THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III
Chief Administrative Law Judge

APPELLATE CASE NO. 2020-001323

ADMINISTRATIVE LAW COURT CASE NO.: 18-ALJ-07-0358-CC
ADMINISTRATIVE LAW COURT CASE NO.: 18-ALJ-07-0360-CC
ADMINISTRATIVE LAW COURT CASE NO.: 18-ALJ-07-0366-CC

CareAlliance Health Services, d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., Bon Secours-St. Francis Xavier Hospital, Inc., Roper St. Francis Berkeley Hospital and Roper Mount Pleasant Hospital,.....Appellant-Respondent,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Hospital,.....Respondents,

AND

Walterboro Community Hospital, Inc., d/b/a Colleton Medical Center,.....Appellant,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Hospital,.....Respondents,

AND

Trident Medical Center, LLC d/b/a Trident Medical Center and Summerville Medical Center,.....Appellant,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Hospital,.....Respondents.

JOINT MOTION OF THE APPELLANTS TRIDENT MEDICAL CENTER LLC AND WALTERBORO COMMUNITY HOSPITAL, INC., FOR RELIEF FROM APPEAL BOND REQUIRED BY S.C. CODE ANN. § 44-7-220(B) AND MEMORANDUM IN SUPPORT

MOTION

The Appellants Trident Medical Center, LLC d/b/a Trident Medical Center and Summerville Medical Center ("Trident") and Walterboro Community Hospital d/b/a Colleton Medical Center ("CMC") (collectively, the "Appellants") hereby move the Court pursuant to SCACR, Rule 240, for an order relieving the Appellants of the obligation to post the $1.5 million bond ("Appeal Bond") directed in this case by S.C. Code Ann. § 44-7-220(B)(2018). Appellants grounds for relief are that § 44-7-220(B)'s requirement of an Appeal Bond deprives Appellants of their right to judicial review in violation of the Equal Protection and Due Process Guarantees of the United States Constitution and the South Carolina Constitution.

In order to allow for proper presentation and consideration of this issue, the Appellants also move the Court that, pending review and resolution of Appellants' Motion for Relief, the Court stay any dismissal of Appellants' appeals for failure to deposit the Appeal Bond within the time frame required under the Appeal Bond statute, *i.e.*, within five days of filing of their Notices of Appeal. Further, Appellants request that the Court suspend the regular briefing schedule during the pendency of the Court's consideration of Appellants' Motion for Relief from the Appeal Bond.

BACKGROUND

On October 2, Appellants filed their Notices of Appeal challenging the September 4, 2020 Amended Final Order and Decision ("Amended Final Order") of the Administrative Law Court ("ALC") affirming the Respondent South Carolina Department of Health and Environmental Control's ("DHEC" or "Department") decision to grant a Certificate of Need ("CON") to the Respondent Medical University Hospital Authority, d/b/a MUHA Community Hospital ("MUHA") for the establishment of a new $325 million 128-bed community hospital in Berkeley County, South Carolina. The Appellants are providers of hospital services in Charleston, Berkeley, Dorchester and Colleton Counties who will be adversely affected by the addition of MUHA's new community hospital.

As is contemplated by the State Certification of Need and Health Facility Licensure Act ("CON Act"), S.C. Code Ann. §§ 44-7-110 *et seq.* (2018 and Supp. 2019), upon notice of MUHA's CON application, the Appellants asserted "affected person" status under § 44-7-130 and, thereafter, participated in the CON application review process before the Department. After exhausting their remedies before the Department[1], Appellants sought further administrative review by the ALC in accordance with § 44-7-210(C) of the CON Act and § 44-1-60(F), which provide for contested case review of decisions of the Department. After conducting a contested case hearing, the ALC affirmed the decision of the Department.

With the issuance of the ALC's Amended Final Order, the Appellants properly exhausted their administrative remedies. Therefore, Appellants' right to initiate judicial review is available under three statutory provisions governing such appeals. S.C. Code Ann. § 1-23-380 (Supp. 2019) of the Administrative Procedures Act provides that "A party who has exhausted all administrative

[1] Appellants also requested review by the Department Board under § 44-1-60(E)(1), which the Board declined to conduct.

remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1." (Emphasis added). While § 1-23-380 applies to appeals from all agency decisions, S.C. Code Ann. § 1-23-610(A)(1)(Supp. 2019) provides specifically for the judicial review of a final decision of the ALC:

> For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

(Emphasis added). Finally, the CON Act at § 44-7-200(A) provides that a party who is aggrieved by a final decision of the ALC in a CON case "may seek judicial review" of the final decision under § 1-23-380 of the Administrative Procedures Act, discussed above. On October 2, 2020, Appellants filed their Notices of Appeal in accordance with the above statutes.

