

This 17th day of November, 2017.
Columbia, South Carolina

Protection, Environmental, and Regulatory
Law Group, LLC

From the desk of:
Geoffrey K. Chambers
(864) 508-0899
geoffrey@CPERLGroup.com

November 17, 2017

Mr. Jefferson Davis
403 McCarter Ave
Greenville, SC 29615

Re: Jefferson Davis v. ECENCF Case No. 2017-CP-40-6976

Dear Mr. Davis,

Please find enclosed a copy of the answer to your Summons and Complaint filed on behalf of ECENCF.

Sincerely,

Geoffrey K. Chambers, Esq.

CC: Greenville County Clerk of Court
(Via Electronic Filing)

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C.A. NO. 2017-CP-40-06976
Jefferson Davis, Jr., Plaintiff, vs. South Carolina Educational Credit for Exceptional Needs Children Fund, Defendant.	**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

RICHLAND COUNTY
FILED
2018 JAN 24 PM 3:5
JEANNETTE W. McBRIDE
C.C.P. & G.S.

TO THE DEFENDANT ABOVE-NAMED:

Plaintiff, Jefferson Davis, Jr., moves pursuant to South Carolina Rule of Civil Procedure 56, for this Court to grant summary judgment in favor of Plaintiff on all causes of action. There is no genuine issue of material fact and it is clear that Defendant, South Carolina Educational Credit for Exceptional Needs Children Fund, is in fact a "public body" and must comply with the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 et seq. ("FOIA"). Accordingly, Plaintiff is entitled to summary judgment as a matter of law.

STATEMENT OF THE CASE

Plaintiff Jefferson Davis, Jr., (hereinafter "Davis" or "Plaintiff") is a citizen, taxpayer, and registered elector of Greenville County, South Carolina.

Defendant South Carolina Educational Credit for Exceptional Needs Children Fund (hereinafter "ECENC Fund" or "Defendant") is a nonprofit entity formed under the laws of South Carolina.

This Court has jurisdiction under FOIA.

This case is relatively straightforward and simple. Defendant has failed to respond or comply with certain FOIA requests. Defendant claims it is not a "public body" under FOIA and thus does not have to respond to any FOIA requests. Given the substantial government support, specifically through the South Carolina Department of Revenue, and the controlling case law, Defendant is clearly a "public body" subject to FOIA and as such must respond to said requests.

STANDARD OF REVIEW

Summary Judgment is appropriate when it is clear that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 285, 543 S.E.2d 563, 566 (Ct. App. 1999.) In the present case, there is no genuine issue of material fact and the evidence is clear that Defendant is a "public body" subject to FOIA. Summary Judgement is appropriate in this case.

PROCEDURAL HISTORY

After Defendant refused to comply with certain FOIA requests and claimed it was not a "public body" subject to FOIA, Plaintiff filed his Summons and Complaint on July 31, 2017 in Greenville County. On August 31, 2017, Defendant filed a 12(b)(3) Motion to Dismiss based on improper venue[1]. On November 6, 2017, a hearing was held in Greenville on Defendants Motion to Dismiss and as a result venue was transferred to Richland County. On November 20, 2017, Defendant filed its Answer. Plaintiff now files this Motion for Summary Judgment on January 24, 2018.

[1] Defendant also included a 12(b)(6) motion to dismiss which it later withdrew.

STATEMENT OF FACTS – Generally surrounding FOIA Violations

FOIA VIOLATION #1 - Documents

1. On or about July 10, 2017, Plaintiff served a FOIA request on the Defendant via U.S. Mail, which was received shortly thereafter (See Complaint, Exhibit A). ADMITTED, See Defendant Answer #6.

2. Also on or about July 10, 2017, Plaintiff served the same FOIA request on the Defendant via Email, which was received shortly thereafter (See Complaint, Exhibit B). ADMITTED, See Defendant Answer #7.

3. FOIA requires a "public body," in response to a request, to "notify" the Plaintiff "of its determination and the reasons for it" within 10 business days. S.C. Code Ann. § 30-4-30(c) (effective 5/19/2017).

4. As a result of the foregoing failures, Plaintiff's "request must be considered approved as to nonexempt records or information." *Id.*

5. The Defendant failed to respond to the July 10, 2017 FOIA request within the required 10 business days (or July 25, 2017). See Davis Affidavit, Numbers 9, 10 & 11.

6. Defendant has failed to provide Plaintiff's request in violation of § 30-4-30(c) (effective 5/19/2017). See Davis Affidavit, Number 11.

7. Defendant has denied additional FOIA request for documents claiming to not be a "public body". See Davis Affidavit, Number 12 (Aug 31 request) & Number 13 (Sept 12 denial)

FOIA VIOLATION #2 – Meeting Notifications

8. On or about December 14, 2016, Plaintiff served a FOIA request on the Defendant via U.S. Mail, which was received shortly thereafter (See Complaint, Exhibit C). ADMITTED, See Defendant Answer #12.

9. Also on or about December 14, 2016, Plaintiff served the same FOIA request on the Defendant via Email, which was received shortly thereafter (See Complaint, Exhibit D). ADMITTED, See Defendant Answer #13.

10. The Defendant failed to respond to the December 14, 2016 request. See Davis Affidavit, Numbers 15 & 16.

11. FOIA requires "[a]ll public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings." S.C. Code Ann. § 30-4-80(e)

12. FOIA requires a "public body," in response to a request, to "notify" the Plaintiff "of its determination and the reasons therefor" within 15 business days. S.C. Code Ann. § 30-4-30(c) (pre 5/19/2017).

13. Defendant's failure to respond to the Plaintiff's December 14, 2016 FOIA request is a violation of § 30-4-30(c) (pre 5/19/2017).

14. As a result of the foregoing failure, Plaintiff's "request must be considered approved as to nonexempt records or information." *Id.*

15. Plaintiff has received no notification from Defendant of any meetings. ADMITTED, See Defendant Answer # 19.

16. Meetings requiring notice to Plaintiff have in fact occurred. See Davis Affidavit, Number 17.

17. Plaintiff contends that Defendant is acting in bad faith given it is clear Defendant is a "public body". See Davis Affidavit, Number 18.

STATEMENT OF FACTS – Demonstrating Defendant is a "public body"

Plaintiff claims that Defendant has in **bad faith** denied being a "public body" in an effort to avoid transparency in its operations. There are certain indisputable facts that make it clear Defendant is a "public body" subject to FOIA. These facts include, but are not limited to, the following:

1. Defendant is a legislatively created entity pursuant to budget Proviso 109.15 of the 2016-17 General Appropriation Act as ratified by the General Assembly on June 2, 2016 (and renewed by Proviso 109.11 of the 2017-18 General Appropriation Act (H.3720)). See attached Exhibits A & B.

> "(B) (1) There is created the Educational Credit for Exceptional Needs Children Fund that is separate and distinct from the State general fund. The fund shall be organized by the department as a public charity as defined by the Internal Revenue Code under sections 509(a)(1) through 509(a)(4) and consist solely of contributions

made to the fund. The fund may not receive an appropriation of public funds. The fund shall receive and hold all contributions intended for it as well as all earnings until disbursed as provided in this chapter. Monies received in the fund shall be used to provide scholarships to exceptional needs children attending eligible schools."

2. By law, all of Defendants board members are appoint by elected government officials.

"(B) (3) The fund shall be governed by five directors, two appointed by the Chairman of the House Ways and Means Committee, one of which is based upon the recommendation of the South Carolina Association of Christian Schools and one which is based upon the recommendation of the Diocese of Charleston, two appointed by the Chairman of the Senate Finance Committee based upon the recommendations of the South Carolina Independent Schools Association and one appointed by the Governor based upon the recommendation of the Palmetto Association of Independent Schools. ..."

3. By law, and in conjunction with Defendants government appointed board members, the South Carolina Department of Revenue ("SCDOR") Director designates the executive director of Defendant.

"(B) (3) .... The directors of the fund, along with the Director of the Department of Revenue, shall designate an executive director of the fund."

4. By law, Defendant's operations and administration is performed by the SCDOR.

"(B) (4) In concert with the fund directors, the Department of Revenue shall administer the fund, including, but not limited to, the keeping of records, the management of accounts, and disbursement of the grants awarded pursuant to this proviso. The department may expend up to two percent of the fund for administration and related costs."

5. Defendant was formed on June 16, 2016, by the then Director of the SCDOR using the SCDOR physical address as its principal office. See Davis Affidavit, Number 19.

6. Defendant utilizes SCDOR employees to process taxpayer donations. In fact, the taxpayer donation phone number listed on Defendant's website for **"Stocks, Bonds, and other Marketable Securities"** goes directly to an SCDOR phone number and employee. (803-896-1633 – SCDOR employee Lauranne Mays). See Davis Affidavit, Numbers 20, 21 & 22.

7. SCDOR employees, on government time, at public expense, actively solicit taxpayer donations for Defendant. See Davis Affidavit, Number 23 & Number 24.

8. SCDOR actively solicits taxpayer donations for Defendant on the homepage of its website as well as SCDOR's Facebook and Twitter pages. See Davis Affidavit, Numbers 25, 26 & 27.

9. Defendant utilizes the ***sc.gov*** website and a contract administered by the **South Carolina Department of Administration** to process Defendants online taxpayer donations. This service is unavailable to any organizations outside state government organizations. Specifically, the Defendants taxpayer donor page states:

> "This online service is provided by SC.GOV, a third party, working under a contract administered by the State of South Carolina Department of Administration. The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal." See Davis Affidavit, Number 28.

10. According to Defendants own website, Defendants government appointed governing board does not have access to the names of their donors, likely because all processing of taxpayer donations is done by SCDOR. It is clear that SCDOR would only provide such services to a "public body". See Davis Affidavit, Number 29.

11. Defendant is publicly listed as a "**State Board and Commission**". As required by state law, specifically § 1-5-40, the **South Carolina Secretary of State** has a duty to monitor state boards and commissions. The South Carolina Secretary of State does in fact list Defendant and its government appointed board members as part of the Secretary of States duties. Also as required by law, specifically § 1-1-1310, Defendant or its agent report said legally required information to the South Carolina Secretary of State. See Davis Affidavit, Number 30.

As the above demonstrates, in conjunction with the following LAW & ANALYSIS, it is clear Defendant is a "public body" subject to the requirements of FOIA.

LAW & ANALYSIS

Intent & Public Policy of FOIA. The FOIA preamble best expresses both the General Assembly's intent in enacting the statute, as well as the vital public policy underlying it. The preamble, set forth in§ 30-4-15, provides as follows:

> "[t]he General Assembly finds that it is **vital in a democratic society that public business be performed in an open and public manner** so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and fully report the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings." (Emphasis added.)

FOIA Should Be Applied Broadly. On numerous occasions, in construing FOIA, the South Carolina Attorney General has emphasized the General Assembly's expression of public policy as articulated in § 30-4-15. In *Op. Atty. Gen.*, Op. No. 88-31 (April 11, 1998), for example,

they summarized the rules of statutory construction which the Attorney General's Office follows in interpreting FOIA as follows:

> "[a]s with any statute, the primary objective in construing the provisions of the Freedom of Information Act is to ascertain and give effect to the legislature's intent. *Bankers Trust of South Carolina v. Bruce*, 275 S.C. 35, 267 S.E.2d 424 (1980). South Carolina's Freedom of Information Act was designed to guarantee to the public reasonable access to certain information concerning activities of the government. *Martin v. Ellisor*, 266 S.C. 377, 213 S.E.2d 732 (1975). The Act is a statute remedial in nature and must be liberally construed to carry out the purpose mandated by the General Assembly. *South Carolina Department of Mental Health v. Hanna*, 270 S.C. 210, 241 S.E.2d 563 (1978). Any exception to the Act's applicability must be narrowly construed. *News and Observer Publishing Co. v. Interim Bd. of Ed. for Wake Co.*, 29 N.C. App. 37, 223 S.E.2d 580 (1976)."

See also, *Evening Post Publishing Co. v. City of North Charleston*, 363 S.C. 452, 611 S.E.2d 496 (2005) (FOIA exemptions are to be narrowly construed to fulfill the purpose of FOIA to guarantee the public reasonable access to certain activities of government).

"Public Body" – FOIA Statute Specifically Applies to Defendant. A "public body" is subject the FOAI. Section 30-4-20(a) broadly defines what a "public body" as follows:

> "(a) 'Public body' means 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. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter." (Emphasis added.)

"Public Body" – FOIA Case Law Specifically Applies to Defendant. With respect to application of the definition of "public body" as contained in § 30-4-20(a), the seminal case is our South Carolina Supreme Court's decision in ***Weston v. Carolina Research and Development Foundation***, 303 S.C. 398, 401 S.E.2d 161 (1991). In *Weston*, the Court concluded that the Carolina Research and Development Foundation (hereinafter "CR&D Foundation"), an eleemosynary corporation like Defendant ECENC Fund, was indeed a "public body" for purposes of FOIA. *Weston* rejected any argument that a "private" corporation could not constitute a "public body" under FOIA. CR&D Foundation argued that the common law distinguished "between 'public' and 'private' corporations [and that such a distinction] overrides the clear language of the FOIA." 303 S.C. at 403. It is expected that Defendant ECENC Fund will make the same flawed and previously rejected argument. Notwithstanding the fact that under the common law a "private" corporation does not lose its private identity by virtue of the receipt of public support, the *Weston* Court concluded that such analysis was inapplicable to FOIA. Our South Carolina Supreme Court in *Weston* reasoned:

> "... the unambiguous language of the FOIA mandates that the receipt of support in whole or in part from public funds brings a corporation within the definition of a public body. The common law concept of "public" versus "private" corporations is inconsistent with the FOIA's definition of "public body" and thus cannot be superimposed on the FOIA. 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)."

303 S.C. at 404. Accordingly, the *Weston* Court made it clear that for purposes of whether or not an entity is a "public body" under FOIA, the fact that the entity or organization may be characterized as "private" is not controlling. Instead, the question is simply one of whether or not the entity or organization is "supported in whole or in part by public funds or [is] expending public funds."

As to that issue, the *Weston* Court determined that the CR&D Foundation had met the definition of a "public body" under FOIA in a number of ways. First, the CR&D Foundation accepted funds from the sale of the Wade Hampton Hotel by the University of South Carolina. Secondly, the Foundation accepted $16,300,000 in federal grant money on behalf of the University and managed the expenditure of these funds for the development of the Swearingen Engineering Center. Thirdly, the Foundation accepted a conveyance of land and a cash grant from the City of Columbia and a cash grant from Richland County, all for the development of the Koger Center. Finally, the Foundation accepted funds paid by private third parties in exchange for research performed by University employees. Examining these, the Court concluded:

> "*[e]ach of the above transactions alone would bring the Foundation within the FOIA's definition of "public body"*. Taken together, they lead to the unavoidable conclusion that the Foundation is a "public body". This conclusion is mandated by the clear language of the FOIA. The Foundation's argument that the FOIA only applies to governmental and quasi-governmental bodies would rewrite the statutory definition of "public body" by deleting the phrase, "**or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds.**" According to the Foundation's position, a corporation that cannot be labeled governmental or quasi-governmental would be exempt from the FOIA, regardless of whether it received support from public funds or expended public funds. **Such a construction would obliterate both the intent and the clear meaning of the statutory definition**."

Id. at 403. (emphasis added).

Weston's comments concerning the grant obtained for the Swearingen Engineering Center are especially instructive. The CR&D Foundation argued that the "grant did not support the Foundation, but that the money went towards the cost of constructing the Swearingen Engineering Center at the University." Thus, the CD&R Foundation contended that it did not "directly" benefit from the public funds. Notwithstanding this fact, however, the Supreme Court concluded that the CD&R Foundation did benefit indirectly because " ... the Foundation used University personnel on University payroll in conjunction with the construction project. In addition, the Foundation clearly directed the expenditure of the funds it received." 305 S.C. at 402. Thus, *Weston* makes clear that the definition of a "public body" contained in FOIA - requiring an organization to be "supported in whole or in part by public funds or expending public funds" - does not necessitate a direct transmittal of public funds for the benefit of an entity. Indeed, *Weston* concludes that indirect support of the organization such as through the organization's use or the assistance of government resources (e.g. use of public employees on the governmental payroll whose primary task is their government responsibility) is sufficient to meet the "public body" requirement of FOIA.

Numerous other South Carolina cases apply FOIA to otherwise private nonprofits such as Defendant ECENC Fund. See *Sloan v. Friends of The Hunley Inc.*, 393 S.C. 152, 711 S.E.2d 895 (S.C., 2011); *Disabato v. S.C. Ass'n of Sch. Adm'rs*, 404 S.C. 433, 746 S.E.2d 329 (S.C., 2013).

Given that Defendant ECENC Fund's administration is carried out by a government agency, SCDOR, by public employees, on the governmental payroll, clearly demonstrates Defendant ECEN Fund is supported by public funds and meets the "public body" requirement of FOIA. The Court in *Weston* was clear and any other interpretation of its application to Defendant ECENC Fund would obliterate both the intent and the clear meaning of the statutory definition.

Public Funds Being Distributed by Public Officials Subject to FOIA. In a recent January 18, 2018 South Carolina Attorney General Opinion it was confirmed that the fund being distributed by Defendant are in fact ***public funds***, specifically stating:

> "With the increased level of State involvement, including how the directors of the Fund are appointed and that these directors administer the Fund in concert with the Department of Revenue, it is this Office's opinion that a court would likely find the grant … authorized by the ECENC proviso likewise constitute "public funds." See Elliott v. McNair, 250 S.C. 75, 90, 156 S.E.2d 421, 429 (1967) ("It does not matter whether the money is derived by ad valorem taxes, by gift or Otherwise."); State v. Mecham, 173 Ariz. 474, 481, 844 P.2d 641, 648 (Ct. App. 1992) ("We conclude that the term 'public money' includes not only state-owned funds but also private money held by State officials in their official capacity."); S.C. Code Ann.§ 13-1-25 (defining "public moneys" to be a fund of any kind used by the Department of Commerce "notwithstanding their public or private source, and must be treated like public monies for all purposes."); 63C Am. Jur. 2d Public Funds § 1 ("It is sometimes held that the term public money includes not only state-owned funds, but also private money held by state officials in their official capacity.")."

Op. S.C. Atty. Gen., dated January 18, 2018, page 8. It should be clear that **state officials** at the Department of Revenue and government appointed directors distributing **public funds** should be subject to FOIA, otherwise the entire law could easily be circumvented.

Attorney General Opinions. South Carolina Attorney General Opinions have also consistently noted, "if the entity in question comes within the definition of 'public body,' the Freedom of Information Act is applicable." *Op. S.C. Atty. Gen.*, Op. No. 93-63 (September 10, 1993). In determining whether a particular entity is supported in whole or in part by public funds, or is expending public funds, the South Carolina Attorney General's Office has rejected any argument that there is a certain threshold level of support of an entity by public funds specifically concluding that there exists no "*de minimis*" exception to the Act's applicability for public funding which is indirect or insignificant. In the view of the South Carolina Attorney General's Office,

> "[w]hile the notion of "support" is not defined in the FOIA, the South Carolina Supreme Court has construed "support" to mean "to maintain or aid and assist in the maintenance," *Harris v. Leslie*, 195 S.C. 526, 12 S.E.2d 538, 542 (1940), or to "uphold or sustain." *State v. Stoker*, 133 S.C. 67, 130 S.E. 337, 339 (1925). What kind of support, or how much, is needed to bring an entity under the FOIA is likewise not found in the FOIA. Payment of incidental expenses of a committee established by a county legislative delegation to oversee an audit of the county school system from public funds, was arguably enough to bring that committee under the FOIA. *Op. Atty. Gen.* dated July 11, 1983. An ad hoc citizens' committee apparently totally supported (actually or "in kind") by public funds of some kind was felt to be subject to the FOIA. *Op. Atty. Gen.* dated September 21, 1989 .... See also *Op. Atty. Gen.* dated March 27, 1984 as to additional comments on "support" by public funds."

Op. S.C. Atty. Gen., Op. No. 92-01 (January 16, 1992) (emphasis added). In that same Opinion, the South Carolina Attorney General also commented that "[p]ublic funds provided 'in kind" or via grants may well be sufficient to bring the entity under the FOIA."

On March 17, 1995, in another Opinion, the South Carolina Attorney General's Office stated that "[d]ue to the broad definition of 'public body' contained in the [Freedom of Information] Act, it is entirely possible that an entity could be subject to the Act without its members being public officers." What is important to keep in mind here is the South Carolina Attorney General's statement in Op. No. 92-01 that FOIA simply does not attempt to delineate "[w]hat kind of support or how much, is needed to bring an entity under the FOIA .... "

It is expected that Defendant ECENC Fund will claim that its board members are not public officers, however it is undeniable that Defendants board member are appointed by elected government officials. Proviso Section (B)(3). Whether Defendant's board members are public officers or not, they are certainly controlled by elected public officers and thus subject Defendant to the "public body" requirements of FOIA.

SC Attorney General Opinion No. 89-96 (September 21, 1989) is particularly instructive with respect to application of FOIA's "public body" definition.. Such Opinion employs the same kind of broad reading of the "public body" definition as does *Weston*, and illustrates how so-called indirect or "in kind" use or provision of governmental resources can trigger the "public body" definition. There, the South Carolina Attorney General's Office addressed the question of the applicability of FOIA to the Charleston Harbor Estuary Citizens Committee, "an ad hoc group of individuals including representatives of state regulatory agencies, private businesses, municipal and county governments, and private citizens." Such organization was originally convened under the auspices of the South Carolina Sea Grant Consortium and Congressman Ravenel, using one-time federal grant funds "to identify priority issues and concerns related to the Charleston Harbor Estuary." The Consortium provided meeting space and assisted with organizational aspects of the Committee's meetings. *A staff member of the Consortium worked with the group*. As noted above, SCDOR provides substantial employee and administrative support to Defendant. Expenses related to postage, printing, transportation, and accommodation were provided by the federal funds. The South Carolina Attorney General's Office concluded that the Committee was supported in whole or in part by public funds, stating as follows:

> "... the Committee does not have a treasury, receives no direct monetary support, and does not expend funds. ***"In kind" support is being furnished by means of the time of a staff member of the Sea Grant Consortium***, which entity also provides meeting space. Funds from EPA/NOAA are being used on behalf of the Committee by the Sea Grant Consortium to pay for postage, printing, and transportation and accommodations for speakers for Committee meetings. These expenditures of grant (i.e. public) funds on behalf of the Committee, while not expended by the Committee itself, do aid in the support of the Committee. Indeed, no other funds of which we are aware are expended by or on behalf of the Committee. It thus appears to this Office that the Committee is probably totally supported (actually or "in kind") by public funds of same kind. *Thus, the Committee probably would be subject to the terms of the Freedom of Information Act, though only a court could determine this issue conclusively.*"

(emphasis added).

Other Jurisdictional Case Law. Other cases elsewhere are supportive of the conclusion reached in the 1989 Opinion. For example, in *Associated Press v. Sebelius*, 31 Kan.2d 1107, 78 P.3d 486 (2003), the Kansas Court of Appeals concluded that the use of state employees assigned to the Governor-Elect's Transition Office (GETO) was sufficient to trigger the "supported in whole or in part by public funds" requirement. The Court stated that

> "[t]he stipulated facts indicate that BEST [Budget Efficiency Savings Team] volunteers received no compensation or reimbursement for their time, mileage, or anything else, other than minor refreshments. However, there were 12 state employees assigned to BEST pursuant to K.S.A. 75-134. The state employees continued to receive their salary while assisting BEST. This evidence is sufficient to establish the public funding requirements of ... [the Kansas Open Meetings Act] ...."

78 P.3d at 492. Thus, employing the same analysis as *Weston* and the 1989 Opinion, the Court in *Sebelius* found that "indirect" support, through the use of government resources, was sufficient to trigger the "supported in whole or in part by public funds" requirement.

Moreover, in *Delaware Solid Waste Authority v. News Journal Company*, 480 A.2d 628 (Del. 1984), the Delaware Supreme Court concluded that the language "supported in whole or in part by public funds" contained no "*de minimis*" exception. There, the Court responded to the Solid Waste Authority's argument that the FOIA excused from coverage entities with *de minimis* public funding as follows:

> "[t]he Authority's argument, that the appropriations received were *de minimis*, ignores the plain language of the Act. Section 10002(a)(l) specifically states "'public body' means any ... entity ... which: (1) is supported in whole or in part by public funds" .... This is an express provision conceived by the legislature to promote the policy interests underlying the Act and precludes specious *de minimis* arguments."

480 A.2d at 633. See also, *Op. S.C. Atty. Gen.*, November 3, 1980 ("If an organization is determined to be a 'public body' within the meaning of the act, then ***any meeting held by that body so long as it is a convening of a quorum of the constituent membership must be opened to the public*** unless the topic of the meeting fits within one of the statutory exceptions as defined in Section 30-4-70 .... "; members of Drug Formulary Advisory Committee are reimbursed for mileage and are paid a per diem and the Committee is thus a "public body" under the Act.) (emphasis added); *Op. S.C. Atty. Gen.*, No. 91-42 (June 28, 1991) (" ... we find it inescapable that a search committee screening candidates to fill a 'public figure' type of a position of a university would be supported by or expending public funds and thus subject to the Act."); *Del. Op. Atty. Gen.*, 02-18-19, 2002 WL 31867895 (August 19, 2002) ("The host school district pays for the costs of the hotel conference room and food with public funds. It does not matter if these costs are *de minimis*. FOIA applies if the public body is supported 'in whole or in part by public funds.'").

Quality Towing. Our SC Supreme Court's decision in *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (2001) also represents a good example of the Court's broad reading of the "public body" requirement of FOIA and is in keeping with the requirement that the Act must be liberally construed to effectuate the legislative purpose. In *Quality Towing*, the City Manager of Myrtle Beach created a review committee, consisting of City employees, but not City Council members, having prior experience with the local towing companies and knowledge of the procurement process. The Committee's purpose was to evaluate and assist the City Manager in determining which towing company should be awarded the bid to provide towing services to the City.

One of the questions before the Court in *Quality Towing* was whether the Committee was a "public body" and thereby subject to FOIA. It was argued that the fact that the City Manager,

rather than City Council, formed the Committee and that no member of City Council served on the Committee was controlling and that the Committee thus was not a "public body." The Court rejected this distinction, however. In the words of the Court,

> "[t]he fact that the City Manager, and not the City Council, created the Committee, and no council member served on the Committee, is not enough to remove the Committee from the definition of "public body" as stated in FOIA. First, it does not matter that members of the Committee are not members of the parent body. See 1984 S.C. Op. Atty. Gen. No. 84-281. Second, the Committee was set up to give advice to the City Manager, and ultimately the City Council. It is clear from the minutes of the City Council meeting and the testimony of Thomas Leath, City Manager, the Committee's selection process and recommendation went directly to the City Council. ...
>
> Furthermore, the legislature amended the definition of "public body" in 1987 by adding the phrase "including committees, subcommittees, advisory committees, and the like of any such body by whatever name known.;' Clearly, the legislature intended for "advisory" bodies, such as the Committee set up by the City Manager to advise him and the City Council, to be covered by the definition.
>
> Finally, the Committee was formed to help determine the award of a City contract. This contract entailed the expenditure of public funds. Because the Committee was not open to the public, Quality was unable to learn its bid had been termed non-responsive and to respond to the Committee's concerns. The Committee made its decision to recommend Auto Body Works to the City in secret. FOIA was enacted to prevent the government from acting in secret. *South Carolina Tax Comm n. v. Gaston Copper Recycling Corp.*, 316 S.C. 163, 447 S.E.2d 843 (1994). In addition, the City has advanced no valid reason to hold the meetings and discussions of the Committee concerning a public contract in private. This kind of secret determination is exactly what FOIA was designed to prevent.
>
> The City also argues the Committee was not performing a "government function," but rather a proprietary or business function", and therefore is not subject to FOIA. See 1984 S.C. Op. Atty. Gen. No. 84-64 (only a committee performing a governmental function [is] subject to FOIA). The special referee agreed with the City, finding the function performed by the Committee was proprietary in nature. We find a committee formed to give advice to a public body or official is performing a government function. See *MFY Legal Services, Inc. v. Toia*, 93 Misc.2d 147, 402 N.Y.S.2d 510 (N.Y. Sup. Ct. 1977) (the giving of advice to a public body or official is a government function).
>
> We hold the plain language of section 30-1-20(a) clearly includes an "advisory committee" such as the one set up in the instant case."

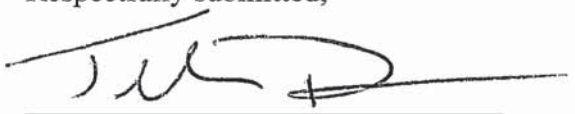
345 S.C. at 162-163.

CONCLUSION

Due to the substantial governmental entanglements, financial and in-kind support it receives from state government agencies, and because there is no genuine issue of material fact, Plaintiff, Jefferson Davis, Jr., respectfully requests that the Court grant his Motion for Summary Judgment and issue an Order:

1. Declaring that the Defendant is a § 30-4-20(a) "public body";
2. Declaring that the Defendant must comply with FOIA;
3. Declaring that the Defendant has violated FOIA;
4. Declaring that Plaintiff's unanswered requests are deemed approved;
5. Enjoining Defendant to provide Plaintiff a copy of all requested documents.
6. Enjoining Defendant to provide Plaintiff notice of all future meetings as well as meeting minutes, notes, and board actions from all previous meetings.
7. Awarding the Plaintiff estimated cost of litigation in the amount of $500 (plus any third party attorney fees) pursuant to S.C. Code Ann. § 30-4-100(b) or 15-53-100(b), or both; and
8. Granting Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted,



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PLAINTIFF, *PRO SE*

January 24, 2018
Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2017-CP-40-06976
Jefferson Davis, Jr.,	)	
Plaintiff,	)	
vs.	)	
South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
Defendant.	)	

RICHLAND COUNTY
FILED
2018 JAN 24 PM 3:54
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff does hereby certify that I have caused to be mailed and/or otherwise transmitted a copy of the below listed documents to the party shown below, postage prepaid, on the **24st day of January, 2018**, as follows:

PLEADINGS: **MOTION FOR SUMMARY JUDGMENT**

PARTIES SERVED: Geoffrey K. Chambers, Esq.
CPER Law Group, LLC
411 Walnut Street #10646
Green Cove Springs, FL 32043-3443

Jefferson Davis, Jr.
Plaintiff, *Pro Se*

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	C.A. NO. 2017-CP-40-06976
Jefferson Davis, Jr., Plaintiff, vs. South Carolina Educational Credit for Exceptional Needs Children Fund, Defendant.	)	**AFFIDAVIT OF RONALD JEFFERSON DAVIS, JR.**

RICHLAND COUNTY FILED
2018 JAN 24 PM 3:54
JEANNETTE W. McBRIDE C.C.P. & G.S.

Personally appeared before me, Ronald Jefferson Davis, Jr., and after being duly sworn deposes and testifies as follows:

1. I am over the age of eighteen (18) and competent to make the following statement.
2. I make this affidavit of my own personal knowledge.
3. I am a resident of Greenville County, SC.
4. I am the Plaintiff, Jefferson Davis, Jr., in the above captioned matter.
5. The South Carolina Educational Credit for Exceptional Needs Children Fund (hereinafter "ECENC Fund" or "Defendant") is the Defendant in the above captioned matter.
6. **Attachment A** to this Affidavit is a true and correct copy of my July 10, 2017 FOIA request that I mailed and emailed to Defendant on said date.
7. Defendant's response to said FOIA request was due to me within 10 business days, or no later than July 25, 2017.
8. **Attachment B** to this Affidavit is a true and correct copy of Defendant's response letter (and envelope) to my July 10, 2017 FOIA request.

9. Although the Defendant's response letter was dated July 25, 2017 (the 10-day statutory deadline for denial), the actual stamp on the envelope (and postmark) was not dated until July 28, 2017, three days late.

10. Based on the date on the stamp and the postmark, I do not believe a response to my July 10, 2017 FOIA request was sent to me by Defendant within the required statutory 10-day deadline.

11. I have never received from Defendant the requested information in my July 10, 2017, FOIA request.

12. **Attachment C** to this Affidavit is a true and correct copy of my August 31, 2017, FOIA request that I mailed and emailed to Defendant on said date.

13. **Attachment D** to this Affidavit is a true and correct copy of a letter dated September 12, 2017, which I received from Defendant purporting to claim Defendant is not a "public body" and indicating that Defendant will not respond to any of my FOIA requests now or in the future.

14. **Attachment E** to this Affidavit is a true and correct copy of my December 14, 2016, FOIA request that I mailed and emailed to Defendant on said date.

15. I am unaware of any response that Defendant has ever sent to me in regards to my December 14, 2016 FOIA request.

16. I have never been provided notice of the date, time and location of any board meeting of Defendant.

17. It has come to my attention from various sources that Defendant has had board meetings since my December 14, 2016 FOIA request. I am unaware of any board meeting of Defendant being open to the public.

18. It is my belief that Defendant has been acting in bad faith regarding transparency and in its failure to admit it is a "public body" under FOIA.

19. **Attachment F** to this Affidavit is a true and correct copy of FOIA produced documents provided to me by the SC Department of Revenue demonstrating that former Director Rick Reames formed the Defendant entity.

20. **Attachment G** to this Affidavit is a true and correct copy of website screenshots demonstrating that donors desiring to make stock donations to Defendant were directed to the South Carolina Department of Revenue to facilitate the stock donation.

21. I personally called the phone number referenced in **Attachment G** and was connected to the voicemail of Lauranne Mays.

22. Pursuant to documentation found on the internet, Ms. Lauranne Mays is an employee of the South Carolina Department of Revenue.

23. **Attachment H** to this Affidavit is a true and correct copy of FOIA produced documents provided to me by the SC Department of Revenue demonstrating that former Director Rick Reames personally solicited donations for Defendant on taxpayer time using a taxpayer email address.

24. I was personally told by Catherine Templeton, a former contractor with the South Carolina Department of Revenue, that she assisted former Director Rick Reames raise donations for Defendant. I believed this comment referred to part of Ms. Templeton's services while she was contracted with the Department.

25. **Attachment I** to this Affidavit is a true and correct copy of the South Carolina Department of Revenue website homepage advertising for donations for Defendant.

26. **Attachment J** to this Affidavit is a true and correct copy of the South Carolina Department of Revenue Facebook advertising for donations for Defendant.

27. **Attachment K** to this Affidavit is a true and correct copy of the South Carolina Department of Revenue twitter feed advertising for donations for Defendant.

28. **Attachment L** to this Affidavit is a true and correct copy of the State's *www.Sc.gov* donor page used by Defendant.

29. **Attachment M** to this Affidavit is a true and correct copy of Defendant's "Donor FAQ" webpage demonstrating that Defendant does not even know the names of their donors.

30. **Attachment N** to this Affidavit is a true and correct copy of a South Carolina Secretary of State webpage listing Defendant as a government entity / board.

Ronald Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com

SWORN AND SUBSCRIBED to me this

24 day of January, 2018

Notary Public for South Carolina

My Commission Expires: December 12, 2022

ROBIN PRIDE
Notary Public - State of South Carolina
My Commission Expires December 12, 2022

ATTACHMENT A

July 10, 2017

VIA US MAIL & email (tep@sctech.org)

ECENC Fund (*aka Exceptional SC*)
Attn: Tom Persons, Chairman
P.O. Box 211847
Columbia, SC 29221

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Mr. Persons:

Pursuant to the South Carolina Freedom of Information Act, § 30-4, and 5 U.S.C. § 552, I request that you email me a copy of the following public records:

- **2016-2017 DOR "report" / CPA audit regarding the ECENC Fund.**

Section (B)(5) of the 2016-2017 Proviso 109.15 requires a Department of Revenue "report" (including an audit) by June 30th. I presume you have been provided a copy via email and can easily forward me the requested document.

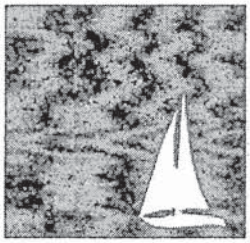
This request for disclosure of these public records is primarily to benefit the general public; I request that you waive the fees, if any, pursuant to§ 30-4-30(b). I will pay the reasonable and direct costs of locating and reproducing the requested public records to the extent required by § 30-4-30(b). However, I request prior notice should you determine that such costs will exceed $10.

Best,

Jeff Davis, *JD, MBA, CPA*
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com

cc Geoffrey K. Chambers, Esq. (*geoffrey@CPERLGroup.com*)

ATTACHMENT B



Consumer Protection, Environmental, and Regulatory Law Group, LLC

From the desk of:
Geoffrey K. Chambers
(864) 508-0899
geoffrey@CPERLGroup.com

Tuesday, July 25, 2017

Mr. Ronald Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615

RE: FOIA Request dated July 10, 2017

Dear Mr. Davis,

I am in receipt of your Freedom of Information Act (FOIA) request to South Carolina Educational Credit for Exceptional Needs Children Fund. You appear to request the "DOR Report / CPA Audit" of the South Carolina Educational Credit for Exceptional Needs Children Fund.

South Carolina Educational Credit for Exceptional Needs Children Fund is a 501(c) charitable organization. Pursuant to the South Carolina Freedom of Information Act, SC Code Annotated 30-4-10 *et seq.*, and the South Carolina Solicitation of Public Funds Act, 833-56-10 *et seq.*, South Carolina Educational Credit for Exceptional Needs Children Fund is not subject to FOIA.

I believe the documents you seek are public documents. I do not have the documents to provide a courtesy copy. I recommend you request these documents from the proper public body records custodian.

I hope you find this information helpful.

Sincerely,

Geoffrey K. Chambers

Geoffrey K. Chambers

411 Walnut St
Green Cove Springs FL 32043

U.S. POSTAGE
PAID
LUGOFF, SC
29078
JUL 28, 17
AMOUNT
$0.49
R2305M145693-02

Ronald Jefferson Davis, Jr
403 McCarter Ave
Greenville SC 29615

29615-141903

ATTACHMENT C

August 31, 2017

VIA US MAIL & email (tep@sctech.org)

ECENC Fund (*aka Exceptional SC*)
Attn: Tom Persons, Chairman
P.O. Box 211847
Columbia, SC 29221

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Mr. Persons:

Various statements from the South Carolina Educational Credit for Exceptional Needs Children Fund (ECENC Fund) have made reference to a **"funding formula"** that is approved by the ECENC Fund's Board and used to determine the scholarship amounts for applicants.

Pursuant to the South Carolina Freedom of Information Act, § 30-4, and 5 U.S.C. § 552, I request that you mail me a copy of the following public records:

1. **Any and all ECENC Fund "funding formula" which were approved and / or used by the ECENC Fund Board for the *2016-2017 program year*.**

2. **Any and all ECENC Fund "funding formula" which were approved and / or used by the ECENC Fund Board for the *2017-2018 program year*, including but not limited to the "funding formula" approved by the ECENC Fund Board at your board meeting on August 30, 2017.**

To that extent, please produce responsive documents in their entirety, including all attachments, enclosures, and exhibits but excluding drawings. In the event you determine that a requested document contains material or information within the statutory exemptions to mandatory disclosure, I request that you review such material for discretionary disclosure. Similarly, in the event you determine a document contains material or information within the statutory exemptions to mandatory disclosure, I request, in accordance with the provisions of § 30-4-40(b), you produce any and all reasonably segregable portions of such document.

Please produce responsive documents as gathered on a weekly basis until all documents have been produced. Documents should not be withheld pending complete fulfilment of this request.

If you determine that any or all documents responsive to any individual requested item (*or portion thereof*) cannot or have not been disclosed or specifically identified and withheld under the claim of authority, ***I request specific written confirmation of such fact and request that the withheld documents be specifically identified***. In the event you determine you have no document responsive to an individual request item (*or portion thereof*), ***I request specific written confirmation of that fact***.

This request constitutes notice of demand for production of all described documents. If, for any reason, you determine that you will not send me any document or portion thereof, or that this request will not, in whole or in part, be complied with, I request prompt notice of any action taken. In addition, I request such notice include complete identification of the withheld documents or portions thereof by title, author, date, nature of such material, and a thorough explanation of all legal and factual bases for your determination to deny disclosure. I request that in responding to this request you adhere to the time limitations set forth in§ 30-4-30(c).

This request for disclosure of these public records is primarily to benefit the general public; I request that you waive the fees, if any, pursuant to§ 30-4-30(b).

I will pay the reasonable and direct costs of locating and reproducing the requested public records to the extent required by § 30-4-30(b). However, I request prior notice should you determine that such costs will exceed $10.