ARGUMENT

In 2010, the General Assembly amended the CON Act section recognizing the right of judicial review to add a new requirement:

> If the relief requested in the appeal is the reversal of the Administrative Law Court's decision to approve the Certificate of Need application . . ., the party filing the appeal shall deposit a bond with the Clerk of the Court of Appeals within five calendar days after filing the petition to appeal. The bond must be secured by cash or a surety authorized to do business in this State in an amount equal to five percent of the total cost of the project or one hundred thousand dollars, whichever is greater, up to a maximum of one million five hundred thousand dollars. If the Court of Appeals affirms the Administrative Law Court's decision or dismisses the appeal, the Court of Appeals shall award to the party whose project is the subject of the appeal all of the bond and also may award reasonable attorney's fees and costs incurred in the appeal. If a party appeals the denial of its own Certificate of Need application . . . and there is no competing application involved in the appeal, the party filing the appeal is not required to deposit a bond with the Court of Appeals.

S.C. Code Ann. § 44-7-220(B)(2018).

Analyzing the plain language of § 44-7-220(B) reveals the following. The requirement that an Appeal Bond be posted applies only (i) in a CON case (ii) where the ALC decided to approve the CON application and (iii) where the appellant is requesting reversal of the decision. No Appeal Bond requirement exists for any other type of matter decided by an agency or the ALC and appealed to this Court. Appellants in all other cases are able to exercise their rights to judicial review of ALC and agency decisions without the burden of paying money into the Court and without the possibility that an adverse decision by the Court of Appeals, however meritorious, will result in an automatic forfeiture of significant sums of money.

Further, the statute provides no discretion to the Court of Appeals in collecting the Appeal Bond, setting the bond amount, or in dispensing the bond funds; rather § 44-7-220(B) requires that, in each case, the entire Appeal Bond, up to $1.5 million for each party filing a notice of appeal, be collected and awarded to the prevailing respondent (CON applicant) without the slightest proof of the damages, if any, actually caused by the appeal. In other words, neither the collection nor the award of the Appeal Bond bears any relation to any potential or actual damages suffered by the respondent CON applicant or to any potential or actual conduct or motive of an appellant other than the mere filing of a Notice of Appeal seeking judicial review of a decision of the ALC.

S.C. Code Ann. §§ 1-23-380(2) and 1-23-610(A)(1) and SCACR, Rule 241(b)(11) all provide that the filing and service of a notice of appeal does not stay the ALC decision appealed from. Thus, unless the appellant seeks a stay (supersedeas), the CON applicant is free to commence work on its project without regard to the appeal. Therefore, in the absence of a stay, the CON Applicant will suffer no delay damages from the filing of the appeal.

Moreover, in the opposite case, where the appellant affirmatively seeks a stay to prevent the project from going forward, SCACR, Rule 241(c)(3), provides that the granting of supersedeas

"may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking, as the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may deem appropriate." Rule 241(c)(3) also provides that "where it appears that the granting ... of a stay, or the issuance of a writ of supersedeas is insufficient to afford complete relief, the ... court may order other affirmative relief upon such terms as are deemed appropriate." Thus, without reference to the Appeal Bond, the Court can fashion any monetary or other undertaking to compensate a CON applicant should the Court grant an appellant's request to stay (delay) the project pending resolution of the appeal. Thus, the Appeal Bond required by § 44-7-220(B) provides a CON applicant no protection from delay that is not already provided for in the law.

Similarly, if an Appellant files a frivolous appeal for any improper purpose, including delay, the Appeal Bond required by § 44-7-220(B) does nothing to protect a CON applicant beyond the protections already provided for in the law. Section 44-7-220(C) provides that, in addition to the mandatory award of the full Appeal Bond, in the event the Court of Appeals determines that an appeal is frivolous, it "may award damages incurred as a result of the delay, as well as reasonable attorney's fees and costs, to the party whose project is the subject of the . . . judicial review." Similarly, SCACR, Rule 269 allows the Court to address frivolous appeals by "impos[ing] upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require."