Best,

Jeff Davis, *JD, MBA, CPA*
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com

ATTACHMENT D

Consumer Protection, Environmental, and Regulatory Law Group, LLC

From the desk of:
Geoffrey K. Chambers
(864) 508-0899
geoffrey@CPERLGroup.com

September 12, 2017

Mr. Jefferson Davis
403 McCarter Ave
Greenville, SC 29615

Re: Jefferson Davis August 31 FOIA Request

Dear Mr. Davis,

I am in receipt of your fourth FOIA Request to Educational Credit for Exceptional Needs Children Fund. As stated in the three prior replies, the Educational Credit for Exceptional Needs Children Fund is not a public body to which FOIA applies pursuant to South Carolina Code Section 30-4-20. Educational Credit for Exceptional Needs Children Fund is a charity registered with the South Carolina Secretary of State.

Due to pending litigation you have brought regarding Freedom of Information Act requests sent to ECENCF, I have instructed my client not to respond. In the future, I recommend you direct FOIA requests to government entities. As an opposing party in litigation, I ask that you do not send any correspondence directly to parties who have representation.

Sincerely,

Geoffrey K. Chambers, Esq.

Geoffrey K. Chambers
411 Walnut Street, Number 10646
Green Cove Springs, FL 32043

COLUMBIA SC 290
12 SEP 2017 PM 3 L

Mr. Jefferson Davis
403 McCarter Ave.
Greenville, SC 29615

29615-141903

ATTACHMENT E

December 14th, 2016

VIA US MAIL & email (tep@sctech.org)

ECENC Fund (*aka Exceptional SC*)
Attn: Tom Persons, Chairman
P.O. Box 211847
Columbia, SC 29221

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Mr. Persons:

Pursuant to the South Carolina Freedom of Information Act, § 30-4, and 5 U.S.C. § 552, I request that you mail me a copy of the following public records:

1. **Copies of all invoices and payments made on behalf of the ECENC Fund.**
2. **Copies of all board minutes and/or actions for the ECENC Fund.**
3. **Copies of all brokerage statements for the ECENC Fund.**
4. **Copies of any employment or contractor agreement with or for the services of David M. Laird.**

To that extent, please produce responsive documents in their entirety, including all attachments, enclosures, and exhibits but excluding drawings. In the event you determine that a requested document contains material or information within the statutory exemptions to mandatory disclosure, I request that you review such material for discretionary disclosure. Similarly, in the event you determine a document contains material or information within the statutory exemptions to mandatory disclosure, I request, in accordance with the provisions of § 30-4-40(b), you produce any and all reasonably segregable portions of such document.

Please produce responsive documents as gathered on a weekly basis until all documents have been produced. Documents should not be withheld pending complete fulfilment of this request.

If you determine that any or all documents responsive to any individual requested item (*or portion thereof*) cannot or have not been disclosed or specifically identified and withheld under the claim of authority, I request specific written confirmation of such fact. In the event you determine you have no document responsive to an individual request item (*or portion thereof*), I request specific written confirmation of that fact.

This request constitutes notice of demand for production of all described documents. If, for any reason, you determine that you will not send me any document or portion thereof, or that this request will not, in whole or in part, be complied with, I request prompt notice of any action taken. In addition, I request such notice include complete identification of the withheld documents or portions thereof by title, author, date, nature of such material, and a thorough explanation of all legal and factual bases for your determination to deny disclosure. I request that in responding to this request you adhere to the time limitations set forth in§ 30-4-30(c).

This request for disclosure of these public records is primarily to benefit the general public; I request that you waive the fees, if any, pursuant to§ 30-4-30(b).

I will pay the reasonable and direct costs of locating and reproducing the requested public records to the extent required by § 30-4-30(b). However, I request prior notice should you determine that such costs will exceed $15.

Best,

Jeff Davis, *JD, MBA, CPA*
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com

ATTACHMENT F

CERTIFIED TO BE A TRUE AND CORRECT COPY AS TAKEN FROM AND COMPARED WITH THE ORIGINAL ON FILE IN THIS OFFICE

JUN 16 2016

SECRETARY OF STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF INCORPORATION
Nonprofit Corporation – Domestic
Filing Fee $25.00

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to S.C. Code of Laws §33-31-202, the undersigned corporation submits the following information:

1. The name of the nonprofit corporation is South Carolina Educational Credit for Exceptional Needs Children Fund

2. The initial registered office (registered agent's address in SC) of the nonprofit corporation is

300A Outlet Pointe Boulevard
Street Address

Columbia	Richland	South Carolina	29210
City	County	State	Zip Code

The name of the registered agent of the nonprofit corporation at that office is

Rick Reames III
Print Name

I hereby consent to the appointment as registered agent of the corporation.

Agent's Signature

3. Check "a", "b", or "c" whichever is applicable. Check only one box:

a. [X] The nonprofit corporation is a public benefit corporation.

b. [ ] The nonprofit corporation is a religious corporation.

c. [ ] The nonprofit corporation is a mutual benefit corporation.

4. Check "a" or "b", whichever is applicable:

a. [ ] This corporation will have members.

b. [X] This corporation will not have members.

5. The address of the principal office of the nonprofit corporation is

300A Outlet Pointe Boulevard
Street Address

Columbia	Richland	South Carolina	29210
City	County	State	Zip Code

NP - Domestic - Articles of

160616-0119 FILED: 06/16/2016
SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONA
Filing Fee $25.00 ORIG

vised by the South Carolina
, of State, March 2012
2)

Mark Hammond South Carolina Secretary of State

Name of Corporation South Carolina Educational Credit for Exceptional Needs Children Fund

6. If this nonprofit corporation is either a **public benefit** or **religious corporation** complete either "a" or "b", whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation. **If you are going to apply for 501(c)(3) status, you must complete section "a."**

a. [ ] Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

[X] If you choose to name a specific 501(c)(3) entity to which the assets should be distributed, please indicate the name of the selected entity.

See attached.

OR

b. [ ] If the dissolved corporation is not described in Section 501(c)(3) of the Internal Code, upon dissolution of the corporation, the assets shall be distributed to one or more public benefit or religious corporations or to one or more of the entities described in (i) above.

[ ] If you chose to name a specific public benefit, religious corporation or 501(c)(3) entity to which the assets should be distributed, please indicate the name of the selected entity.

7. If the corporation is a **mutual benefit corporation** complete either "a" or 'b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.

a. [ ] Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.

b. [ ] Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to

8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See S.C. Code of Laws §33-31-202(c))

See attached.

Name of Corporation South Carolina Educational Credit for Exceptional Needs Children Fund

9. The name and address of each incorporator is as follows (**only one is required, but you may have more than one**).

Name	Address	Zip Code
Rick Reames III	300A Outlet Pointe Boulevard, Columbia, SC	29210

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles.

Name (only if named in articles)	Signature of director

11. Each incorporator listed in #9 **must** sign the articles.

Signature of incorporator

Signature of incorporator

Signature of incorporator

12. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date/time is _____

Filing Checklist

- Articles of Incorporation (in duplicate)
- $25.00 made payable to the South Carolina Secretary of State – Political Associations must also submit CL-1 form and additional $25.00 fee
- Self-Addressed, Stamped Return Envelope
- Return all documents to: South Carolina Secretary of State's Office
  Attn: Corporate Filings
  1205 Pendleton Street, Suite 525
  Columbia, SC 29201

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

ATTACHMENT TO
NONPROFIT CORPORATION ARTICLES OF INCORPORATION

Attachment to Paragraph 6

Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, for a public purpose. Any such assets not so disposed shall be disposed of by a Court of competent jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

Attachment to Paragraph 8

Notwithstanding any other provisions of these Articles of Incorporation, the corporation is organized and shall be operated exclusively for charitable and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any future federal tax laws (hereinafter, the "Code"). Notwithstanding any other provisions of these articles, no part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth above. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for political office. Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or by (b) a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

SOUTH CAROLINA SECRETARY OF STATE

2016 JUL -8 AM 11:53

PUBLIC CHARITIES DIVISION

REGISTRATION STATEMENT FOR A CHARITABLE ORGANIZATION

Filing Instructions

- Pursuant to Section 33-56-30 of the South Carolina Code of Laws, failure to complete all sections of this form may cause your registration to be returned to you and may result in a possible violation and/or fine.
- If this is a renewal, this form cannot be accepted more than six (6) weeks prior to the current expiration.
- **This form must be signed and accompanied by a filing fee of $50.00 made payable to the Secretary of State.**
- If the annual financial report for the immediately preceeding fiscal year has not already been filed with the Secretary of State's Office, please submit it with this form. You may submit your financial report on the Annual Financial Report for a Charitable Organization which can be found on our website www.scsos.com or on IRS Form 990, 990EZ, or 990PF; **we cannot accept IRS Form 990-N.** If the financial report is not ready you must submit a copy of the extension request submitted to the IRS.
- Please contact our office with any questions regarding this form at 803-734-1790 or email charities@sos.sc.gov.
- Mail to South Carolina Secretary of State, Attn: Division of Public Charities, 1205 Pendleton St., Suite 525, Columbia, SC 29201.
- Please type or print clearly.

Check one: [X] Initial Registration [ ] Renewal

Current Fiscal Year Dates 06/16/2016 (mo/day/year) **to** 06/30/2016 (mo/day/year)

Enter Federal Employer's Identification Number: 81 - 3017474 **Charity Public ID:** _____ (Renewal only)

1. Legal Name of Organization: South Carolina Educational Credit for Exceptional Needs Children Fund

   a. Doing Business As (DBA) Names: N/A (If applicable)

   b. Former Names Used by the Charity: N/A (If applicable)

   c. Organization's Website: N/A (If applicable)

   d. Please provide a contact person for your organization:

   Rick Reames III — Name
   President — Title
   Post Office Box 125, Columbia, South Carolina 29214 — Address, City, State, Zip Code
   803-898-5040 — Daytime Phone
   rick.reames@dor.sc.gov — Email

2. Purpose for which this organization was formed. Attach a statement if necessary.

   See attached.

3. Tax-exempt status under the Internal Revenue Code: [ ] YES [X] NO

   If "Yes," please provide a copy of any determination letter recognizing the charitable organization's tax-exempt status from the Internal Revenue Service and any changes, amendments, or revocations to that letter.

4. Enter the state and country in which the organization was legally established, as well as the date of establishment:

State South Carolina Country USA Date 06/16/2016 (mo/day/year)

5. Form of organization. Check one: [X] ** Corporation (includes all nonprofit [i.e. 501(c)3] and for profit corporations)

[ ] Association [ ] Other _____ (Please Specify)

**** All corporations must provide a name and street address for a registered agent.**

Rick Reames III
Name (This cannot be the name of the organization)

300A Outlet Pointe Boulevard	Columbia	SC	29210
Street Address (PO Box cannot be accepted)	City	State	Zip Code

6. Complete A or B, whichever applies: **(6A or 6B must be a street address, not a PO Box)**

A. Principal address of the organization:

300A Outlet Pointe Boulevard, Columbia, South Carolina 29210
Street Address, City, State, Zip Code

B. If the organization does not maintain an office, please provide the name and address of the person having custody of the organization's financial records:

Name

Street Address, City, State, Zip Code

7. Addresses of any of your organization's offices in South Carolina. Attach a list if necessary.

300A Outlet Pointe Boulevard	Columbia, South Carolina 29210
Name	Address, City, State, Zip Code

8. Names and addresses of any chapters, branches or affiliates of your organization in South Carolina. Attach a list if necessary.

N/A	
Name	Address, City, State, Zip Code

9. **For the current fiscal year,** please provide the names and addresses of your organization's officers, directors, trustees, and board members. Attach a list if necessary.

See attached.		
Name	Address, City, State, Zip Code	Title
Name	Address, City, State, Zip Code	Title
Name	Address, City, State, Zip Code	Title
Name	Address, City, State, Zip Code	Title

10. Check all states in which your organization is authorized to solicit contributions.

AL		AK		AR		AZ		CA		CO		CT		DC		DE	
FL		GA		HI		IA		ID		IL		IN		KS		KY	
LA		MA		MD		ME		MI		MN		MO		MS		MT	
NC		ND		NE		NH		NJ		NM		NV		NY		OH	
OK		OR		PA		PR		RI		SC		SD		TN		TX	
UT		VA		VT		WA		WI		WV		WY					

If any other governmental authority that is not listed above has authorized your organization to solicit contributions, enter the name of the governmental authority. Attach a list if necessary.

11. Check up to three boxes below that best describe the general purpose for which solicited contributions are to be used.

- [ ] A. **Arts, Culture, Humanities** (inc. historical)
- [X] B. **Educational Institutions** (inc. literacy)
- [ ] C. **Environment, Beautification** (inc. gardening, outdoor education)
- [ ] D. **Animal-Related** (inc. wildlife sanctuaries)
- [ ] E. **Health-General, Rehabilitative** (inc. nursing, family planning)
- [ ] F. **Mental Health, Crisis Intervention** (inc. alcoholism, services for rape and abuse victims)
- [ ] G. **Disease, Disorders, Medical Disciplines**
- [ ] H. **Medical Research**
- [ ] I. **Crime, Legal-Related** (inc. prevention of abuse, delinquency)
- [ ] J. **Employment, Job-Related** (inc. voc. rehabilitation, unions)
- [ ] K. **Agriculture, Food, Nutrition** (inc. livestock breeding)
- [ ] L. **Housing, Shelter** (inc. senior citizen housing)
- [ ] M. **Public Safety, Disaster Preparedness and Relief** (inc. rescue squads, auto safety)
- [ ] N. **Recreation, Sports, Leisure, Athletics** (inc. social clubs, Special Olympics)
- [ ] O. **Youth Development**
- [ ] P. **Human Services** (inc. thrift stores, YMCAs and YWCAs, hearing- or sight-impaired orgs.)
- [ ] Q. **International, Foreign Affairs, National Security** (inc. cultural exchange)
- [ ] R. **Civil Rights, Social Action, Advocacy** (inc. right to life and right to die; reproductive rights)
- [ ] S. **Community Improvement, Capacity Building** (inc. neighborhood associations, service clubs, bus. development)
- [X] T. **Philanthropy, Volunteerism, Grant-making** (inc. foundations)
- [ ] U. **Science and Technology Research Institutes** (inc. computer science, engineering)
- [ ] V. **Social Sciences Institutes** (inc. institutes for studies on population, minorities and economics)
- [ ] W. **Public Affairs, Society Benefit** (inc. citizen participation, consumer protection, veterans' orgs., leadership development)
- [ ] X. **Religion, Spiritual Development** (inc. religious broadcasters and interfaith coalitions)
- [ ] Y. **Mutual / Membership Benefit** (inc. fraternal organizations, cemeteries)
- [ ] Z. **Unknown, Other**

Please Specify: _____

12. Is your organization currently, or has it in the past, been the subject of a legal or administrative action concerning a charitable solicitation, fundraising campaign, or campaign with a commercial co-venturer by another local, state or federal governmental authority including, but not limited to, registration or license revocation or denial, fines, injunctions or suspensions? [ ] YES [X] NO If "Yes," please attach an explanation of all actions.

13. Have any of the organization's officers, directors, trustees or board members been the subject of a criminal conviction, including guilty or nolo contendere pleas, involving any charitable solicitations act, fraud, dishonesty, or false statement in a jursidiction within the United States? [ ] YES [X] NO If "Yes," please attach a description and date of any such conviction.

14. If any of the charitable organization's officers, directors, trustees or board members are related to one another by blood, marriage or adoption, please provide a statement as to the relationship(s).

N/A

15. If any of the charitable organization's officers, directors, trustees or board members are related by blood, marriage or adoption to a director or officer of a professional fundraising counsel or professional solicitor under contract with the charitable organization, please provide a statement as to the relationship(s).

N/A

16. If your organization intends to use a professional solicitor, professional fundraising counsel, or commercial co-venturer, or hire individuals to solicit, please list their names and contact information. Attach a list if necessary.

N/A

Name Phone

Address, City, State, Zip Code

I certify that the information furnished in this application and all attached supplementary information is true and correct to the best of my knowledge, information and belief. I understand that the giving of false or incorrect information may constitute a misdemeanor carrying a penalty upon conviction of a fine of not more than two thousand dollars or imprisonment for not more than one year, or both, for a first offense. A second or subsequent offense may constitute a felony carrying a penalty upon conviction of a fine of not more than five thousand dollars or imprisonment of not more than five years, or both.

CHIEF FINANCIAL OFFICER / TREASURER

Rick Reames III
Print Name

Signature 6/3-4/16 Date

Post Office Box 125
Mailing Address

Columbia, South Carolina 29214
City, State, Zip

803-898-5040
Phone Number

CHIEF EXECUTIVE OFFICER / PRESIDENT

Rick Reames III
Print Name

Signature 6/30/16 Date

Post Office Box 125
Mailing Address

Columbia, South Carolina 29214
City, State, Zip

803-898-5040
Phone Number

*** The persons signing this form as CEO/President and CFO/Treasurer must be designated as such on the current fiscal year's list of officers, directors, trustees, and board members. If not, the registration will be returned for correction.**

Attachment to
Registration Statement for a Charitable Organization

South Carolina Educational Credit for Exceptional Needs Children Fund
EIN 81-3017474

---

2. Purpose for which this organization was formed:

The purpose of South Carolina Educational Credit for Exceptional Needs Children Fund (the "Corporation") shall be to provide scholarships to "exceptional needs children" who are "qualifying students" attending "eligible schools." The Corporation is directed to be formed and operated in accordance with 2016 S.C. Act No. _____, Part 1B, Section 109, Proviso 109.15. (the "Authorizing Statute"), and to do all things necessary or convenient, and not inconsistent with law, to further these goals. The purpose of the Corporation is exclusively charitable and educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

The Authorizing Statute defines an "exceptional needs child" to mean "a child:

(a) who has been evaluated in accordance with [the State of South Carolina's] evaluation criteria, as set forth in S.C. Code Ann. Regs. 43-243.1, and determined eligible as a child with a disability who needs special education and related services, in accordance with the requirements of Section 300.8 of the Individuals with Disabilities Education Act; or

(b) who has been diagnosed within the last three years by a licensed speech-language pathologist, psychiatrist, or medical, mental health, psychoeducational, or other comparable licensed health care provider as having a neurodevelopmental disorder, a substantial sensory or physical impairment such as deaf, blind, or orthopedic disability, or some other disability or acute or chronic condition that significantly impedes the student's ability to learn and succeed in school without specialized instructional and associated supports and services tailored to the child's unique needs."

The Authorizing Statute defines "qualifying student" to mean "a student who is an exceptional needs child, a South Carolina resident, and who is eligible to be enrolled in a South Carolina secondary or elementary public school at the kindergarten or later year level for the applicable school year."

The Authorizing Statute defines an "eligible school" to mean "an independent school including those religious in nature, other than a public school, at which the

compulsory attendance requirements of S.C. Code Ann. Section 59-65-10 may be met, that:

(a) offers a general education to primary or secondary school students;

(b) does not discriminate on the basis of race, color, or national origin;

(c) is located in [the State of South Carolina];

(d) has an educational curriculum that includes courses set forth in the state's diploma requirements, graduation certificate requirements (for special needs children), and where the students attending are administered national achievement or state standardized tests, or both, at progressive grade levels to determine student progress;

(e) has school facilities that are subject to applicable federal, state, and local laws;

(f) is a member in good standing of the Southern Association of Colleges and Schools, the South Carolina Association of Christian Schools, or the South Carolina Independent Schools Association; and

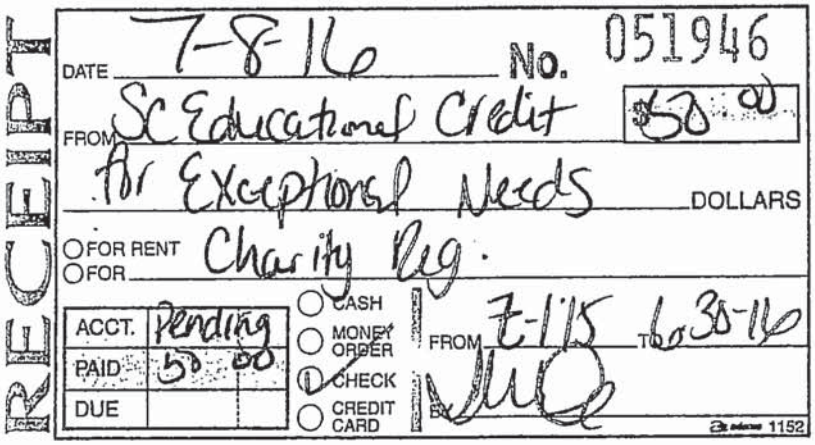
(g) provides a specially designed program or learning resource center to provide needed accommodations based on the needs of exceptional needs students or provides onsite educational services or supports to meet the needs of exceptional needs students, or is a school specifically existing to meet the needs of only exceptional needs students with documented disabilities."

The Authorizing Statute defines "independent school" to means "a school, other than a public school, at which the compulsory attendance requirements of S.C. Code Ann. Section 59-65-10 may be met and that does not discriminate based on the grounds of race, color, religion, or national origin."

9. Names and addresses of organization's officers, directors, trustees and board members for the current fiscal year:

Betsy A. Fanning, Director
4789 Sebastian Court
North Charleston, South Carolina 29405

Michael F. Acquilano, Director
901 Orange Grove Road
Charleston, South Carolina 29407



DATE 7-8-16 No. 051946

FROM SC Educational Credit $50.00

for Exceptional Needs DOLLARS

○ FOR RENT
○ FOR Charity Reg.

ACCT.	Pending
PAID	50 00
DUE	

○ CASH
○ MONEY ORDER
✓ CHECK
○ CREDIT CARD

FROM 7-1-15 TO 6-30-16

BY

1152

RECEIPT

ATTACHMENT G

Our fundraising goal for the 2017-2018 school year is $11 million. Donation methods are listed at the bottom of this page.

Please note: Proviso 109.11 provides that South Carolina tax credits for donations to Exceptional SC may not exceed $11 million annually. Once donations total $11 million, additional donations are not eligible for a state tax credit.

How to Donate:

1. Online*: Donate online using a credit card or electronic check. Exceptional SC will notify the South Carolina Department of Revenue (SCDOR), who will then confirm your donation. The information submitted for the donor must match the information on your South Carolina income tax return.

2. By Mail: Mail your paper check along with a completed **Exceptional SC Donation Form** to: Exceptional SC, P.O. Box 211847, Columbia, SC 29221. Information from the Exceptional SC Donation Form will be sent to the SCDOR, who will then confirm your tax credit.

3. Stocks, Bonds, and other Marketable Securities: Please have your account manager contact 803-896-1633 for delivery instructions. After your donation, please complete the **Exceptional SC Donation Form**. Information from the Exceptional SC Donation Form will be sent to the SCDOR, who will then confirm your tax credit.

**Administrative fees apply for online donations.*

Tax credits for donations are limited by an annual statewide cap of $11 million on a first come, first served basis.

ATTACHMENT H

Amy Wright

From: Rick Reames
Sent: Wednesday, July 06, 2016 2:47 PM
To: Ted Pitts
Subject: RE: exceptional needs tax credit for your members

How about this? Edit as you need to.

Exceptional SC is the new face of South Carolina's Educational Credit for Exceptional Needs Children. It is an organization established under Internal Revenue Code Section 501(c)(3) that is dedicated to supporting exceptional needs students and families in South Carolina by providing scholarships to attend private schools that meet their needs.

Donors making financial contributions to Exceptional SC not only help these exceptional needs children but also receive significant tax benefits, including a state income tax credit. The total statewide credit is limited to $10M on a first come, first serve basis - and it is already filling up fast. Potential donors should act fast so they don't lose this opportunity. Click on www.exceptionalsc.org for more information.

Rick Reames
Director
SC Department of Revenue
P.O. Box 125
Columbia, SC 29214
803.898.5040

-----Original Message-----
From: Ted Pitts [mailto:ted.pitts@scchamber.net]
Sent: Wednesday, July 06, 2016 1:10 PM
To: Rick Reames
Subject: RE: exceptional needs tax credit for your members

Rick,

Can you send me an email with two or three sentences talking about the program and savings that are realized. I will use it to generate my own email and copy you to make the introductions.

Thanks,

Ted

-----Original Message-----
From: Rick Reames [mailto:Rick.Reames@dor.sc.gov]
Sent: Tuesday, July 05, 2016 10:29 AM
To: Ted Pitts <ted.pitts@scchamber.net>
Cc: Ashley Thomas <Ashley.Thomas@dor.sc.gov>; Amy Wright <Amy.Wright@dor.sc.gov>
Subject: exceptional needs tax credit for your members

Ted,

Thanks for your time last week to chat on this. I believe we sent some marketing materials to Molly for yall to push out (don't have her email to cc her). As we also discussed, we would love [redacted] that might have local decision making and have SC tax liabilities they want to abate. [redacted] What is the best way to approach this? Appreciate your help. Hope your 4th was good.

Rick

Rick Reames
Director
SC Department of Revenue
P.O. Box 125
Columbia, SC 29214
803.898.5040

ATTACHMENT I

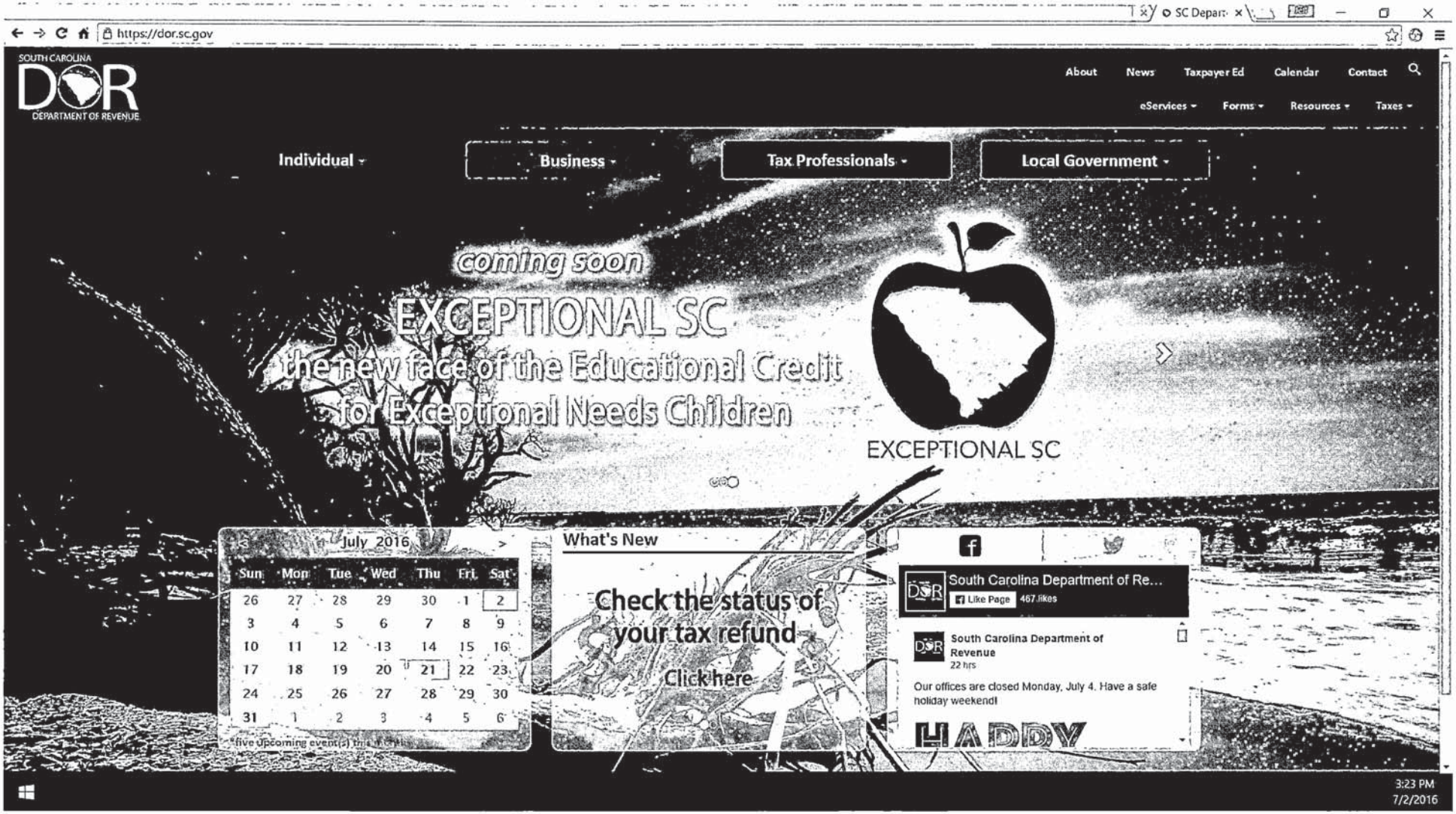
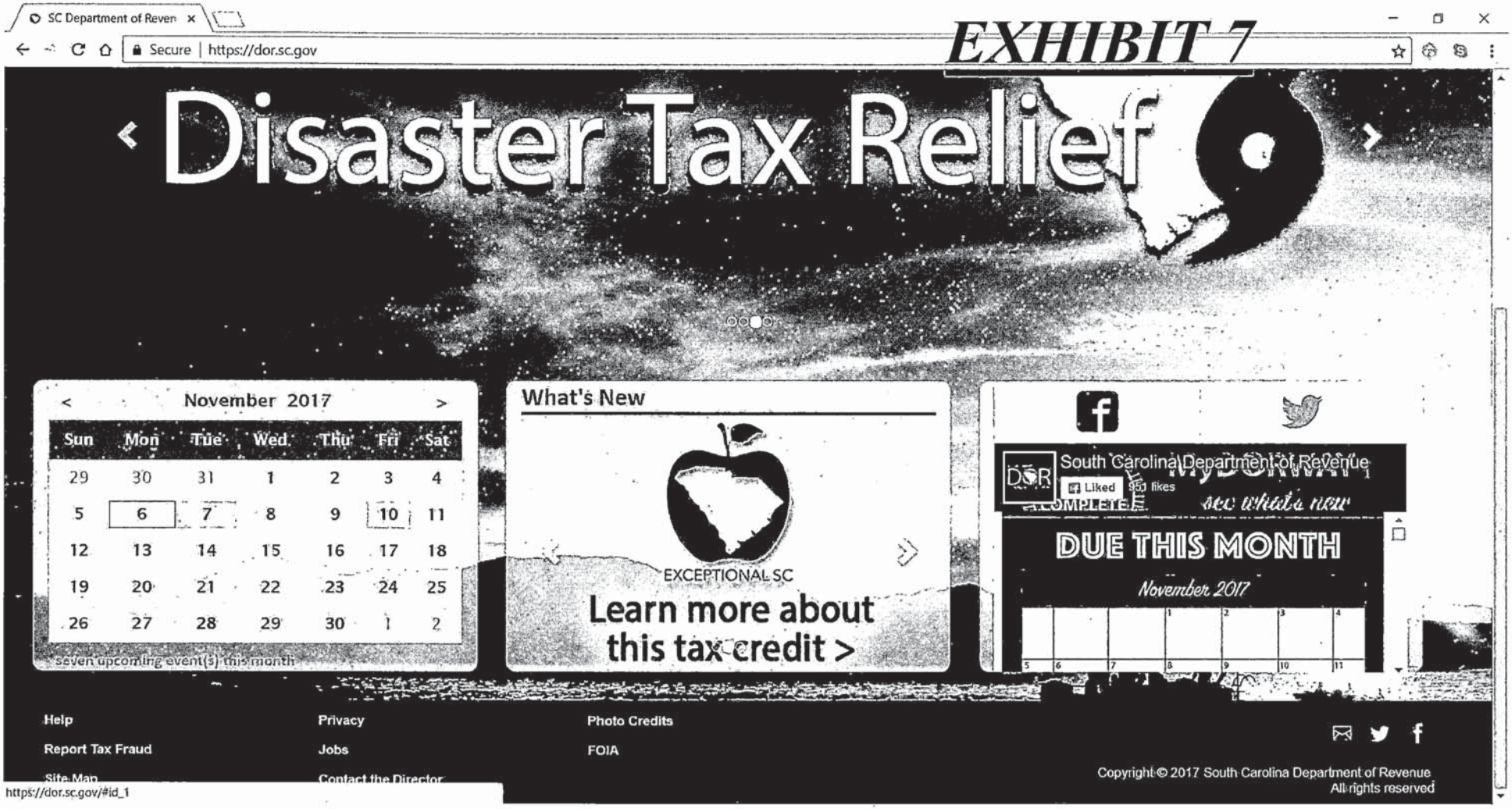
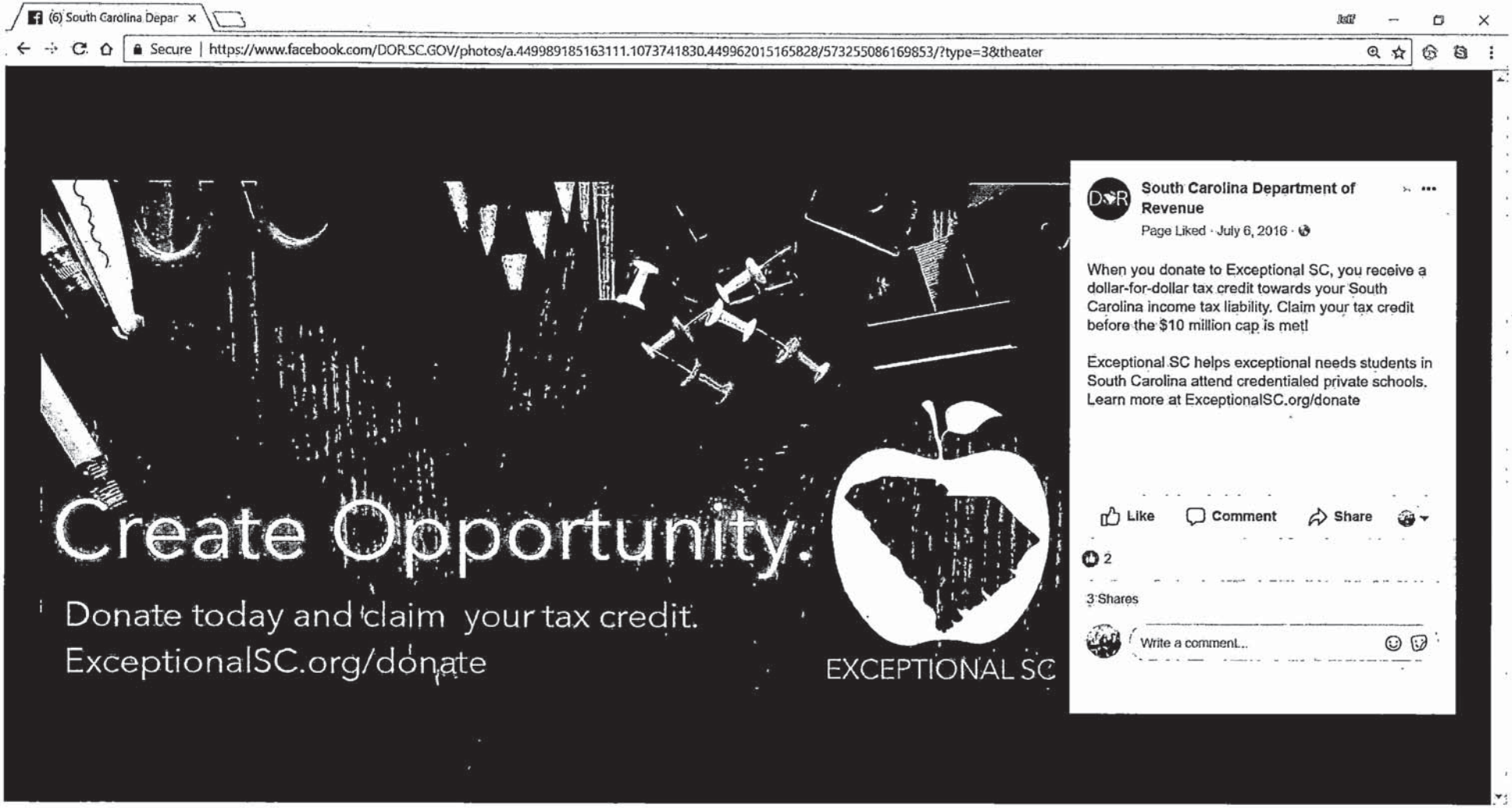

https://dor.sc.gov
SOUTH CAROLINA DOR DEPARTMENT OF REVENUE
About
News
Taxpayer Ed
Calendar
Contact
eServices
Forms
Resources
Taxes
Individual
Business
Tax Professionals
Local Government
coming soon
EXCEPTIONAL SC
the new face of the Educational Credit for Exceptional Needs Children
EXCEPTIONAL SC
July 2016
Sun Mon Tue Wed Thu Fri Sat
What's New
Check the status of your tax refund
Click here
South Carolina Department of Re...
Like Page 467 likes
South Carolina Department of Revenue
22 hrs
Our offices are closed Monday, July 4. Have a safe holiday weekend!
HADDY
3:23 PM
7/2/2016

EXHIBIT 7


SC Department of Reven
Secure | https://dor.sc.gov
Disaster Tax Relief
November 2017
Sun Mon Tue Wed Thu Fri Sat
29 30 31 1 2 3 4
5 6 7 8 9 10 11
12 13 14 15 16 17 18
19 20 21 22 23 24 25
26 27 28 29 30 1 2
seven upcoming event(s) this month
What's New
EXCEPTIONAL SC
Learn more about this tax credit >
South Carolina Department of Revenue
Liked 951 likes
DUE THIS MONTH
November 2017
Help
Report Tax Fraud
Site Map
Privacy
Jobs
Contact the Director
Photo Credits
FOIA
Copyright © 2017 South Carolina Department of Revenue
All rights reserved
https://dor.sc.gov/#id_1

ATTACHMENT J


(6) South Carolina Depar
Secure | https://www.facebook.com/DORSC.GOV/photos/a.449989185163111.1073741830.449962015165828/573255086169853/?type=3&theater
Create Opportunity.
Donate today and claim your tax credit.
ExceptionalSC.org/donate
EXCEPTIONAL SC
South Carolina Department of Revenue
Page Liked · July 6, 2016 ·
When you donate to Exceptional SC, you receive a dollar-for-dollar tax credit towards your South Carolina income tax liability. Claim your tax credit before the $10 million cap is met!
Exceptional SC helps exceptional needs students in South Carolina attend credentialed private schools. Learn more at ExceptionalSC.org/donate
Like
Comment
Share
2
3 Shares
Write a comment...

ATTACHMENT K

SC Dept. of Revenue (@S

Twitter, Inc. [US] | https://twitter.com/scdor?lang=en

Home Moments Search Twitter Have an account? Log in

SC Dept. of Revenue
@SCDOR

Tweets 1,619 | Following 494 | Followers 1,122 | Likes 253 | Lists 2

Follow

1

SC Dept. of Revenue @SCDOR · 13 Jul 2017

for tax credits are still available for donations to Exceptional SC. $8.3M remaining. Claim yours today @ ExceptionalSC.org/donate.