Finally, to the extent that a CON applicant incurs costs as a result of an appeal, there are numerous provisions that directly address these costs. SCACR, Rule 222 allows a prevailing respondent to apply to the Court to have certain costs and a portion of its attorneys' fees paid by the Appellant. Section 44-7-220(B) itself provides that, in addition to the

mandatory award of the Appeal Bond, the Court of Appeals "may award reasonable attorney's fees and costs incurred in the appeal."

As the above discussion illustrates, the Appeal Bond required by § 44-7-220(B) does not enhance or provide additional protection to a CON applicant from damages that potentially might occur in an unsuccessful or dismissed appeal. Adequate protection is already afforded in existing separate provisions for attorney's fees, costs, security, and damages for delay and for frivolous appeals. Unlike the Appeal Bond, the existing protections extend to both appellants and respondents and cover cases other than those that arise under the CON Act. Thus, whether or not the General Assembly intended it to be so, the Appeal Bond provided for in § 44-7-220(B) serves no real purpose other than as an impermissible deterrent or barrier to the exercise of the Appellants' constitutional rights to judicial review of a decision of the ALC.[2]

In this case, if the posting of an Appeal Bond in the total amount of $3 million[3] is considered a prerequisite to the exercise of the constitutional right to judicial review,[4] neither

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[2] Appellants are aware that this Court has addressed the purpose and constitutionality of the Appeal Bond provided for in § 44-7-220(B) in at least one prior order on appeal. *See Grand Strand Reg'l Med. Ctr, v. S.C. Dep't of Health & Envtl. Control and Carolina Reg'l Cancer Ctr.*, Order Denying Supersedeas, Appellate Case No. 2014-000973 (March 19, 2015). Appellants do not believe the *Grand Strand* decision has precedential value or that it is persuasive on the issues raised by Appellants herein, because, in *Grand Strand*, Carolina Regional Cancer Center posted the Appeal Bond and moved for a stay, arguing that the Appeal Bond is unconstitutional unless a stay accompanies the posting of the bond. In this case, Appellants have not posted the Appeal Bond and argue that they cannot, or should not have to do so, and that requiring the bond as a prerequisite to appeal violates Appellants' constitutional rights to due process and equal protection under the law.

[3] With the bond required of the remaining Appellant, CareAlliance Health Services, d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., Bon Secours-St. Francis Xavier Hospital, Inc., Roper St. Francis Berkeley Hospital and Roper Mount Pleasant Hospital ("Roper"), the total amount to be posted in this case is $4.5 million.

[4] In addition to being silent on the purpose of the Appeal Bond, § 44-7-220(B) also does not explicitly require dismissal of an appeal for failure to post the bond. For purposes of this Motion

Trident nor CMC will be able to proceed with these appeals *See* Exhibit A, Affidavit of Todd Gallati and Exhibit B, Affidavit of James Hiott. As explained by Mr. Gallati, the CEO of Trident, he is required to exercise reasonable judgment in expending the limited resources available to Trident and, in his judgment, expending $1.5 million to access the judicial process is not, by any standard, a reasonable choice, particularly in light of the effects of the coronavirus pandemic. Thus, while Trident would continue its appeal in the absence of the Appeal Bond, it cannot do so if the bond is a prerequisite to judicial review in this case. (Ex. A, at ¶¶ 5, 7-8).

Similarly, Mr. Hiott, the CEO of CMC attests that, as a struggling rural hospital, CMC is not financially able to post the $1.5 million Appeal Bond but would continue its appeal if the bond were not a prerequisite to judicial review in this case. (Ex. B, at ¶¶ 5-8). Thus, Appellants come before this Court seeking an Order declaring that the Appeal Bond provided for in § 44-7-220(B) violates Appellants' right to judicial review under the Equal Protection and Due Process Guarantees of the United States and South Carolina Constitutions and, therefore, Appellants must be relieved of such requirement and may continue to prosecute their appeals without the posting of the Appeal Bond.

A. Imposition of the Appeal Bond violates Appellants' due process rights to judicial review guaranteed by U.S. Const. amend. XIV, § 1 and S.C. Const. art. I, §§ 3 and 22.

The courts of South Carolina have long recognized the general rule that "the right of appeal is not an inherent or vested right, but is a matter of grace" and that "in the absence of a constitutional restriction, the legislature in its discretion may abridge or regulate the right of appeal." *Horn v. Blackwell*, 212 S.C. 480, 483, 48 S.E.2d 322, 323 (1948). In *Horn,* the South Carolina Supreme Court considered a law that required a tenant to post a bond "at the time of

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for Relief, Appellants assume that the Court would treat the failure to post the bond as requiring dismissal.

appealing" an order of ejectment in order to stay ejectment. The law specifically provided that "[i]n the event the tenant shall fail to file the bond herein required within five (5) days after service of the notice of appeal such appeal shall be dismissed." *Id.* The tenant argued that a constitutional provision, which provided that, in cases tried by a magistrate, "the right of appeal shall be secured under such rules and regulations as may be provided by law," restricted the authority of the General Assembly to impose a bond requirement on such appeal. In rejecting the tenant's arguments, the Court noted that the constitutional provision in question did not prohibit the General Assembly from specifying the manner of exercising the right to appeal from a magistrate's order of ejectment, including requiring that the tenant post a bond to stay ejectment during an appeal. *Id.*

The *Horn v. Blackwell* decision is distinguishable from this case in many important and informative respects. First, *Horn* did not involve an appeal from an administrative agency. The right to appeal claimed by the tenant in *Horn* was from the magistrate, who had provided at least one level of judicial review prior to tenant's appeal. As discussed below, Art. I, § 22 explicitly requires that at least one level of judicial review be provided to persons before they are bound by decisions of an administrative agency. Appellants in this case have received no judicial review of the decision to award MUHA a CON to establish a new hospital in the service areas of their existing facilities.

Second, the appeal bond in *Horn* was to be given in exchange for a stay of ejectment of the tenant from the property of the landlord. The stated purpose of the bond in *Horn* was to protect the landlord from the effects of such stay of ejectment during the appeal. As noted above, § 44-7-220(B) is silent on the purpose of the Appeal Bond. Indeed, an analysis of existing law indicates that, to the extent that the Appeal Bond might be said to protect against delay or the costs of appeal, or to deter and compensate for frivolous appeals, it is wholly duplicative of existing law that already adequately provides for these protections. On the other hand, the requirement that an

appellant post up to a $1.5 million Appeal Bond in order to maintain an appeal is undoubtedly a deterrent or outright barrier to the exercise of the constitutional right to judicial review of an administrative decision provided by S.C. Const. art. I, § 22.

Finally, the constitutional provision cited by the tenant provided that the right of appeal from magistrate decisions be secured under "such rules and regulations as may be provided by law." *Horn*, 212 S.C. at 483, 48 S.E.2d at 323. This language tilts in favor of regulation by the General Assembly, rather than restricting such regulation. As discussed below, there is no such reference to rules and regulations in Art. I, § 22's due process guarantee of judicial review.

Article I, § 22 of the South Carolina Constitution, entitled, "Procedure before administrative agencies; judicial review," provides that:

> No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have *in all such instances* the right to judicial review.

(Emphasis added). The Fourteenth Amendment to the United States Constitution and the South Carolina Constitution further provide that the State shall not deprive any person of life, liberty or property without due process of law. *See* U.S. Const. amend. XIV, § 1 and S.C. Const. art. I, § 3.

As summarized by the South Carolina Supreme Court, "[t]he fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (citing S.C. Const. art. 1 § 22)). The *Kurschner* Court also notes that:

> Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. (Citations omitted). Rather, due process is flexible and calls for such procedural protections as the particular situation demands.

Id., 376 S.C. at 171-172, 656 S.E.2d at 350.

The flexibility of due process of necessity applies only to the elements of notice and opportunity to be heard and such flexibility allows administrative bodies to meet those requirements of due process in different ways, depending on the circumstances. There is only one way to protect the right of judicial review "in all such instances" and that is to provide unfettered access to at least one court. With respect to decisions of the ALC in CON cases, or otherwise, the only judicial review provided by law is an appeal to the Court of Appeals. *See, e.g.*, S.C. Code Ann. § 1-23-380 ("Except as otherwise provided by law, an appeal is to the court of appeals"). The substantial and mandatory Appeal Bond requirement of § 44-7-220(B) of the CON Act impermissibly burdens and impedes the constitutional due process right to judicial review afforded by the South Carolina Constitution and should be declared invalid.