3

SC Dept. of Revenue Retweeted

IRS @IRSnews · 13 Jul 2017

Fake emails from a #tax software education provider phishing for sensitive #TaxPro data. #IRS alert: irs.gov/alerts

3 2

SC Dept. of Revenue (@S ×

Twitter, Inc. [US] | https://twitter.com/scdor?lang=en

Home Moments Search Twitter Have an account? Log in

SC Dept. of Revenue
@SCDOR

Tweets	Following	Followers	Likes	Lists
1,619	494	1,122	253	2

Follow

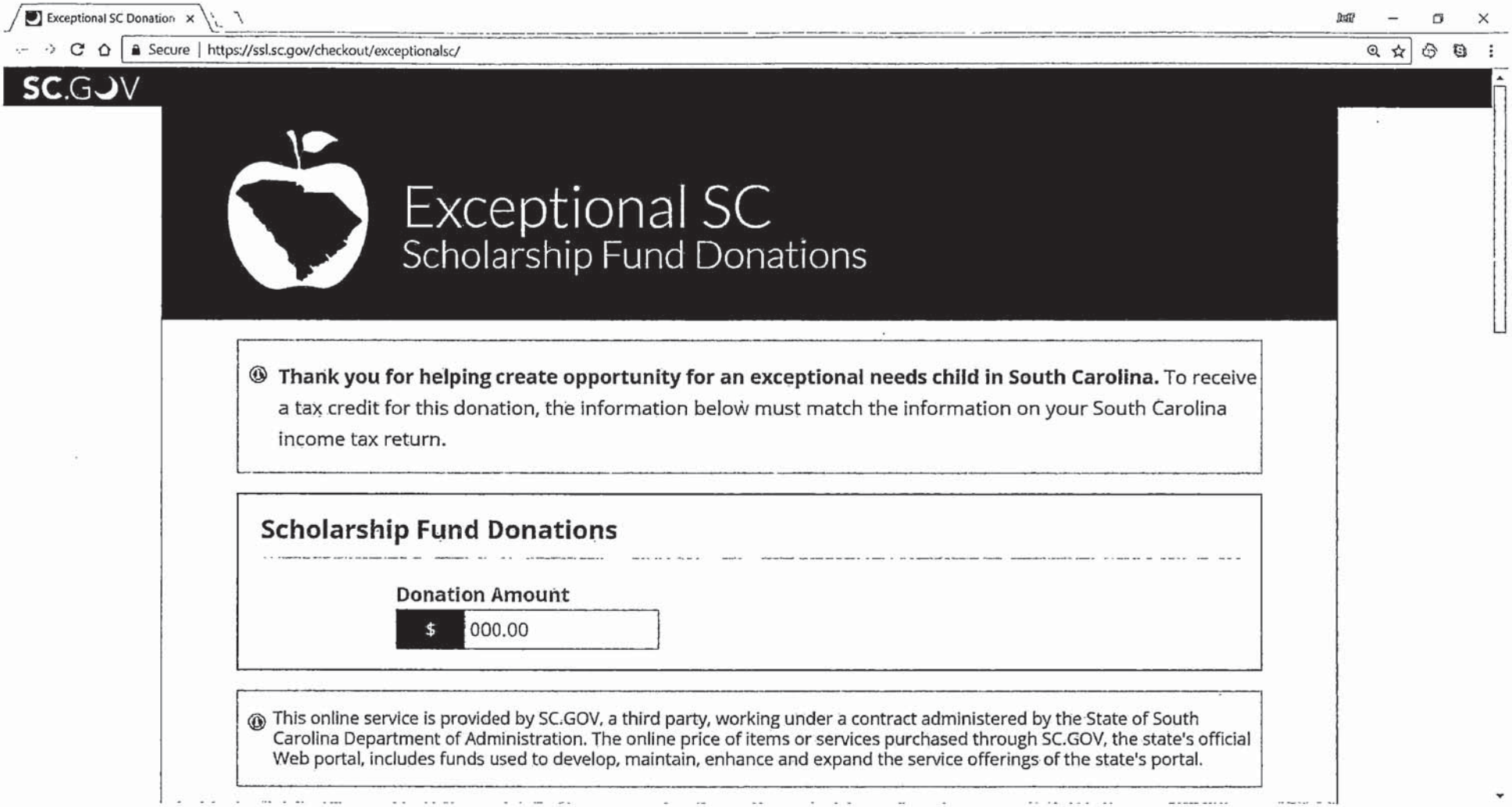
1

SC Dept. of Revenue @SCDOR · 27 Jul 2017
Interested in claiming a dollar-for-dollar tax credit on up to 60% of your SC income tax liability? Check out ExceptionalSC.org.

1

SC Dept. of Revenue @SCDOR · 26 Jul 2017
Our policy area is now hiring a Senior State Tax Attorney. JD + 4 years of experience are required. Apply today at jobs.sc.gov.

ATTACHMENT L


Exceptional SC Donation
Secure | https://ssl.sc.gov/checkout/exceptionalsc/
SC.GOV
Exceptional SC
Scholarship Fund Donations
Thank you for helping create opportunity for an exceptional needs child in South Carolina. To receive a tax credit for this donation, the information below must match the information on your South Carolina income tax return.
Scholarship Fund Donations
Donation Amount
$
000.00
This online service is provided by SC.GOV, a third party, working under a contract administered by the State of South Carolina Department of Administration. The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal.

ATTACHMENT M

About

FAQs

1. **What is ECENC?**
   Educational Credits for Exceptional Needs Children was created by the SC General Assembly in 2013. It created a mechanism for donors to contribute toward a scholarship fund for students in SC who meet the criteria as exceptional needs to use to go to approved independent schools in SC. It has been included as a budget proviso for the last several years. Each year the legislature tweaks the language of the proviso, working to make the program stronger. The Exceptional SC board is working with the SC legislature to make the funding permanent law.

2. **What is Exceptional SC?**
   Exceptional SC was created in the 2016 budget proviso 109.5 governing the ECENC. According to the proviso, "The fund shall be governed by five directors, two appointed by the Chairman of the House Ways and Means Committee, one of which is based upon the recommendation of the South Carolina Association of Christian Schools and one which is based upon the recommendation of the Diocese of Charleston, two appointed by the Chairman of the Senate Finance Committee based upon the recommendations of the South Carolina Independent Schools Association and one appointed by the Governor based upon the recommendation of the Palmetto Association of Independent Schools."

3. **Who are the current directors for Exceptional SC?**
   Thomas E. Persons, Mr. Michael A. Acquilano, Mr. C. Edward Earwood III, Mrs. Betsy A. Fanning, and Dr. Spencer A. Jordan.

4. **How are awards determined?**
   As stated in the 2016 proviso, incumbent students (those students who received awards in the previous year) are given priority. The Exceptional SC board is developing support by the legislature to increase the funding tax credits so that all our special need students can get full scholarships.

5. **How do "new" students get prioritized?**
   Students who did not receive awards in the previous year will receive awards as funds allow.

6. **Who can donate?**
   No limitations. South Carolina taxpayers are eligible for a State income tax credit on up to 60% of their State liability. Exceptional SC is a 501(c)(3). Donations to a 501(c)(3) are deductible on your federal taxes. Please consult your CPA/financial advisor for more information on donating to non-profits.

7. **Can parents and family members donate?**
   Absolutely! However, please note that there is no "quid pro quo." The Exceptional SC board does not have access to the names of donors while making funding decisions. Our funding of students is based *only* on eligibility documents and incumbency.

8. **Will additional awards be made?**
   Incumbents will receive fall and spring awards. As additional funds become available, new students to the program will also receive awards.

9. **I got a tax credit and a scholarship. What do I do?**
   You will be notified by the Department of Revenue that your tax credit has been reduced by the amount of scholarship your child received.

ATTACHMENT N

Boards & Commissions Search Home

<< Back to Search Results

Educational Credit for Exceptional Needs Children Fund

Statutes: SC Code §Proviso 109.15, 2016

Members

Position	Position Title	Current Members	Appointed By	Appointed Date	Expiration Date	Coterm/At Pleasure Of
Governor Appointee	Director	Fanning, Betsy A.	Governor Nikki R. Haley	6/27/2016		☑
House Ways & Means Appointee	Director	Earwood, Edward	Chairman Brian White, House Ways & Means Committee	6/13/2016		☑
House Ways & Means Appointee	Director	Acquilano, Michael F.	Chairman Brian White, House Ways & Means Committee	6/13/2016		☑
Senate Finance Appointee	Director	Persons, Thomas E. Sr.	Hugh K. Leatherman, Sr., Chairman of the Senate Finance Committee	6/21/2016		☑
Senate Finance Appointee	Director	Jordan, Spencer	Hugh K. Leatherman, Sr., Chairman of the Senate Finance Committee	6/21/2016		☑

If you are an appointing authority or administrator of a state board or commission and need to report an appointment, resignation, or other change in membership to the Secretary of State's Office, you may send your written notification to:

SC Secretary of State's Office
Attn: Boards & Commissions
1205 Pendleton Street, Suite 525
Columbia, SC 29201

For additional information on state boards and commissions, please visit our Boards and Commissions FAQs page. You may also call our Boards and Commissions Division at (803) 734-2512.

Disclaimer: The South Carolina Secretary of State's State Boards & Commissions online database is provided as a convenience to our customers to search for state boards and commissions membership information that has been provided to our office. Updates are uploaded every 24 hours. Users are advised that pursuant to S.C. Code of Laws §1-1-1310, it is the responsibility of each state board and commission to provide the Secretary of State's Office with membership information. While every effort is made to ensure reliability and accuracy, the Secretary of State's Office relies on the information provided by state boards and commissions and their appointing authorities.

FAQs | Congressional Districts Map | Judicial Circuits Map | Boards & Commissions | Home

South Carolina
Secretary of State
Mark Hammond

Boards & Commissions Search Home

◉ Search Boards, Commissions, and Committees ○ Search Board Members

Name: Contains ▼ EDUCATIONAL credit Search

	Search Results
1	Educational Credit for Exceptional Needs Children Fund

If you are an appointing authority or administrator of a state board or commission and need to report an appointment, resignation, or other change in membership to the Secretary of State's Office, you may send your written notification to:

SC Secretary of State's Office
Attn: Boards & Commissions
1205 Pendleton Street, Suite 525
Columbia, SC 29201

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FAQs | Congressional Districts Map | Judicial Circuits Map | Boards & Commissions | Home

South Carolina Secretary of State Mark Hammond

Business Entities Online

File, Search, and Retrieve Documents Electronically

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

Corporate Information

Entity Type: Nonprofit

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 06/16/2016

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: RICK REAMES III

Address: 300A OUTLET POINTE BOULEVARD
COLUMBIA, South Carolina 29210

Official Documents On File

Filing Type	Filing Date
Incorporation	06/16/2016

For filing questions please contact us at **803-734-2158**

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South Carolina
Secretary of State
Mark Hammond

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

Public Id: P35886

Mr. Rick Reames III, CEO
300 OUTLET POINTE BLVD STE A
COLUMBIA, SC292105666

Status: Registered: Information from this organization's annual financial report is listed below.

The following financial information has been provided to the Secretary of State's Office by the above named organization. The Secretary of State's Office has not independently verified this financial information.If a charity has recently registered with the Secretary of State's Office for the first time, there may not be any financial data available. Below are figures for the organization's fiscal year - .

TOTAL REVENUE:

PROGRAM EXPENSES:

TOTAL EXPENSES:

NET ASSETS:

FUNDRAISER COSTS:

Disclaimer: The Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the charity to inform the Secretary of State of any updated information. While every effort is made to ensure the accuracy of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from the Charity Database does so at his or her own risk.

All financial information is based on the organization's IRS Form 990 or the Secretary of State's Annual Financial Report as filed with the Secretary of State's Office. The Secretary of State's Office has not independently verified this financial information. Financial reports, registration statements and exemption applications are maintained by the Secretary of State's Office for three years and are deemed public records. Copies are available to the public for a copy fee.

Mailing Address: SC Secretary of State's Office 1205 Pendleton Street Suite 525 Columbia, SC 29201

ELECTRONICALLY FILED - 2018 Jun 14 4:19 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr. Plaintiff,	)	Case No.: 2017-CP-40-06976
v.	)	Motion to Dismiss
South Carolina Educational Credit for Exceptional Needs Children Fund Defendant	)	

Defendant hereby moves this honorable court to dismiss this case pursuant to South Carolina Rules of Civil Procedure Rule 12(b)(6), failure to state facts sufficient to constitute a cause of action for which relief can be granted.

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 14th day of June, 2018
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Jun 14 4:19 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr.	)	Case No.: 2017-CP-40-06976
Plaintiff,	)	
v.	)	Memo in Support of Motion to Dismiss
South Carolina Educational Credit for Exceptional Needs Children Fund	)	
Defendant	)	

PROCEDURAL BACKGROUND

Plaintiff filed a lawsuit requesting compliance with the Freedom of Information Act based on several requests for information sent to the Defendant.

The Defendant is a 501(c)3 which grants scholarships to special needs students who may be better helped by the services of a private institution. The program was created by a budget proviso which outlined reporting requirements for the Defendant. Funding for the Defendant comes from private donations for which the donor receives a tax credit on their South Carolina taxes.

ARGUMENTS IN SUPPORT OF MOTION TO DISMISS

On May 23, 2018, the South Carolina Supreme Court held that the legislature did not intend FOIA to apply where a more specific reporting statute applies. *DomainsNewMedia.com, LLC, v. Hilton Head Island-Bluffton Chamber of Commerce*. Opinion No. 27803, May 23, 2018, SC. Sup. Ct. In *DomainsNewMedia.com,* the court held that the Chamber of Commerce was not subject to FOIA, that the governmental funds they received were subject to “narrow and

ELECTRONICALLY FILED - 2018 Jun 14 4:19 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

targeted" reporting requirements outlined in two different statutes, and that because of this specialized reporting, the more general FOIA requirements did not apply. "Following the passage of FOIA, the General Assembly enacted the more narrow and targeted A-Tax statute (and Proviso 39.2) to provide what it determined were the necessary accountability safeguards with regard to the expenditure of these specific funds while simultaneously protecting the private nature of the organizations selected to perform this marketing function. The General Assembly deemed these provisions sufficient to ensure that the funds are being properly expended, and Domains has presented no valid legal basis to contravene this legislative determination." *Id.*

The Defendant is subject to its own narrow and targeted reporting requirements as laid out by the budget proviso and by the subsequent bill recently signed into law. These reports are made available to the legislature, the Secretary of State and the general public and a copy can be easily downloaded from the Defendant's website. These reports contain all the summary statistics on how the funds were spent, the schools which received the funds, and donations solicited that can be given without compromising donor or student personal information. Plaintiff has received copies of these reports.

On May 18, 2018, the Governor of South Carolina signed H. 4077 into law. *South Carolina Code, Annotated 1976* Title 12, Chapter 6, Article 25, Section 1(B)(4):

> In concert with the public charity directors, the department shall administer the public charity including, but not limited to, the keeping of records, the management of accounts, and disbursement of the grants awarded pursuant to this section. The public charity may expend up to two percent of the fund for administration and related costs. The department and the public charity may not expend public funds to administer the program. *Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the Department of Revenue or the public charity in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act. Personally identifiable information, as described in the Family Educational Rights and Privacy Act and*

ELECTRONICALLY FILED - 2018 Jun 14 4:19 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

> *individual health records, or the medical or wellness needs of children applying for or receiving grants must remain confidential and is not subject to disclosure pursuant to the Freedom of Information Act.* [emphasis added]

This new bill is explicit instruction from the legislature that FOIA does not apply to the normal operations of the Defendant. The Defendant's operations are concerned only with the awarding of scholarships, including tasks such as qualifying students, confirming enrollment and tuition with schools, soliciting donations from South Carolina taxpayers, granting awards, and handling unique situations regarding these awards when they arise. All operations of the Defendant would be covered by the two types of information listed in the Act.

Likewise, according to the South Carolina Freedom of Information Act, public meetings in which applications for scholarships are reviewed and scholarships are awarded are exempt from FOIA disclosure and can be closed meetings. *South Carolina Code, Annotated 1976* Title 30, Chapter 4, Article 70, Section a(1). All board meetings of Defendant involve review of scholarships, discussion of specific cases, procedures by which scholarships are awarded, and personnel issues, and are thus closed to the public.

CONCLUSION

Because of the S.C. Supreme Court ruling in *DomainsNewsMedia*.com, the explicit and clear statutory expression of legislative intent, and the exemptions already existing in the South Carolina Freedom of Information Act, the Plaintiff has failed to state a cause of action for which relief can be granted. Clearly, FOIA does not apply to the Defendant. Therefore, we respectfully request this court dismiss this action with prejudice.

(Signatures on next page)

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 14th day of June, 2018
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Jun 14 4:19 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

ELECTRONICALLY FILED - 2018 Jun 14 4:19 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr.	)	Case No.: 2017-CP-40-06976
Plaintiff,	)	
v.	)	Motion for Protective Order
South Carolina Educational Credit for Exceptional Needs Children Fund	)	
Defendant	)	

Defendant hereby moves this honorable court for a protective order regarding discovery requests by the Plaintiff. This motion is specific to Plaintiff's Interrogatory question 7 and Request for Production. This motion is based on protection of privacy of third parties, the burdensome nature of the request for a small organization with a very limited budget, and as outlined in Defendant's Motion to Dismiss, the Plaintiff is not entitled to this information as a matter of law.

Defendant reserves the right to supplement this motion with a memo prior to hearing.

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 14th day of June, 2018
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr.	)	Case No.: 2017-CP-40-06976
Plaintiff,	)	
v.	)	Motion for Summary Judgment
South Carolina Educational Credit for Exceptional Needs Children Fund	)	
Defendant	)	

Defendant hereby moves this Honorable Court Summary Judgment pursuant to South Carolina Rules of Civil Procedure Rule 56. Defendant reserves the right to support this motion with memos and affidavits submitted at a later date.

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 16th day of August, 2018
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr.	)	Case No.: 2017-CP-40-06976
Plaintiff,	)	
v.	)	Memo in Support of Motion for Summary Judgment
South Carolina Educational Credit for Exceptional Needs Children Fund	)	
Defendant	)	

PROCEDURAL BACKGROUND AND BACKGROUND FACTS

Plaintiff filed a lawsuit requesting compliance with the Freedom of Information Act based on several requests for information sent to the Defendant.

The Defendant is a 501(c)3 which grants scholarships to special needs students who may be better helped by the services of a private institution. The program was created by a budget proviso which outlined reporting requirements for the Defendant. Funding for the Defendant comes from private donations for which the donor receives a tax credit on their South Carolina taxes.

Defendant moves for Summary Judgment that Defendant is not a Public Body as contemplated by FOIA, Defendant is exempt from holding open meetings subject to FOIA and Defendant is exempt by South Carolina Law from disclosing documents to FOIA requests relating to its normal operations.

ARGUMENTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

On May 23, 2018, the South Carolina Supreme Court held that the legislature did not intend FOIA to apply where a more specific reporting statute applies. *DomainsNewMedia.com, LLC, v. Hilton Head Island-Bluffton Chamber of Commerce*. Opinion No. 27803, May 23, 2018, SC. Sup. Ct. In *DomainsNewMedia.com,* the court held that the Chamber of Commerce was not subject to FOIA, that the governmental funds they received were subject to "narrow and targeted" reporting requirements outlined in two different statutes, and that because of this specialized reporting, the more general FOIA requirements did not apply. "Following the passage of FOIA, the General Assembly enacted the more narrow and targeted A-Tax statute (and Proviso 39.2) to provide what it determined were the necessary accountability safeguards with regard to the expenditure of these specific funds while simultaneously protecting the private nature of the organizations selected to perform this marketing function. The General Assembly deemed these provisions sufficient to ensure that the funds are being properly expended, and Domains has presented no valid legal basis to contravene this legislative determination." *Id.*

The Defendant is subject to its own narrow and targeted reporting requirements as laid out by the budget proviso and by the subsequent bill recently signed into law. These reports are made available to the legislature, the Secretary of State and the general public and a copy can be easily downloaded from the Defendant's website. These reports contain all the summary statistics on how the funds were spent, the schools which received the funds, and donations solicited that can be given without compromising donor or student personal information. Plaintiff has received copies of these reports.

Educational Credit for Exceptional Needs Children Fund or Exceptional SC is a 501(c)3 organization. It registers with the Secretary of State as a public charity under Section 509 and reports to the Secretary of State as contemplated for entities not subject to FOIA. The funding is

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

not state funding, but rather private donations. Exceptional SC receives no support from state funding. The State has provided an avenue for Exceptional SC to exist, and for that reason this program is highly regulated and reporting intensive. Like the Chamber of Commerce, Exceptional SC is a 501(c)3 organization that has extensive reporting requirements regarding its activities and use of funds. Exceptional SC is not a public body subject to FOIA because of the nearly similar extensive reporting requirements making the Hilton Head Chamber of Commerce not a public body pursuant to FOIA.

On May 18, 2018, the Governor of South Carolina signed H. 4077 into law. *South Carolina Code, Annotated 1976* Title 12, Chapter 6, Section 3790(B)(4):

> In concert with the public charity directors, the department shall administer the public charity including, but not limited to, the keeping of records, the management of accounts, and disbursement of the grants awarded pursuant to this section. The public charity may expend up to two percent of the fund for administration and related costs. The department and the public charity may not expend public funds to administer the program. *Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the Department of Revenue or the public charity in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act. Personally identifiable information, as described in the Family Educational Rights and Privacy Act and individual health records, or the medical or wellness needs of children applying for or receiving grants must remain confidential and is not subject to disclosure pursuant to the Freedom of Information Act.* [emphasis added]

This new bill is explicit instruction from the legislature that FOIA does not apply to the normal operations of the Defendant. The Defendant's operations are concerned only with the awarding of scholarships, including tasks such as qualifying students, confirming enrollment and tuition with schools, soliciting donations from South Carolina taxpayers, granting awards, and handling unique situations regarding these awards when they arise. All operations of the Defendant would be covered by the two types of information listed in the Act.

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

Likewise, according to the South Carolina Freedom of Information Act, public meetings in which applications for scholarships are reviewed and scholarships are awarded are exempt from FOIA disclosure and can be closed meetings. *South Carolina Code, Annotated 1976* Title 30, Chapter 4, Article 70, Section a(1). All board meetings of Defendant involve review of scholarships, discussion of specific cases, procedures by which scholarships are awarded, and personnel issues, and are thus closed to the public.

The Plaintiff has filed an action seeking compliance with FOIA. The Defendant is not a public body as contemplated by FOIA. South Carolina Law prohibits Defendant from making the disclosures requested by the Plaintiff. South Carolina Freedom of Information Act law exempts Defendant from holding open meetings and exempts Defendant from FOIA. For these reasons the court should dismiss the Plaintiff's action with prejudice as he has failed to state a cause of action upon which relief can be granted and has requested relief that is inconsistent with South Carolina Law.

CONCLUSION

Because of the S.C. Supreme Court ruling in *DomainsNewsMedia*.com, the explicit and clear statutory expression of legislative intent, and the exemptions already existing in the South Carolina Freedom of Information Act, the Plaintiff has failed to state a cause of action for which relief can be granted. Clearly, FOIA does not apply to the Defendant. Therefore, we respectfully request this court dismiss this action with prejudice.

(Signatures on next page)

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 16th day of August, 2018
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr.	)	Case No.: 2017-CP-40-06976
Plaintiff,	)	
v.	)	Motion for Judgment on the Pleadings
South Carolina Educational Credit for Exceptional Needs Children Fund	)	
Defendant	)	

Defendant hereby moves this honorable court to dismiss this case pursuant to South Carolina Rules of Civil Procedure Rule 12(c). Plaintiff has failed to bring a cause of action for which relief can be granted. SC Code 1976 Annotated section 12-6-3790(B)(4) prohibits the relief sought by Plaintiff. Furthermore, the Supreme Court has ruled that an entity is not a public body subject to FOIA when the Legislature prescribed more specific reporting requirements. Furthermore, Defendant is exempted from providing relief sought by South Carolina Law.

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 16th day of August, 2018
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr.	)	Case No.: 2017-CP-40-06976
Plaintiff,	)	
v.	)	Memo in Support of Motion for Judgment on the Pleadings
South Carolina Educational Credit for Exceptional Needs Children Fund	)	
Defendant	)	

PROCEDURAL BACKGROUND AND BACKGROUND FACTS

Plaintiff filed a lawsuit requesting compliance with the Freedom of Information Act based on several requests for information sent to the Defendant.

The Defendant is a 501(c)3 which grants scholarships to special needs students who may be better helped by the services of a private institution. The program was created by a budget proviso which outlined reporting requirements for the Defendant. Funding for the Defendant comes from private donations for which the donor receives a tax credit on their South Carolina taxes.

Defendant moves for Judgment on the Pleadings because Defendant is not a Public Body as contemplated by FOIA, Defendant is exempt from holding open meetings subject to FOIA and Defendant is exempt by South Carolina Law from disclosing documents relating to its normal operations.

ARGUMENTS IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

On May 23, 2018, the South Carolina Supreme Court held that the legislature did not intend FOIA to apply where a more specific reporting statute applies. *DomainsNewMedia.com, LLC, v. Hilton Head Island-Bluffton Chamber of Commerce*. Opinion No. 27803, May 23, 2018, SC. Sup. Ct. In *DomainsNewMedia.com,* the court held that the Chamber of Commerce was not subject to FOIA, that the governmental funds they received were subject to "narrow and targeted" reporting requirements outlined in two different statutes, and that because of this specialized reporting, the more general FOIA requirements did not apply. "Following the passage of FOIA, the General Assembly enacted the more narrow and targeted A-Tax statute (and Proviso 39.2) to provide what it determined were the necessary accountability safeguards with regard to the expenditure of these specific funds while simultaneously protecting the private nature of the organizations selected to perform this marketing function. The General Assembly deemed these provisions sufficient to ensure that the funds are being properly expended, and Domains has presented no valid legal basis to contravene this legislative determination." *Id.*

The Defendant is subject to its own narrow and targeted reporting requirements as laid out by the budget proviso and by the subsequent bill recently signed into law. These reports are made available to the legislature, the Secretary of State and the general public and a copy can be easily downloaded from the Defendant's website. These reports contain all the summary statistics on how the funds were spent, the schools which received the funds, and donations solicited that can be given without compromising donor or student personal information. Plaintiff has received copies of these reports.

Educational Credit for Exceptional Needs Children Fund or Exceptional SC is a 501(c)3 organization. It registers with the Secretary of State as a public charity under Section 509 and reports to the Secretary of State as contemplated for entities not subject to FOIA. The funding is

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

not state funding, but rather private donations. Exceptional SC receives no support from state funding. The State has provided an avenue for Exceptional SC to exist, and for that reason this program is highly regulated and reporting intensive. Like the Chamber of Commerce, Exceptional SC is a 501(c)3 organization that has extensive reporting requirements regarding its activities and use of funds. Exceptional SC is not a public body subject to FOIA because of the nearly similar extensive reporting requirements making the Hilton Head Chamber of Commerce not a public body pursuant to FOIA.

On May 18, 2018, the Governor of South Carolina signed H. 4077 into law. *South Carolina Code, Annotated 1976* Title 12, Chapter 6, Section 3790(B)(4):

> In concert with the public charity directors, the department shall administer the public charity including, but not limited to, the keeping of records, the management of accounts, and disbursement of the grants awarded pursuant to this section. The public charity may expend up to two percent of the fund for administration and related costs. The department and the public charity may not expend public funds to administer the program. *Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the Department of Revenue or the public charity in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act. Personally identifiable information, as described in the Family Educational Rights and Privacy Act and individual health records, or the medical or wellness needs of children applying for or receiving grants must remain confidential and is not subject to disclosure pursuant to the Freedom of Information Act.* [emphasis added]

This new bill is explicit instruction from the legislature that FOIA does not apply to the normal operations of the Defendant. The Defendant's operations are concerned only with the awarding of scholarships, including tasks such as qualifying students, confirming enrollment and tuition with schools, soliciting donations from South Carolina taxpayers, granting awards, and handling unique situations regarding these awards when they arise. All operations of the Defendant would be covered by the two types of information listed in the Act.

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

Likewise, according to the South Carolina Freedom of Information Act, public meetings in which applications for scholarships are reviewed and scholarships are awarded are exempt from FOIA disclosure and can be closed meetings. *South Carolina Code, Annotated 1976* Title 30, Chapter 4, Article 70, Section a(1). All board meetings of Defendant involve review of scholarships, discussion of specific cases, procedures by which scholarships are awarded, and personnel issues, and are thus closed to the public.

The Plaintiff has filed an action seeking compliance with FOIA. The Defendant is not a public body as contemplated by FOIA. South Carolina Law prohibits Defendant from making the disclosures requested by the Plaintiff. South Carolina Freedom of Information Act law exempts Defendant from holding open meetings and exempts Defendant from FOIA. For these reasons the court should dismiss the Plaintiff's action with prejudice as he has failed to state a cause of action upon which relief can be granted and has requested relief that is inconsistent with South Carolina Law.

CONCLUSION

Because of the S.C. Supreme Court ruling in *DomainsNewsMedia*.com, the explicit and clear statutory expression of legislative intent, and the exemptions already existing in the South Carolina Freedom of Information Act, the Plaintiff has failed to state a cause of action for which relief can be granted. Clearly, FOIA does not apply to the Defendant. Therefore, we respectfully request this court dismiss this action with prejudice.

(Signatures on next page)

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 16th day of August, 2018
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2017-CP-40-06976
Jefferson Davis, Jr.,	)	
	)	
Plaintiff,	)	
	)	**EMERGENCY MOTION**
vs.	)	**FOR CONTEMPT & SANCTIONS**
	)	
South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
	)	
Defendant.	)	

RICHLAND COUNTY
FILED
2018 AUG 22 AM 9:21
JEANETTE W. MCBRIDE
C.C.P. & G.S.

MOTION FOR CONTEMPT: Plaintiff, Jefferson Davis, Jr., respectfully moves this Court for an Order holding Defendant in Contempt for failing to comply with the Court's August 9th, 2018 Order to provide discovery responses by August 14th, 2018.

At our hearing on **August 9th, 2018** before the **Honorable Perry H. Gravely**, Defendant promised the Court that they would "send an email" that afternoon to Plaintiff with their response to Interrogatories. No email was sent / received.

At our hearing on **August 9th, 2018** before the **Honorable Perry H. Gravely**, Defendant promised the court that they would provide responses to Request for Production to Plaintiff "within five days". **This Court so ordered said responses to be provided within 5 days**. No responses have been sent / received.

At our hearing on **May 15th, 2018** before the **Honorable Jocelyn Newman**, Defendant promised the court that they would provide discovery responses to Plaintiff within a week or two. No responses have been sent / received.

In addition to the above unfulfilled promises by Defendant to the Court and Defendant violating a Court Order, Plaintiff has made extensive efforts as outlined in his May 7, 2018 Motion to Compel Discovery. This includes, but not limited to, additional promises by Defendant to provide discovery responses which were not fulfilled.

FAILURE TO OBJECT: Discovery request were provided to Defendant in March 2018 and by rule Defendant had 30 days to file any objections. Defendant did file any objections, and to this date has not filed any objections. To the contrary, Defendant has promised to provide responses with any objections. This Court in its August 9th, 2018 Order gave Defendants five days to file any objections. Defendant, again, did not file any objects. As such Plaintiff would request that this Court Order Defendant to comply with Plaintiffs discovery request in full and be barred from filing any objections.

REQUEST FOR SANCTIONS: The case at hand involves a simple **Complaint for FOIA Enforcement** (originally filed 7/31/2017). When successful, Plaintiff will be entitled by law to his costs, including attorney's fees S.C. Code Ann. § 30-4-100(B). This taxation of costs provision in FOIA compelling losing government / public defendants is traditionally the motivating factor to prod compliance with FOIA requests from citizens.

In this case, Plaintiff is currently acting *Pro Se* and there are no exorbitant attorney's fees yet which would traditionally motivate defendants to comply with FOIA and settle the dispute as economically and expediently as possible. However, this Court does have the authority to sanction

Defendant since they are obviously not motivated to take this case seriously otherwise. As such Plaintiff would request this Court to apply monetary sanctions on Defendant for their egregious failures to comply with their legal requirements and, worse, this Court's Order.

Furthermore, whereas it is Defendant's Board Members who are "dragging their feet" in this case, Plaintiff further request that such sanctions be applied to the individual Board Members of Defendant, joint & severally.

RELIEF SOUGHT: Plaintiff now respectfully does pray and ask this Court to grant an Order:

1. Holding Defendant in Contempt of Court,

2. Barring Defendant from objecting to any of Plaintiffs discovery requests served to date, and

3. Sanctioning Defendants Board Members in an amount the Court deems appropriate to motivate Defendant to comply with their legal requirements and this Courts Orders.

Respectfully submitted,

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com

PLAINTIFF, *PRO SE*

August 16, 2018
Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2017-CP-40-06976
Jefferson Davis, Jr.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
	)	
Defendant.	)	

RICHLAND COUNTY
FILED
2018 AUG 22 AM 9:21
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff does hereby certify that I have caused to be mailed and/or otherwise transmitted a copy of the below listed documents to the party shown below, postage prepaid, on the **16th day of August, 2018**, as follows:

PLEADINGS: **EMERGENCY MOTION FOR CONTEMPT & SANCTIONS**

PARTIES SERVED:

Geoffrey K. Chambers, Esq.
CPER Law Group, LLC
411 Walnut Street #10646
Green Cove Springs, FL 32043-3443
g.k.chambers@gmail.com
geoffrey@cperlgroup.com

Jefferson Davis, Jr.
Plaintiff, *Pro Se*

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
)
) CASE NO.: 2017 -CP- 40 - 06976
JEFFERSON DAVIS, JR.)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
SOUTH CAROLINA EDUCATIONAL CREDIT)
FOR EXCEPTIONAL NEEDS CHILDREN FUND)
Defendant.)

FILED
2018 SEP 10 PM 1:16
JEANNETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY

Plaintiff's Attorney:	Defendant's Attorney:
N/A - Pro Se, Bar No.	Geoffrey K. Chambers, Bar No. 10646
Address: 403 McCarter Ave, Greenville, SC 29615	Address: 411 Walnut Street, No. 10646 Green Cove Springs, FL 32043
Phone: 843-901-8036 (cell) Fax	Phone: Fax
E-mail: *jdavis@apogeetax.com* Other:	E-mail: *g.k.chambers@gmail.com* Other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: MOTION TO COMPEL DISCOVERY AND FOR SANCTIONS

Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff /☐ Defendant

September 7 XXXXX, 20 18
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter:
- ☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE CODE

Date: , 20

CLERK'S VERIFICATION

Collected by: Date Filed: , 20

☐ MOTION FEE COLLECTED: $
☐ CONTESTED – AMOUNT DUE: $

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	C.A. NO. 2017-CP-40-06976
Jefferson Davis, Jr., Plaintiff, vs. South Carolina Educational Credit for Exceptional Needs Children Fund, Defendant.	)	**MOTION TO COMPEL DISCOVERY AND FOR SANCTIONS**

RICHLAND COUNTY
FILED
2018 SEP 10 PM 4:16
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Plaintiff, Jefferson Davis, Jr., moves pursuant to South Carolina Rules of Civil Procedure, specifically but not limited to Rule 37, for this Court to compel Defendant to respond to **PLAINTIFF'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT, PLAINTIFF'S FIRST CONTINUING INTERROGATORIES TO DEFENDANT** and **PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO DEFENDANT.** Plaintiff further moves, consistent with his **EMERGENCY MOTION FOR CONTEMPT & SANCTIONS** (dated 8/16/2018 and stamped filed 8/22/2018), for Sanctions and for Defendant's Pleadings to be Stricken. Plaintiff reserves the right to support this Motion with Memos and Affidavits which will be submitted at a later date (with specific and numbered objections to denied discovery). Plaintiff is waiting on third parties for additional information.

Respectfully submitted,

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com
PLAINTIFF, *PRO SE*

September 7, 2018
Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2017-CP-40-06976
Jefferson Davis, Jr.,	)	
Plaintiff,	)	
vs.	)	
South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
Defendant.	)	

RICHLAND COUNTY
FILED
2018 SEP 10 PM 4:16
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff does hereby certify that I have caused to be mailed and/or otherwise transmitted a copy of the below listed documents to the party shown below, postage prepaid, on the **7th day of September, 2018**, as follows:

PLEADINGS: **MOTION TO COMPEL DISCOVERY AND FOR SANCTIONS**

PARTIES SERVED:

Geoffrey K. Chambers, Esq.
CPER Law Group, LLC
411 Walnut Street #10646
Green Cove Springs, FL 32043-3443
g.k.chambers@gmail.com
geoffrey@cperlgroup.com

Jefferson Davis, Jr.
Plaintiff, *Pro Se*

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
JEFFERSON DAVIS, JR.)
Plaintiff,)
vs.)
SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2017 -CP- 40 - 06976

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

FILED
2018 SEP 10 PM 4:16
JEANNETTE W. MOBRIDE
C.O.P. & G.S.
RICHLAND COUNTY

Plaintiff's Attorney:	Defendant's Attorney:
N/A - Pro Se, Bar No.	Geoffrey K. Chambers, Bar No. 10646
Address: 403 McCarter Ave, Greenville, SC 29615	Address: 411 Walnut Street, No. 10646 Green Cove Springs, FL 32043
Phone: 843-901-8036 (cell) Fax	Phone: Fax
E-mail: *jdavis@apogeetax.com* Other:	E-mail: *g.k.chambers@gmail.com* Other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: ~~MOTION TO COMPEL DISCOVERY AND FOR SANCTIONS~~ Motion for Summary Judgment

Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff /☐ Defendant

September 7 ~~XXXXX~~, 20 18
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE
☐ Other:	Date: , 20

CLERK'S VERIFICATION

Collected by: Date Filed: , 20

☐ MOTION FEE COLLECTED: $
☐ CONTESTED – AMOUNT DUE: $

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	C.A. NO. 2017-CP-40-06976
Jefferson Davis, Jr., Plaintiff, vs. South Carolina Educational Credit for Exceptional Needs Children Fund, Defendant.	)	**RENEWED MOTION FOR SUMMARY JUDGMENT (New Facts / Changed Circumstances)**

RICHLAND COUNTY
FILED
2018 SEP 10 PM 4:16
JEANETTE W. MCBRIDE
CLERK OF COURT & G.S.

Plaintiff, Jefferson Davis, Jr., moves pursuant to South Carolina Rule of Civil Procedure 56, for this Court to grant summary judgment in favor of Plaintiff on all causes of action given new facts and changed circumstances. There is no genuine issue of material fact and it is clear that Defendant, South Carolina Educational Credit for Exceptional Needs Children Fund, is in fact a "public body" and must comply with the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 et seq. ("FOIA"). Accordingly, Plaintiff is entitled to summary judgment as a matter of law.

Plaintiff reserves the right to support this Motion with Memos and Affidavits which will be submitted at a later date. Plaintiff is waiting on third parties for additional information.

Respectfully submitted,

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com
PLAINTIFF, *PRO SE*

September 7, 2018
Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2017-CP-40-06976
Jefferson Davis, Jr.,	)	
Plaintiff,	)	
vs.	)	
South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
Defendant.	)	

RICHLAND COUNTY
FILED
2018 SEP 10 PM 4:16
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff does hereby certify that I have caused to be mailed and/or otherwise transmitted a copy of the below listed documents to the party shown below, postage prepaid, on the **7th day of September, 2018**, as follows:

PLEADINGS: **RENEWED MOTION FOR SUMMARY JUDGMENT**

PARTIES SERVED: Geoffrey K. Chambers, Esq.
CPER Law Group, LLC
411 Walnut Street #10646
Green Cove Springs, FL 32043-3443
g.k.chambers@gmail.com
geoffrey@cperlgroup.com

Jefferson Davis, Jr.
Plaintiff, *Pro Se*

ELECTRONICALLY FILED - 2018 Sep 29 3:16 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr. Plaintiff, v. South Carolina Educational Credit for Exceptional Needs Children Fund Defendant	Case No.: 2017-CP-40-06976 Revised Memo in Support of Motion for Judgment on the Pleadings

PROCEDURAL BACKGROUND AND BACKGROUND FACTS

Plaintiff filed a lawsuit in the Circuit Court of Greenville County requesting compliance with the Freedom of Information Act based on several requests for information sent to the Defendant. While Plaintiff did not title the action as a Motion for Declaratory Judgment, Plaintiff cites South Carolina Code § 30-4-100. This action should be construed as a Motion for Declaratory Judgment allowed to compel response to the South Carolina Freedom of Information Act (FOIA) pursuant to South Carolina Code § 30-4-100.

Defendant Educational Credit for Exceptional Needs Children Fund (ECENCF) filed a motion to dismiss for improper venue. At the hearing of the Motion to Dismiss it was agreed to allow transfer of the action to the proper venue, Richland County.

Possibly due to the Plaintiff's improper case title and selection of case classification, scheduling of a hearing within 10 days was not triggered. While waiting on a hearing to be scheduled, Plaintiff filed a Motion for Summary Judgment which was denied and sent numerous discovery requests.

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Defendant ECENC responded to the discovery requests, but stopped short of providing documents. Because ECENCF asserts it is not a Public Body subject to the FOIA pursuant to § 30-4-20(a), any and all ECENCF documents are the subject matter of this case. As subject matter of the case ECENCF documents are not subject to discovery in an action to compel FOIA response. *City of Columbia v. American Civil Liberties Union of South Carolina, Inc.*, 475 S.E.2d 747, 323 S.C. 384 (S.C., 1995) citing *Giza v. Secretary of Health, Education, and Welfare*, 628 F.2d 748 (1st Cir.1980) (To the extent that discovery is allowed in a FOIA action, it is directed at determining whether complete disclosure has been made, e. g., whether a thorough search for documents has taken place, whether withheld items are exempt from disclosure.)

Plaintiff filed a Motion to Compel Discovery which was heard in July 2018. Judge Gravely ordered ECENCF to supply a response to the Request for Production which included specific objections. Upon receipt of production and objections, Plaintiff filed a second Motion to Compel Discovery which is pending before this Court.

Defendant, ECENCF, is a 501(C)3 corporation that does not receive or expend public funds. Defendant was created and specifically defined by a 2016-2017 budget proviso dealing with educational tax credits. A second budget proviso with the same definition of ECENCF was issued in 2017-2018 and then codified into permanent law in May 2018.

Defendant moves for Judgment on the Pleadings based upon and because Defendant is not a Public Body as contemplated by the FOIA, a more specific reporting statute exempts Defendant from the FOIA and statutory law exempts Defendant’s information from the FOIA.