B. Imposition of the Appeal Bond violates Appellants' right to equal protection of the laws guaranteed by U. S. Const. amend. XIV, § 1 and S.C. Const. art. I, §§ 3.

As summarized by the South Carolina Supreme Court in *Joseph v. S.C. Dep't of Labor, Licensing & Regulation*, 417 S.C. 436, 451, 790 S.E.2d 763, 771 (2016):

> The Equal Protection Clause provides, "nor [shall any State] deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Where an alleged equal protection violation does not implicate a suspect class or abridge a fundamental right, the rational basis test is used. *Denene, Inc. v. City of Charleston,* 359 S.C. 85, 91, 596 S.E.2d 917, 920 (2004) (citation omitted). Under the rational basis test, the Court must determine: (1) whether the law treats similarly situated entities differently; (2) if so, whether the legislative body has a rational basis for the disparate treatment; and (3) whether the disparate treatment bears a rational relationship to a legitimate government purpose. *Dunes W. Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 293–94, 737 S.E.2d 601, 608 (2013) (citing *Ed Robinson Laundry & Dry Cleaning, Inc. v. S.C. Dep't of Rev.*, 356 S.C. 120, 124, 588 S.E.2d 97, 99 (2003)).

Appellants contend that the Appeal Bond required by § 44-7-220(B) fails the rational basis test for determining the validity of laws under the Equal Protection Clause because it applies only to an extremely limited class of persons seeking to appeal a decision of the ALC granting a

CON, it lacks any rational basis for being so limited, and it bears no relation to a legitimate government purpose in that numerous laws already exist to protect the rights of all persons engaged in the judicial review process.

In *Lindsey vs. Normet,* 405 U.S. 56, 92 S.Ct. 862 (1972), the United States Supreme Court addressed a challenge to a bond requirement found in Oregon's landlord-tenant laws. The Oregon law required tenants challenging eviction procedures to post a bond equal to twice the value of the amount of the rent expected to accrue while the case was on appeal ("the double bond"). If the judgment was affirmed, the landlord received the entire bond without proof of any damage. Oregon law did not impose a double bond requirement for any other appellant or in any other case.

Applying the rational relationship test, the United States Supreme Court could find no rational purpose for requiring appealing tenants to post a double bond when there is no relationship to any damage sustained by the landlord during appeal. Specifically, the Court stated "the claim that the double bond requirement operates to screen out frivolous appeals is unpersuasive." *Id.* at 78. Further, the Court observed that no other appellants were subject to this obligation and stated, "we discern nothing in the special purposes of the [law] or in the special characteristics of the landlord tenant relationship to warrant this discrimination." *Id.* As a result, the Court held that requiring a special bond for this one class of appellants was arbitrary and irrational and in violation of the equal protection clause of the Fourteenth Amendment. "When an appeal is afforded . . . it cannot be granted to some litigants and capriciously or arbitrarily be denied to others without violating the Equal Protection Clause." *Id.*, at 79, 92 S.Ct. at 877.

In this case, only appellants challenging an approved CON project face an onerous bond requirement as a prerequisite to maintaining an appeal to the Court of Appeals. Other persons

seeking to exercise the right of judicial review of a decision by the ALC, such as persons opposing the issuance of environmental permits or persons contesting other non-CON actions of the Department or the actions of other government agencies, are not required to post substantial sums of money for the privilege of appeal and to have those funds automatically disgorged to a prevailing applicant without any discretion to the appellate court or any proof of actual damages. Because the Appeal Bond requirement applies only to a small subset of appeals from the ALC, the Appeal Bond statute violates the Equal Protection Clause.

Moreover, no legitimate government purpose exists to justify the disparate treatment found in the Appeal Bond statute. For example, nothing in the CON Act suggests a basis for treating persons seeking judicial review of the approval of a CON project differently from persons seeking judicial review of denials of CON projects, denials of exemption requests, or determinations as to CON applicability when no competing application is at issue. *See* S.C. Code Ann.§ 44-7-220(B) (specifically excluding these classes of appeals from the bond requirement).