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CAUSES OF ACTION AND REQUESTS FOR RELIEF IN THE PLAINTIFF'S MOTION

In his Motion for Declaratory Judgment, the Plaintiff's causes of action are Defendant's failure to comply with two FOIA requests. These FOIA requests were for production of an audit report and notification of any public meetings held by ECENCF.

Mr. Davis makes the following requests for relief:

1. Declaring that the Defendant has violated FOIA;

2. Declaring that the request [sic] are deemed approved;

3. Enjoining Defendant to provide Plaintiff a copy of all requested documents.

4. Enjoining Defendant to provide Plaintiff notice of all future meetings as well as meeting minutes, notes, and board actions from all previous meetings.

5. Awarding the Plaintiff costs of litigation (including any third party attorney fees) pursuant to S.C. Code Ann. § 30-4-100(b); and

6. Granting Plaintiff such other and further relief as the Court deems just and proper.

LEGAL STANDARD

A judgment on the pleadings shall be granted "where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor." *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009) citing *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991).To state a sufficient cause of action under the Declaratory Judgment Act a party must demonstrate a justiciable controversy. *Brown v. Wingard*, 285 S.C. 478, 330

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S.E.2d 301 (1985). A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute which is contingent, hypothetical, or abstract. *Guimarin & Doan, Inc. v. Georgetown Textile and Mfg. Co., Inc.*, 249 S.C. 561, 155 S.E.2d 618 (1967). A justiciable controversy exists where (1) a concrete issue is present, and (2) there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party. *Power v. McNair*, 255 S.C. 150, 177 S.E.2d 551 (1970). A party has stated a cause of action under the Declaratory Judgment Act if he states the existence of a controversy which should be decided even though he is ultimately on the wrong side of the controversy. *Dantzler v. Callison*, 227 S.C. 317, 88 S.E.2d 64 (1955). The Rule 12(c) motion admits the well pleaded facts in the complaint and the court must take those well pleaded factual allegations as true. The motion does not admit the inferences drawn by the plaintiff from the facts nor does it admit conclusions of law. *Russell v. City of Columbia*, 301 S.C. 117, 390 S.E.2d 463 (Ct.App.1989). If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56. *Brown v. James*, 389 S.C. 41, 47 n.5, 697 S.E.2d 604, 607 n.5 (Ct. App. 2010)

A MOTION FOR JUDGMENT ON THE PLEADINGS IS PROPER

Plaintiff's Motion for Declaratory Judgment should be dismissed pursuant to Rule 12(c) because Plaintiff fails to plead and cannot establish a duty of ECENCF to respond to FOIA requests and a legal right to the information requested through the FOIA. ECENCF does not have a duty to respond because: (1) ECENCF is defined by § 12-6-3790(B)1-4 (and prior budget provisos with identical language) as an entity that does not meet the definition of a Public Body;

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(2) A more specific and targeted statutory reporting requirement applies instead of the FOIA; (3) §12-6-3790(B)4 exempts information used by ECENCF from the FOIA.

ECENCF is not a Public Body

While the Plaintiff states ECENCF is a "Public Body of the State of South Carolina", this is a conclusion of law and inconsistent with statutory provisions. Conclusions of law should not be admitted in a Motion for Judgment on the Pleadings. *Russell v. City of Columbia*, 301 S.C. 117, 390 S.E.2d 463 (Ct.App.1989). Instead the Court should look to the South Carolina Code of Laws to determine if ECENCF is defined as a Public Body having a duty under the FOIA. It is clear and explicit the legislature did not intend ECENCF to be a public body when the statutory definition of ECENCF contained in South Carolina Code § 12-6-3790 is compared to the statutory definition of a Public Body in South Carolina Code §30-4-20(a).

The common law concept of "public" versus "private" is inconsistent with the FOIA's definition of "public body" and thus cannot be superimposed on the FOIA. *Weston v. Carolina Research and Development Corporation*, 401 S.E. 2d 161, 303 S.C. 398(S.C. 1990). When interpreting a statute, Courts should follow the definitions contained in the statute. *Bell Finance v. South Carolina Dept. of Consumer Affairs*, 297 S.C. 111, 374 S.E.2d 918 (Ct. App. 1988)

Public Bodies for purposes of application of the FOIA are defined in South Carolina Code § 30-4-20(a):

> "Public body" means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in § 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

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> 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. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.
>
> *South Carolina Code Annotated 1976* § 30-4-20(a)

ECENCF is statutorily defined as a corporation that does not receive, have or spend public funds. This statutory definition of ECENCF has remained unchanged since the creation of the Public Charity by proviso 109.15 of the 2016-2017 Appropriations Act.

§ 12-6-3790(B)1 specifies that ECENCF is a Public Charity pursuant to IRC §509(a)1-4. All public charities are 501(C)3 corporations. This is defined by IRC §509.

§ 12-6-3790(B)2 specifies that ECENCF is separate and apart from the State. "The assets managed by ECENCF are not property of the State and not public funds. The State has no claim to the funds. ECENCF funds cannot be comingled with those of the State. ECENCF's agreements, debts and contractual obligations are not the agreements, debts and contractual obligations of the State." *South Carolina Code Annotated 1976* § 12-6-3790(B)2.

§ 12-6-3790(B)4 provides that the Department of Revenue and ECENCF may not expend public funds to administer ECENCF.

§ 12-6-3790(B)1 provides that ECENCF may not receive an appropriation of public funds.

The statute clearly defines ECENCF as a corporation that does not receive, hold, use or spend public funds. South Carolina Code § 30-4-20(a) defines Corporate Public Bodies as only

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those corporations that are supported by or expend public funds. It is not accidental the Legislature made ECENCF a corporation that is separate and apart from the State and included extensive statutory language prohibiting support by or expenditure of public funds. The legislature intended an entity reviewing special needs children scholarship applications not be subject to the FOIA.

By statutory definition, ECENCF is not a Public Body. The FOIA does not apply to ECENCF. As a result, Plaintiff has failed to plead a legal right to the audit report or notice of meetings requested pursuant to the FOIA. Plaintiff has also failed to plead a duty of Defendant to provide said documents.

The FOIA does not apply because of the presence of a more specific reporting statute.

Even if Plaintiff can somehow show that ECENCF meets the definition of a Public Body found in § 30-4-20(a), ECENCF is not required to comply with the FOIA because of the presence of a more specific narrow and targeted reporting statute.

On May 23, 2018, the South Carolina Supreme Court held that the legislature did not intend the FOIA to apply where a more specific reporting statute applies. *DomainsNewMedia.com, LLC, v. Hilton Head Island-Bluffton Chamber of Commerce*. Opinion No. 27803, May 23, 2018, SC. Sup. Ct. The court held that the Chamber of Commerce is not subject to the FOIA, that the governmental support received is subject to "narrow and targeted" reporting requirements outlined by statute, and that because of this specialized reporting, the more general FOIA requirements do not apply.

> "Following the passage of FOIA, the General Assembly enacted the more narrow and targeted A-Tax statute (and Proviso 39.2) to provide what it determined were the necessary accountability safeguards with regard to the expenditure of these

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> specific funds while simultaneously protecting the private nature of the organizations selected to perform this marketing function. The General Assembly deemed these provisions sufficient to ensure that the funds are being properly expended, and Domains has presented no valid legal basis to contravene this legislative determination." *Id.*

The Defendant is subject to its own narrow and targeted reporting requirements found in South Carolina Code § 12-6-3790(B)5. These reports are made available to the legislature, the Secretary of State and the general public and a copy can be easily downloaded from the Defendant's website. These reports contain all the summary statistics on how the funds were spent, the schools which received the funds, and donations solicited that can be given without compromising donor or student personal information. Upon information and belief, Plaintiff has received copies of these reports.

ECENCF is not a public body subject to the FOIA because of the narrow and targeted reporting requirements found in both § 12-6-3790(B)5 and the A-tax statutes. The FOIA does not apply to ECENCF or the documents requested by Plaintiff pursuant to the FOIA. Therefore Plaintiff has failed to plead a legal right to the notice of meetings or audit report requested pursuant to the FOIA. Plaintiff also failed to plead a duty of Defendant to supply the requested documents pursuant to the FOIA.

ECENCF information is exempt from the FOIA pursuant to § 12-6-3790(B)4.

Even if Plaintiff were somehow able to show ECENCF were a Public Body, ECENCF has no duty to reply to FOIA requests because of a statutory exclusion from the FOIA.

On May 18, 2018, the Governor of South Carolina signed H. 4077 into law. This law provides a clear and unambiguous exemption from the FOIA:

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> In concert with the public charity directors, the department shall administer the public charity including, but not limited to, the keeping of records, the management of accounts, and disbursement of the grants awarded pursuant to this section. The public charity may expend up to two percent of the fund for administration and related costs. The department and the public charity may not expend public funds to administer the program. *Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the Department of Revenue or the public charity in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act. Personally identifiable information, as described in the Family Educational Rights and Privacy Act and individual health records, or the medical or wellness needs of children applying for or receiving grants must remain confidential and is not subject to disclosure pursuant to the Freedom of Information Act.* [emphasis added]
>
> *South Carolina Code, Annotated 1976* § 12-6-3790(B)(4)

ECENCF and the South Carolina Department of Revenue have no duty to reply to FOIA requests for information regarding ECENCF's activities because that information is exempt. Plaintiff did not plead any legal right to the report and notice of meetings requested pursuant to the FOIA.

The FOIA exemption language is not included in proviso 109.15 of the 2016-2017 Appropriations Act or proviso 109.11 of the 2017-2018 Appropriations Act. However, its inclusion in § 12-6-3790 further and explicitly verifies the intent of the legislature that ECENCF not be subject to the FOIA.

CONCLUSION

As a pure matter of law, ECENCF has no duty to comply with the FOIA because it is not a Public Body, a more specific reporting statute applies instead of the FOIA and information contained in documents used by ECENCF is not subject to the FOIA. As a matter of law, the FOIA does not provide the Plaintiff a legal right to information from ECENCF. Plaintiff has

failed to plead the definite assertion of legal rights and positive legal duty required to sustain a Motion for Declaratory Judgment. Therefore, ECENCF respectfully requests this court dismiss this action with prejudice.

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 29th day of September, 2018
Green Cove Springs, Florida

ELECTRONICALLY FILED - 2018 Sep 29 3:16 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2017-CP-40-06976
Jefferson Davis, Jr.,	)	
Plaintiff,	)	**PLAINTIFFS' NOTICE AND MOTION FOR RECONSIDERATION OF FINAL ORDER**
vs.	)	
South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
Defendant.	)	

RICHLAND COUNTY
FILED
2019 JAN -7 AM 8:18
JEANNETTE W. WALKER
C.C.P.

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRCP, Plaintiff Jefferson Davis, Jr. hereby submits this motion for reconsideration of the Court's Final Order dated and entered on December 21, 2018 (the "Order"). Plaintiff raises the following exceptions to particular statements, findings, and conclusions in the Order and Plaintiff respectfully request that the Court reconsider the same.

DomainsNewMedia.com does not apply. On Page 2 the Court references the DomainsNewMedia.com, LLC, v. Hilton Head Island-Bluffton Chamber of Commerce, 423 S.C. 295, 814 S.E.2D 513 (2018). The trial court in DomainsNewMedia.com ruled in favor of the Plaintiff holding that the Chamber of Commerce was subject to the Freedom of Information Act (FOIA). This was due to the fact that the Chamber of Commerce had comingled public funds and its operations with those of their contract to manage the hospitality tax. It was a bad result and no one (including the legislature) ever intended the private operations of the Chamber of Commerce to be subject to FOIA. Private entities are not, nor should they, be subject to FOIA. It was a result that could have easily been avoided "if" the Chamber had managed the operations of the hospitality

tax in a separate entity, but they did not. The Chamber made a mistake by comingling the funds and operations and if the trial court ruling was allowed to stand it would have opened up a huge can of worms subjecting ALL of the operations (public and private) of the Chamber to public scrutiny. But, most legal observers, as well as the dissent of Justice Few, all agree it was a correct ruling by the trial court per the letter of the law.

So, in what has been a heavily criticized (in the legal community) 4 - 1 ruling by our Supreme Court, that bad result was corrected. DomainsNewMedia.com is a one-time anomaly, not a rule to be built on and expanded as this Order would do.

DomainsNewMedia.com is highly distinguishable. The facts and circumstances in the DomainsNewMedia.com case are completely distinguishable from the case at hand. The Chamber of Commerce is a private entity. Defendant was legislatively created. S.C. Code Ann. § 12-6-3790. The Chamber has members who select their board of directors. Defendants governing board is appointed by the Chairman of House Ways & Means, Chairman of Senate Finance and the Governor. S.C. Code Ann. § 12-6-3790(B)(3). The Chamber manages its own operations. Defendant by law has its operations managed by the SC Department of Revenue, specifically **"the department shall administer the public charity including, but not limited to, the keeping of records, the management of accounts, and disbursement of grants"**. S.C. Code Ann. § 12-6-3790(B)(4) (emphasis added). Evidence was presented that Defendant was formed by employees of the SC Department of Revenue, on public time and at public expense. Evidence was even presented that the Secretary of State filing fee to actually create Defendant was paid by the SC Department of Revenue, at public expense. Actually cash outlay of public funds. Defendant presented no evidence to dispute this use of public funds.

Additionally, the Chamber of Commerce does its own fundraising. Plaintiff presented evidence that Defendants fundraising was done by employees of the South Carolina Department of Revenue, at public expense. Evidence was presented that in order for a member of the public to make a stock donation to Defendant, you had to call an employee at the SC Department of Revenue. Evidence was also presented that employees of the SC Department of Revenue picked up the mail for Defendant at Defendants P.O. Box, a round trip of 6 miles from DOR's offices. The Chamber of Commerce negotiates and engages its own credit card vendor. Plaintiff presented evidence that Defendants use (and enjoy the cost benefits of) the *SC.gov* South Carolina state government credit card system.[1] The Chamber of Commerce, nor any other private entity enjoys these government perks. There is no other legislatively created, government administered and government governed entity that enjoys these perks and is exempt from FOIA. Board member of the Chamber of Commerce, as a private entity, are not listed on the SC Secretary of State's Office website under State Boards & Commissions online search page. Pursuant to S.C. Code of Laws §1-5-40, the Secretary of State's Office has a duty to monitor positions on state boards and commissions. The Secretary has correctly listed Defendant, as a public entity, in their online database of State Boards & Commissions. This evidence was presented by Plaintiff. All of these items and more point directly to the fact Defendant is public body subject to FOIA.

Public Support - Funding via Tax Credits is irrelevant and moot. Regardless of whether we believe tax credits are public funds or not, the fact remains that Defendant is "administered" by the SC Department of Revenue and as such receives public support. Defendant clearly fits the statutory definition of a "public body" due to the fact it is a "corporation …

[1] This is a strict violation of the terms of the vendor contract which states that only government entities are allowed to use the system. Defendant would not be entitled to this perk if it were not a public entity and governed by the State of South Carolina.

supported in whole or in part by public funds or expending public funds". S.C. Code Ann. § 30-4-20(a) (emphasis added). Even if the bulk of Defendants funds come from legislatively appropriated private funds, there is not debate, and Defendants did not contest or present any evidence to the contrary that public funds are being expended to administer Defendants operations.

No reference to FOIA exemption in applicable annual budget provisos. The Court makes reference to the FOIA language under the current permanent law (signed into law after the filing of this case). The FOIA request at issue were under previous annual budget provisos. There was no reference whatsoever to the Freedom of Information Act in the budget provisos or even under the original H. 4077. The now ratified H. 4077 permanent law (signed May 18, 2018) has nothing to do with compliance under the previous annual budget provisos. The reference to FOIA in H 4077 was only added to AFTER the filing of this lawsuit to clarify that tax return data and children's personally identifiable information and health records were not subject to FOIA. Again, it was only to CLARIFY in no uncertain terms, not to add a new exempt category, because that information was already exempt from FOIA.[2] The legislative intent was never to exempt the entire administrative operations from FOIA. If the legislature had intended for a blanket exemption, including an exemption of Defendants OPERATIONS, they would have specifically stated such, not mentioned tax return and health data. The legislature would have never passed a blanket exemption in Plaintiff's experience.

[2] It should be noted that no personal or confidential information has ever been sought by Plaintiff via FOIA or otherwise. The FOIA requests submitted exclusively dealt with the ***administrative operations*** of the Defendant. As a rule we do not exempt government agencies completely from FOIA simple because they handle confidential and exempt information. The OPERATIONS of said government entities are always subject to FOIA as should be the OPERATIONS of Defendant.

FOIA provides for "executive session". The Court makes reference to Defendants need to make specific ***individual*** scholarship decisions in private. Plaintiff agrees and that is why FOIA provides for executive session of public entity board meetings. However, evidence was presented that Defendant "claims" to award scholarship grants based on a formula. The discussion of a general formula and other administrative matters should not be private and behind closed door discussions.

Public policy - setting the path for a "shadow government". Finally, the Court must consider the demands of public policy. The Freedom of Information Act is the basis of a free society. If DomainsNewMedia.com is allowed to be expanded, we are only a short step to a system wide shadow government. The roadmap will be clear. Simply establish a government non-profit, allow legislators to appoint the governing board, administer it with the accountants and lawyers at their SC Department of Revenue, fund it with tax credits and require them do some minor "reporting" ... and all of a sudden the government can do ANYTHING it wants with zero transparency or accountability. FOIA has been a cornerstone of our Country and a tool of citizens to root out waste and corruption in government. Public policy demands we not allow FOIA to be so easily gutted and circumvented in this manner. Today it is $14 million scholarship program, tomorrow it is *(fill in the blank)*. The sky is the limit and the potential for corruption is limitless.

CONCLUSION

The Chamber of Commerce is an independent body. Defendant is a legislatively created entity administered by the SC Department of Revenue. Public funds ARE BEING EXPENDED by the SC Department of Revenue in fulfilment of its statutory responsibilities as outlined in the

respective annual budget provisos and now under the permanent law. As such Defendant is a "public body" as defined by S.C. Code Ann. § 30-4-20(a) and thus subject to FOIA.

THEREFORE, as set forth herein, Plaintiff respectfully submit that the Court reconsider its Order, reverse its rulings, and enter judgment in favor of Plaintiff on his Renewed Motion for Summary Judgment.

Plaintiff reserves the right to support this Motion with Memos and Affidavits which may be submitted at a later date.

Respectfully submitted,

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com
PLAINTIFF, *PRO SE*

December 31, 2018
Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2017-CP-40-06976
Jefferson Davis, Jr.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
South Carolina Educational Credit for Exceptional Needs Children Fund,	)	
	)	
Defendant.	)	

FILED
2019 JAN -7 AM 8:18
JEANNELLE W. MCBRIDE
C.C.P. & G.S.

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff does hereby certify that I have caused to be mailed and/or otherwise transmitted a copy of the below listed documents to the party shown below, postage prepaid, on the **31th day of December, 2018**, as follows:

PLEADINGS: **PLAINTIFFS' NOTICE AND MOTION FOR RECONSIDERATION OF FINAL ORDER**

PARTIES SERVED: Geoffrey K. Chambers, Esq.
CPER Law Group, LLC
411 Walnut Street #10646
Green Cove Springs, FL 32043-3443
g.k.chambers@gmail.com
geoffrey@cperlgroup.com

Jefferson Davis, Jr.
Plaintiff, *Pro Se*

ELECTRONICALLY FILED - 2019 Jan 17 11:07 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr. Plaintiff, v. South Carolina Educational Credit for Exceptional Needs Children Fund Defendant	)	Case No.: 2017-CP-40-06976 Defendant's Reply in Opposition to Plaintiffs SCRP Rule 59(e) Motion

The Defendant, by and through counsel, hereby replies to the Plaintiff's Motion to Alter or Amend the Judgment of this Court pursuant to Rule 59 (e) of the South Carolina Rules of Civil Procedure. The Plaintiff's Motion should be denied for the reasons set forth herein.

BRIEF PROCEDURAL AND FACTUAL HISTORY

Plaintiff filed a lawsuit requesting compliance with the Freedom of Information Act based on several requests for information sent to the Defendant.

The Defendant is a 501(c)3 which grants scholarships to special needs students who may be better helped by the services of a private institution. The program was created by a budget proviso which outlined reporting requirements for the Defendant. Funding for the Defendant comes from private donations for which the donor receives a tax credit on their South Carolina taxes.

On January 24th 2017, Plaintiff filed a Motion for Summary Judgment which was denied.

Defendant filed a Motion for Judgment on the Pleadings and a Motion for Summary Judgment on August 17, 2018.

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Plaintiff filed a second Motion for Summary Judgment on September 10, 2018.

By Order dated December 21, 2018, Defendants Motions for Summary Judgment and Judgment on the Pleadings were granted and this action was dismissed. The Order was served on the Defendant by mail on December 21, 2018.

On January 7, 2018, Defendant filed the present Motion to Reconsider pursuant to SCRCP Rule 59(e).

REHASHING ARGUMENTS PREVIOUSLY BEFORE THE COURT IS IMPROPER USE OF SCRCP RULE 59(E)

Plaintiff stated a number of arguments in his Motion for Reconsideration, including:

a. DomainsNewMedia.com, LLC v. Hilton Head Island Chamber of Commerce, 814 S.E.2d 513(S.C., 2018) was a one-time anomaly and not intended to set future legal precedent.
b. Hilton Head Island Chamber of Commerce and Defendant are distinguishable because Defendant was legislatively created and a state agency has statutory authority to step in and manage the entity.
c. Defendant is supported by public funds because the Department of Revenue is statutorily allowed to run the fund in conjunction with the Corporation's Board of Directors.
d. Past budget provisos did not have the exemption to FOIA contained in the current law.
e. FOIA has a provision for Executive Session
f. The ruling of this Court creates a path for a "shadow government" and is against public policy.

Items listed above in a, b, c and f were argued extensively in not one, but two virtually identical Motions for Summary Judgment filed by Plaintiff. These same points were argued extensively by

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Plaintiff in opposition to the Defendant's Motion for Judgment on the Pleadings and Defendant's Motion for Summary Judgment.

South Carolina Rules of Civil Procedure "contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Elam v. South Carolina Department of Transportation, 602 SE 2d 772 (S. C. 2004).

Plaintiff has argued the points in items a, b, c, and f in support of or in opposition to four separate motions in front of two different Circuit Court Judges. It is unlikely the Court misunderstood or failed to fully consider these points raised by the Plaintiff.

To the extent Plaintiffs motion is proper, Defendant responds as follows:

a. DomainsNewMedia.Com v. Hilton Head Island Chamber of Commerce is Published

Plaintiff alleges that DomainsNewMedia.com, LLC v. Hilton Head Island Chamber of Commerce, 814 S.E.2d 513(S.C., 2018) was a one-time anomaly and not intended to set future legal precedent. The Supreme Court can and does issue unpublished opinions when they do not intend to set precedent.

The Supreme Court denied a request for rehearing and published its Opinion. This indicates the opposite of Plaintiffs contention. The Supreme Court did intend precedential value.

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b. Defendant Fits the Material Elements of an Entity Not Subject to FOIA Pursuant to DomainsNewMedia.com v. Hilton Head Island Chamber of Commerce

The four key elements making Hilton Head Island Chamber of Commerce not subject to FOIA are 1) the Chamber is a corporation 2) that expends public funds, but 3) is expending public funds under a specific statutory reporting requirement that is meant to ensure accountability and 4) was enacted into law after the Freedom of Information Act. *Id.*

The South Carolina Freedom of Information Act was created forty-one years ago by 1978 Act No. 593. The laws governing the activities and extensive specific reporting requirements of Defendant were first passed in a 2016 Budget Proviso and made Permanent Law by South Carolina Code §12-6-3790 in May of 2018.

South Carolina Code §12-6-3790(B)(5) and §12-6-3790(E)(6) provide extensive reporting requirements, including an audit of Defendant by an independent CPA firm, extensive and detailed reports on Defendant's operations and a report on the impact and effectiveness of Defendant's scholarships.

Like the Chamber of Commerce, Defendant is a corporation. Specifically, Defendant is a 501(c)3 corporation and defined by Internal Revenue Code 509(a)1-4 as a Public Charity. As such, Defendant annually reports to the Secretary of State pursuant to the South Carolina Charitable Solicitations Act, South Carolina Code §33-56-10 *et seq.*

Defendant meets the same material requirements of DomainsNewMedia.com and as such is exempt from the Freedom of Information Act.

c. Defendant is not Supported by Public Funds.

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Defendant's funding is statutorily defined in South Carolina Code §12-6-3790(B)(5). "The Department and the Public Charity may not expend public funds to administer the program."

Plaintiff's contention that the Department of Revenue expends state funds to support Defendant is not consistent with statutory law. The similarity but exact opposite position of language in §12-6-3790(B)(5) and the definition of a corporation qualifying as a 'Public Body' under §30-4-20(a) is evidence of legislative intent. The legislature does not intend for Defendant to qualify as a 'Public Body'.

d. The Legislature Routinely Creates Exemptions to the Freedom of Information Act

Plaintiff contends that a pathway should not be created for operating portions of the government outside of the reach of the Freedom of Information Act. This contention is not consistent with South Carolina Statutes or the history of the South Carolina Freedom of Information Act.

The Legislature created the Freedom of Information Act in 1978. The Freedom of Information act defines a procedure through which the public can obtain information about how their government is spending tax dollars. The legislature can and does create exceptions to the Freedom of Information Act. See §16-25-370(a) (Domestic Violence Committee records are not subject to FOIA.) See also §17-5-544(a) (The Child Fatality Review Team is not subject to FOIA.)

ISSUES THAT COULD HAVE BEEN RAISED BEFORE THE COURT BEFORE JUDGMENT CANNOT BE RAISED USING SCRCP RULE 59(E)

Plaintiff did not raise retroactivity and develop an argument prior to judgment.

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"A party cannot use a Rule 59 (e) motion to present to the court an issue the party could have raised to the circuit court prior to judgment, but did not." Stevens & Wilkinson of South Carolina, Inc. V. City of Columbia, 409 S.C. 568, 762 S.E. 2d 696 (2014). Issues not presented prior to judgment cannot be preserved for appeal by a rule 59(e) motion. Hickman v. Hickman, 392 SE 2d 481 (SC App 1990).

To the extent that Plaintiffs new arguments raised by Rule 59(e) may be considered by the Court, they are not compelling.

While a change in law is rarely applied retroactively, clarification of legislative intent is retroactive by nature. Hock RH, LLC v. S.C. Dep't of Revenue, 813 S.E.2d 540 (S.C. App., 2018). A subsequent statutory amendment may be interpreted as clarifying original legislative intent. Stuckey v. State Budget and Control Bd., 339 S.C. 397, 401, 529 S.E.2d 706, 708 (2000) (citing Cotty v. Yartzeff, 309 S.C. 259, 422 S.E.2d 100 (1992)).

The absence of explicit FOIA exclusion language in the prior budget provisos does not render Defendant subject to FOIA under those provisos. The definition of the Defendant in Provisos is materially the same definition of the permanent law. The Proviso description of Defendant is an entity not subject to FOIA because it does not meet the definition of a Public Body. Similarly the Defendant is not and never was subject to FOIA pursuant to DomainsNewMedia.com, LLC v. Hilton Head Island Chamber of Commerce, 814 S.E.2d 513(S.C., 2018).

FAILURE TO SERVE WITHIN 10 DAYS

Pursuant to the Form 4 filed with this Court on December 21, 2018, the Clerk of Court's Office mailed written notice of the December 21, 2018 Order to Plaintiff on December 21, 2018.

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Plaintiff should have received notice of the Court's Order on or about December 26, 2018 if we include 5 days pursuant to SCRCP Rule 6.

Plaintiff filed his Rule 59(e) motion on January 7, 2018.

Plaintiff mailed an alleged copy of the Motion to opposing counsel. The alleged copy received by Defendant's counsel was not time stamped by the court or filed with the Court at the time of its mailing.

Rule 59(e) requires a motion to be served not later than 10 days after receipt of written notice of the entry of the order. SCRCP Rule 59(e).

If no motion was filed until 12 days after notice of the Order, Plaintiff could not have served Defendant with a valid, filed and stamped Rule 59(e) motion within 10 days of receipt of the Court's Order.

Plaintiff's Rule 59(e) motion should be denied as untimely.

CONCLUSION

For the above stated reasons, Plaintiff respectfully requests this Court deny Plaintiff's Motion under SCRCP Rule 59(e).

Signatures on next page.

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 17th day of January, 2019
Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Jan 17 11:07 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

ELECTRONICALLY FILED - 2019 Jan 28 12:20 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr.	)	Case No.: 2017-CP-40-06976
Plaintiff,	)	
v.	)	Defendant's Supplemental Memo in Opposition to Plaintiffs SCRP Rule 59(e) Motion
South Carolina Educational Credit for Exceptional Needs Children Fund	)	
Defendant	)	

The Defendant, South Carolina Educational Credit for Exceptional Needs Children Fund, by and through counsel, hereby supplements its reply to the Plaintiff's Motion to Alter or Amend the Judgment of this Court pursuant to Rule 59 (e) of the South Carolina Rules of Civil Procedure. This supplement is for the limited purpose of correcting an error in Defendant's original reply regarding Plaintiffs untimeliness of filing his Rule 59(e) motion. Defendant withdraws objection to timeliness of Plaintiff filing his Rule 59(e) motion.

FAILURE TO SERVE WITHIN 10 DAYS IS WITHDRAWN

Upon further investigation, Defendant respectfully requests this Court notice Defendant's withdrawal of objection to timeliness of service and filing of the Plaintiff's Rule 59(e) motion.

Defendant was provided an unclocked copy of the Plaintiff's Rule 59(e) motion on December 31, 2018. The unclocked copy appears to be word for word the same as that filed with the Court on January 7, 2019.

Rule 5(d) SCRP and Rule 6(a) SCRP are applicable to filing and service of Plaintiff's motion.

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"All papers required to be served upon a party except as provided in Rule 26(g)(1), shall be filed with the court within five (5) days after service thereof." SCRCP Rule 5(d)

"When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation." SCRCP Rule 6(a)

Pursuant to SCRP Rule 5, Plaintiff is not required to serve Defendant with a clocked copy of the filed motion. If holidays and weekends are excluded from the five day time period as allowed by SCRP Rule 6, Plaintiff appears to have filed his Rule 59(e) motion in a timely manner.

Defendant therefore respectfully requests this Honorable Court to allow withdrawal of Defendant's objection to timeliness of filing. Defendant does not withdraw other items listed in its Response in Opposition.

CONCLUSION

For the above stated reasons, Defendant respectfully requests this Court allow Defendant's withdrawal of objection to timeliness of Plaintiff's filing of his Rule 59(e) motion. All other items in Defendant's Response in Opposition to Plaintiff's Rule 59(e) motion are not withdrawn.

Signatures on next page.

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 27th day of January, 2019
Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Jan 28 12:20 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

State of South Carolina	)	
	)	Court of Common Pleas
County of Richland	)	
		2017-CP-40-06976
Jefferson Davis, Jr.	)	
vs.	)	Transcript of Record
	)	
	)	
South Carolina Educational Credit for Exceptional Needs Children	)	
Defendant	)	

April 17, 2018
Columbia, South Carolina

B E F O R E:

Honorable Jocelyn Newman, Judge

A P P E A R A N C E S:

Jefferson Davis, Jr.
Pro Se

Geoffrey K. Chambers, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

THE COURT: Next is Jefferson Davis, Jr. versus South Carolina Educational Credit for Exceptional Needs Children Fund.

MR. DAVIS: Yes, Ma'am. It is a mouthful, that's for sure.

THE COURT: It is. And tell me your name?

MR. DAVIS: Jeff Davis, I am the Plaintiff, pro se.

THE COURT: And, Mr. Chambers, do you know?

MR. DAVIS: I don't know, they didn't respond to the motion for summary judgment. I think their deadline was the 11th to respond.

THE COURT: Did they have notice?

MR. DAVIS: Yes, Ma'am.

THE COURT: Let's see. It would appear that notice was sent March 23rd of this year, that appears to be the case. Have you had any contact with Mr. Chambers?

MR. DAVIS: I have had contact with him in the past. I sent him discovery recently, we did have a hearing up in Greenville. I originally filed this in Greenville, they are located down here so he came to a hearing, did a motion to dismiss, that failed and then we changed venue to here. So he has been involved in the case. And I mailed him discovery a couple of weeks ago. They have had all of the information.

THE COURT: Okay. Have a seat, Sir, I am going to

have my Clerk call Mr. Chambers and just make sure there was some notice or something.

MR. DAVIS: I understand.

(Whereupon, a short break was taken to contact Mr. Chambers.)

THE COURT: Now, we are going to go back to Jefferson Davis versus South Carolina Educational Credit for Exceptional Needs Children Fund. My Clerk stepped out and called Mr. Chambers three times, she received no answer. It appears that he got notice so let's go ahead.

MR. DAVIS: Thank you, Your Honor. This is a very simple case, it is a Freedom of Information Act request that I had filed with this particular entity. I am sure you know the public policy behind FOIA. If we don't have insight into our Government, we don't have a Government, we have a tyranny, if you will. I have got the law, I have got the facts, I have got everything in my motion for summary judgment about an affidavit, a sworn affidavit with that to follow the evidence that is there. I will just run through, you know, just something real quick and I think you will see in about two seconds what this is. FOIA is for any sort of corporation nonprofit that it has assistance, financial assistance for, controlled by the Government. So that is what we are dealing with here. I did it put it in words, bad faith, that I think this

particular entity is not answering FOIA requests. I know that is a strong statement. I see the evidence of, they are not responding to certain things. I was literally in a hearing over at the State House, the Senate Building two hours ago where their Board Chairman who was appointed by President, Pro Tem of the Senate, Hugh Leatherman, in his official capacity pointed to this, was talking about how they are not a Government organization, they are not run by the Department of Revenue. They are aware of what is going on with this and that is why they don't want to, that is why they are being belligerent in not answering these FOIA requests. Let me just tell you about this entity. It was originally created by the Government in a pledge of proviso which is an annual renewing, we are in the fifth year of the entire program, two years being run under this Government organization, is the exact same wording as the State's Ports authority. State's Port authority is obviously subject to FOIA. It was this entity, just over two years ago, just about two years ago, was formed by the South Carolina Department of Revenue, by their then Director, Rick Reames, in his official capacity. This isn't a nonprofit that is established by hundreds and thousands of nonprofits out there. This was formed by the Department of Revenue as per law, as per, you know, the proviso. They use the address of the South

Carolina Department of Revenue as their service address, not even the physical address and this isn't something that Director Reames was doing on the side in his personal capacity, it was their, the Department of Revenue's PO Box. By law in this proviso, it is in my motion for summary judgment, it is quoted there. By law the South Carolina Department of Revenue administers this nonprofit. This particular nonprofit uses for contributions the sc.gov credit card payment system. I have dealt with many non-profits, I would love to use their credit card system. I would love to have their negotiated pricing but it is not available to your average nonprofit. The Board Members, as I stated earlier, about the Board Chairman there, there are five Board Members to this organization. Two are from, by law, two are by proviso which is an annual renew proviso. Two are appointed by the Chairman of the South Carolina House, Ways and Means Chairman; two are appointed by the Chairman of the Senate Finance; one is appointed by the Governor. That sounds pretty Government to me. The Executive Director of this organization is a gentleman by the name of Chad Connelly. He is appointed or hired in that position by the five Board Members who I just stated and by the Director of the Department of Revenue. There aren't many nonpublic, private, nonprofits out there that the Director of the

Department of Revenue and five Government appointed officials select on that organization. The Board, as you may know, the Secretary of State's Office list all Government Boards. This particular entity is listed and searchable on the Secretary of State's Office for Governor of Boards. You can see who appointed them. There is no other Government, obviously the Secretary of State oversees all nonprofits. There is no other nonpublic, nonprofits that are searchable in this data base and that data base at the bottom will reference, I think it is one of my exhibits, will reference that this is for Government to search. The direct quote was, "to search for State Boards and Commissions membership information." That sounds pretty Government to me. The mail of this organization is by all information available, picked up by South Carolina Department of Revenue employees, per their website and I have got a copy of that in there. The Exceptional S.C. Board does not have access to the names of donors. I don't know what nonprofit out there wouldn't know the names of their donors. The Department of Revenue, by all information and I filed a FOIA request for the Department of Revenue. There are no, the Department does not charge any fees, any management fees or anything for this nonprofit. So they are using Department of Revenue staff, they are using Department of Revenue

resources. That by itself makes this subject to FOIA. The Department of Revenue is also subject, is also given the responsibility to do financial reporting on this particular nonprofit and report it back to the Governor, to the Chairman of Ways and Means and Chairman, as I said, of Finance. And there is no competitor to this nonprofit, it is the only nonprofit that is out there. There is lots of nonprofits out there fighting for donor dollars every day, there is no competitor. That sounds pretty Government to me. I have walked through the law analysis, it is all here. I am happy to answer any questions but I think just by the fact that this Organization was formed by, actually I have a receipt where the Department of Revenue paid the $50.00 dollar fee, the filing fee at the Secretary of State's Office to create this entity. They are being belligerent and not answering FOIA requests. And we are just left with no opportunity, no other recourse except to file this particular FOIA for a declaratory judgment action.

THE COURT: Okay.

MR. DAVIS: Every lawyer, every CPA, every Government politician that I have spoken to, every expert that knows FOIA, does a lot of FOIA requests out there, FOIA enforcement, lawsuits, they said this is obviously a Governmental entity that should be complying with FOIA.

THE COURT: Okay. And I will take this under advisement just to give myself the opportunity to read through everything that you put here. You are probably right but I just want to make sure.

MR. DAVIS: I appreciate it.

THE COURT: So I will let you know something soon.

MR. DAVIS: Great. And I have given them a discovery request. I don't know what would happen with that discovery request if you were to go ahead and grant my motion for summary judgment. I mean, it is all FOIA'ble information in those discovery requests. The only thing I would ask if you grant my motion for summary judgment, as part of that order you could order that they comply with those discovery requests as well. So we don't have to go back through the process of then filing a FOIA request for that information and then we are back here when they are refusing to provide it. They have been very belligerent in not providing information to the public.

THE COURT: Will you email me discovery requests that you are speaking of?

MR. DAVIS: Yes, Your Honor.

THE COURT: Okay, perfect and copy my Clerk. Thank you.

MR. DAVIS: Appreciate it.

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Richland, South Carolina on the 17th day of April, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 19, 2019

Joy Holston

Joy E. Holston, Court Reporter

My Commission expires: May 2, 2026

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

JEFFERSON DAVIS, JR.,)
PLAINTIFF,) TRANSCRIPT OF RECORD
)
-VS-) 17-CP-40-6976
)
S.C. EDUCATIONAL CREDIT FOR)
EXCEPTIONAL NEEDS CHILDREN)
FUND)
DEFENDANT.)
) MAY 15, 2018
) RICHLAND, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOCELYN NEWMAN, JUDGE

A P P E A R A N C E S:

JEFFERSON DAVIS, JR.,
FOR THE PLAINTIFF

GEOFFREY KELLY CHAMBERS, ESQUIRE
FOR THE DEFENDANT

ANGELA P. BERRY
FAMILY COURT REPORTER

E X H I B I T S

NO.	DESCRIPTION	I.D.	EVD.

(REPORTER'S NOTE: NO EXHIBITS WERE INTRODUCED AT THE HEARING.)

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS

(REPORTER'S NOTE: NO WITNESSES TESTIFIED AT THE HEARING.)

THE COURT: I'm on Jefferson Davis, Jr. versus South Carolina Educational Credit. I just felt it was going to be a long argument at the last so I was trying to save it to the last but y'all -- we've got nothing else ready, so.

MR. DAVIS: I don't think it will be too long. You've heard half of it already.

(Pause.)

THE COURT: All right, Mr. Davis, this is your Motion for Summary Judgment?

MR. DAVIS: Yes, ma'am.

THE COURT: All right.

MR. DAVIS: Your Honor, I don't know if you recall but last month we were here and I did go through -- Plaintiff's (sic) counsel was -- did not receive notice to it and you did allow me to go through my presentation of the case.

But basically just to recap there, you know, the Freedom of Information Act is -- if we don't have a government that we can look into and see what's going on, we don't really have a government. So, you know, it's vital and as I put in here, one of the prefaces for the FOIA Act was, you know, the General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner.

The South Carolina Educational Credit for Exceptional Needs Children Fund is a legislatively created entity. And

on my statement of facts on page 5, that entity was created by budget proviso. The budget proviso is different than a law. A law is something that becomes permanent but there is a budget that goes from year to year, from June 30th -- or July 1st to June 30th of each year. Five years ago they started a budget proviso for this exceptional needs tax credit program to help allow special children with special needs who attend a private school.

And the current iteration of the budget proviso, it is managed and run by a government appointed board. And by law it is Budget Proviso 109.15 for 2016-17 budget year in budget proviso -- it's all in the DOR budget Section 109.11 for the 2017-2018 which we are currently in.

In both of those budget provisos, this entity is governed by a five-person board. Two are appointed by the Chairman of the House Ways and Means Committee, two are appointed by the Chairman of Senate Finance, one is appointed by the Governor. By law, in Section B(3) as I note on page 6, the Directors of the fund along with the Directors of the Department of Revenue shall designate an Executive Director of the Fund. We've got the Department -- the Director of the Department of Revenue in conjunction with five members, five appointed board members who are appointed by government officials selecting an individual Executive Director to run this non-profit.

If you look at number 4, Section B(4), by law the Defendant's operations and administration is performed by the South Carolina Department of Revenue. B(4) says, in concert with the fund directors, who are government appointed officials, the Department of Revenue shall administer the fund, including, but not limited to, keeping records, management of the accounts, disbursements of the grants awarded pursuant to the proviso. The Department may expend up to two percent of the funds for administrative and related costs.

On page 7, item number 6, Defendant utilizes the South Carolina Department of Revenue employees to process tax payer donations. If you look -- and I've got as part of my affidavit a screenshot of Defendant -- the Exceptional Needs Tax Credit Scholarship Funds' website, they -- under -- you can donate cash to this entity or you can donate stocks like any normal 501(c)(3) non-profit. Under the stocks and bonds and marketable securities, that phone number goes to an individual directly at the Department of Revenue. So the Department of Revenue is bringing in or handling the management of stock donations dealing with the brokerage accounts, things of that nature. And I've got as part of my affidavit that person's phone number and the actual SCDOR employee that works there.

SCDOR employees actively, on government time, solicit

donations for this entity. I've got a screenshot as part of my affidavit where on the Department of Revenue website and also tweets and Facebook posts where the Department of Revenue is encouraging people to donate to this entity. Of course they would, they administer the entity.

I also have as part of my affidavit, an email, I believe I have an email, where the Director of the Department of Revenue, the former Director who was the Director at the time, Rick Reames, was soliciting donations from Ted Pitts over at the Chamber of Commerce, asking him to send out emails to members of the Chamber of Commerce to potentially donate to this fund.

What's also quite interesting, is if you look at where they make cash donations to this entity, they utilize the sc.gov, sc.gov is a credit card processing website. They -- this is not something that's readily or available whatsoever to any individual non-profit. I'm sure they have fantastic pricing, favorable pricing that a normal non-profit would not be able to get.

I've also put in some information in regards to how this entity was originally formed. It was formed by the then Director of the Department of Revenue on government time using the registered agent address of the Department of Revenue. I mean, it was set up and managed by the Department of Revenue. I've got it even down to -- from

the Freedom of Information Act request from the Department of Revenue, the $50 filing fee that was paid to the Secretary of State's office was paid by the South Carolina Department of Revenue.

This has government written all over it. And if you look at the case law and some the Attorney General's opinions on FOIA, if we -- FOIA should be broadly viewed. If we can sit there and create -- legislatively create a separate entity that is then appointed by board members -- run by board members who are appointed by government officials or elected officials, administered by the South Carolina Department of Revenue, why can't we do that with the Department of Education? Why can't we do it with any and every agency in the State of South Carolina? It's a slippery slope if this is allowed to stand, that we can sit there, essentially avoid the entire FOIA process, by just putting them in these little entities to the side.

I think it's pretty clear. Most folks that I've spoken to seem to primarily adhere with this process, but there is no other entity out there that wouldn't be subject to the Freedom of Information Act that would be in this sense.

THE COURT: Okay.

MR. DAVIS: That's it.

THE COURT: Thank you. Yes, sir.

MR. CHAMBERS: Your Honor, this turns on a matter of law. And there are two very important things I would like to call the Court's attention to and first is the Freedom of Information Act -- may I approach?

THE COURT: Yes, sir.

MR. CHAMBERS: This defines a public body. And it defines, you know, basically the entities that a Freedom of Information Act request would apply to. And so it's a stage -- it's, you know, basically the -- when we go through this, there are three things that were questionable. Are we a board, a commission or authority of the state? And if we're one of those, it would apply to us. Everything else is pretty quick and easy to rule out in that list.

So I go to the proviso that created this entity. If I may?

THE COURT: Yes, sir.

MR. CHAMBERS: And there's some very important things in this. And a lot of the things that Mr. Davis talked about absolutely are the case. But the important thing in this proviso is that the proviso discusses three separate things.

A Department of Revenue which is a state agency of the State of South Carolina. It discusses a charity which must comply with revenue regulation 509(a)(1) through (a)4, that

charity is a 501(c)(3) organization. He's absolutely correct, this proviso says that the -- that basically the creation of this was ordered by the legislature.

The one place where he's not exactly correct is, how do these people get on the board. He says that they're appointed and the final step is a yes or no from specific members of government. But we go back before that, they don't get to choose the identity of who's on this board. They didn't get to choose that it would be Tom Persons on this board. They didn't get to choose that it would Betsy Fanning on this board. The way that works is the schools put forth the identity of the person to be put on the board, the legislature simply says a yes or no. And so that's the way that it is on there, it's not a traditional appointment. And that's kind of important.

And another aspect of this that's also important is if you look through this, there is no provision in here for terms, there is no provision for a -- for basically a process of reappointment. There's no control over these people by threat of replacement. So there's no ongoing control of this 501(c)(3).

But let's go back to this and another important aspect is it says in here that there's a fund, in that fund will go monies collected through this tax credit. And it says that two different entities can run this program. One is

the Department of Revenue. Through this proviso it says the Department of Revenue can run this. As a matter of fact, in the early days of it, they did. They then turned it over to this charity that was created and have allowed the charity to disburse the scholarships where they probably passed a year or a year and a half.

The charity can also run it. And that's important because a lot of these things he attributes to, you know, a government action by this entity, he's pointing out that, you know, yes, this is a government action. Well the law itself says that that particular state agency can do those things and that they can step in and run it. But it doesn't say -- what it doesn't say is that this charity was created -- is created as a state board, a commission or an authority.

What Mr. Davis does have, and I learned about this through this litigation, is something from the Secretary of State's website where it has a state board or commission search. And so a little bit of history of this, DOR created this, they named a board to it, they gave them some instructions and what they expected, they told them what the reporting is and then basically they said, you're not part of the state, you do not have any state support, you absolutely cannot use any state resources. We are watching you, we expect your reports, we're going to continue to

monitor you but good luck. And so our take on that is that we are a regulated charity rather than a board or commission.

Well we find this on the state's Secretary of State's website, through Mr. Davis who pointed it out, and it says we are a board or commission. So I called them and I said, hey, if this is the case, I need to know how this came about, who put us on there and why. And if we are in fact a board or commission of the State of South Carolina, FOIA would apply and I need to settle this suit.

Well the short answer of it is, is that I got passed around through numerous people and finally got to the person who made that decision. They said, that I looked at this and I saw that the people were appointed so I put you on there as a board or commission. Well I said, well this isn't exactly accurate. It says that these people served at the pleasure of them and they don't even get to pick the identity of the person. And he said, well, I don't know, the box was just checked. And I said, well, who determines whether or not this is a board or commission, is it the Secretary of State's office? No, we just list them. Well, who would determine that? Well, the legislature.

This -- so I started thinking about it and said, is there a definitive list of every board, commission or, I guess, special purpose district or authority in the State

of South Carolina. And there is and it's published every year and it's called the South Carolina Legislative Manual. I have in my hand the 2018 version. I can put this into evidence. Would you like to see it? Okay.

Your Honor, you'll find that we are not listed as a board, commission or authority in that. I have the pages where we would be listed.

(Pause.)

MR. CHAMBERS: So, through that, I eliminate -- I know that we're not a subdivision of county -- a county or a city. I know that we're not an agency. I know that we're not a board or commission from that. And I know that we're not an authority.

One other piece of evidence that is interesting if we go back to the proviso is it says that we must comply with 509. What 509 is, Revenue Regulation 509 is, it is a reporting to the Secretary of State for every organization that is soliciting charitable donations and the key to those regulations is the reporting is required for entities that are not subject to FOIA. And that too is on the Secretary of State's website.

So what we've got is we've got a situation where the evidence points to the facts, that despite the fact that this organization was created by statute, that the legislature did not intend for FOIA to apply. Why would

they not intend for FOIA to apply? What does this organization do? This organization grants scholarships to special needs children. What do these people do? They take applications from special -- the parents of special needs children that list the type of disability and where they would like to -- what institution that specializes in this, they would like to send that child to. And then this board goes through all of that information regarding the disability of the children and makes a decision on scholarship funding and who is eligible and who is not. So there's very good reason that the legislature would not want this information to be released.

This lawsuit came up and there was a bill which was originally going to be exactly the same or very very similar to the proviso called H4077. This passed the House and the Senate, it likely will be signed by the Governor next week. And in that they state that, we will not be subject to FOIA for anything in the usual course of business in the operation of this fund and then neither the Department of Revenue or this entity. And you will find that in -- on the third page (b)(4) and it says there, the department shall administer the public charity, just as it does in the proviso. They add, the public charity may expend up to two percent of the fund for administration and related costs. We spent .6 last year. The department and

the public charity may -- may not expend public funds, that's key. There are no public funds in this entity. There is no public assistance. I am not Will Davidson or Mr. Lindemann. I'm not paid by the IRF. There's no support from the state to this organization as far as defense of this lawsuit or other things that an entity subject to FOIA would enjoy.

The key, information contained and produced in, one, tax returns, two, documents or magnetically or electronically stored data utilized by the Department of Revenue or the public charity in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act.

So there was no legislative intent for any information to come out of this particular charity because of what it deals with. Now a lot of the things that were asked for in this litigation are things that that when we look at them, the majority of them are information about kids, especially the emails.

It further says that we can't disclose any information about the kids pursuant to the Family Educational Rights and Privacy Act. So that would preclude 99.9 percent of what we do.

The other small percent of what we do is that we do

have an Executive Director and employees and in the meetings there has been discussion about the -- going through the resumes and hiring, that's personnel issues. The Freedom of Information Act 30-4-70 -- I'm sorry, yeah, it basically says that, a public body may hold a meeting closed to the public for one or more of the following reasons: discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee or a student. And so the very first part of that they cover pretty much everything that is done.

So even if we are a public body which I contend that we are not, I contend that we are a highly regulated charity, Mr. Davis's suit has failed to bring a cause of action that this court can grant relief.

I would be happy to answer any questions of the Court.

Thank you.

THE COURT: Mr. Davis.

MR. DAVIS: Thank you, that's all very interesting. It's all new information, a lot of new things are coming out today and a lot of what you've heard is an absolute stretch.

Let me tell you just a bit about -- address the final thing that he was talking about the FOIA information that we are seeking and other people are seeking, it has nothing to do with children's information, children's disabilities,

anything to do with in regards to the children. It has to do with the operation of this fund, who is making decisions on which children get funded, what schools may or not be eligible, what type of information, what are they doing in actually advocating for this program, things of that nature, and who over at DOR is handling that. We could go to DOR and get some things but they refuse and as they said -- I mean, nobody is looking for confidential information for children and actually I would be happy to provide the Court with some newspaper articles where this actual organization did send out the entire list of 2,000 children and their disabilities on a unsecured network. So that's what's really out there in regards to why people are looking at this entity that is receiving a substantial amount of money on an annual basis, 12 million dollars and up, so it could be.

But let me go back and address a couple of things that counsel made statements about. First about the board members, how they -- a school association recommends someone but the government official, per the language of the proviso, is the person who appoints it. I emailed in earlier to the Court today, and it occurred literally four weeks ago, they're now claiming that the school appointed them but four weeks ago, Mr. Persons, and that's actually in Mr. Persons' affidavit, item number 2, that he was not

appointed by the government official but through the recommendation of a school association. He literally thanked Senator Hugh Leatherman for appointing him to the board position. Hugh Leatherman is the Chairman of Senate Finance, President Pro Tem of the Senate, the most powerful legislator, obviously more powerful than the Governor of this state. He's thanking Hugh Leatherman for appointing him. That's his words, giving you a reference over to where that video is, it's on the state website so you can look directly at it.

Also counsel pointed out that there's a new law, this program has been an annual proviso, it's now going to be permanent law. I've actually got a copy if I could approach the Court and provide ---

(Noise in the courtroom, pause.)

THE COURT: All right, continue, Mr. Davis.

MR. DAVIS: This is the actual bill H4077. The legislative history is on the first page. What you might find interesting, Your Honor, is a lot of the stuff that occurred, a lot of the additions of excluding FOIA-able information, some things of that nature, actually occurred after our hearing last week. So our contention -- last month, our contention was that if we were able to show that this entity was a government entity, due to some other reasons in regards to school choice and some things like

that, public funds and use, establishment of clause, constitutional issues, would not have gone this route.

But that's neither here nor there, but what I wanted to point out in this bill or in this -- it's now been ratified, passed by the House and Senate and ratified, to be signed by the Governor later this week, but school associations have been stripped of that authority to even recommend who is on the board. The board, as in this bill, the final leg which will be effective upon the Governor's signature later this week or next week, the board members are strictly appointed by Hugh Leatherman who's got two spots, Chairman of the Ways and Means, and the Governor. They're not even getting recommendations from those organizations mainly because two of the organizations are Christian organizations, that once again brought up a constitutional issue so they stripped those organizations from the authority to even recommend these board members.

So if Mr. Persons continues to be a board member after the current program ends, and if he continues to be a board member as part of the new program, he can be appointed directly by Hugh Leatherman or one of those three individuals. So they've stripped those school organizations out. So I just find it quite interesting that that was the crux of their reasoning and now that is no longer out there.

No ongoing control, I would find it humorous to tell Senator Leatherman or the Chairman White or the Governor, that they have no control over the board members they appointed to an organization. They are responsible for appointing these people, maybe there is not language about how to remove them, but I am sure they're -- have the authority to remove.

Now I will tell you the formulating language, the creation -- the creating language is the exact same language as the Ports Authority and all these other type of independent or government established non-profit entities -- non-profit entities that are out there. The Ports Authority is clearly subject to the Freedom of Information Act.

Counsel's statement saying that either can run the organization, the Department of Revenue can run it or if they're mature enough, they can run it themselves, that's not in the language. The language is, as I read earlier, that the Department of Revenue shall administer the program. It has nothing that the Department of Revenue -- or this public charity can be the one that -- to administer the program. It strictly says, the Department shall administer the program.

The Secretary of State, I understand that counsel made the reference that normal non-profits report to the

Secretary of State's office. To be a non-profit and function and raise donations here, you have to apply to the Secretary of State, you have to do an annual renewal of that authorization. As part of that, there's a financial report where you submit your form 990, your IRS tax return. Their 990 tax return is going to be public information anyhow. But for the convenience of individuals, the Secretary of State asks them to file that with the Secretary of State and then they can provide these printouts. So people in South Carolina an easily search up non-profits to see how much they're charging as overhead and things of that nature. And that's why it's in there.

Of course, entities that are clearly subject to FOIA would not need to be in there because that's -- they're probably government entities and reporting. They're contending they're not subject to FOIA so that's why they're filing. They would probably still file because all the 501(c)(3) non-profits with authorizations, they file that financial report. But just because they contend they're not subject to FOIA doesn't mean that they're not.

And, you know, just -- I mean, just back to that last -- that last point which I kind of find highly offensive and unusual, special needs kids info, I mean, that is not -- I mean DHS, I'm sure -- I can't imagine the number of organizations in our state that handle sensitive

information about children, the elderly, handicapped, that's not the type of information that we're -- that anyone's seeking. But it's trying to find out exactly how they're operating this organization and who they're selecting and giving scholarships to. One of the things that we found out in analyzing, once this organization came about and started running the program, we had certain schools that were, as people would think, well, these schools are receiving more money. Mr. Persons happens to have three children that go to Christ Church up in Greenville, one of the most prestigious schools in the state. Why is that school receiving more funding than a school of low-income children that we work with.

So that's the type of things, finding out that funding formula that they've refused to provide to us. So that's what we're looking for. We're not looking for disabilities of children. We're looking for the funding formula that's allowing certain non-profit, certain schools in this state, to benefit more heavily than others.

Thank you, Your Honor.

THE COURT: Mr. Davis, I hear your argument and you may ultimately prevail but I do believe that a genuine issue of material fact exists here therefore I'm going to deny your Motion for Summary Judgment. The evidence may weigh in your favor ultimately but, you know, I'm not

weighing the evidence on your Motion for Summary Judgment, just the evidence of that genuine issue of material fact.

So your Motion is respectfully denied.

MR. DAVIS: Thank you, Your Honor.

THE COURT: Thank you.

----- END OF TRANSCRIPT OF RECORD ------

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND) CERTIFICATE

I, the undersigned Angela P. Berry, official court reporter for the eighth judicial circuit of the State of South Carolina do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 15th day of May, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Angela P. Berry,
Family Court Reporter

State of South Carolina)
)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2017-CP-40-6976

Jefferson Davis, Jr.,

Plaintiff,

vs.

South Carolina Educational Credit for Exceptional Needs Children Fund,

Defendant.

Transcript of Record

August 9, 2018
Columbia, South Carolina

B E F O R E:

The Honorable Perry H. Gravely, Judge

A P P E A R A N C E S:

Jefferson Davis, Jr., Esquire
Self-represented Plaintiff

Geoffrey K. Chambers, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

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E X H I B I T S

No.	Description	Ev.

No exhibits introduced.

THE COURT: All right, are you Mr. Davis?

MR. DAVIS: Yes, sir. Yes, Your Honor.

THE COURT: Okay. All right, and?

MR. CHAMBERS: I'm Geoffrey Chambers. I represent South -- or the Exceptional S.C.

THE COURT: All right. Okay. All right, we're here for defendant's motion to dismiss, defendant's motion for protection of discovery, and plaintiff's motion to compel discovery. So, I'll hear the motion -- defendant's motions first, and then we'll hear from the plaintiff's motions.

Yes, sir.

MR. CHAMBERS: Your Honor, I'll start with the motion to dismiss. I represent the South Carolina Educational Credit for Exceptional Needs Children Fund. It's also known as Exceptional S.C. It is a 501(c)(3) that grants scholarships to special needs children to go to basically private institutions that specialize in those special needs.

THE COURT: Okay.

MR. CHAMBERS: The fund is, is set up by tax code. It is, it is funded by basically a tax credit. So, people donate to the fund. There is a -- they, they get a tax credit for that. Now, as far as operation of that fund, statutorily there are two entities that can operate this program, which is the granting of scholarships out of that

fund. One is the 501(c)(3) that I represent. The backup to that in the statute is the Department of Revenue. So, if something were to happen to, to this organization, it would go to the Department of Revenue to operate that program and they, in fact, did operate that program historically.

The history of this is that the South Carolina -- this was -- there was a, a budget proviso that gave a tax credit and a number of independent 501(c)(3)s popped up. Mr. Davis and his wife are associated with one of those. Their -- and, in fact, it was their organization that was audited by DOR. DOR found some things in that audit that they didn't like. Recommended to the legislature that the, that the program be discontinued.

A number of parents and others who had benefited from the program itself went to the legislature, begged them not to pull the plug on this. Instead, the legislature came up with a different scheme in which, in which basically they had a more -- one more closely controlled 501(c)(3) which operated this program and eliminated the, the number of other 501(c)(3)s that were doing the scholarship granting. I represent that one statutorily directed 501(c)(3).

So, at first what this lawsuit -- we thought that it was going to be a fight over whether or not this organization was, in fact, a public body. The funding is

coming from private donations. However, the, the tax credit, you know, is a, is a way of funneling that. So, so, I thought it was going to be a messy fight over that. Turns out it's not. The South Carolina Supreme Court answered this question very recently, and it involved the accommodations tax, and so somebody sued the Hilton Head Chamber of Commerce over FOIA and -- claiming that they were a public body because they were receiving a large amount of money from the accommodations tax to advertise tourism in that area. Typically, if you're receiving those state funds, it puts you into a public body.

Your Honor, the Supreme Court looked at it and they said no, not, not the case because what happens in the accommodations tax statute is there are a lot of very specific legislative mandated -- legislatively mandated reporting procedures. That is a much more specific reporting procedure than FOIA, and so what the Supreme Court said was that the more specific law trumped and that FOIA does not apply. If I may approach?

THE COURT: Yes.

MR. CHAMBERS: FOIA does not apply when we have this very specific reporting capacity.

So when we look at our law, there are very, very similar -- as a matter of fact, almost identical reporting procedures in our law. It starts with the secretary of

state; we register with the secretary of state as a charity. We report to them. That's stated in the law, but generally. Specifically in the law, we're audited every year. A copy of that audit goes to the legislature, the governor, Department of Revenue. The Department of Revenue also puts together a report on us every year. In, in both of those procedures, we, we are providing, you know, basically the amount of scholarship money raised, the amount of scholarships granted, who those scholarships went to, which schools, and a lot of other things. Also a third report is done by the Education Oversight Committee on this program, and that third report is, is, is basically looking at the progress and tracking the progress of the students and the, the benefit of this program.

If I may approach again?

THE COURT: Yes.

MR. CHAMBERS: So, what I have is I have excerpts from the law that outlined a lot of this, a lot of -- a lot of this. So, we fit into the exact same scenario that the Hilton Head Chamber of Commerce fits into. Both are 501(c)(3)s. There -- the mechanism of receiving money is a little bit different. The mechanism of exactly how they're set up and associated with government is slightly different, but the, the point is is that we also have the very specific reporting statute just like in the

accommodations tax statute. For that reason, this more specific law applies pursuant to the Supreme Court's May order, and we are not considered a public body pursuant to FOIA.

The second thing that happened since this lawsuit was formed was the budget proviso was codified into law. And in that codification, in 12-6-37-90(b)(4) -- and I've added emphasis on your, on your sheet to this:

> Information contained in or produced from a tax return document magnetically or electronically stored data, data -- or magnetically or electronically utilized by either the Department of Revenue or the public charity in their exercise of its duty provided under this section must remain confidential and is exempt from exposure under the -- pursuant to the Freedom of Information Act.

So, we have both of those things that came out at approximately the same time. Both of them indicate that the things that Mr. Davis has asked for under the suit are not something that he's entitled to under law. We're asking that this court dismiss that for failure to state a claim upon which relief can be granted.

THE COURT: All right, I'll be glad to hear from you.

MR. DAVIS: Yes, sir. First, a procedural question.

I think deemed as a 12(b)(6) motion? 12(b)(6) is, as I understand it, before an answer is filed.

THE COURT: Right.

MR. DAVIS: Is that relevant to this -- their motion? They've already answered. We're in -- we're trying to get discovery, and they file a 12(b)(6).

THE COURT: I'm sorry. It's a motion for summary judgment. Let me check.

MR. DAVIS: It's on their motion.

THE COURT: Right.

MR. DAVIS: Civil procedure 12(b)(6), but it ---

THE COURT: Was it filed with the answer?

MR. DAVIS: No, sir. The answer was filed months ago. This was new.

THE COURT: What's your response to that?

MR. CHAMBERS: Your Honor, it's my understanding that failure to, failure to state a claim or failure to state a cause of action can be raised. There are certain things that have to be raised right away. Failure to state a cause of action is something that can be raised, raised later because you're basically getting into a case and you discover things later on.

The other thing is is that the court always has the discretion to convert this into a motion for summary judgment.

(A PAUSE.)

THE COURT: Looking at the -- I mean, I mean, I think you may have a good point there. I mean, it says, 12(b)(6) -- I didn't -- it says:

> Every defense, in law or fact, to a cause of action shall be asserted in the responsive pleadings except the following defenses may at the option of the pleader be made by motion.

And it had 12(b)(6):

> Motion made shall be made before pleading if a further pleading is permitted.

So, I mean, usually what -- based on what you've indicated is that what you find out later, that's usually in the form of a motion for summary judgment. I take the general rule that unless there is proper notice to all parties that it's going to be converted to summary judgment, or everybody's kind of treating it that -- I, I think that just fairness and notice to everybody, it needs to be provided notice on summary judgment. So, I mean, I'll be glad to hear from you. I mean, I think he makes a valid point. I had not looked at it from that standpoint.

MR. CHAMBERS: I can refile it.

THE COURT: I mean, that's ---

MR. CHAMBERS: I can refile it under a different title.

THE COURT: Well, but different title, but it also -- it is more than that, motion for summary judgment, because that requires everybody realizing that they have to submit affidavits and any kind of -- I mean, there's a lot of -- I know as an attorney, I mean, if I have a motion to dismiss, I'm going to defend it one way. If I have a motion for summary judgment, it's a totally different mind set in doing it. So, it's more than just changing the label. It's providing notice that, hey, this is -- we're going under this standard, and, of course, the rules have different standards for those, you know. So without consent, I'm not willing to convert it to a motion for summary judgment, and I believe that under 12(b), that that is a -- since I -- I was looking. You didn't reference that in your answer, did you? I was looking through there. I didn't -- I mean, sometimes I know ---

MR. CHAMBERS: I may, I may have.

THE COURT: I mean, I know some attorneys ---

MR. CHAMBERS: I don't know if I listed that as a defense or not. I'll look.

THE COURT: Yeah.

MR. CHAMBERS: It's been a while back. I cannot remember back off the top of my head, but I do have it here.

THE COURT: It looks like it's just a general denial.

MR. CHAMBERS: Your Honor, if I did it, that would be right before the signators and final defenses.

THE COURT: Right and, I mean, I know some attorneys will put kind of a 12(b)(6) language in the -- as a second defense. I mean, I think, based on that, I really -- I agree with the plaintiff here, that if -- since it's under 12(b), then it -- not sure that's a proper measure at this point. So, I'm going to, I guess, deny your motion.

MR. CHAMBERS: Okay.

THE COURT: And ask you to -- you can refile it, and y'all can have it under that standard, so.

MR. DAVIS: Thank you, Your Honor.

THE COURT: Thank you.

MR. CHAMBERS: And on the second motion, which is the motion for protection -- protective order.

THE COURT: Okay.

MR. CHAMBERS: I have the Supreme Court saying that somebody's not entitled to things under FOIA. I have the legislature saying that somebody's not entitled to something under FOIA.

The history of this is is that -- and I think that this cartoon created and posted by Mr. Davis sums up -- if I can find it.

(A PAUSE.)

MR. CHAMBERS: So, if I may, if I may approach? And I

hand you up a package of things.

So, every Saturday -- as I said, Mr. Davis, runs or ran a organization called Palmetto Kids First which ---

MR. DAVIS: Your Honor, I apologize. I'm a volunteer with that organization. My wife is the executive director. I'm not in control, not on the board, not -- have no actual influence on that organization. Just, just for clarification.

THE COURT: Okay.

MR. DAVIS: Since he's speaking about it.

MR. CHAMBERS: Your Honor, the, the Department of Revenue in their audit would disagree with that, and their audit findings would disagree with that, but that's irrelevant. Saturday basically an email came -- comes out. This cartoon is taken from one of those emails from a while back, and it, it sums up where we are and what a lot of motivation is here.

So, part of, part of this is is that, is that they ran this program. There was an audit. DR didn't -- what -- DOR didn't like what they saw in the audit. The entire program was changed based on the results of that audit, and so it's viewed as this government takeover and there is a, there is a -- every Saturday since that time three years ago, there have been these, these emails sent out to the list of donors and the list, and the list of parents that

they knew of at the time at which they were running a scholarship funding organization, plus anyone else who wants to sign up for it. And in that, a lot out of times what they're doing is they're bringing these things up and they're saying okay, well, there's this. Here's the contact information for people involved, and they're providing personal cell phone numbers, they're providing, you know, any, any con -- any and all contact information they can get. I've seen it where Jason Elliott's personal cell phone was given out in one of these. So, to some degree -- and they're urging everyone to call.

And another thing that they did is apparently there was a test of the application system a couple of months before applications -- application for scholarships opened, and they announced to this entire group of ---

THE COURT: Well, let's just -- I mean, let's cut to the chase here. What -- I mean, they've got -- they've filed discovery.

MR. CHAMBERS: Right.

THE COURT: And y'all -- what, what's ---

MR. CHAMBERS: I'm trying to protect ---

THE COURT: --- the nature of the ---

MR. CHAMBERS: --- the individuals. He's asked for a lot of personal contact information from employees and, and, and board members and other things like that. I'm

trying to protect against that.

The other things that I'm trying to protect against are what this organization does is it looks at individual kids and their disabilities and, and basically awards scholarships. I've got roughly 16,000 emails that he's asked for that there's no way to really search through other than to lay eyes on them and determine whether or not I can or cannot give out the information. It's a situation where I, I really don't feel comfortable giving out a bundle of emails that say that ---

THE COURT: Well, let's ---

MR. CHAMBERS: --- child named X has this.

THE COURT: Well, let me do this. Why don't -- I mean, normally if it's something that you don't feel is appropriate, I mean, then submit an objection to those and then if he wants to pursue it, then he can file a motion to compel which can be heard at the same time as ---

MR. CHAMBERS: Okay.

THE COURT: --- your motion for summary judgment.

MR. CHAMBERS: Okay. The -- and then the, the final thing is is that in light of the fact that we have a lawsuit over something that both the Supreme Court and the legislature have said that he's not entitled to, at what point should I, should I cut the expense to my client of having to go through all of that documentation and this

discovery? I, I think that the court, I think that the court -- and I need, obviously need to refile this as a summary judgement ---

THE COURT: I'm sure you can craft a response that will cover that.

MR. CHAMBERS: Okay.

THE COURT: To the discovery.

So, all right. So, I guess that resolves all the issues before the court today.

MR. DAVIS: Well, I had a motion to compel.

THE COURT: Okay.

MR. DAVIS: And I obviously have some statements in regard to what, what he just said. But, you know, the first thing being, you know, I filed discovery with them back in March of this year. I think it was March 23, 2018, it was filed or served on defendants. They have thirty days to either object or comply. We're way past the thirty days. At the last hearing that we had here in Columbia in front of Judge, Judge Newman, plaintiff -- or defense attorney, counsel, defense counsel told the judge that he was going to provide it within a week. I've got a witness here that I brought that was at that hearing where he, defense counsel, told Judge Newman he was going to provide this information. There was no objection to the, to the -- to anything in the request, and that was on May 15th.

Now all of a sudden we had a roster hearing motion for a nonjury trial on -- I think that was, that was filed with the court to go in front of Judge Hood, and then three days later he's got an objection to discovery in his 12(b)(6) motion. So, I'm a little confused as to how we can be this far and this deep into discovery past the thirty days where he has the ability to object, which he did not. He told Judge Newman he was going to provide the information, and now he's claiming issues and concerns that -- you know, I could address a couple of his issues here.

He talks about the Department of Revenue being a backup. The word backup is not in the law. The Department of Revenue is, is -- specifically in the law, it says administers this program in conjunction with a board that is appointed by government officials. The language that's in the statute is exactly like the court's authority. This is not the chamber of commerce, you know. This is ---

THE COURT: Well, but we're not -- I mean, but I'm not getting into the substance. This is talking about the discovery here.

MR. DAVIS: Yes, sir, but, I mean, we're deep into this, and all of a sudden last minute we get a nonjury trial roster meeting scheduled, and all of a sudden he's got issues and problems with discovery that was filed back in March, or served on March 23, 2018.

THE COURT: Are y'all on a roster, nonjury roster?

MR. DAVIS: Yes, sir.

THE COURT: When is it supposed to be heard?

MR. CHAMBERS: The nonjury roster had been postponed for these motions. Obviously I'm going to file another motion for summary judgment. That would probably be heard -- I guess August 24th is when it's back on the roster.

CLERK OF COURT: 27th. 27th.

MR. CHAMBERS: So, if I go home and refile this as, as, as summary judgment, then I guess that will be heard there.

THE COURT: Well, and I guess you need to file something. You need to -- I mean, whatever you're going to file, discovery responses, you need to file that, whether it's responses or, I mean, whatever and ---

MR. CHAMBERS: We did, we did comply with a lot of the discovery. There were, there were a couple of things in there that were just an impossibility.

MR. DAVIS: Your Honor, the only discovery I've received is an answer which was yes/no, and I've received no other discovery.

MR. CHAMBERS: He should have received ---

MR. DAVIS: I'm sorry, the -- yeah, request for admissions.

MR. CHAMBERS: And ---

MR. DAVIS: Request for admissions. That was all I've received.

MR. CHAMBERS: And, and interrogatories.

MR. DAVIS: I'm not sure that you provided them or not. You're objecting to interrogatory number 7.

MR. CHAMBERS: Well, yes, but the rest of them should have been supplied.

MR. DAVIS: I'm not sure I received the interrogatories.

MR. CHAMBERS: They should have been mailed to you.

MR. DAVIS: I've had difficulties. I'm, I'm pro se in ---

MR. CHAMBERS: All right.

MR. DAVIS: --- this case, Your Honor. I've had difficulty actually getting anything mailed to me or emailed. So, if they were mailed, I have not received them. So, we've got nothing ---

THE COURT: All right.

MR. DAVIS: --- from them at this time.

THE COURT: If they are not mailed in -- within five days, can you make sure that responses, interrogatories, and request for production are provided?

MR. CHAMBERS: I can email him a copy of all that today.

THE COURT: All right.

MR. DAVIS: Even if it's the interrogatories, I mean, I would have -- I didn't know that any interrogatories had been provided to me. So, I don't have that information, but we're still looking for discovery. And in my motion to compel discovery, if you look at the request for production -- and they should be aware that I didn't receive interrogatories because my motion to compel actually has the, you know, the -- what -- the interrogatories in there as, as an attachment because that's what I was looking for.

But my request for production are very simple. It's communications with elected officials. It's communications that they've had. Board minutes. This, this organization -- this is a civil FOIA case. They're bringing up issues and questions and concerns that we'd like to delve into.

The state bar has told me to file -- that I have an ethical duty to file a bar complaint against the Department of Revenue director Rick Reames, who is the individual who ordered the audit of this organization, and it's his firm that was representing our political opposition. I'm dealing with the LLR right now with the CPA, getting his information revoked because the Department of Revenue had an independent CPA review Palmetto Kids First audit. That CPA was Kirkland, one of our ---

THE COURT: All right.

MR. DAVIS: --- largest competitors.

THE COURT: All right, I've, I've said you need to file responses within -- you say five days you can get him some responses?

MR. CHAMBERS: I'll give him complete responses within five days.

THE COURT: All right.

MR. CHAMBERS: And noting any objections, objections that I cannot, cannot comply with.

THE COURT: All right. All right, I'll issue a Form 4 accordingly.

MR. DAVIS: So, he is -- you're ordering him to provide the discovery?

THE COURT: Right.

MR. DAVIS: Great. Thanks.

THE COURT: Responses to your interrogatories and request for production.

MR. CHAMBERS: Yes, sir.

THE COURT: Right.

MR. CHAMBERS: Thank you, sir.

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 9TH DAY OF AUGUST, 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/s/*ELIZABETH B. HARRIS*, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 12TH, 2018

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2017-CP-40-6976
	)	
	)	
JEFFERSON DAVIS, JR.,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
EDUCATIONAL CREDIT OF EXCEPTIONAL NEEDS CHILDREN,	)	
	)	
DEFENDANT,	)	

September 4th, 2018
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

JEFFERSON DAVIS, JD, MBA
Appearing pro se

GEOFFREY CHAMBERS, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

THE COURT: All right. We're on the record in 2017-CP-40-6976, Davis vs. South Carolina something or something or something.

Mr. Davis is pro se; is that right?

MR. DAVIS: Yes, sir.

THE COURT: All right. Good afternoon.

Mr. Chambers, you represent...

MR. CHAMBERS: Yes, Your Honor. I represent Educational Credit for Exceptional Needs Children.

THE COURT: Got it. Okay.

MR. CHAMBERS: And -- and, Your Honor, I was -- I talked to your staff about this. Mr. Davis had mentioned going on vacation from September 7th to September 28th and had mailed something to the court that was a different format. I tried to file something electronically on his behalf --

THE COURT: Okay.

MR. CHAMBERS: -- for basically protection or continuance of the case during that time period.

THE COURT: Okay.

MR. CHAMBERS: The Clerk's Office --

THE COURT: Rejected it?

MR. CHAMBERS: -- rejected it for a filing fee --

THE COURT: Right.

MR. CHAMBERS: -- but I have it here with me. Can we

also get that signed?

THE COURT: Check it out, Mr. Davis. Make sure it says what --

MR. DAVIS: Yes, I reviewed it.

THE COURT: Okay.

MR. DAVIS: I apologize. I didn't expect it to --

THE COURT: Can you get that for me?

MR. DAVIS: I'll give this to you.

MR. CHAMBERS: I don't think anything is going to get scheduled just because we're so close to that period of dates but you never know, and I'm sorry it still says electronically filed. I did not have time to change it, Your Honor.

THE COURT: Perfectly fine. I'll get that filed today.

MR. CHAMBERS: All right. Thank you.

THE COURT: And you're okay with those dates, Mr. Davis?

MR. DAVIS: Yes, Your Honor.

THE COURT: Okay. So we're here today for the purpose of a status conference. So you all help me kind of with -- Mr. Chambers, why don't you get me up to speed on kind of where the case is and what's going on with and see if we can't formulate a plan for going forward.

MR. CHAMBERS: Your Honor, we have currently three

motions. Mr. Davis wants to file a fourth motion. When we get those here heard, I think that that will clarify this case in a lot of different ways.

THE COURT: Okay.

MR. CHAMBERS: If it does go forward past those motions which those motions could in this case, regardless of outcome, depending on how those are decided for the court, if it does go on past that, we would need two weeks to complete production of items to Mr. Davis, and then we would need -- he wanted to do depositions based upon that discovery and was -- do you have one, two?

MR. DAVIS: It would certainly be more than two depositions, Your Honor.

THE COURT: All right. How many?

MR. DAVIS: It's hard to tell. It could be four, five or six.

THE COURT: Okay.

MR. DAVIS: It could be more. It's -- a lot of the claims that -- this is, frankly, a very simple FOIA issue, and for some reason, I can't get discovery out of -- out of the defendants, and then the discovery that they have produced is incorrect.

THE COURT: Okay.

MR. DAVIS: Okay. So I don't know how far and how wide it will go.

THE COURT: Okay. All right. So how long after -- so what three motions are pending?

MR. CHAMBERS: Currently it is a -- it's a motion on the discovery, and then there is a -- a motion for judgment on the pleadings and a motion for summary judgment.

THE COURT: And those are filed by the defense?

MR. CHAMBERS: That's...

MR. DAVIS: I had to bring my motion to compel.

MR. CHAMBERS: Yeah.

MR. DAVIS: The judge has ordered that they produce discovery and produce some documents.

THE COURT: Okay. And the defense has filed a summary judgment motion?

MR. CHAMBERS: Yes, Your Honor.

THE COURT: And then a motion for judgment on the pleadings?

MR. CHAMBERS: Yes, Your Honor.

MR. DAVIS: And then, Your Honor, I'll file here shortly a motion for summary judgment, if possible.

THE COURT: If you're going to file it, you need to file it sooner rather than later.

MR. DAVIS: Yes, sir.

THE COURT: Are any of those scheduled?

MR. CHAMBERS: None are scheduled yet, Your Honor.

THE COURT: Okay. When were -- when were the summary judgment motions filed?

MR. CHAMBERS: Probably -- I think all the motions were scheduled -- filed about a month back.

THE COURT: Okay.

MR. CHAMBERS: So I suspect October, November but I'm not sure.

THE COURT: And what year was the case filed, 2018?

MR. DAVIS: July 2017.

THE COURT: Okay.

MR. DAVIS: And with the new FOIA law, you're supposed to have a hearing within ten days. I was never able to get a hearing within ten days to get this resolved quickly but it's... oh well.

THE COURT: Okay. So Judge Gravely heard something when he was here in August?

MR. DAVIS: He -- your Honor, he heard the motion to compel discovery, and then they had a Protective Order. So I think there were three motions at a time they lost their --

THE COURT: And what does Judge Gravely's order say?

MR. CHAMBERS: Judge Gravely's order says that -- to basically send them a written response including objections to discovery.

THE COURT: And when was that due by?

MR. CHAMBERS: It was due five days after the hearing which would have put it due on the 16th. It was mailed on that date.

MR. DAVIS: The initial discovery -- I'm not sure about the date it was corrected on; that they responded to that. That's why I thought it was of urgency because it was past the five days.

The original discovery was given to -- to defendants in March. They never objected. They told me multiple times they were going to produce the discovery. They told Judge Newman I think back on May 15th that they were going to produce it. I'm still not sure, not sure about that. So even if we do get some further guidance on directing them to produce, I'm concerned that they won't -- still won't produce.

THE COURT: And when is your -- your protection is going to be through September 28th?

MR. DAVIS: Yes. Yes, Your Honor.

THE COURT: Okay. Does anybody have a copy of Gravely's order?

(Pause).

All right. So what we're going to do is we're going to put the motions that are now pending -- if you're going to file a motion for summary judgment, you need to file it this week.