As discussed above, to the extent that the Appeal Bond can be considered an attempt to compensate a CON applicant for the delay to its proposed project or to protect against or deter frivolous appeals or to compensate a CON applicant for its costs incurred in an appeal, there are numerous existing provisions of law that adequately address those issues. As observed by the United States Supreme Court in *Lindsey*:

> While a State may properly take steps to insure that an appellant post adequate security before an appeal to preserve the property at issue, to guard a damage award already made, or to insure a landlord against loss of rent if the tenant remains in possession, the double-bond requirement here does not effectuate these purposes since it is unrelated to actual rent accrued or to specific damage sustained by the landlord. This requirement is unnecessary to assure the landlord payment of accrued rent since the undertaking [a tenant] must file pursuant to the general appeal bond statute ... must cover 'the value of the use and occupation of such property . . . from the time of the appeal until the delivery of the possession thereof, and since

> the landlord may bring a separate action at law for payment of back rent under [another law]. Moreover, the landlord is protected against waste or damages occurring during the appeal by undertaking [under another law] that the tenant must file if he wishes to remain in possession of the property during the appeal. The claim that the double-bond requirement operates to screen out frivolous appeals is unpersuasive, for it not only bars nonfrivolous appeals by those who are unable to post the bond but also allows meritless appeals by others who can afford the bond. The impact on ... appellants is unavoidable: if the lower court decision is affirmed, the entire double bond is forfeited; recovery is not limited to costs incurred by the appellee, rent owed, or damage suffered. No other appellant is subject to automatic assessment of unproved damages. We discern nothing in the special purposes of the statute or in the special characteristics of the landlord tenant relationship to warrant this discrimination.
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> In the case before us, however, the State has not sought to protect a damage award or property an appellee is rightfully entitled to because of a lower court judgment. Instead, it has automatically doubled the stakes when a tenant seeks to appeal an adverse judgment in an [eviction] action. The discrimination against the poor, who could pay their rent pending an appeal but cannot post the double bond, is particularly obvious. For them, as a practical matter, appeal is foreclosed, no matter how meritorious their case may be. The nonindigent ... appellant also is confronted by a substantial barrier to appeal faced by no other civil litigant in Oregon. The discrimination against [this] class of ... appellants is arbitrary and irrational, and the double-bond requirement ... violates the Equal Protection Clause.

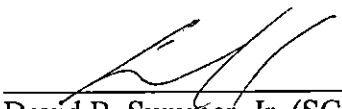
Lindsey, 405 U.S. at 77-79, 92 S.Ct. at 876-877.

The Appeal Bond requirement set forth in § 44-7- 220(B) applies only to a small subset of appellants and excludes other similarly situated appellants. No rational basis exists for such disparate treatment. Further, the Appeal Bond serves no legitimate governmental purpose not already addressed by other laws. Finally, the Appeal Bond undoubtedly acts as a deterrent or an outright bar to the exercise of the constitutional right of the Appellants to judicial review. Under the rationale set forth in *Lindsey*, the Appeal Bond in this case violates the Equal Protection Clauses of the Fourteenth Amendment of the U.S. Constitution and of S.C. Const. art. I, § 3.

CONCLUSION

For the reasons set forth herein, the Appellants respectfully request that this Court find that the Appeal Bond requirement set forth in 44-7-200(B) violates the Due Process requirements of U.S. Const. amend. XIV, § 1 and S.C. Const. art. I, §§ 3 and 22 and the Equal Protection guarantees of U. S. Const. amend. XIV, § 1 and S.C. Const. art. I, §§ 3 and order that the Appellants are therefore relieved from any obligation to comply with the requirement in order to maintain their duly filed appeals in this case. Further, Appellants respectfully request that this Court stay any dismissal of Appellants' appeals pending resolution of the issues raised in Appellants' Motion for Relief from Appeal Bond.

Respectfully submitted,



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AFFIDAVIT OF TODD GALLATI

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1. I am the Chief Executive Officer ("CEO") of Trident Health, which includes both Trident Medical Center, LLC d/b/a Trident Medical Center and d/b/a Summerville Medical Center (collectively, "Trident"), among other healthcare facilities, and in my capacity as CEO I have personal knowledge of the facts referenced or discussed in this Affidavit.