MR. DAVIS: Yes, sir.

THE COURT: Okay. We're going to put all those motions to be set for the October -- the first October term of Common Pleas Non Jury. I don't know when that is yet because I can't get on the internet, and that way we can get those resolved. I'll be able to tell you what week that is here in just a second, and then there's a motion to enforce Judge Gravely's order, or what was your position on that, Mr. Chambers?

MR. DAVIS: Well, my position was, Your Honor, just to get them to comply with some form of discovery. They --

THE COURT: Okay. Well, what they are telling me is that Judge Gravely's order says that they were to provide you with written responses and objections within five days, and they're saying that they did that.

MR. DAVIS: They did but they objected to essentially everything.

THE COURT: Okay. Well, then --

MR. DAVIS: Which --

THE COURT: -- there is nothing to go back before Judge Gravely for.

MR. DAVIS: They were at --

MR. CHAMBERS: He's filed a motion to compel on that.

THE COURT: Okay.

MR. CHAMBERS: And I think if we hear that, then, you know -- the five days, you know, that's -- that's not the issue. I think the issue is to go through the objections and determine what is discoverable and what is not under the circumstances.

THE COURT: And why didn't that happen with Judge Gravely?

MR. DAVIS: It -- because I think at the end of that hearing, they were agreeing to produce some discovery. Then it was last minute, they were -- they were panicked, and they wrote about a two page -- objected to everything.

They didn't want to produce any documents. Everything is attorney/client privilege; conversations amongst the board members are attorney/client privilege, everything. They -- it's the most ridiculous exclusions for discovery that you can even imagine.

They didn't make absolutely no attempt to comply with Judge Gravely's order, none whatsoever. They're talking about 16,000 documents, and they produced zero.

It gets a tad frustrating because they have never objected, and they told the courts multiple times they were going to produce it. So everybody was under the impression they were actually going to produce something. Maybe there would be some discussion later on they didn't produce enough or something, but they objected to

everything.

THE COURT: What about it, Mr. Chambers?

MR. CHAMBERS: Your Honor, I think -- I think we just need to get that heard to go through the individual objections to that and why and have a court determine what we should -- what we should produce.

THE COURT: Okay. And your client is under -- aware of the issue that if you are found to be in violation of the -- of the discovery rules that they can be fined; is that right?

MR. CHAMBERS: I understand that, Your Honor.

THE COURT: Have you explained that to your client that if you lose a discovery hearing on a motion to compel, the circuit judge has the full authority to fine your client per occurrence, and they have the full authority to start striking pleadings? Your client understands that; is that right?

MR. CHAMBERS: Yes, Your Honor.

THE COURT: Okay. All right. So you all will be on the docket -- the week of October 1st you will be in front of Judge Benjamin, and the Clerk's Office will let you know time and day that hearing will be set. So that will be that week.

Let me read Judge Gravely's order here.

(Pause).

Okay.

MR. DAVIS: And Your Honor, I didn't include their responses to the production discovery. The very first one, it's burdensome and they're not subject to FOIA, so they don't have to produce it.

THE COURT: Right. Okay.

MR. DAVIS: This whole case is probably --

THE COURT: All right. I mean, what should have happened at the -- what Judge Gravely's order said is that the defense counsel advised that he thought the discovery responses had been sent.

MR. CHAMBERS: Your Honor, they -- they had other than...

THE COURT: And they were all objected to?

MR. CHAMBERS: No. There were significant answers. There were three different -- there were requests to admit. There were interrogatories and there were requests for production.

The request -- you have a FOIA case against an entity that is a 501(c)(3), number one, and number two, there's statutory law that prohibits the -- the disclosure of those documents. The case is...

THE COURT: I'm not here to argue the legal parts of it.

MR. CHAMBERS: Yeah, okay.

THE COURT: But what Judge Gravely clearly had the impression of is that discovery was either -- had been provided --

MR. CHAMBERS: Yes, Your Honor, I understand that.

THE COURT: -- or was about to be provided.

MR. CHAMBERS: I -- I had -- I had provided some of the discovery. The issue came down to Request for Production.

I had a -- I had put in a motion for protection and basically an overarching, I guess, objection to it, and he said no, I want to see. I want to see the actual physical response, item by item.

THE COURT: Okay. All right. So you are going to take all of that up with Judge Benjamin including the motion for summary judgment, motion for judgment on the pleadings, and a motion to compel all on October -- the week of October 1st.

It's not on the docket right now, but it will be as soon as I go tell the clerk to put it on the docket. Then at that point in time, we have to go one by one through the discovery, and then the judge rules it's either discoverable or it's not discoverable which is what should have happened in front of Judge Gravely but didn't. That's for a different date for a different conversation, but that week, you all need go through the discovery

responses one at a time methodically and each side can make their argument as to why or why not they're discoverable. Then you get an official ruling so you have it going forward.

Okay. Now, once all of that is done and all of the summary judgment rulings are ruled upon, if the case is still alive -- I don't know anything about the case, literally. I've seen you two at a roster meeting.

If the case is still alive after Judge Benjamin rules on all of that, then at that point in time we need to see where we are to get you on the trial date for the -- early next year.

Okay. So if you all -- once Judge Benjamin rules, you all reach back out to me, say she has ruled. The case is dead or the case is alive, and we need to figure out a time to get the case resolved. Okay?

MR. DAVIS: All right.

MR. CHAMBERS: All right.

MR. DAVIS: Thank you very much.

THE COURT: Okay.

(Whereupon, the proceedings were concluded.)

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 4th day of September, 2018.

September 7, 2018

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2017-CP-40-06976

Jefferson Davis, Jr.,)
)
Plaintiff,)
)
vs.) TRANSCRIPT OF RECORD
)
South Carolina Educational)
Credit for Exceptional Needs)
Children Fund,)
)
Defendant.)

October 3 , 2018
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

A P P E A R A N C E S:

JEFFERSON DAVIS, JR., ESQ.
Pro Se Plaintiff

GEOFFREY K. CHAMBERS, ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

INDEX OF WITNESSES

(WHEREUPON, no witnesses were called during these proceedings.)

EXHIBITS

(WHEREUPON, no exhibits were introduced during these proceedings.)

OCTOBER 3, 2018

THE COURT: 2017-CP-40-6976, Jefferson Davis, Jr., versus v. South Carolina Educational Credit for Exceptional Needs.

These are motions filed -- it looks like a motion for judgment on the pleadings filed by the Defendant, and the other three motions -- a motion for summary judgment, a motion to compel, and a motion for contempt and sanctions -- have been filed by the Plaintiff. And also a motion for summary judgment filed by the Defendant.

It appears that the Defendant's motions were filed first, so I will let you all go first. They were filed August 17, 2018. And then the Plaintiff's motions were filed August 22, 2018, and September 10, 2018.

I will be glad to hear from you.

MR. CHAMBERS: Your Honor, may it please the Court? I'm Geoffrey Chambers. I represent the Educational Credit for Exceptional Needs Children Fund, which is a 501(c)(3) public charity.

Your Honor, I would like to have the 12(c) heard first, and the reason for that is there is some abnormality about this case, and I kind of discovered it in the last -- it has kind of come

together, and I figured out why that abnormality is the way it is.

Normally this type of action -- this is a Freedom of Information Act request that was denied. And the allowed action on that is a motion for declaratory judgment.

When Mr. Davis filed this, apparently it was filed as a summons and complaint under complex litigation. The normal procedure under the act is that a hearing is held -- or basically scheduled within ten days of the filing of the motion. And at that hearing the Court would determine whether or not there is an issue that needs further consideration of the Court or whether it can be decided there based upon the pleadings and/or testimony of individuals at the hearing, or was presented at the hearing.

So with that, the main issue in this case -- and do you have my memo in support of the 12(c), Your Honor? If I may approach, I can bring those, filed last week.

(Complies.)

THE COURT: Thank you.

MR. CHAMBERS: So what we have is we have a case that was filed by Mr. Davis I guess last -- on

or about last August. He filed it in Greenville County. It was moved to Richland County upon a questioning of venue there because the Defendant is in Richland County.

Your Honor, if I may, this is the complaint from the case. Do you need a copy, or have you got it?

THE COURT: It is online.

MR. CHAMBERS: Okay, great.

All right. So in his complaint he alleges that he sent two FOIA requests to Educational Credit for Exceptional Needs Children Fund. The FOIA requests were either not responded to or denied.

He makes a conclusion of law at the very beginning of it that says that the Educational Credit for Exceptional Needs Children Fund is a public body operating in the State of South Carolina or of the State of South Carolina.

In a motion for declaratory judgment, conclusions of law are not admitted, but the facts as they stand are admitted.

In general, we have no -- we don't disagree really with his facts. He did send a FOIA request to us. We did deny his FOIA request. The reason

we denied his FOIA request is we are not a public body.

What is determined as a public body pursuant to FOIA, Your Honor, is covered by 30-4-20(a) under the South Carolina Code. And in 30-20-4(a) it says -- it gives a list of things, and it says: Any organization, corporation, or agency supported in whole or part by public funds or expending public funds.

Our organization is defined by statute. And if we look at the budget provisos and the later statute that defines our organization, it is 12-6-3790(b)(1) through (4), define what this organization is.

THE COURT: 12-16?

MR. CHAMBERS: 12-6-3790(b)(4). And it is also exactly the same in the 2016 Appropriations Act, Section 109.15, and the 2017 Appropriations Act, Section 109.11.

MR. DAVIS: I'm sorry, Your Honor. Just to clarify, it is not the same. That particular (b)(4) was changed into permanent law. We've been following this for five years. So I was just trying to help out.

MR. CHAMBERS: As far as the definition of

what this organization is, it is the same. And what it is is, it is defined as: There is created the Educational Credit for Exceptional Needs Children's Fund that is separate and distinct from the state general fund. The fund must be organized as a public charity as defined in the Internal Revenue Code under Section 509(a)(1) through (4).

When we go to 509(a)(1) through (4), 509(a)(1) through (4) states that: A public charity is a 501(c)(3) organization. So as a matter of law we have it defined as a 501(c)(3), which is a corporation.

We go back to this, the FOIA law, 30-4-20, and we look at what it says about corporations, and it says: For any organization, corporation, or agency supported in whole or part by public funds or expending public funds.

So we go back again to the law which created this, where the legislature created this entity, and we see what it says about funding.

In Section (b)(1), it says: The fund may not receive an appropriation of public funds. So it is not going to receive any.

It says that: The amounts on deposit in the fund do not constitute public funds and are not the

property of the state. Amounts on deposit in the funds may not be co-mingled with state funds, or public funds, and the state does not have a claim to or interest in the amounts on deposit. Agreements or contracts entered into by or on behalf of the fund do not constitute a debt or obligation of the state.

So what that is saying is that this is just absolutely financially separate from the state.

We go to the next section on it and it says --

THE COURT: Where are you reading from now?

MR. CHAMBERS: I can hand you a copy of this, Your Honor.

THE COURT: That would be great. Thank you.

(Complies.)

MR. CHAMBERS: Thank you, Your Honor.

It also says that: The Department of Revenue and the public charity may not expend public funds to administer the program.

So the way that the legislature defined this is they defined an organization that, as far as public funds go, this is a separate and apart thing from the state.

The legislature wove -- they first defined what is a public body in the FOIA. It is no

accident that in this they wove through that definition and they made it absolutely clear that this is a corporation.

A corporation is a public body if it is benefiting from public funds, expending public funds, or receiving public funds. They make it absolutely clear in here that neither the Department of Revenue nor this organization may expend public funds in its operation, and they make it absolutely clear that they don't have public funds, and that they can't receive public funds.

The intent of that was this is not a public body that was created. The legislature defined what a public body is. They can also define an organization that doesn't meet that definition.

Even if the Plaintiff alleges that he could rewrite his pleadings -- he doesn't address this in his pleadings, he just says it is a public body. That is a conclusion of law. The law says opposite. Even if he thinks that he can replead this in a way that would address around that, he can't. And the reason that he can't is because of Domains Media v. the Hilton Head Chamber of Commerce.

In Domains Media, it dealt with the

accommodations tax and the Chamber of Commerce, which is also a 501(c)(3), receiving funding from the state to do advertising for the Hilton Head area for tourism.

And it was alleged in the litigation that they were, or the declaratory judgment, that they were a public body. The Chamber of Commerce says, No, we are not. The Court agreed with them. And the reason that the Court agreed with them was because when you have a general statute -- and if I may approach?

(Complies.)

MR. CHAMBERS: When you have a general statute on reporting, such as FOIA, and a specific statute, the specific statute governs.

And if we look back at our legislation, you'll see in (b)(5)there is a reporting requirement, and if you turn a couple of pages, there is another reporting requirement with the EOC.

So the legislature has put very specific statutes in there, or statutory language in there, to ensure the accountability of this operation and the entirety of the operation. And it is something that goes to every aspect of the operation.

There is an audit of us. There is a

compliance audit of all of the schools to which these kids go to by the EOC. There is a detailed report put together by the Department of Revenue on us, the program as a whole. The test scores of the kids are looked at to determine whether or not this is making a difference or not. So at every aspect of it there is an accountability statute. It is a specific narrowly-tailored accountability statute.

Domains Media v. Hilton Head says that: When you have that narrowly-tailored statute, it governs, FOIA does not. The Hilton Head Chamber of Commerce was not a public body and not subject -- FOIA does not apply to it.

It is the exact same thing that is going on in this case. So even if he could draft around and allege we are doing something illegal, which we are not, he cannot draft new legislation with a revised motion for summary judgment or complaint. And so there is no way for him to draft around the fact that those specific recording statutes are there and that the law is when you have that specific reporting statute, then the general FOIA doesn't apply. We are not a public body. We don't have to respond to that.

The last thing, in case it is not clear that

the legislature did not want FOIA to interfere with this, they didn't put this in the budget provisos, but this lawsuit happened. His constant FOIA requests were coming. The legislature made it explicit that they don't intend FOIA to apply to this when they enacted this into permanent law this year.

And what they said in that is they said that: FOIA does not apply to information related to the operation of this entity in its duties under the statute.

THE COURT: Where are you reading from?

MR. CHAMBERS: If you will look at (b)(4), 12-6-3790(b)(4), in the middle of it.

THE COURT: Okay.

MR. CHAMBERS: So they went from, We didn't create a public body to, Okay, in case for some reason you can allege something was going on and try and draft around this in a complaint or go after other state agencies that were reported to, this must be kept confidential.

And the legislature has the right to say what is subject to FOIA and what is not. They have clearly said that. So, one, by definition, by the way that the legislature defines a public body, and

by the statutes themselves, we are not a public body. We do not get money from the state. We do not have money that is the state's. We cannot spend money that is the state's to support us. And nor can the Department of Revenue.

Secondly, we have very specific reporting statutes pursuant to the Domains Media case. Those trump the FOIA. We are not required to respond to a FOIA request.

And, last but not least, as of May of this year, we do not have to respond to FOIA, and nor does any state entity which is a public body which does receive our stuff in those reports, they don't have to respond either, because that is information that we use in carrying out our duties of going through scholarship applications and awarding scholarships with private donations, funding those scholarships.

THE COURT: All right. That is your motion -- do you have a motion to dismiss and a motion for summary judgment?

MR. CHAMBERS: I have a motion for summary judgment. I would like Your Honor to hear from co-counsel. The main thing here is that nowhere in his complaint has he alleged that we have a duty to

respond to his FOIA. He hasn't laid that out. And he has not laid out in his complaint and cannot lay out in his complaint that he has any legal right to these things, because those are determined by law. This need not go any further.

Every letter that I sent to him said, We are not a public body. I spelled it out in the one that I sent to him last summer. And, you know, if it is possible, Your Honor, my client just wants to go home. They are tired of this. This has been long, it has been drawn out. It has been something that was supposed to be quick, over with on a motion, and it has been drawn out and gotten into all this crazy stuff that, quite frankly, he is not entitled to under the actual system in which this is supposed to go through, but because he filed it in the wrong way, it went into a different direction.

So we just want what we were entitled to to begin with, which was to be heard on that, and for Your Honor to make a decision.

THE COURT: Thank you.

Yes, sir?

MR. DAVIS: Thank you, Your Honor.

This is fantastics news. The first thing I

want to point out is that Defense counsel stated they don't object, or don't have any disagreement with the facts. That was our issue. We have argued this, this motion for summary judgment, one time before, actually twice. The first time they didn't -- Defense counsel didn't show up. The second time in front of Judge Newman, and there were some issues, as you did with the other case, of material fact, they were claiming all sort of crazy things that did create some controversy, and I think they wanted to go to trial. But now it is good to know that they don't disagree with any of that.

A couple of points here. Let me first start off with what they are talking about with (b)(4). This language was added to the law this year. The first two years under which I filed FOIA requests, this language was not there. But if you look under (b)(4) -- and why this was added is because the Defendants were telling legislators that our FOIA requests, we were trying to get information on tax returns, financial information on the parents or the donors, and they were telling the legislators that we were trying to get medical information on children.

I have never made -- we have never made a request in regards to anything of a financial nature in regards to tax return information or anything in regards to medical information on children. That is what they were telling legislators, and that is why this provision was added to the law in (b)(4).

And if you look at (b)(4), it is very clear, they have added -- everything after the first -- the sentence that says: The department and the public charity shall not expend public funds to administer the program. They added information contained in or produced from a tax return. It is not subject to FOIA. And then personally identifiable information as described in the Family Education Rights and Privacy Act, individual health records are not subject to FOIA. That is what the legislature was trying to prevent because these individuals were telling people we were asking for tax return information and financial information.

The legislature had no intent whatsoever to say the entire entity and its operations were not subject of FOIA. The only things that we had asked from them are administrative in nature. For example, this organization hired a group to create

their website. Their website, they paid someone $31,500. It is a website that should cost $500. This is the type of clarity that FOIA, the intent of FOIA was to cover.

So, just so we know, (b)(4) only added or only exempted them from FOIA specifically for tax return information and medical information, which was already exempt from FOIA anyhow, but it was to appease the Defendants because they were claiming we were asking for additional information.

The legislature specifically discusses FOIA. They specifically added it in there. They do not say that this organization is exempt from FOIA across the board. They only say these two particular instances, not everything. If the legislature had an intent to exempt them in full, they would have exempted them in full, which would have created another controversy on a much larger level from a public policy perspective.

And if you think public policy, they can exempt a 501(c)(3) organization from FOIA that is run and governed by the Department of Revenue, they can exempt every operation of government from FOIA. We can put the entire school system, every school can be put into a 501(c)(3) and funded through tax

credits and run by the Department of Education and not be subject to FOIA based on what they are trying to do.

So there was no way they are going to -- the legislature is ever going to exempt this organization from FOIA. They will exempt them from what was already there, tax returns and health information.

So that is, you know, Step Number One.

Number Two. And then, Your Honor, I have got my motion for summary judgment that we originally filed. It is a copy. If I can approach the Court?

THE COURT: Yes, sir.

(Complies.)

MR. DAVIS: This is what I filed on May 7th. It kind of goes through the standard of review, the law, everything from that nature.

If you look on Page 9, that is where Defense counsel noted 30-4-2(a). That is where FOIA defines what a public body is. The law that is written -- the way this law is written is copied exactly from the law from the Ports Authority. Nobody is claiming the Ports Authority is not subject to FOIA. There are other independent organizations in groups that have gone to -- the

South Carolina School Board Association is subject to FOIA. It is a separate organization that gets payments from members. It is subject to FOIA. Just because they are a 501(c)(3) does not mean they are not subject to FOIA. But if you look there at what is highlighted, they don't have to receive public funds. I'm not conceding the fact that they don't receive public funds because I think there is some funding there that could be argued as public, but they certainly receive, as it is underlined there, Or any organization or corporation or agency supported in whole or in part by public funds or expended public funds.

This organization is supported in part, potentially in whole, by the South Carolina Department of Revenue. If you go back and look at the law that they are citing, Section (b)(1) through (4), and actually if you head straight down to Number (4): In concert with the public charity directors, the department shall administer to public charity, including but not limited to keeping of records, the management of accounts and disbursement of grants awarded pursuant to this section. The department. If you look at the definitional section, that is the Department of

Revenue. The Department of Revenue is managing by law this organization. That is petty much a public group that is getting support from the Department of Revenue.

I can go through a little bit of the formation of this. I'll do that next. But let me just address Domains.

The Domains law -- this is why I am kind of renewing this motion for summary judgment. The first time it was argued they had issues of material fact. That was on May 15th. Domains has occurred. And I have also got a copy of this entity's tax return, which I have e-mailed to the Court earlier this morning, but I will give you the operable section --

MR. CHAMBERS: I am going to object because this isn't in his pleadings, but go ahead.

MR. DAVIS: Section (r) of their tax returns was not available previously. I don't know any individual 501(c)(3) non-profit that is provided on the tax returns -- I deal with a lot of non-profits -- that would list related taxes and organization the South Carolina Department of Revenue. Why would they, in completing their tax return, list the Department of Revenue as a related

entity. It is because it is a related entity because per the law they are managing the organization.

Let me walk through -- oh, in regards to Domains, the other part of Domains, Domains deals with the Chamber of Commerce. The Chamber of Commerce, there is multiple -- lots of them all across the state. They are independent organizations. Domains was a 4 to 1 decision. A lot of people still argue that -- you know, agree with the dissent that Domains was more of an issue of trying to get to the result, which the spirit was that the Chamber should not be subject to FOIA because they are independent organizations, they just happened to be taking these combination tax funds directly, which actually are public funds and would have sucked them into it, but it was not the intent. But Domains roughly had to do with independent Chambers of Commerce. The Chamber of Commerce is not run by the Department of Revenue. The Chamber of Commerce, each one of them has a board. Their board is not appointed, as with this organization. This organization has a 5-member board. Two members are appointed by the Chairman of Senate Finance, Hugh Leatherman, Senator

Leatherman; two members of the board are appointed by the Chairman of the House Ways and Means, which is Chairman White; and one member is appointed by the governor. Show me a Chamber of Commerce that is run by a Board of Directors that is appointed by government officials. So it just doesn't exist. And it is entirely distinguishable.

They do bring up the reporting requirements. There was reporting requirements in Domain in regards to how they use those accommodation tax funds. It is limited. It is really not material to this. And it is certainly not differentiated. But the Chambers are not run by the Department of Revenue, they are not using state resources, and they are not appointed -- you know, they don't have boards that are appointed by state legislators.

The other things, if I can hand these out to you quickly, just to kind of go through how this organization -- this kind of goes into a little bit of my motion for summary judgment -- but how this organization was created.

MR. CHAMBERS: I am going to object because it is not in the pleadings and this is a 12(c).

THE COURT: Have you responded to his motion?

MR. DAVIS: Well, I am responding to the fact

that they are saying that it is not a government entity, it is not run by a governmental organization.

I can go through the history of the organization in the sense of who established it, who is running it. I have got in that memorandum right there, there is attachments where they are using the State of South Carolina's credit card system for their donors. There is -- I have spoken to those individuals. A contract, you have to be a government organization to use the State of South Carolina's credit card system. I can assure you every non-profit, every business in this state would love to get the buying power of the state's credit card system, but these organizations -- there are a lot of resources, state resources that this organization was using and getting the benefits of that are not available to any other non-profit or any other individual groups out there. Those individuals and non-profits have to fend for themselves. This organization is wholly supported by the government. This organization is administered by the state by the Department of Revenue. The executive director -- and it is in the law -- the executive director is hired by the

5-person board appointed by the government in conjunction with the Director of the Department of Revenue. That is the individual who is hiring the executive -- those are the -- that is the body, the six people that are hiring the executive director of this organization. I don't know any other non-profit that the Department of Revenue is helping select their executive director who is running it.

That is kind of my argument of where that is going in regards to theirs. I mean, I guess we can go into exactly how the organization was formed, the department was handling all of that, but, you know, it is --

THE COURT: Thank you.

MR. CHAMBERS: Your Honor, if I may respond very quickly?

First and foremost, I disagree with his reading of 12-6-3790(b)(4). The actual sentence is: Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the Department of Revenue or the public charity in the exercise of its duties as provided in this section must remain confidential and is exempt from

disclosure pursuant to the Freedom of Information Act.

So what must be confidential and exempt is information that is in a document or a tax return or electronically stored. It is not limited to tax returns and medical information about kids. It is limited by: Used in the lawful exercise of this organization under its duties pursuant to statute.

MR. DAVIS: Your Honor, that is a rather broad reading, and we are in a lot of trouble if that is the case.

THE COURT: All right.

MR. CHAMBERS: And the next point that I want to bring up is if we go back to Domains Media, even if all of this conspiracy theory is true that he is alleging about the Department of Revenue running this organization --

MR. DAVIS: It is in the law, Your Honor.

THE COURT: All right, hold on a second.

MR. CHAMBERS: Even if it is, he cannot draft around this. If you will just give me a sec. The FOIA is a general statute, the apex statute of the specific statute. Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more

specific and definite manner, the more specific statute will be considered an exception to or a qualifier of the general statute and given such affect.

They exempted an organization who was receiving public funds who met this definition based upon a specific statute in Domains Media. We have those exact same specific requirements. There is a report done on the number of total amount of grants. There is a report done on the identity of schools and the amount of grants going to each school for scholarships. There is a report on an itemized and detailed explanation of fees or other revenues obtained on behalf of each school. There is an audit of our organization. And there is a report on the criteria and eligibility requirements for scholarships.

There is further in (e)(3): By March 1st of each year, the Education Oversight Committee shall publish on its website a comprehensive list of independent schools that are certified as eligible institutions. The list must include the institution's name, address, telephone numbers and website addresses, the score reports and compliance audits received by the committee pursuant to an

earlier section, test scores of kids, not identifying personal information on it, but reports of advertised data. The Education Oversight Committee shall summarize and redact the reports identified in Subitem (a), if necessary, to prevent the disclosure of personally identifiable information.

So the legislature has put in an accountability statute into this that is specific. It governs here. Not only have they done that, they have said that all of this must be kept confidential and FOIA doesn't apply.

What that says is, Here is the information you can have, these two reports, the Education Oversight report and the report -- and the audit. That's it. We are not subject to FOIA. We are not a public body. We don't have that duty. Without that duty, there is no justiciable conflict here. There is nothing more for the Court to look into.

We can make a long drawn out case over this involving lots of discovery, this, that, and the other, and we will come to the exact same conclusion at the end of the day. It is black letter law. We want it cut off here.

MR. DAVIS: Your Honor, Domains works great

for a Chamber of Commerce, it doesn't work great --

THE COURT: Let me ask you this, are all of the motions -- so that is your motion on the 12(b). And also I assume you are making a summary judgment motion, because you filed a motion for summary judgment?

MR. CHAMBERS: I did file a motion for summary judgment.

THE COURT: Are the arguments the same?

MR. CHAMBERS: The arguments are mostly the same with some evidence.

THE COURT: All right. Well, I'm not -- the reason I'm asking is, I need to look at all this stuff. I am not going to rule today. So if you want to argue your motion for summary judgment, you need to go ahead and argue that.

And then, Mr. Davis, I am assuming your motion to compel, discovery and sanctions is -- and the contempt and sanctions, I will hear from you, but I am assuming they are all around the same FOIA issue of producing these documents.

MR. DAVIS: Well, it is not FOIA. This case started last summer, the summer of 2017. I filed discovery requests I think in April -- or March 23rd of this year, and they have been belligerent

on providing anything. I argued the original motion to compel in front of Judge Gravely. He granted that. I have had -- Defense counsel has told multiple -- I mean, told Judge Newman that he was going to provide discovery, he told Judge Gravely he was going to provide discovery. He has told multiple parties -- told me multiple times. It is just discovery in this case.

THE COURT: We will get to that. I am just trying to make sure we hear all these motions filed. Your motion for summary judgment?

MR. CHAMBERS: Okay. Your Honor, my motion for summary judgment is based upon the same arguments. We are not a public body as a matter of law.

The things that I would like to introduce into evidence are: Some other statutes, the affidavit of Thomas Persons, and the legislative manual of the State of South Carolina.

THE COURT: All right. Yes, sir?

MR. CHAMBERS: So, again, this is all based upon the definition in the FOIA of what a public body is and exceptions to that.

One, a public body is a list of different things, specific things listed. It includes any

department of the state, majority of the directors or representatives of departments within the executive branch of the state government, any state board, commission, agency, and authority, any public governmental body or political subdivision of the state, including, and it lists municipalities, townships, school districts, all that type of stuff, 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 such body, by whatever name known.

So we are one of those things. And this -- the legislative manual is produced by the legislature, and it lists every -- we are obviously not a town, a county, but it lists everything that the legislature believes is a board, commission, or authority, starting on Page 400 something.

It does not list the Educational Credit for Exceptional Needs Children Fund. The reason it is not listed there is because they didn't intend this to be a board, commission, or authority. It is exactly what they define it as in the statute. It is a 501(c)(3) corporation that operates as a

public charity. It is exactly what they define it in the statute. It does not receive public funds. It receives donations that are given where the donor is given a tax credit under a Department of Revenue scheme.

The legislature has the right to define what a public body is. They also have the right to define an organization that does not meet these requirements.

In Tom Persons' affidavit, it talks a little bit about the organization, gives a little bit of background facts. Let me find it. I've got it right here. Not a state employee. The executive director is not a state employee by statute or 501(c)(3). The budget provisos basically define what this organization is, i.e., a 501(c)(3) that is not supported or receiving or spending state funds. The property of it is defined in every one of those as not being state funds.

Nobody at this organization is a state employee. They don't receive state salary and benefits, and they do not receive any assistance at all from the State of South Carolina in defending this lawsuit. I am not paid by the state, I am paid by this organization out of their fund, which

is not the property of the State of South Carolina, not the funds of the State of South Carolina. Their debts to me are not the debts of the State of South Carolina. That really does not sound like what the legislature does when it sets up a board, commission, or authority.

And if we look at what they do when they set up a board, commission, or authority, they talk about things like a body politic of the state. They use the word authority or board or commission in the definition of it. And if you look at our statute and the budget provisos, they avoid the word board even down to where they say who runs this, because they didn't want confusion. It is not run by a board of directors, it is run by directors. The place where you see committee come in is talking about what is in fact a part of the state or a body politic of the state, the Education Oversight Committee. It is very different language when they set up something like a board, commission, or authority. They say that, This is ours, this is mine. I am the state, this is mine.

In our language, they are saying the exact opposite. They are saying, You are not a part of us. That is the key to all of this. And so there

is no difference between us and that Chamber of Commerce in the eyes of the FOIA's definition of what a public body is. Absolutely no difference. We are both 501(c)(3) organizations, we both have the same statutory reporting requirements that are specific.

Last but not least, there is a statute that says that we are not subject to it and that this must be kept confidential. If that is not legislative intent that what is going on right here not be going on, I have no idea what is, Your Honor.

MR. DAVIS: Your Honor, the legislative intent was to make them not subject to FOIA. And the State has clearly not utilized this other stuff, which was tax returns and health information upon children.

I am not arguing that they are a board, a commission, or authority, or a town, or anything of that nature, I am arguing what is on Page 9 of my original motion for summary judgment.

A public body means -- all those things that he was saying -- or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds. They are

supported in part by the Department of Revenue. To make a donation to this organization, you use the State's credit card system.

I've got in one of these affidavits which I will hand up to the Court, one of their frequently asked questions on their website: Can parents donate quid pro quo? The Exceptional SC Board -- which they now are using the word board -- does not have access to the names of donors while making funding decisions. What organization doesn't know the names of their donors? The Department of Revenue knows all their donors. The Department of Revenue is running and managing the program by law in conjunction with this 5-person board, which is appointed by three legislators from the House, Senate, and Governor. So I am arguing that it is an organization supported in part by government, by government funds.

When I mailed this initial complaint to their P.O. Box, which was a box which was opened by the Department of Revenue, Dear the Department of Revenue Offices, it was signed -- the green card was signed by a Department of Revenue employee.

I will get into our next issue with their discovery request, when I asked him in

interrogatories who gets the mail, they only answered Tom Persons, but I got a green card from this particular complaint signed by a Department of Revenue employee.

To make a stock donation to this organization, on their website they have the phone number of an individual that works at the Department of Revenue. They state phone number, they state department employee. They just made the argument that none of the people involved in this organization are government employees or receive government benefits. Everybody at the Department of Revenue that works on this organization is a government employee and receives government benefits.

I have got my counter of my motion for summary judgment, and I can go through mine.

THE COURT: Yes, sir, I will be glad to hear from you. Y'all are exceeding your time.

MR. CHAMBERS: I am going to object to his motion for summary judgment on the fact that he is alleging that he has a newly obtained 2016 tax return as his new evidence. He has already filed a motion for summary judgment on these exact same causes of action. At the most, I would like for him to explain why he didn't have a 2016 tax return

before arguing that a few months ago.

MR. DAVIS: 2016 tax return for them is, the year end is 6/30/2017, which is due ten and a half months after the end of the 6/30/17. It was not available. It was not filed by the time we had this. It wasn't available online. I would file a FOIA request, they would provide it, it has to show up online.

THE COURT: All right, let me hear your motion. I will consider your objection.

MR. CHAMBERS: All right.

MR. DAVIS: Your Honor, I mean, I have kind of gone through the law on the original May 7th memorandum. If we are going to go back and research and look at this, I have got the law there, I have got cases that address this, everything of that nature, but -- the Attorney General's opinions, public funds, anything -- the public purpose of FOIA is to provide clarity and transparency to the public on any sort of government organization. A government employee board, administered by the Department of Revenue, set up by the Department of Revenue, hiring of the executive director by the director of the Department of Revenue. This has got government all

over it.

So I have got the cases, the law. I know they are relying upon Domain, but obviously the Chamber of Commerce is completely separate. Let me pass up this affidavit of Harbeck, which was filed on May 7th. But it has got a substantial number of documents that show what I was claiming earlier in regards to what they have on their website. The Secretary of -- if you go to the Secretary of State's office, there is a search where you can search the boards and commissioners on the Secretary of State's office.

THE COURT: And these are your reasons for your motion for summary judgment?

MR. DAVIS: Well, it is part of it. Yes. Yes, Your Honor. It should be very clear to --

THE COURT: I mean, I don't know if you are still arguing --

MR. DAVIS: It is summary judgment.

THE COURT: I mean, I think you have already responded. I need to hear what your motion is for summary judgment, why there is no genuine issues of fact and that I should grant summary judgment on your --

MR. DAVIS: Well, there is no genuine issue of

fact because they are now not complicating the situation with -- they know a little bit more about it. The Defense counsel admitted earlier there was no issue of fact. It is an issue of law for the Court to determine. It should be rather simple.

There were some factual complaints that they had originally in the first argument of it. That is why Judge Newman didn't rule in my favor. Even in her statement, I believe the deposition -- the transcript, even she said at the time that it looked like everything was in my favor, but since there was some issues of material fact debated between the parties, that she was going to delay that.

I can go through -- there are several exhibits that I can certainly show, there is the law from the first two years. I think we know that. Let me just run through a couple of these. Here is the exhibit of where the organization was originally set up, the Articles of Incorporation. You will notice the address on the Articles of Incorporation is the Department of Revenue. If you will notice the signature, it is Mr. Rick Reams, III. He was at that time the Director of the Department of Revenue. And you will notice he is listed as the

CEO of this organization. This organization was set up by the Department of Revenue.

Here is the registration information from the Secretary of State's office I was able to get. Again, the Department of Revenue, Department of Revenue address. Here is the receipt I was able to get from the Department of Revenue. I can't get it from Exceptional SC or fund. This is a payment. A payment was made by the Department of Revenue. Payment was not made by this organization, it was made by the Department of Revenue. That is public funds.

Here is a screenshot from the Secretary of State's office. You can look up boards and commissions. You can't look up board members of independent non-profits, but you can look up boards and commissions. It lists every member, all five members of their board, who appointed them, and the date of the appointment. That is only done for government entities. Here is a screenshot from the Department of Revenue website with their advertising the organization.

THE COURT: Isn't this all attached to your affidavit?

MR. DAVIS: I don't think all of these are,

there are some that may be in there. These are just some that I had separate. Here is a screenshot from Exceptional SC that is using, if you look at the url at the top, it uses the sc.gov website. Here is a screenshot from their website, the Exceptional SC's website, or the Defendant's website, and if you look at Number 3, to make a stock donation, that phone number is for an individual at the Department of Revenue. That is getting assistance from government organizations, which taxpayers need to know about. Here is the online business, Rick Reams, again, the address for the registered agent for that is the Department of Revenue. Everything points to this organization being managed and run by --

MR. CHAMBERS: For the record, I am going to object to all of these because these were all part of the prior summary judgment and all available at the time of the prior summary judgment.

MR. DAVIS: And they were part of that information, Your Honor. You have not heard this particular motion, you have not heard any of this. Judge Hood allowed this motion to be renewed so we could hopefully work out our issues.

Essentially, it is a rather simple case. I

have got the law for you and all supporting documents.

That is my case for summary judgment, Your Honor.

THE COURT: All right. Any response?

MR. CHAMBERS: Your Honor, I haven't heard anything new. And I haven't heard any significance of this information.

If we look at the law, the law says that the Department of Revenue or this charity may run this program. It does not say in the FOIA that because the legislature created this 501(c)(3) corporation that it is subject to FOIA. It does not say that because the Department of Revenue is capable under law of operating this program that this 501(c)(3) corporation is subject to FOIA. It does not say any of that.

What it says is that it says that a corporation who is supported by or expends public funds. Again, we look at the legal definition of the corporation: Cannot be -- Public funds cannot be used to operate. Two, public funds are not held by it. Three, cannot receive an appropriation of public funds.

Last but not least, none of this helps with

the fact that the legislature put out very specific reporting requirements for this program and for this organization.

For that reason, the specific trumps the general law. These are our reporting requirements. In case it is not clear, our information is to be kept confidential and not subject to FOIA. And these are our reporting requirements. I don't think we can get more clear than that as far as legislative intent. And it is clear to me, and I hope that it is clear to the Court, that the legislative intent was that the Education Credit for Exceptional Needs Children Fund is not subject to the Freedom of Information Act. We are not a pubic body. And even if we were, we are exempted for other reasons.

Thank you.

MR. DAVIS: Your Honor, obviously you have heard everything, but I don't think the legislative intent was to set up a secret organization.

THE COURT: All right. What are your other motions? You have two other motions.

MR. DAVIS: The other motions -- it is really motion to -- well, I had originally filed a May 7 motion to compel with Judge Gravely and awarded,

because they didn't respond timely, on August 9 he filed an order for them to respond in five days. They didn't respond in five days. So I reached out. I submitted on the 16th an emergency motion for contempt. And I have been going through this since early April to get them to respond to any sort of discovery. They refused to.

And on September 7, per Judge Hood, I filed the motion to compel discovery. They provided some discovery. They have responded to interrogatories with some incorrect answers. You ask them for a number, they give a person. You ask for phone numbers, there is no numbers on there. You ask for who is actually handling the mail, they say Mr. Persons is the person handling the mail, but I can show you the green -- you know, the notice of service, the green card is signed by an individual at the Department of Revenue.

I can go through the lengthy detail of the multiple times that I have requested -- the multiple times they have ordered or told the judge or the Court that they were going to provide these documents. I have got the transcript from the hearing with Judge Hood and the transcript of the hearing with Judge Gravely.

If you look -- I can provide you with the transcript of Judge Hood -- we kind of discussed this matter with the Court. And I know we are short on time, but if you look at Page 10, going on to Page 11, you can see where the Court, or Judge Hood, actually, I would consider, say it was reading them the riot act, talking about that they are maybe subject to sanctions, penalties, having the pleadings stricken for not responding to discovery.

I would like to, just for your records, so you will have it, here is the transcript from the August 9th hearing of Judge Gravely. I can get you a -- I guess because of the hurricane -- I have ordered, but they were behind in getting transcripts for the May 15th where Defense counsel told Judge Newman that they were going to get me discovery within a week. They didn't get me discovery. They didn't object. They didn't object 30 days after my original discovery. They never objected through the whole process until the end.

I would like to show you their responses to Requests for Production. And if this doesn't satisfy the Court's need for either sanctioning the other party or either striking their pleadings, per

what Judge Hood had to say as being -- they have essentially objected. They talked about 16,000 documents. They talked about providing 16,000 documents, emails. They provided zero in their response.

In their response, they rely upon three types. Number One, We are not subject to FOIA, we are going to win this case, so we are not going to give you anything. That is pretty much not what discovery is.

Item Number Two that they relied upon in all of the answers to Requests for Production: It is burdensome, it is too hard, we don't want to do it, it is too burdensome, we are not going to give it to you. I don't think that is the intent of discovery.