2. I am familiar with the above captioned contested cases involving the Trident affiliated hospitals (Trident Medical Center and Summerville Medical Center), and I provided testimony as a witness during the contested case proceedings in support of Trident's opposition to the Medical University Hospital Authority's ("MUHA") proposed hospital project in Berkeley County, South Carolina.

3. Trident opposed the MUHA's Certificate of Need ("CON") project to build a 128 bed hospital in Berkeley County, South Carolina. Trident provided myriad reasons for this opposition to the South Carolina Department of Health and Environmental Control's ("DHEC") Staff during the CON review period, and again during the contested case hearing before the South Carolina Administrative Law Court ("SCALC").

4. Trident does not agree with the SCALC's final decision to uphold DHEC's decision to approve MUHA's CON. As such, Trident would like to exercise its constitutional right to an appeal, but it is directed by statute to post a $1.5 million bond within five days of filing a Notice of Appeal to exercise that constitutional right.

5. During normal times, Trident could not, by any reasonable standard, expend $1.5 million solely for the purposes of appealing an ALC CON decision given the healthcare needs of its community and its commitment to charitable care.

6. These are not, however, normal times given the COVID-19 pandemic which has claimed the lives of over 3,000 South Carolinians and 200,000 Americans. There is still significant uncertainty regarding the length of the pandemic, the severity of the pandemic, which could

increase due to seasonal change, and when a viable and effective vaccine will become available. Moreover, Trident has made a commitment not to terminate any of its hospital staff during these very difficult times, even though many other hospitals in South Carolina have undertaken such measures.

7. As CEO of Trident, I cannot in good conscience approve a $1.5 million expenditure during this or any other time given the beneficial alternative uses for such significant funds. Moreover, nothing prevents MUHA from proceeding with its proposed 128 bed hospital project during the pendency of Trident's appeal from the SCALC final decision.

8. But for the statutory directive to post a $1.5 million bond, Trident would proceed with the appeal from the SCALC's final decision in this matter.

FURTHER THE AFFIANT SAYETH NOT.

Todd Gallati, CEO

Sworn to and subscribed before me
this 6th day of October, 2020

APRIL L. EMERSON
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
My Commission Expires October 4, 2027

Notary Public for South Carolina

My Commission Expires: 10-4-2027

EXHIBIT B

TO
JOINT MOTION OF THE APPELLANTS
TRIDENT MEDICAL CENTER, LLC AND
WALTERBORO COMMUNITY HOSPITAL, INC.
FOR RELIEF FROM APPEAL BOND REQUIRED BY
S.C. CODE ANN. § 44-7-220(B) AND
MEMORANDUM IN SUPPORT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III
Chief Administrative Law Judge

APPELLATE CASE NO. 2020-001323

ADMINISTRATIVE LAW COURT CASE NO.: 18-ALJ-07-0358-CC
ADMINISTRATIVE LAW COURT CASE NO.: 18-ALJ-07-0360-CC
ADMINISTRATIVE LAW COURT CASE NO.: 18-ALJ-07-0366-CC

CareAlliance Health Services, d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., Bon Secours-St. Francis Xavier Hospital, Inc., Roper St. Francis Berkeley Hospital and Roper Mount Pleasant Hospital,.....Appellant-Respondent,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Hospital,.....Respondents,

AND

Walterboro Community Hospital, Inc., d/b/a Colleton Medical Center,.....Appellant,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Hospital,.....Respondents,

AND

Trident Medical Center, LLC d/b/a Trident Medical Center and Summerville Medical Center,.....Appellant,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Hospital,.....Respondents.

AFFIDAVIT OF JAMES HIOTT

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1. I am the Chief Executive Officer ("CEO") of Walterboro Community Hospital, Inc., d/b/a Colleton Medical Center ("Colleton"), and in my capacity as CEO I have personal knowledge of the facts referenced or discussed in this Affidavit.

2. I am familiar with this matter and I testified on behalf of Colleton during the contested case hearing against the Medical University Hospital Authority's ("MUHA") proposed Berkeley County hospital.

3. Colleton's opposition to MUHA's Berkeley County hospital Certificate of Need ("CON") project was based primarily on the adverse impact Colleton would experience if MUHA placed a 128 bed hospital in Berkeley County, South Carolina. Colleton is a rural hospital located in Walterboro, South Carolina that normally operates at a loss. Colleton presented evidence that MUHA would draw patients from Colleton's service area and further erode Colleton's patient census at its hospital.