And then Number Three, which I think is pretty mild, is in Item Number -- Request For Production Item Number 11 -- or 10, 11, and 12, we asked for emails referencing myself, my wife, who runs a non-profit, and then the particular non-profit, the controversy that we were having. Their response to that was any email referencing us was attorney-client privilege. So if some individual parent or some individual donor, they emailed --

the board members emailed between themselves, all of a sudden that -- and if it references us, that is attorney-client privilege. I think we all learned that attorney-client privilege was the discussion between you and your attorney, not discussions between you and third parties. And they are relying upon some brand new attorney-client privilege.

I will tell you what happened here, Your Honor, is Judge Gravely granted my motion to compel. Defense counsel said it would take him five days to provide production. He referenced no objections. He did say that he would like to provide production, he would produce documents, but he may have some objections. I don't think the intent of the discussion was he was going to object to everything out there, especially not the 16,000 documents. And I don't know that there are 16,000 documents or not.

On the 7th day I reached out to him with an email at 12:59 p.m. saying, Are you going to produce the documents?

Three hours later I get an -- I think they panicked, wrote this up quickly using the same excuse for every single request for document

production and sent it in so they didn't have -- they are belligerent in not wanting to produce any sort of discovery.

And that is at the same time they crossed in the email with my emergency motion. And it was just out of frustration of this is not what I learned in law school. You know, you read the rules. 30 days is 30 days. We were before the Court the other day dealing with counsel on another case. We conversed yesterday. This was coming back, he was putting discovery together. He asked for -- you know, we were in front of the Court the other day potentially asking for an extension. I am happy to work with counsel on an extension. I have offered this counsel an extension on some of these documents. They have never even requested it. So multiple times, probably I would say ten different times, we requested, then we were told we were going to receive discovery, and nothing comes. And then when it finally comes, after a motion to compel has been awarded, after they have been read essentially the riot act by Judge Hood, it is some new-found attorney-client privilege, some new-found privilege of burdensome, and the third excuse, which is a new thing, you know, We are going to win

the case, so we don't have to give you anything.

So that is kind of my issue. I didn't ask in my original motion to compel for any sort of sanctions. But the intent -- this is a FOIA case. I am pro se. There is no teeth to the FOIA statute. The only teeth to the FOIA statute is the fact that they have to pay expenses to the person winning the case. If I win, I will charge -- I don't get compensated for my time. I get compensated for driving down here. I get compensated for printing paper. They don't care about losing and how much it is going to cost them. If I was a $500-an-hour attorney standing here, they might care, but there is no teeth in the FOIA law. The Court has teeth to look at what they have done through this process and inflict some sort of0 penalty or sanctions, whether it is monetary or striking the pleadings to get them to comply with the Court's order and with the rules.

Thank you, Your Honor.

MR. CHAMBERS: One, Mr. Davis wants to argue his discovery issues at every opportunity he gets. There is a motion hearing for where it is not before the Court, he is arguing it. There is a roster meeting, he is arguing it. And so the

transcripts that he is sitting here saying, These are the transcripts of this, that, and the other, those are not the ones where it is before the Court.

At the hearing with Judge Gravely, we talked about this, and I basically pointed this out. I decide that I'm going to sue the 7-11 because I sent them a FOIA and they didn't respond. I filed that suit as complex litigation when I'm only allowed to file it as a motion for declaratory judgment. It goes into the slow track and I pepper them with discovery requests for just a fishing expedition of documents, emails between yourself and any politician, emails of all of the board members or the directors of the corporation, emails of, you know, like basically stuff that the Department of Revenue would have that we wouldn't even have access to. It is a small laundry list.

But the problem is this whole thing got a rite of procedure. And the procedure is, come into this courthouse relatively quickly, look at the situation, determine whether or not more is needed to be known or not to determine whether or not the Court can come up with an answer.

And so he is taking advantage, and it is clear

from his arguments today, he is well prepared, he is a trained attorney, he is taking advantage of that. And he may have even known what he was doing when he put it as complex litigation, I do not know. But the point is, he is not entitled to this.

And if we look at two cases, City of Columbia vs. -- may I approach, Your Honor?

THE COURT: Yes, sir.

MR. CHAMBERS: City of Columbia vs. American Civil Liberties Union, which cites Giza. It says that, When something is the rest of a case on FOIA, that you are not entitled to it through discovery, or, ideally, that the Court review that issue first and then narrowly allow discovery to answer that specific question if it cannot be answered otherwise.

For example, if it cannot be answered by statutory law, then we look at, you know, Do we need to go into this. Because this can be answered by statutory law, none of this is necessary or proper.

As far as Judge Gravely's order, Judge Gravely said, Well, why have you not responded? I said, because this is a FOIA case, because this is not

supposed to happen this way. This is -- I haven't responded because we are not subject to FOIA. It is the same thing that is argued here today.

And he said, Well, put together a writing, note your objections, give it to him. Those are the judge's words. Do it within 5 days.

He claims we took 7. Look at the rule on timing. He said that on the 9th. We don't count that day. So the 10th, 11th, then we have a Friday and Saturday, it is less than seven days, so you don't count -- I'm sorry, Saturday and Sunday -- so 10th, 11th, 12th and 13th don't count. Then you have the 14th -- I'm sorry, the 10th, 11th, 15, 16, 17. Your Honor, I'm sorry. But the point is on the fifth day if you take out -- if you look at the 16th, if you don't count the day that the order came out, which I think it came out on the 9th, if you don't count that day, you take the two days out for the weekend, it was within the 5 days. So the response was timely.

And the other thing that he is misrepresenting is is that, Yes, I was working on it before I heard from him. He emailed the judge directly, copied me on the email. I was within the time limits of what I had to respond to him. And I did get it in the

mail before the end of the day. I had actually already gotten it in the mail by the time I got his email.

THE COURT: All right. Well, there is a process that has to be done. If there is sufficiency and if you have turned over the documents, you are supposed to write a letter saying what is sufficient in each one of them.

MR. DAVIS: Well, we have got no documents.

THE COURT: In the responses, you have to write a letter saying what is sufficient. Under the rules, if he did not turn something over, you have to write a letter to him saying, You did not respond to this, you did not respond to that, or your response is incomplete. You said he didn't give you anything, right? So you are supposed to follow up with him and then give him a timeline to respond, and then if he doesn't, then you bring it back before the Court.

MR. DAVIS: And that is why I brought the original motion to compel, he was ordered to respond, he said he was going to respond. Ultimately, since he said he was going to produce documents, so there was no discussion with Judge Gravely in regards to, I am not going to produce

anything, in other words, I may have some objections to some item of discovery, not a complete objection to everything.

And just so Your Honor does know, Defense counsel is talking about slow tracking this or putting it in complex litigation, that is not -- certainly not my intent. I can provide you emails, multiple emails of calling the clerk, wrote Judge Hood's law clerk, I have got emails to that effect. The new FOIA law says we are supposed to have a hearing within ten days of filing. I was trying to get that ten day. I had made multiple attempts. What I thought it was these people, the Defendants were slow on because they wanted to go ahead and get their permanent law. They wanted to go ahead and get some language in there, which they were able to get some language in there to discuss, or at least point to FOIA, but I think it only points to FOIA in the sense of medical records and tax returns. That is why they, in my opinion, were slow-walking this particular litigation, so they could get that in there. Because it hadn't been in the law previously, it wasn't in the law the first two years. The third year when it became permanent law, they added it in there. And I think that is

the controversy they wanted in there. I was more than happy to get this thing resolved quickly.

THE COURT: All right. Well, I will take a look at all this stuff that you all have given me. I think I need to rule on the motions for summary judgment and the motion for 12(b) first, which is usually what happens, usually file a motion and he will answer under 12(b)(1), and discovery wouldn't even be relevant, so I'm a little confused.

MR. DAVIS: They filed an original 12(b)(6) before they answered. They then dropped that. They answered. But then after they answered and after some of these motions, they filed another 12(b)(6), which --

MR. CHAMBERS: Which he objected to, so I filed it as a 12(c). So 12(c) is the -- so the federal rule, you can file a 12(b)(6) at any point. In South Carolina, 12(b)(6) is limited to basically filing it, you know, pre-answer, and then once something has been answered, then it changes -- shifts over to 12(c). So I basically labeled it a 12(b). He objected to it. I re-filed it as a 12(c), which it is appropriate.

THE COURT: I guess what I'm confused -- I mean, I'm just confused as to why you are even

having a discussion regarding discovery responses until the rule -- the 12(b) motion can be heard.

MR. DAVIS: It was a new motion on there. They had done a 12(b)(6) originally last summer, and then they did another one here recently. So that is why. And I sent them discovery in the interim and motion to compel and such.

MR. CHAMBERS: So, yes. And like I said, Your Honor, I mean, this case has been an unusual track because of -- this normally is something that is heard very quickly and it is a very simple motion thing rather than a -- it is not complex litigation.

MR. DAVIS: And I have offered to meet with counsel to discuss the issue, and they have refused that request. I have been anxious to get it resolved. I think it is pretty clear. They have been slow-walking it I think to get that FOIA information added to the law. They got it. And now we are here, so.

THE COURT: All right, thank you. I will get you all something. I'm not sure when, but I will get you all something.

MR. DAVIS: Thank you, Your Honor.

MR. CHAMBERS: Thank you, Your Honor.

THE COURT: All right. Thank you all.

(WHEREUPON, the hearing adjourned at 10:54 a.m.)

(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 3rd day of October, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 20, 2019

s/*Deborah M. McCurdy, RPR*

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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Proviso 109.15. of the 2016-17 General Appropriation Act
As Ratified by the General Assembly on June 2, 2016

109.15. (DOR: Educational Credit for Exceptional Needs Children) (A) As used in this proviso:

(1) "Eligible school" means an independent school including those religious in nature, other than a public school, at which the compulsory attendance requirements of Section 59-65-10 may be met, that:

(a) offers a general education to primary or secondary school students;

(b) does not discriminate on the basis of race, color, or national origin;

(c) is located in this State;

(d) has an educational curriculum that includes courses set forth in the state's diploma requirements, graduation certificate requirements (for special needs children), and where the students attending are administered national achievement or state standardized tests, or both, at progressive grade levels to determine student progress;

(e) has school facilities that are subject to applicable federal, state, and local laws;

(f) is a member in good standing of the Southern Association of Colleges and Schools, the South Carolina Association of Christian Schools, or the South Carolina Independent Schools Association; and

(g) provides a specially designed program or learning resource center to provide needed accommodations based on the needs of exceptional needs students or provides onsite educational services or supports to meet the needs of exceptional needs students, or is a school specifically existing to meet the needs of only exceptional needs students with documented disabilities.

(2) "Exceptional needs child" means a child:

(a) who has been evaluated in accordance with this state's evaluation criteria, as set forth in S.C. Code Ann. Regs. 43-243.1, and determined eligible as a child with a disability who needs special education and related services, in accordance with the requirements of Section 300.8 of the Individuals with Disabilities Education Act; or

(b) who has been diagnosed within the last three years by a licensed speech-language pathologist, psychiatrist, or medical, mental health, psychoeducational, or other comparable licensed health care provider as having a neurodevelopmental disorder, a substantial sensory or physical impairment such as deaf, blind, or orthopedic disability, or some other disability or acute or chronic condition that significantly impedes the student's ability to learn and succeed in school without specialized instructional and associated supports and services tailored to the child's unique needs.

(4) 'Independent school' means a school, other than a public school, at which the compulsory attendance requirements of Section 59-65-10 may be met and that does not discriminate based on the grounds of race, color, religion, or national origin.

(5) 'Parent' means the natural or adoptive parent or legal guardian of a child.

(6) 'Qualifying student' means a student who is an exceptional needs child, a South Carolina resident, and who is eligible to be enrolled in a South Carolina secondary or elementary public school at the kindergarten or later year level for the applicable school year.

(7) 'Resident public school district' means the public school district in which a student resides.

(8) 'Transportation' means transportation to and from school only.

(9) 'Tuition' means the total amount of money charged for the cost of a qualifying student to attend an independent school including, but not limited to, fees for attending the school, textbook fees, and school-related transportation.

(10) 'Department' means the Department of Revenue.

(B) (1) There is created the Educational Credit for Exceptional Needs Children Fund that is separate and distinct from the State general fund. The fund shall be organized by the department as a public charity as defined by the Internal Revenue Code under sections 509(a)(1) through 509(a)(4) and consist solely of contributions made to the fund. The fund may not receive an appropriation of public funds. The fund shall receive and hold all contributions intended for it as well as all earnings until disbursed as

provided in this chapter. Monies received in the fund shall be used to provide scholarships to exceptional needs children attending eligible schools.

(2) The amounts on deposit in the fund do not constitute public funds nor are the deposits property of the State. Amounts on deposit in the fund must not be commingled with public funds and the State shall have no claim to or interest in the amounts on deposit. Agreements or contracts entered into by or on behalf of the fund do not constitute a debt or obligation of the State.

(3) The fund shall be governed by five directors, two appointed by the Chairman of the House Ways and Means Committee, one of which is based upon the recommendation of the South Carolina Association of Christian Schools and one which is based upon the recommendation of the Diocese of Charleston, two appointed by the Chairman of the Senate Finance Committee based upon the recommendations of the South Carolina Independent Schools Association and one appointed by the Governor based upon the recommendation of the Palmetto Association of Independent Schools. The directors of the fund, along with the Director of the Department of Revenue, shall designate an executive director of the fund.

(4) In concert with the fund directors, the Department of Revenue shall administer the fund, including, but not limited to, the keeping of records, the management of accounts, and disbursement of the grants awarded pursuant to this proviso. The department may expend up to two percent of the fund for administration and related costs. The department may not expend public funds to administer the program.

(5) By June thirtieth of the current fiscal year, the Department of Revenue must report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee and the Governor:

(a) the number and total amount of grants issued to eligible schools in the fiscal year;

(b) for each grant issued to an eligible school in the fiscal year, the identity of the school and the amount of the grant;

(c) an itemization and detailed explanation of any fees or other revenues obtained from or on behalf of any eligible schools;

(d) a copy of a compilation, review, or audit of the fund's financial statements, conducted by a certified public accounting firm and;

(e) the criteria and eligibility requirements for scholarship awards.

(C) (1) Grants may be awarded in an amount not exceeding eleven thousand dollars or the total annual cost of tuition, whichever is less, to a qualifying student at an eligible school.

(2) Before awarding any grant, the fund must receive written documentation from the qualifying student's parent or guardian documenting that the qualifying student is an exceptional needs child. Upon approving the application, the fund must issue a check to the eligible school in the name of the qualifying student within either thirty days upon approval of the application or thirty days of the start of the school's semester.

(3) In the event that the qualifying student leaves or withdraws from the school for any reason before the end of the semester or school year and does not reenroll within thirty days, then the eligible school must return a prorated amount of the grant to the fund based on the number of days the qualifying student was enrolled in the school during the semester or school year within sixty days of the qualifying student's departure.

(4) The department may not award grants solely for the benefit of one school.

(5) The department may not release any personally identifiable information pertaining to students or donors or use information collected about donors, students, or schools for financial gain.

(6) The department shall develop a process to prioritize the awarding of grants to eligible incumbent grant recipients at eligible schools.

(D) (1) (a) Tax credits authorized by subsection (H)(1) and subsection (I) of this proviso annually may not exceed cumulatively a total of ten million dollars for contributions to the Educational Credit for Exceptional Needs Children Fund.

(b) Tax credits authorized pursuant to subsection (H)(2) of this proviso annually may not exceed cumulatively a total of two million dollars for tuition payments made on behalf of qualifying students.

(c) If the department determines that the total of the credits claimed by all taxpayers exceeds either limit amount as contained in items (a) or (b), it shall allow credits only up to those amounts on a first come, first served basis.

(2) (a) The department shall establish an application process to determine the amount of credit available to be claimed. The receipt of the application by the department shall determine priority for the credit. Subject to the provisions of subitem (e), contributions must be made annually on or before June thirtieth, in order to claim the credit. The credit must be claimed on the return for the tax year that the contribution is made.

(b) A taxpayer may not claim more than sixty percent of his total tax liability for the year in contribution toward the tax credit authorized by subsection (H)(1) or subsection (I). This credit is not refundable.

(c) If a taxpayer deducts the amount of the contribution on his federal return and claims the credit allowed by subsection (H)(1) or subsection (I), then he must add back the amount of the deduction for purposes of South Carolina income taxes.

(d) The department shall prescribe the form and manner of proof required to obtain the credit authorized by subsection (H)(1) or subsection (I). The department shall also develop a method of informing taxpayers if the credit limit is met at any time during the fiscal year.

(e) A taxpayer only may claim a credit pursuant to subsection (H)(1) and subsection (I) for contributions made during the fiscal year.

(3) A corporation or entity entitled to a credit under subsection (H)(1) and subsection (I) may not convey, assign, or transfer the credit authorized by this proviso to another entity unless all of the assets of the entity are conveyed, assigned, or transferred in the same transaction.

(E) (1) On or before August 1, 2016 independent schools may apply to the Education Oversight Committee to be certified as an eligible institution. The Education Oversight Committee shall develop an application to completed by the independent schools which must contain at least:

(a) the number and total amount of grants received in the preceding fiscal year;

(b) student test scores, by category, on national achievement or state standardized tests, or both, for all grades tested and administered by the school receiving or entitled to receive scholarship grants pursuant to this chapter in the previous fiscal year;

(c) a copy of a compilation, review, or compliance audit of the organization's financial statements, conducted by a certified public accounting firm; and

(d) a certification by the independent school that it meets the definition of an eligible school as that term is defined in subsection (A)(1) and that the report is true, accurate, and complete under penalty of perjury in accordance with Section 16-9-10.

(2) (a) The Education Oversight Committee may waive the August first deadline contained in subsection (E) upon good cause shown by an independent school.

(b) The Education Oversight Committee may waive some or all of the curriculum requirements contained in subsection (A)(1)(d) following consultation with the advisory committee.

(3) (a) By September 1, 2016 the Education Oversight Committee shall publish on its website a comprehensive list of independent schools certified as eligible institutions. The list shall include for each eligible institution:

(i) the institution's name, addresses, telephone numbers, and, if available, website addresses; and

(ii) the score reports and audits received by the committee pursuant to subsection (E)(1)(b) and (c).

(b) The Education Oversight Committee shall summarize or redact the score reports identified in item (3)(a)(ii) if necessary to prevent the disclosure of personally identifiable information.

(4) An independent school that does not apply for certification pursuant to this subsection must not be included on the list of eligible schools and contributions to that school shall not be allowed for purposes of the tax credits permitted by this proviso.

(5) An independent school that is denied certification pursuant to this section may seek review by filing a request for a contested case hearing with the Administrative Law Court in accordance with the court's rules of procedure.

(F) (1) The Education Oversight Committee shall establish an advisory committee made up of not more than nine members, including parents, and representatives of independent schools and independent school associations.

(2) The advisory committee shall:

(a) consult with the Education Oversight Committee concerning requests for exemptions from curriculum requirements; and

(b) provide recommendations on other matters requested by the Education Oversight Committee.

(G) Except as otherwise provided, the Department of Education, the Education Oversight Committee, and the Department of Revenue, nor any other state agency may regulate the educational program of an independent school that accepts students receiving scholarship grants pursuant to this chapter."

(H) (1) A taxpayer is entitled to a tax credit against income taxes imposed pursuant to Chapter 6, Title 12 for the amount of cash and the monetary value of any publicly traded securities the taxpayer contributes to the Educational Credit for Exceptional Needs Children Fund up to the limits contained in subsection (D)(1)(a) of this proviso if:

(a) the contribution is used to provide grants for tuition to exceptional needs children enrolled in eligible schools who qualify for these grants under the provisions of this proviso; and

(b) the taxpayer does not designate a specific child or school as the beneficiary of the contribution.

(2) (a) A taxpayer is entitled to a refundable tax credit against income taxes imposed pursuant to Chapter 6, Title 12 for the amount of cash and the monetary value of any publicly traded securities, not exceeding eleven thousand dollars per child, for tuition payments to an eligible school for an exceptional needs child within his custody or care who would be eligible for a grant pursuant to this proviso up to the limits contained in subsection (D)(1)(b) of this proviso.

(b) If a child within the care and custody of taxpayer claiming a tax credit pursuant to this item also receives a grant from the Educational Credit for Exceptional Needs Children Fund, then the taxpayer may only claim a credit equal to the difference of eleven thousand dollars or the cost of tuition, whichever is lower, and the amount of the grant.

(I) A taxpayer is entitled to a tax credit against income taxes imposed pursuant to Chapter 11, Title 12 for the amount of cash and the monetary value of any publicly traded securities the taxpayer contributes to the Educational Credit for Exceptional Needs Children Fund up to the limits contained in subsection (D)(1)(a) of this proviso if:

(1) the contribution is used to provide grants for tuition to exceptional needs children enrolled in eligible schools who qualify for these grants under the provisions of this proviso; and

(2) the taxpayer does not designate a specific child or school as the beneficiary of the contribution.

(J) On or before August 1, 2016, each scholarship funding organization organized and operating pursuant to SECTION 9 of H. 4230, R. 130, Act 92 of 2015 shall deposit with the Educational Credit for Exceptional Needs Children Fund all remaining funds on hand as of July 1, 2016. Scholarship funding organizations organized and operating pursuant to SECTION 9 shall remain in existence after the effective date of this act solely for the purpose of winding down operations and depositing remaining funds with the Educational Credit for Exceptional Needs Children Fund pursuant to this provision. On August 1, 2016 all scholarship funding organizations organized pursuant to SECTION 9 shall cease to exist.

109.11. (DOR: Educational Credit for Exceptional Needs Children) (A) As used in this proviso:

(1) "Eligible school" means an independent school including those religious in nature, other than a public school, at which the compulsory attendance requirements of Section 59-65-10 may be met, that:

(a) offers a general education to primary or secondary school students;

(b) does not discriminate on the basis of race, color, or national origin;

(c) is located in this State;

(d) has an educational curriculum that includes courses set forth in the state's diploma requirements, graduation certificate requirements (for special needs children), and where the students attending are administered national achievement or state standardized tests, or both, at progressive grade levels to determine student progress;

(e) has school facilities that are subject to applicable federal, state, and local laws;

(f) is a member in good standing of the Southern Association of Colleges and Schools, the South Carolina Association of Christian Schools, ~~or~~ the South Carolina Independent Schools Association*, or Palmetto Association of Independent Schools*; and

(g) provides a specially designed program or learning resource center to provide needed accommodations based on the needs of exceptional needs students or provides onsite educational services or supports to meet the needs of exceptional needs students, or is a school specifically existing to meet the needs of only exceptional needs students with documented disabilities.

(2) "Exceptional needs child" means a child:

(a) who has been evaluated in accordance with this state's evaluation criteria, as set forth in S.C. Code Ann. Regs. 43-243.1, and determined eligible as a child with a disability who needs special education and related services, in accordance with the requirements of Section 300.8 of the Individuals with Disabilities Education Act; or

(b) who has been diagnosed within the last three years by a licensed speech-language pathologist, psychiatrist, or medical, mental health, psychoeducational, or other comparable licensed health care provider as having a neurodevelopmental disorder, a substantial sensory or physical impairment such as deaf, blind, or orthopedic disability, or some other disability or acute or chronic condition that significantly impedes the student's ability to learn and succeed in school without specialized instructional and associated supports and services tailored to the child's unique needs.

~~(4)~~ *(3)* 'Independent school' means a school, other than a public school, at which the compulsory attendance requirements of Section 59-65-10 may be met and that does not discriminate based on the grounds of race, color, religion, or national origin.

~~(5)~~ *(4)* 'Parent' means the natural or adoptive parent or legal guardian of a child.

~~(6)~~ *(5)* 'Qualifying student' means a student who is an exceptional needs child, a South Carolina resident, and who is eligible to be enrolled in a South Carolina secondary or elementary public school at the kindergarten or later year level for the applicable school year.

~~(7)~~ *(6)* 'Resident public school district' means the public school district in which a student resides*, or in the case of dependents of active military personnel, the public school district which the student may attend*.

~~(8)~~ *(7)* 'Transportation' means transportation to and from school only.

~~(9)~~ *(8)* 'Tuition' means the total amount of money charged for the cost of a qualifying student to attend an independent school including, but not limited to, fees for attending the school, textbook fees, and school-related transportation.

~~(10)~~ *(9)* 'Department' means the Department of Revenue.

(B) (1) There is created the Educational Credit for Exceptional Needs Children Fund that is separate and distinct from the State general fund. The fund shall be organized by the department as a public charity as defined by the Internal Revenue Code under sections 509(a)(1) through 509(a)(4) and consist solely of contributions made to the fund. The fund may not receive an appropriation of public funds. The fund shall receive and hold all contributions intended for it as well as all earnings until disbursed as provided in this chapter. Monies received in the fund shall be used to provide scholarships to exceptional needs children attending eligible schools.

(2) The amounts on deposit in the fund do not constitute public funds nor are the deposits property of the State. Amounts on deposit in the fund must not be commingled with public funds and the State shall have no claim to or interest in the amounts on deposit. Agreements or contracts entered into by or on behalf of the fund do not constitute a debt or obligation of the State.

(3) The ~~fund~~ *public charity* shall be governed by five directors, two appointed by the Chairman of the House Ways and Means Committee, one of which is based upon the recommendation of the South Carolina Association of Christian Schools and one which is based upon the recommendation of the Diocese of Charleston, two appointed by the Chairman of the Senate Finance Committee based upon the recommendations of the South Carolina Independent Schools Association and one appointed by the Governor based upon the recommendation of the Palmetto Association of Independent Schools. The directors of the ~~fund~~ *public charity*, along with the Director of the Department of Revenue, shall designate an executive director of the ~~fund~~ *public charity*.

(4) In concert with the ~~fund~~ *public charity* directors, the Department of Revenue shall administer the ~~fund~~ *public charity*, including, but not limited to, the keeping of records, the management of accounts, and disbursement of the grants awarded pursuant to this proviso. The ~~department~~ *public charity* may expend up to two percent of the fund for administration and related costs. ~~The~~ *Neither the* department *or the public charity* may ~~not~~ expend public funds to administer the program.

(5) By June thirtieth of the current fiscal year, the Department of Revenue must report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee and the Governor:

(a) the number and total amount of grants issued to eligible schools in the fiscal year;

(b) for each grant issued to an eligible school in the fiscal year, the identity of the school and the amount of the grant;

(c) an itemization and detailed explanation of any fees or other revenues obtained from or on behalf of any eligible schools;

(d) a copy of a compilation, review, or audit of the fund's financial statements, conducted by a certified public accounting firm and;

(e) the criteria and eligibility requirements for scholarship awards.

(C) (1) Grants may be awarded in an amount not exceeding eleven thousand dollars or the total annual cost of tuition, whichever is less, to a qualifying student at an eligible school.

(2) Before awarding any grant, the ~~fund~~ *public charity* must receive written documentation from the qualifying student's parent or guardian documenting that the qualifying student is an exceptional needs child. Upon approving the application, the ~~fund~~ *public charity* must issue a check to the eligible school in the name of the qualifying student within either thirty days upon approval of the application or thirty days of the start of the school's semester.

(3) In the event that the qualifying student leaves or withdraws from the school for any reason before the end of the semester or school year and does not reenroll within thirty days, then the eligible school must return a prorated amount of the grant to the ~~fund~~ *public charity* based on the number of days the qualifying student was enrolled in the school during the semester or school year within sixty days of the qualifying student's departure.

(4) The ~~department~~ *public charity* may not award grants solely for the benefit of one school.

(5) The department *or the public charity* may not release any personally identifiable information pertaining to students or donors or use information collected about donors, students, or schools for financial gain.

(6) The ~~department~~ *public charity* shall develop a process to prioritize the awarding of grants to eligible incumbent grant recipients at eligible schools.

(D) (1) (a) Tax credits authorized by subsection (H)(1) and subsection (I) of this proviso annually may not exceed cumulatively a total of ~~ten~~ *eleven* million dollars for contributions to the Educational Credit for Exceptional Needs Children Fund.

(b) Tax credits authorized pursuant to subsection (H)(2) of this proviso annually may not exceed cumulatively a total of two million dollars for tuition payments made on behalf of qualifying students.

(c) If the department determines that the total of the credits claimed by all taxpayers exceeds either limit amount as contained in items (a) or (b), it shall allow credits only up to those amounts on a first come, first served basis.

(2) (a) The department shall establish an application process to determine the amount of credit available to be claimed. The receipt of the application by the department shall determine priority for the credit. Subject to the provisions of subitem (e), contributions must be made annually on or before June thirtieth, in order to claim the credit. The credit must be claimed on the return for the tax year that the contribution is made.

(b) A taxpayer may not claim more than sixty percent of his total tax liability for the year in contribution toward the tax credit authorized by subsection (H)(1) or subsection (I). This credit is not refundable.

(c) If a taxpayer deducts the amount of the contribution on his federal return and claims the credit allowed by subsection (H)(1) or subsection (I), then he must add back the amount of the deduction for purposes of South Carolina income taxes.

(d) The department shall prescribe the form and manner of proof required to obtain the credit authorized by subsection (H)(1) or subsection (I). The department shall also develop a method of informing taxpayers if the credit limit is met at any time during the fiscal year.

(e) A taxpayer only may claim a credit pursuant to subsection (H)(1) and subsection (I) for contributions made during the fiscal year.

(3) A corporation or entity entitled to a credit under subsection (H)(1) and subsection (I) may not convey, assign, or transfer the credit authorized by this proviso to another entity unless all of the assets of the entity are conveyed, assigned, or transferred in the same transaction.

(E) (1) On or before August 1, ~~2016~~ *of the current fiscal year an* independent ~~schools may apply to the Education Oversight Committee to be certified as an eligible institution~~ *school who participated in the program in the prior fiscal year and who desires to participate in the program in the current fiscal year must reapply to the Education Oversight Committee*. *The independent school must certify to the Education Oversight Committee that it continues to meet all program requirements and must provide to the committee student test score data from the prior school year by December 31. If student test score data are not submitted by December 31, then the Education Oversight Committee must remove the school from the program. The Education Oversight Committee must consult with the Southern Association of Colleges and Schools, the South Carolina Association of Christian Schools, the South Carolina Independent Schools Association, Palmetto Association of Independent Schools, or the Diocese of Charleston to verify that the school is still a member in good standing and that the school continues to serve exceptional needs children. An independent school who did not participate in the program in the prior fiscal year but desires to participate in the program in the current fiscal year must apply to the Education Oversight Committee.* The Education Oversight Committee shall develop an application to *be* completed by the independent schools which must contain at least:

(a) the number and total amount of grants received in the preceding fiscal year;

(b) student test scores, by category, on national achievement or state standardized tests, or both, for all grades tested and administered by the school receiving or entitled to receive scholarship grants pursuant to this chapter in the previous fiscal year;

(c) a copy of a compilation, review, or compliance audit of the organization's financial statements *as relating to the grants received*, conducted by a certified public accounting firm; and

(d) a certification by the independent school that it meets the definition of an eligible school as that term is defined in subsection (A)(1) and that the report is true, accurate, and complete under penalty of perjury in accordance with Section 16-9-10.

(2) (a) The Education Oversight Committee may waive the August first deadline contained in subsection (E) upon good cause shown by an independent school.

(b) The Education Oversight Committee may waive some or all of the curriculum requirements contained in subsection (A)(1)(d) following consultation with the advisory committee.

(3) (a) By September 1, 2016 the Education Oversight Committee shall publish on its website a comprehensive list of independent schools certified as eligible institutions. The list shall include for each eligible institution:

(i) the institution's name, addresses, telephone numbers, and, if available, website addresses; and

(ii) the score reports and ***compliance*** audits received by the committee pursuant to subsection (E)(1)(b) and (c).

(b) The Education Oversight Committee shall summarize or redact the score reports identified in item (3)(a)(ii) if necessary to prevent the disclosure of personally identifiable information.

(4) An independent school that does not apply for certification pursuant to this subsection must not be included on the list of eligible schools and contributions to that school shall not be allowed for purposes of the tax credits permitted by this proviso.

(5) An independent school that is denied certification pursuant to this section may seek review by filing a request for a contested case hearing with the Administrative Law Court in accordance with the court's rules of procedure.

(F) (1) The Education Oversight Committee shall establish an advisory committee made up of not more than nine members, including parents, and representatives of independent schools and independent school associations.

(2) The advisory committee shall:

(a) consult with the Education Oversight Committee concerning requests for exemptions from curriculum requirements; and

(b) provide recommendations on other matters requested by the Education Oversight Committee.

(G) Except as otherwise provided, the Department of Education, the Education Oversight Committee, and the Department of Revenue, nor any other state agency may regulate the educational program of an independent school that accepts students receiving scholarship grants pursuant to this chapter."

(H) (1) A taxpayer is entitled to a tax credit against income taxes imposed pursuant to Chapter 6, Title 12 for the amount of cash and the monetary value of any publicly traded securities the taxpayer contributes to the Educational Credit for Exceptional Needs Children Fund up to the limits contained in subsection (D)(1)(a) of this proviso if:

(a) the contribution is used to provide grants for tuition to exceptional needs children enrolled in eligible schools who qualify for these grants under the provisions of this proviso; and

(b) the taxpayer does not designate a specific child or school as the beneficiary of the contribution.

(2) (a) A taxpayer is entitled to a refundable tax credit against income taxes imposed pursuant to Chapter 6, Title 12 for the amount of cash and the monetary value of any publicly traded securities, not exceeding eleven thousand dollars per child, for tuition payments to an eligible school for an exceptional needs child within his custody or care who would be eligible for a grant pursuant to this proviso up to the limits contained in subsection (D)(1)(b) of this proviso.

(b) If a child within the care and custody of taxpayer claiming a tax credit pursuant to this item also receives a grant from the Educational Credit for Exceptional Needs Children Fund, then the taxpayer may only claim a credit equal to the difference of eleven thousand dollars or the cost of tuition, whichever is lower, and the amount of the grant.

(I) A taxpayer is entitled to a tax credit against income taxes imposed pursuant to Chapter 11, Title 12 for the amount of cash and the monetary value of any publicly traded securities the taxpayer contributes to the Educational Credit for Exceptional Needs Children Fund up to the limits contained in subsection (D)(1)(a) of this proviso if:

(1) the contribution is used to provide grants for tuition to exceptional needs children enrolled in eligible schools who qualify for these grants under the provisions of this proviso; and

(2) the taxpayer does not designate a specific child or school as the beneficiary of the contribution.

(J) ~~On or before August 1, 2016, each scholarship funding organization organized and operating pursuant to SECTION 9 of H. 4230, R. 130, Act 92 of 2015 shall deposit with the Educational Credit for Exceptional Needs Children Fund all remaining funds on hand as of July 1, 2016. Scholarship funding organizations organized and operating pursuant to SECTION 9 shall remain in existence after the effective date of this act solely for the~~

~~purpose of winding down operations and depositing remaining funds with the Educational Credit for Exceptional Needs Children Fund pursuant to this provision. On August 1, 2016 all scholarship funding organizations organized pursuant to SECTION 9 shall cease to exist.~~ *The department shall conduct a comprehensive study of the Exceptional Needs Tax Credit program. The study shall examine the following:*

(1) whether or not the students participating in the program have experienced measurable improvement as a result of participation;

(2) the allocation of scholarship funds and tax credits among students, including the effect of funding limitations on the addition of new participants; the demographic and socio-economic data of the participants and their families; and the geographical distribution of the participants;

(3) the distribution of scholarship funds among all eligible schools;

(4) identification of the schools in which the most measurable improvement has occurred among students, with an analysis of the types of schools achieving the best results and best practices implemented by those schools; and

(5) any other aspect of the program that the department determines would be relevant and useful in making future policy decisions in regard to the program and its continued existence or expansion.

The department shall submit a report of its study to the General Assembly no later than January 15, 2018.

South Carolina Legislature

247 found 2 times.

H*4077

Session 122 (2017-2018)

H*4077(Rat #0247, Act #0247 of 2018) General Bill, By G.R. Smith, Erickson, J.E. Smith, McKnight, McCoy, Norrell, Kirby, Bales, McEachern, Gilliard, Loftis, Burns, Allison, Douglas, McCravy, Hamilton, Fry, Henderson, Elliott, W. Newton, Martin, V.S. Moss, Long, Robinson-Simpson, West, Collins, Bradley, Arrington, Bedingfield, Putnam, Johnson, Bowers, Anthony, Bannister, Bennett, Blackwell, Clary, Crawford, Daning, Delleney, Forrest, Forrester, Herbkersman, Hixon, Jordan, Lucas, Magnuson, Murphy, B. Newton, S. Rivers, Sandifer, Sottile, Stringer, Taylor, Tallon, Thayer, White, Whitmire, Willis, Hiott, Yow, Toole and Mace

Similar(H 4305)
AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-6-3790 SO AS TO PROVIDE DEFINITIONS, TO CREATE THE "EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN'S FUND", TO PROVIDE FOR GOVERNANCE AND ADMINISTRATION OF THE FUND, TO PROVIDE FOR THE MANNER IN WHICH GRANTS ARE AWARDED, TO PROVIDE FOR ANNUAL LIMITS ON INCOME TAX CREDITS AVAILABLE, TO SPECIFY THE MANNER IN WHICH THE CREDIT IS CLAIMED, TO PROVIDE THAT THE EDUCATION OVERSIGHT COMMITTEE IS RESPONSIBLE FOR DETERMINING WHICH SCHOOLS ARE ELIGIBLE, TO PROVIDE THAT THE EDUCATION OVERSIGHT COMMITTEE SHALL ESTABLISH AN ADVISORY COMMITTEE, TO ALLOW FOR AN INCOME TAX CREDIT FOR CONTRIBUTIONS TO THE EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN'S FUND AND FOR TUITION PAYMENTS MADE TO AN ELIGIBLE SCHOOL FOR AN EXCEPTIONAL NEEDS CHILD WITHIN THE TAXPAYER'S CUSTODY OR CARE, AND TO PROVIDE THAT THE DEPARTMENT SHALL CONDUCT A STUDY OF THE EXCEPTIONAL NEEDS TAX CREDIT PROGRAM. - ratified title

03/30/17	House	Introduced and read first time (House Journal-page 86)
03/30/17	House	Referred to Committee on Ways and Means (House Journal-page 86)
01/16/18	House	Member(s) request name added as sponsor: Hiott
02/13/18	House	Committee report: Favorable with amendment Ways and Means (House Journal-page 22)
02/14/18	House	Member(s) request name added as sponsor: Yow
02/15/18	House	Member(s) request name added as sponsor: Toole, Mace
02/15/18	House	Amended (House Journal-page 14)
02/15/18	House	Read second time (House Journal-page 14)
02/15/18	House	Roll call Yeas-107 Nays-0 (House Journal-page 23)
02/15/18	House	Unanimous consent for third reading on next legislative day (House Journal-page 24)
02/16/18	House	Read third time and sent to Senate (House Journal-page 2)
02/20/18	Senate	Introduced and read first time (Senate Journal-page 8)
02/20/18	Senate	Referred to Committee on Finance (Senate Journal-page 8)
04/25/18	Senate	Committee report: Favorable with amendment Finance (Senate Journal-page 11)
04/26/18		Scrivener's error corrected

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05/01/18  Senate Committee Amendment Adopted (Senate Journal-page 27)
05/01/18  Senate Read second time (Senate Journal-page 27)
05/01/18  Senate Roll call Ayes-41  Nays-0 (Senate Journal-page 27)
05/02/18         Scrivener's error corrected
05/08/18  Senate Read third time and returned to House with
                  amendments (Senate Journal-page 45)
05/10/18  House  Concurred in Senate amendment and enrolled
                  (House Journal-page 60)
05/10/18  House  Roll call Yeas-108  Nays-0 (House Journal-page 61)
05/14/18         Ratified R 247
05/18/18         Signed By Governor
05/30/18         Effective date See Act
05/31/18         Act No. 247
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H. 4077

(A247, R247, H4077)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-6-3790 SO AS TO PROVIDE DEFINITIONS, TO CREATE THE "EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN'S FUND", TO PROVIDE FOR GOVERNANCE AND ADMINISTRATION OF THE FUND, TO PROVIDE FOR THE MANNER IN WHICH GRANTS ARE AWARDED, TO PROVIDE FOR ANNUAL LIMITS ON INCOME TAX CREDITS AVAILABLE, TO SPECIFY THE MANNER IN WHICH THE CREDIT IS CLAIMED, TO PROVIDE THAT THE EDUCATION OVERSIGHT COMMITTEE IS RESPONSIBLE FOR DETERMINING WHICH SCHOOLS ARE ELIGIBLE, TO PROVIDE THAT THE EDUCATION OVERSIGHT COMMITTEE SHALL ESTABLISH AN ADVISORY COMMITTEE, TO ALLOW FOR AN INCOME TAX CREDIT FOR CONTRIBUTIONS TO THE EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN'S FUND AND FOR TUITION PAYMENTS MADE TO AN ELIGIBLE SCHOOL FOR AN EXCEPTIONAL NEEDS CHILD WITHIN THE TAXPAYER'S CUSTODY OR CARE, AND TO PROVIDE THAT THE DEPARTMENT SHALL CONDUCT A STUDY OF THE EXCEPTIONAL NEEDS TAX CREDIT PROGRAM.

Be it enacted by the General Assembly of the State of South Carolina:

Educational Credit for Exceptional Needs Children's Fund

SECTION 1. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

"Section 12-6-3790. (A) As used in this section:

(1) 'Eligible school' means an independent school including those religious in nature, other than a public school, at which the compulsory attendance requirements of Section 59-65-10 may be met, that:

(a) offers a general education to primary or secondary school students;

(b) does not discriminate on the basis of race, color, or national origin;

(c) is located in this State;

(d) has an educational curriculum that includes courses set forth in the state's diploma requirements, graduation certificate requirements for special needs children, and where the students attending are administered national achievement or state standardized tests, or both, at progressive grade levels to determine student progress;

(e) has school facilities that are subject to applicable federal, state, and local laws;

(f) is a member in good standing of the Southern Association of Colleges and Schools, the South Carolina Association of Christian Schools, the South Carolina Independent Schools Association, or Palmetto Association of Independent Schools; and

(g) provides a specially designed program or learning resource center to provide needed accommodations based on the needs of exceptional needs students or provides onsite educational services or supports to meet the needs of exceptional needs students, or is a school specifically existing to meet the needs of only exceptional needs students with documented disabilities.

(2) 'Exceptional needs child' means a child:

(a) who has been evaluated in accordance with this state's evaluation criteria, as set forth in S.C. Code Ann. Regs. 43-243.1, and determined eligible as a child with a disability who needs special education and related services, in accordance with the requirements of Section 300.8 of the federal Individuals with Disabilities Education Act; or

(b) who has been diagnosed within the last three years by a licensed speech-language pathologist, psychiatrist, or medical, mental health, psychoeducational, or other comparable licensed health care provider as having a neurodevelopmental disorder, a substantial sensory or physical impairment such as deaf, blind, or orthopedic disability, or some other disability or acute or chronic condition that significantly impedes the student's ability to learn and succeed in school without specialized instructional and associated supports and services tailored to the child's unique needs.

(3) 'Independent school' means a school, other than a public school, at which the compulsory attendance requirements of Section 59-65-10 may be met and that does not discriminate based on the grounds of race, color, religion, or national origin.

(4) 'Parent' means the natural or adoptive parent or legal guardian of a child.

(5) 'Qualifying student' means a student who is an exceptional needs child, a South Carolina resident, and who is eligible to be enrolled in a South Carolina secondary or elementary public school at the kindergarten or later year level for the applicable school year.

(6) 'Resident public school district' means the public school district in which a student resides, or in the case of dependents of active military personnel, the public school district which the student may attend.

(7) 'Transportation' means transportation to and from school only.

(8) 'Tuition' means the total amount of money charged for the cost of a qualifying student to attend an independent school including, but not limited to, fees for attending the school, textbook fees, and school-related transportation.

(B)(1) There is created the 'Educational Credit for Exceptional Needs Children's Fund' that is separate and distinct from the state general fund. The fund must be organized as a public charity as defined by the Internal Revenue Code under Section 509(a)(1) through (4) and consist only of contributions made to the fund. The fund may not receive an appropriation of public funds. The fund must receive and hold all contributions intended for it as well as all earnings until disbursed as provided in this section. Monies received in the fund must be used to provide scholarships to exceptional needs children attending eligible schools.

(2) The amounts on deposit in the fund do not constitute public funds and are not the property of the State. Amounts on deposit in the fund may not be commingled with public funds, and the State does not have a claim to or interest in the amounts on deposit. Agreements or contracts entered into by or on behalf of the fund do not constitute a debt or obligation of the State.

(3) The public charity disbursing contributions made to the fund is governed by five directors, two appointed by the Chairman of the House Ways and Means Committee, two appointed by the Chairman of the Senate Finance Committee, and one appointed by the Governor. The directors of the public charity, along with the director of the department, shall designate an executive director of the public charity.

(4) In concert with the public charity directors, the department shall administer the public charity including, but not limited to, the keeping of records, the management of accounts, and disbursement of the grants awarded pursuant to this section. The public charity may expend up to two percent of the fund for administration and related costs. The department and the public charity may not expend public funds to administer the program. Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the Department of Revenue or the public charity in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act. Personally identifiable information, as described in the Family Educational Rights and Privacy Act and individual health records, or the medical or wellness needs of children applying for or receiving grants must remain confidential and is not subject to disclosure pursuant to the Freedom of Information Act.

(5) By January fifteenth of each year, the department shall report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Governor:

(a) the number and total amount of grants issued to eligible schools in each year;

(b) the identity of the school and the amount of the grant for each grant issued to an eligible school in each year;

(c) an itemized and detailed explanation of fees or other revenues obtained from or on behalf of an eligible school;

(d) a copy of a compilation, review, or audit of the fund's financial statements, conducted by a certified public accounting firm; and

(e) the criteria and eligibility requirements for scholarship awards.

(C)(1) Grants may be awarded in an amount not exceeding eleven thousand dollars or the total annual cost of tuition, whichever is less, to a qualifying student at an eligible school. A qualifying student receiving a grant may not be charged tuition by an eligible school in an amount greater than the student would be charged if the student was not a qualifying student.

(2) Before awarding a grant, the public charity shall receive written documentation from the qualifying student's parent or guardian documenting that the qualifying student is an exceptional needs child. Upon approving the application, the public charity shall issue a check to the eligible school in the name of the qualifying student within either thirty days upon approval of the application or thirty days of the start of the school's semester.

(3) If a qualifying student leaves or withdraws from the school for any reason before the end of the semester or school year and does not reenroll within thirty days, then the eligible school shall return a prorated amount of the grant to the public charity based on the number of days the qualifying student was enrolled in the school during the semester or school year within sixty days of the qualifying student's departure.

(4) The public charity may not award grants only for the benefit of one school.

(5) The department or the public charity may not release personally identifiable information pertaining to students or donors or use information collected about donors, students, or schools for financial gain.

(6) The public charity shall develop a process to prioritize the awarding of grants to eligible incumbent grant recipients at eligible schools.

(D)(1)(a) Tax credits authorized by subsection (H)(1) and subsection (I) annually may not exceed cumulatively a total of twelve million dollars for contributions to the Educational Credit for Exceptional Needs Children's Fund, unless an increased limit is authorized in the annual general appropriations act.

(b) Tax credits authorized pursuant to subsection (H)(2) annually may not exceed cumulatively a total of two million dollars for tuition payments made on behalf of qualifying students, unless an increased limit is authorized in the annual general appropriations act.

(c) If the department determines that the total of the credits claimed by all taxpayers exceeds either limit amount as contained in subitems (a) or (b), it shall allow credits only up to those amounts on a first come, first-served basis.

(2)(a) The department shall establish an application process to determine the amount of credit available to be claimed. The receipt of the application by the department determines priority for the credit. The credit must be claimed on the return for the tax year that the contribution is made.

(b) A taxpayer may not claim more than sixty percent of his total tax liability for the year in contribution toward the tax credit authorized by subsection (H)(1) or subsection (I). This credit is nonrefundable.

(c) If a taxpayer deducts the amount of the contribution on his federal return and claims the credit allowed by subsection (H)(1) or subsection (I), then he must add back the amount of the deduction for purposes of South Carolina income taxes.

(d) The department shall prescribe the form and manner of proof required to obtain the credit authorized by subsection (H)(1) or subsection (I). The department also shall develop a method of informing taxpayers if the credit limit is met any time during the tax year.

(e) A taxpayer only may claim a credit pursuant to subsection (H)(1) and subsection (I) for contributions made during the tax year.

(3) A corporation or entity entitled to a credit under subsection (H)(1) and subsection (I) may not convey, assign, or transfer the credit authorized by this section to another entity unless all of the assets of the entity are conveyed, assigned, or transferred in the same transaction.

(E)(1) By March first of each year, an independent school who participated in the program in the previous year and who desires to participate in the program in the current year shall reapply to the Education Oversight Committee. The independent school shall certify to the Education Oversight Committee that it continues to meet all program requirements and shall provide to the committee student test score data from the previous school year by June thirtieth. If student test score data is not submitted by June thirtieth, then the Education Oversight Committee shall remove the school from the program. An independent school desiring to participate in the program for the first time also shall apply by March first of each year. The Education Oversight Committee shall consult with the Southern Association of Colleges and Schools, the South Carolina Association of Christian Schools, the South Carolina Independent Schools Association, the Palmetto Association of Independent Schools, or the Diocese of Charleston to verify that the school is still a member in good standing and that the school continues to serve exceptional needs children. An independent school who did not participate in the program in the previous year but desires to participate in the program in the current year shall apply to the Education Oversight Committee. The Education Oversight Committee shall develop an application to be completed by the independent schools which must contain at least:

(a) the number and total amount of grants received in the preceding school year;

(b) student test scores, by category, on national achievement or state standardized tests, or both, for all grades tested and administered by the school receiving or entitled to receive scholarship grants pursuant to this section in the previous school year. The school also shall provide individual student test scores on national achievement or state standardized tests, or both, for any student in grades one through twelve who received a grant from the program during the prior school year. The information must be used to provide program level reports to determine whether students participating in the program have experienced measurable improvement. Students with disabilities for whom standardized testing is not appropriate are exempt from this requirement;

(c) a copy of a compilation, review, or compliance audit of the organization's financial statements as relating to the grants received, conducted by a certified public accounting firm; and

(d) a certification by the independent school that it meets the definition of an eligible school as that term is defined in subsection (A)(1) and that the report is true, accurate, and complete under penalty of perjury in accordance with Section 16-9-10.

(2)(a) The Education Oversight Committee may waive the March first deadline contained in subsection (E) upon good cause shown by an independent school.

(b) The Education Oversight Committee may waive some or all of the curriculum requirements contained in subsection (A)(1)(d) following consultation with the advisory committee.

(3)(a) By March first of each year the Education Oversight Committee shall publish on its website a comprehensive list of independent schools certified as eligible institutions. The list must include for each eligible institution:

(i) the institution's name, addresses, telephone numbers, and, if available, website addresses; and

(ii) the score reports and compliance audits received by the committee pursuant to subsection (E)(1)(b) and (c).

(b) The Education Oversight Committee shall summarize or redact the score reports identified in subitem (a)(ii) if necessary to prevent the disclosure of personally identifiable information.

(4) An independent school that does not apply for certification pursuant to this subsection may not be included on the list of eligible schools and contributions to that school may not be allowed for purposes of the tax credits permitted by this section.

(5) An independent school that is denied certification pursuant to this section may seek review by filing a request for a contested case hearing with the Administrative Law Court in accordance with the court's rules of procedure.

(6) Annually, the Education Oversight Committee shall issue a report to the General Assembly documenting the impact of the Educational Credit for Exceptional Needs Children Program on student achievement. In addition, the report must include information on individual schools if at least fifty-one percent of the total enrolled students in the private school participated in the Educational Credit for Exceptional Needs Children Program in the prior school year. The report must be according to each participating private school, and for participating students, in which there are at least thirty participating students who have scores for tests administered. If the Education Oversight Committee determines that the thirty participating-student cell size may be reduced without disclosing personally identifiable information of a participating student, the Education Oversight Committee may reduce the participating-student cell size, but the cell size may not be reduced to less than ten participating students.

(F)(1) The Education Oversight Committee shall establish an advisory committee made up of not more than nine members, including parents, and representatives of independent schools and independent school associations.

(2) The advisory committee shall:

(a) consult with the Education Oversight Committee concerning requests for exemptions from curriculum requirements; and

(b) provide recommendations on other matters requested by the Education Oversight Committee.

(G) Except as otherwise provided, the Department of Education, the Education Oversight Committee, and the Department of Revenue, or any other state agency may not regulate the educational program of an independent school that accepts students receiving scholarship grants pursuant to this section.

(H)(1) A taxpayer is entitled to a tax credit against income taxes imposed pursuant to this chapter for the amount of cash and the monetary value of any publicly traded securities the taxpayer contributes to the Educational Credit for Exceptional Needs Children's Fund up to the limits contained in subsection (D)(1)(a) if:

(a) the contribution is used to provide grants for tuition to exceptional needs children enrolled in eligible schools who qualify for these grants under the provisions of this section; and

(b) the taxpayer does not designate a specific child or school as the beneficiary of the contribution.

(2)(a) A taxpayer is entitled to a refundable tax credit against income taxes imposed pursuant to this chapter for the amount of cash and the monetary value of any publicly traded securities, not exceeding eleven thousand dollars for each child, for tuition payments to an eligible school for an exceptional needs child within his custody or care who would be eligible for a grant pursuant to this section up to the limits contained in subsection (D)(1)(b).

(b) If a child within the care and custody of a taxpayer claiming a tax credit pursuant to this item also receives a grant from the Educational Credit for Exceptional Needs Children's Fund, then the taxpayer only may claim a credit equal to the difference of eleven thousand dollars or the cost of tuition, whichever is lower, and the amount of the grant.

(c) A child within the care and custody of a taxpayer claiming a tax credit pursuant to this item may not be charged tuition by an eligible school in an amount greater than the student would be charged if the student was not a qualifying student.

(I) A taxpayer is entitled to a tax credit against income taxes imposed pursuant to Chapter 11, Title 12 for the amount of cash and the monetary value of any publicly traded securities the taxpayer contributes to the Educational Credit for Exceptional Needs Children's Fund up to the limits contained in subsection (D)(1)(a) if:

(1) the contribution is used to provide grants for tuition to exceptional needs children enrolled in eligible schools who qualify for these grants under the provisions of this section; and

(2) the taxpayer does not designate a specific child or school as the beneficiary of the contribution.

(J)(1) The department shall conduct a comprehensive study of the Exceptional Needs Tax Credit program. The study must examine the following:

(a) the allocation of scholarship funds and tax credits among students, including the effect of funding limitations on the addition of new participants; the demographic and socio-economic data of the participants and their families, including the distribution of scholarship funds by income ranges, to be determined by the department, of scholarship recipients, and their legal guardians, as applicable; and the geographical distribution of the participants. In reporting the information required by this subitem, the department shall protect and may not display any personally identifiable information of scholarship recipients, their families or legal guardians, or taxpayers;

(b) the distribution of scholarship funds among all eligible schools; and

(c) any other aspect of the program that the department determines would be relevant and useful in making future policy decisions in regard to the program and its continued existence or expansion.

(2) The department shall submit a report of its study to the General Assembly no later than January fifteenth of each year."

Time effective

SECTION 2. This act takes effect upon approval of the Governor and applies to income tax years beginning after 2017. All tax credits earned as a result of a contribution made to the Educational Credit for the Exceptional Needs Children's Fund in 2018 apply to the cumulative total of twelve million dollars regardless of when in 2018 the contribution is made. All tax credits earned as a result of a tuition payment made by a taxpayer to an eligible school for an exceptional needs child within his custody or care in 2018 apply to the cumulative total of two million dollars regardless of when in 2018 the payment is made. All necessary reports and forms must be submitted as soon as practicable upon the enactment of this act.

Ratified the 14th day of May, 2018.

Approved the 18th day of May, 2018.

Legislative Services Agency
http://www.scstatehouse.gov

dental hygienists in the State via bd. election for appt. by the Gov.; 1 lay mem. at-large apptd. by the Gov.; 1 dental hygienist at-large apptd. by the Gov.)

1st Dist. —Dr. Phillip M. Prickett (2015) . . . . . .Mt. Pleasant
2nd Dist.—Dr. Zebulon Vance Morgan IV,
Pres. (2016) . . . . . .Columbia
3rd Dist. —Dr. Arthur L. Bruce, *VP* (2017) . . . . . .Anderson
4th Dist. —Dr. Dennis A. Martin, *Secy.* (2018) . . .Greenville
5th Dist. —Dr. Paul S. Coombs, Jr. (2019) . . . . . .Rock Hill
6th Dist. —Dr. Samuel M. Hazel (2018) . . . . . .Walterboro
7th Dist. —Dr. Walter J. Machowski, Jr. (2020) . . .Myrtle Beach
Dentist At-Large—Dr. Carolyn L. Brown (2018) . . .Columbia
Lay Mem.—Eric Schweitzer, Esq. (2016) . . . . . .Mt. Pleasant
Dental Hygienist—Jessica M. Keisler, RDH (2019) . . .Gilbert
Dental Hygienist—Elaine A. Murphy,
RDH (2018) . . . . . .Columbia
Admin. . . . . . .DR. RITA A. MELTON

Dietetics Panel, S.C.

Department of Labor, Licensing and Regulation
P.O. Box 11329, Columbia 29211-1329
Tel. (803) 896-4651

Created by Sec. 40-20-40 to regulate and license dietitians in S.C. *(7 mems. apptd. by the Gov. with advice and consent of the Sen. for 2-year terms.)*

Hospital Employee—Lynette Y. Leland-Reed (2017) . .Columbia
Clinical Dietetics—Kay MacInnis (2017) . . . . . .Columbia
Public Health Dietetics—Rebecca G. Wrenn (2017) . . .Columbia
Consulting Dietetics—Edna Cox Rice (2017) . . . .Lexington
Nutritional Servs. Mgmt.—
Ann F. Childers (2017) . . . . . .Blythewood
Coll./Univ. Faculty Educator—
Judy H. Thomas (2017) . . . . . .Fort Mill
Public At-Large—Michael C. Greene (2017) . . . . .Columbia
Admin. . . . . . .APRIL KOON

Disabilities and Special Needs, Department of

3440 Harden St. Ext., Box 4706, Columbia 29240
Tel. (803) 898-9769

Created by Secs. 44-20-240, *et seq.*, the Department plans and provides for services to meet the needs of persons with intellectual and related disabilities, autism, head injuries, or spinal

cord injuries. The service delivery system encompasses county disabilities and special needs boards and four regional centers.

Commission

Created by Sec. 44-20-210.

(7 mems.: 1 from each Congressional Dist. apptd. by the Gov., with advice & consent of the Sen.)

1st Dist. —Eva Ravenel (2016) . . . . . .Charleston
2nd Dist.—William O. Danielson (2016) . . . . . .Irmo
3rd Dist. —Vicki A. Thompson (2017) . . . . . .Seneca
4th Dist. —Catherine O. Fayssoux (2017) . . . . . .Greenville
5th Dist. —Gary C. Lemel (2018) . . . . . .Fort Mill
6th Dist. —Mary Ellen Barnwell (2018) . . . . . .Eastover
7th Dist. —Samuel F. Broughton, Jr. (2018) . . . . . .Florence
Dir. . . . . . .BEVERLY A. H. BUSCEMI, Ph.D.
Assoc. Dir., Admin. . . . . . .Thomas P. Waring
Assoc. Dir., Operations . . . . . .David A. Goodell
Assoc. Dir., Policy . . . . . .Susan Kreh Beck
Dir., Govt. & Comm. Relations . . . . . .Lois Park Mole

Education, State Board of

1429 Senate St., 1006 Rutledge Bldg., Columbia 29201
Tel. (803) 734-8500

The State Board of Education was created by Art. XI, Section 1 of the South Carolina Constitution. S.C. Code Ann. Secs. 59-5-10, *et seq.*, specifies how Board members are elected and their powers and responsibilities. The Board's powers include adopting rules, regulations, and minimum standards governing the public schools, prescribing rules and regulations for the examination and certification of teachers, prescribing and enforcing courses of study and the use of textbooks and other instructional materials, appointing such committees as may be necessary to carry out the orderly functions of the Board, cooperating fully with the State Superintendent of Education, and assuming such other responsibilities as may be assigned by law or may be found necessary to carry out the purpose and objectives of the Constitution of the State.

(16 mems. elected by the legis. delegations of the respective Judicial Circuits for 4 years, elected for alternating intervals & 1 mem. at-large apptd. by the Gov.)

Circuit

1st—Orangeburg, Calhoun, Dorchester Cos.
Dr. Samuel Alston (2017) . . . . . .Calhoun
2nd—Barnwell, Aiken, Bamberg Cos.
Del-Gratia Jones (2019) . . . . . .Bamberg
3rd—Sumter, Lee, Williamsburg, Clarendon Cos.
Dr. Janice Murray Gamble (2019) . . . . . .Williamsburg
4th—Darlington, Marlboro, Dillon, Chesterfield Cos.
Gerald Reeves (2018) . . . . . .Dillon
5th—Kershaw, Richland Cos.
Dr. Traci Young Cooper (2016) . . . . . .Blythewood
6th—Fairfield, Lancaster, Chester Cos.
James Stroman (2017) . . . . . .Chester
7th—Spartanburg, Cherokee Cos.
Jane P. Harmon (2018) . . . . . .Gaffney
8th—Greenwood, Abbeville, Newberry, Laurens Cos.
Dr. Ivan Randolph (2017) . . . . . .Abbeville
9th—Charleston, Berkeley Cos.
Richard Kizer (2018) . . . . . .Berkeley
10th—Oconee, Anderson Cos.
Jeffrey Kubu (2016) . . . . . .Anderson
11th—Lexington, Saluda, Edgefield, McCormick Cos.
Dr. Sharon Wall (2018) . . . . . .Edgefield
12th—Marion, Florence Cos.
Thomas Ewart (2017) . . . . . .Florence
13th—Pickens, Greenville Cos.
David F. Whittemore, Jr. (2020) . . . . . .Pickens
14th—Hampton, Jasper, Allendale, Beaufort, Colleton Cos.
Dr. Rhonda Edwards (2016) . . . . . .Ridgeland
15th—Horry, Georgetown Cos.
Renee R. Hembree (2019) . . . . . .Horry
16th—Union, York Cos.
Sharon Bynum (2018) . . . . . .York
At-Large—Michael Brennen, *Chm.-elect* . . . . . .Columbia
Secy. & Admin. Off.—Molly M. Spearman . . .State Supt. of Educ.

Education Board, Southern Regional

592 10th St. N.W., Atlanta, Ga. 30318
Tel. (404) 875-9211

Act 860, 1948, as amended, binds S.C. to a compact entered into by southern states to expand educational opportunities for citizens within the South through regional utilization of certain educational programs and facilities.

(Consists of Gov., ex officio & 4 mems. apptd. by the Gov. for 4-year terms & at least 1 of whom shall be selected from field of educ. and at least 1 shall be a mem. of the Legis.)

Ex officio . . . . . .The Gov.
Molly M. Spearman, State Supt. of Educ. (2019) . . .Columbia
Mitchell Zais (2016) . . . . . .Columbia
Nikki G. Setzler (2013) . . . . . .West Columbia
Melanie Barton (2018) . . . . . .Elgin

Education Council, S.C.

Created by Sec. 59-11-20 to bring S.C. into the National Compact for Education, embracing many of the states, and founded for the purpose of developing and exchanging educational concepts on a mutual basis for the benefit of all the participating states. In this way the S.C. Council will be kept abreast of education in the other states and will share with them the benefits of S.C. developments.

(7 mems.: the Gov. & 6 mems. apptd. by the Gov. for 4-year terms.)

Chm. . . . . . .Gov. Henry D. McMaster, Columbia

Gov.'s Appointees: *Supt. of Educ.*, Molly M. Spearman, Columbia; Kathleen M. Bounds, Moncks Corner; Harold Edwin McCarty, Jr., Honea Path; Grady J. Locklear, Sumter; Larry Kobrovsky, Charleston; Robert W. Hayes, Jr., Rock Hill

Education Oversight Committee

P.O. Box 11867, 1205 Pendleton St.
Room 502, Columbia 29211
Tel. (803) 734-6148, Fax (803) 734-6167

Created by Sec. 59-6-10 to assist in, recommend, and supervise implementation and expenditure of funds for the Education Accountability Act and the Education Improvement Act of 1984 and serve as an oversight committee for these acts.

(5 mems. representing bus. and industry: 1 apptd. by the Gov., 1 apptd. by the Pres. Pro Tempore of the Sen., 1 apptd. by the Speaker of the House of Reps., 1 apptd. by the Chm. of the Sen. Educ. Com., and 1 apptd. by the Chm. of the House Educ. and Public Works Com. and 5 mems. representing public educ. teachers and principals: 1 apptd. by the Gov., 1 apptd. by the Pres. Pro Tempore of the Sen., 1 apptd. by the Speaker of the House of Reps., 1 apptd. by the Chm. of the Sen. Educ. Com., 1 apptd. by the Chm. of the House Educ. and Public Works Com. and State Supt. of Educ. ex officio.)

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Speaker of the House of Reps.
or his designee . . . . . .vacant
Bus. and Industry Rep. . . . . . .April A. Allen, Columbia
Educ. Rep. . . . . . .Dr. James R. Couch, Chapin
Pres. Pro Tempore of the Sen.
or his designee . . . . . .Kevin L. Johnson, Manning
Bus. and Industry Rep. . . .Neil C. Robinson, Jr., Charleston
Educ. Rep. . . . . . .Barbara Hairfield, Charleston
Chm. of the Educ. and Public Works Com. of the House of Reps.
or his designee . . . . . .Raye Felder, Fort Mill
Bus. and Industry Rep. . .Dr. John Stockwell, Spartanburg
Educ. Rep. . . . . . .Danny Merck, Norris
Chm. of the Educ. Com. of the Sen.
or his designee . . . . . .Robert W. Hayes, Jr., Rock Hill
Bus. and Industry Rep. . . . . . .Ellen Weaver, Columbia
Educ. Rep. . . . . . .Patti Tate, Rock Hill
Gov. or his designee . . . . . .Henry D. McMaster, Columbia
Bus. and Industry Rep. . . . .Cynthia Bennett, Columbia
Educ. Rep. . . . . . .Anne Bull, Lexington
Chm. of the Ways and Means Com. of the House of Reps.
or his designee . . . . . .Dwight Loftis, Greenville
Chm. of the Fin. Com. of the Sen.
or his designee . . . . . .John W. Matthews, Jr., Bowman
State Supt. or his designee . . . .Molly M. Spearman, Columbia
Exec. Dir. . . . . . .MELANIE BARTON

Educational Television Commission, S.C.

1041 George Rogers Blvd., P.O. Box 11000
Columbia 29201, Tel. (803) 737-3200

Created by Sec. 59-7-10 and charged with developing a statewide educational communications system to serve the needs of the people of S.C., the Commission transmits ETV programs to the public schools, institutions of higher education, other state agencies, and the general public through a statewide system, including broadcast transmitters and the Internet. The Commission also assists state schools and agencies with other communications needs and with the development of instructional and educational technology materials such as educational radio programs, on-line resources, and printed materials. ETV serves as an emergency communications backbone for the State.

(9 mems.: 7 apptd. by the Gov. for 6-year terms, 1 from each Congressional Dist. & 1 from the State at-large who serves as Chm. & the Supt. of Educ., ex officio.)

At-Large —Dr. Brent Nelsen, *Chm.* (2020) . . . . . .Greenville
1st Dist. —Parker Harrington (2016) . . . .Hilton Head Island
2nd Dist.—Elise Bidwell (2020) . . . . . .Columbia
3rd Dist. —Craig A. Kinley (2018) . . . . . .Anderson
4th Dist. —Karen J. Martin (2020) . . . . . .Woodruff
5th Dist. —David Vipperman (2016) . . . . . .Rock Hill
6th Dist. —Nicole Holland (2020) . . . . . .Columbia
7th Dist. —Jill Kelso (2022) . . . . . .Murrells Inlet
Ex officio—State Supt. of Educ., Molly M. Spearman
Pres. . . . . . .LINDA O'BRYON
VPs: *Engineering*, John Crockett; *Content*, Kerry Feduk
Dirs.: *Educ.*, Dean Byrd; *Fin.*, Shatika Spearman; *Admin./Human Resources*, Jennifer Green; *Radio/Programming*, Shari Hutchinson

eGovernment Oversight Committee

Department of Administration
4430 Broad River Rd., Columbia 29210
Tel. (803) 896-1367
www.admin.sc.gov

The eGovernment Oversight Committee provides oversight of the State portal, sc.gov, which is a public/private partnership between the Division of Technology and South Carolina Interactive (SCI). The committee establishes all strategic policies governing the portal. The committee is also responsible for the approval of development/implementation priorities; review and approval of all charges to portal users; review and approval of service level agreements and statements of work negotiated by government entities with the portal manager; review of annual operating reports, customer satisfaction surveys, and performance measures of the portal.

(11 voting mems. or their designated reps. as follows: Div. of Technology Dir., who serves as presiding off.; 5 reps. of State gov. agencies, recommended by the Div. of Technology & apptd. by the Gov.; a nominee of the S.C. Municipal Assn., apptd. by the Gov.; a nominee of the S.C. Assn. of Cos., apptd. by the Gov.; 3 mems. to be selected by the Gov. from each of the assns. listed; S.C. Banker's Assn., Independent Ins. Agents and Brokers of S.C., and S.C. Bar Assn.)

Melissa W. Dunlap (2017) . . . . . .Lexington
Frank D. Rogers (2017) . . . . . .Leesville
Douglas S. Harper (2017) . . . . . .Columbia
Jennifer L. Stirling (2018) . . . . . .Columbia

Anna B. Berger (2018) . . . . . .Columbia
Corey G. Hayes, ex officio, *Presiding Off.* . . . . . .Columbia
Vance M. Stine (2018) . . . . . .Clover
Eric G. Budds (2017) . . . . . .Columbia
Dakin T. MacPhail (2017) . . . . . .Columbia
David M. Ross (2017) . . . . . .Columbia
William E. "Jay" Wolfe, Jr. (2017) . . . . . .Chapin

Election Commission, State

2221 Devine St., Box 5987, Columbia 29250
Tel. (803) 734-9060

Created by Sec. 7-3-10, the State Election Commission (SEC) is the chief election agency in South Carolina, and is responsible for overseeing the voter registration and election processes in the State. The SEC maintains the State's statewide voter registration and election management system. The database contains voter registration records for every registered voter in South Carolina. Using this system, the SEC is responsible for printing voter registration lists for all elections held in the State, which average approximately 300 each year. In combination with the driver's license file, the system also serves as the source for jury selection lists in the State. The SEC provides election oversight, including training and advisory services to counties and municipalities to ensure elections are conducted according to law. The SEC administers a mandatory training and certification program for voter registration and election officials. State law mandates the SEC support the statewide electronic voting system. In fulfilling this mandate, the SEC creates election specific database definitions, produces electronic ballots, provides a comprehensive security plan, and conducts training for county election officials and poll managers in the proper use of the system. This training includes printed materials, classroom instruction, and interactive online training. The Agency provides all voter registration and election materials to county election officials and reimburses counties for allowable primary and election expenses. The Agency provides information regarding voter registration and elections to the media, candidates, political parties, special interest groups, and citizens. The SEC coordinates the accumulation and reporting of election results through its website scVOTES.org. The Agency conducts a voter education and outreach initiative known as "Every Vote Matters. Every Vote Counts." This effort is designed to familiarize voters with the State's voter registration and election

processes and to promote participation in elections. The members of the SEC serve as the State Board of Canvassers after elections to certify election returns, to declare candidates elected, and to sit in a judicial capacity to hear testimony and rule on protests and appeals.

(5 mems. at least 1 of whom shall be a mem. of the majority political party & at least 1 of whom shall be a mem. of the largest minority political party represented in the General Assembly, apptd. by the Gov. for 4-year terms.)

Billy Way, Jr., *Chm.* (2016) . . . . . .Columbia
Nicole Spain White (2018) . . . . . .Elgin
Marilyn W. Bowers (2012) . . . . . .Pickens
Mark A. Benson (2018) . . . . . .Hilton Head
E. Allen Dawson (2016) . . . . . .Johns Island

Exec. Dir. . . . . . .MARCI ANDINO
Dir., Admin. & Fin. . . . . . .Janet Reynolds
Dir., Public Info. & Training . . . . . .Chris Whitmire
Dir., Voter Servs. . . . . . .Howard Snider

Employment and Workforce, S.C. Department of

1550 Gadsden St., P.O. Box 995, Columbia 29202
Tel. (803) 737-2400

Created by S.C. Code Sec. 41-29-10 to administer the S.C. Employment and Workforce Law which provides for the payment of unemployment insurance benefits, the collection of the unemployment tax from subject employers, and the operation of a statewide employment service. The Unemployment Insurance Program collects taxes from employers covered by the law and pays out unemployment benefits to unemployed workers under both state and federal law. The Employment Service Program operates as a free labor exchange where workers and jobs are brought together in S.C. Works Centers located throughout the State. Workers of all skills, professions, and types, including military veterans, migrant and seasonal farm workers, youth and older workers, and the disabled are placed in suitable jobs by the local S.C. Works Centers. Special emphasis is given to the job placement of Unemployment Insurance claimants. By statute, the Department administers the federal Workforce Investment Act (WIA) program. WIA addresses the employment and training needs of adults, youth, and dislocated workers, and provides a variety of workforce services for the business community. In addition, the federal Trade Adjustment

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
	)	
Jefferson Davis, Jr.	)	**AFFIDAVIT OF**
Plaintiff,	)	**THOMAS E. PERSONS, Sr.**
vs.	)	
	)	
South Carolina Educational Credit for Exceptional Needs Children	)	
Defendant.	)	Docket No. 2017-CP-40-06976

Personally appeared before me Thomas E. Persons, Sr., who states the following facts

1) I am the chairman of the board of directors of the non-profit South Carolina Educational Credit for Exceptional Needs Children Fund (Exceptional SC).

2) Exceptional SC is a 501(c)3 charitable organization. Exceptional SC is operated by a board of directors who are chosen by associations of private schools. Board member choices were approved by government, but there is no exercise of control over, or ability to control board members, by government through any provisions for removal, reappointment, replacement, or otherwise.

3) Exceptional SC is a scholarship granting organization that provides scholarships to children with disabilities to attend private educational institutions that specialize in teaching students with those disabilities.

4) Exceptional SC operates off of donations provided by individuals and corporations.

5) Exceptional SC does not receive any state funding, state resources, or state assistance in its ongoing operations.

6) Monies collected by Exceptional SC are not state funds and not the property of the State of South Carolina.

7) Exceptional SC does not have any government employees or have access to government employees to carry out its ongoing operations.

8) Exceptional SC does not provide any government benefits for or to its employees.

9) Exceptional SC does not have IRF insurance coverage.

10) Exceptional SC has exclusive control of its account checkbook and spending from its account.

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11) Exceptional SC is highly regulated pursuant to statute. This regulation includes the Department of Revenue checking financials on a monthly basis to ensure administrative spending is below the statutory limit of 2% of revenue.

12) As part of regulation of Exceptional SC, the Department of Revenue has access to real time data of donations received by Exceptional SC. This monitoring of donations is necessary for the Department of Revenue to regulate a tax credit limit associated with gifts to Exceptional SC. The Department of revenue monitors incoming funds much like a turnstile would monitor passengers entering a train station.

13) As part of regulation of Exceptional SC, the Department of Revenue has access to periodic data of scholarships gifted by Exceptional SC. This is necessary for the Department of Revenue to regulate a tax credit limit associated with scholarships by Exceptional SC.

14) Donations are solicited from private individuals and corporations contacted by the Board of Directors and the Executive Director of Exceptional SC. There is no assistance from any government entity in contacting potential donors and soliciting donations.

15) Exceptional SC is registered as a section 509 organization with the South Carolina Secretary of State. That registration and associated reporting is required for organizations not subject to the Freedom of Information Act that are soliciting charitable donations.

16) Exceptional SC is not an Authority, a Board, or Commission of the State of South Carolina. The Legislative manual does not list Exceptional SC as a part of State Government, an Authority, Board, or Commission.

17) Exceptional SC handles very sensitive information related to the disabilities of children and the identities of children. Exceptional SC takes keeping information confidential very seriously.

Sworn to before me this
11th day of May, 2018

Notary Public of South Carolina

My Commission expires: 3/27/2022

Thomas E. Persons, Sr.

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ELECTRONICALLY FILED - 2018 Sep 28 3:23 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr. Plaintiff, v. South Carolina Educational Credit for Exceptional Needs Children Fund Defendant	)	Case No.: 2017-CP-40-06976 Affidavit of Thomas Persons, Sr.

1. I, Thomas Persons, Sr., am the Chairman of the Board of Directors of Educational Credit for Exceptional Needs Children Fund (ECENCF).
2. I am over 18 years of age.
3. I am not an employee of the South Carolina Department of Revenue or any Department of the State, State Board, State Commission, State Authority or political subdivision of the State of South Carolina.
4. The Executive Director of Educational Credit for Exceptional Needs Children Fund is Chad Connelly.
5. By statutory definition, ECENCF is a 501(c)3 corporation which meets the definition of Public Charity pursuant to Internal Revenue Code 509(a)1-4.
6. Proviso 109.15 of the 2016-2017 General Appropriations Act created ECENCF and defined it as Public Charity pursuant to Sections 509(A)1-4 of the Internal Revenue Code. IRC 509(a) defines all Public Charities as 501(c)3 corporations.
7. Pursuant to 12-6-3790 the ECENCF Public Charity works in concert with the Department of Revenue in administration of the Exceptional Needs Children Fund.

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8. The Public Charity is not a subsidiary of, subdivision of, or otherwise part of the State of South Carolina, the South Carolina Department of Revenue or any other Department of State Government. This is made explicitly clear by statutory definition found in South Carolina Code Section 12-6-3790(B)2 which states ECENCF's assets are not the assets of the State and the debts and obligations of ECENC are not the debts and obligations of the State.
9. Pursuant to statutory definition found in proviso 109.15 of the 2016-2017 General Appropriations Act, proviso 109.11 of the 2017-2018 General Appropriations Act and South Carolina Code Section 12-6-3790 the Educational Credit for Exceptional Needs Children Fund may not receive an appropriation of public funds. The Fund consists entirely of contributions received from private donors pursuant to tax credit laws defined in the statutes. The public charity may expend up to two percent of the fund for administration and related costs. Neither the department or the public charity may expend public funds to administer the program.
10. Pursuant to statutory definition found in proviso 109.15 of the 2016-2017 General Appropriations Act, proviso 109.11 of the 2017-2018 General Appropriations Act and South Carolina Code Section 12-6-3790(B)2: The amounts on deposit in the fund do not constitute public funds nor are the deposits property of the State. Amounts on deposit in the fund must not be commingled with public funds and the State shall have no claim to or interest in the amounts on deposit. Agreements or contracts entered into by or on behalf of the fund do not constitute a debt or obligation of the State.
11. ECENCF does not have access to public funds. ECENCF cannot spend public funds.

12. ECENCF must comply with an extensive and specific statutory reporting procedure included in proviso109.15 of the 2016-2017 General Appropriations Act, proviso 109.11 of the 2017-2018 General Appropriations Act and South Carolina Code Section 12-6-3790(B)5. This statutory reporting procedure has been in place since ECENCF was incorporated.
13. ECENCF works in concert with the Department of Revenue to manage the scholarship fund. The Department of revenue is given independent authority to administer the fund by South Carolina Code Section 12-6-3790(B)4.
14. It is my understanding that South Carolina Code Section 12-6-3790(B)5 puts a duty on ECENCF to keep all documents and information associated with the administration of the Public Charity confidential.
15. I do not receive state benefits or a government salary as a member of the Board of Directors of ECENCF. I am not a government employee. No ECENCF Board of Directors member receives a government salary as a member of the Board of Directors and no ECENCF Board Member is a government employee.
16. The employees of ECENCF are not government employees. They do not receive a state salary or state benefits.
17. ECENCF does not receive any state assistance in defending this FOIA litigation.

(signatures on next page)

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I solemnly affirm that the contents of this affidavit are known to me and that the information is true and correct, under the pains and penalties of perjury.

_____
Thomas Persons, Sr.

_____County, South Carolina

I certify that Thomas Persons, Sr. personally appeared before me this day and certified to me under oath or by affirmation that that the information is true and correct and signed the document in my presence.

Date: _____

_____
Notary Public
Notary Public Notary's printed or typed name _____

My commission expires: _____

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I solemnly affirm that the contents of this affidavit are known to me and that the information is true and correct, under the pains and penalties of perjury.

Thomas Persons, Sr.

RICHLAND County, South Carolina

I certify that Thomas Persons, Sr. personally appeared before me this day and certified to me under oath or by affirmation that that the information is true and correct and signed the document in my presence.

Date: 9-28-18

Notary Public

Notary Public Notary's printed or typed name Toni Cameron

My commission expires: May 13, 2025

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Aug 12 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Hon. DeAndrea Gist Benjamin, Circuit Court Judge

C.A. No.: 2017-CP-40-06976
Appellate Case No. 2019-001231

Jefferson Davis, Jr. ……..……Appellant,

v.

South Carolina Educational Credit for Exceptional Needs Children Fund, ……Respondent.

CERTIFICATE OF COUNSEL / APPELLANT

As required by Rule 210(g), SCACR, the undersigned certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jeff@apogeetax.com

Appellant

August 12, 2020