4. Colleton was surprised by the Administrative Law Court's ("ALC") decision to uphold SCDHEC's approval of MUHA's proposed Berkeley County hospital given the lack of need for the hospital and the adverse impact it would have on other hospital facilities such as Colleton.

5. Because Colleton believes the ALC's final decision is erroneous, it has appealed that decision to the South Carolina Court of Appeals. However, Colleton is not in a financial position to post with this Court a $1.5 million bond within five days of filing its Notice of Appeal as directed by the statute.

6. At the hearing of this matter, Colleton presented to the ALC its financial history over the past several years which shows millions of dollars of losses. See Exhibit A to this Affidavit. Colleton's financial status has not improved since 2018.

7. A $1.5 million appeal bond payment is not feasible for Colleton, nor would it be responsible even if Colleton had the funds to expend given the significant health issues facing our community, which have only been exacerbated by the global pandemic.

8. If this Court requires Colleton to post the $1.5 million bond as a condition of appeal, Colleton will be unable to continue its appeal of the ALC's final decision in this matter.

FURTHER THE AFFIANT SAYETH NOT.

James Hiott, CEO

Sworn to and subscribed before me
this 6th day of October, 2020

Notary Public for South Carolina

My Commission Expires: 6/24/2030

EXHIBIT A

TO JAMES HIOTT AFFIDAVIT

Trident_Exh_003-001

Colleton Medical Center

As Of January 16, 2019

	2014		2015		2016		2017		2018	
	2014 Actual	2014 Budget	2015 Actual	2015 Budget	2016 Actual	2016 Budget	2017 Actual	2017 Budget	2018 Actual	Budget
Gross Patient Service Revenue	314,411,153	318,769,027	331,682,632	346,357,329	366,287,543	368,380,426	370,850,301	402,163,648	397,437,699	404,833,176
Net Patient Service Revenues	71,312,789	67,820,250	70,229,742	74,066,237	74,962,660	77,028,988	73,010,665	79,138,212	74,490,402	74,346,064
Operating Expenses	60,034,816	60,016,757	62,201,292	62,295,241	68,191,057	68,691,789	68,462,766	71,709,365	68,448,229	69,577,334
Non Operating Expenses	8,553,154	8,212,257	8,884,143	8,667,832	8,665,223	8,935,923	9,510,591	8,887,393	10,097,613	8,615,354
Pre-Tax Income	2,724,819	(408,764)	(855,693)	3,103,164	(1,893,620)	(598,724)	(4,962,692)	(1,458,546)	(4,055,440)	(3,846,624)

	2016	2017	2018
Acute LOS	4.1	3.9	3.8
Sub Acute LOS	8.1	9.4	8.1
Total LOS	4.8	4.8	4.6

Sheet1
1 of 1

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III
Chief Administrative Law Judge

APPELLATE CASE NO. 2020-001323

ADMINISTRATIVE LAW COURT CASE NO.: 18-ALJ-07-0358-CC
ADMINISTRATIVE LAW COURT CASE NO.: 18-ALJ-07-0360-CC
ADMINISTRATIVE LAW COURT CASE NO.: 18-ALJ-07-0366-CC

CareAlliance Health Services, d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., Bon Secours-St. Francis Xavier Hospital, Inc., Roper St. Francis Berkeley Hospital and Roper Mount Pleasant Hospital,.....Appellant-Respondent,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Hospital,.....Respondents,

AND

Walterboro Community Hospital, Inc., d/b/a Colleton Medical Center,.....Appellant,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Hospital,.....Respondents,

AND

Trident Medical Center, LLC d/b/a Trident Medical Center and Summerville Medical Center,.....Appellant,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Hospital,.....Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on October 7, 2020, s/he has caused a copy of the Joint Motion of the Appellants Trident Medical Center, LLC and Walterboro Community Hospital, Inc., for Relief from Appeal Bond Required by S.C. Code Ann. § 44-7-220(B) and Memorandum in Support to be served upon all parties of record by electronic mail and U.S. Mail, postage prepaid, addressed as follows:

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Shannon V. Lipham, Esquire
Nexsen Pruet, LLC
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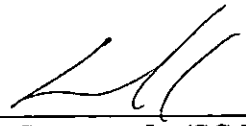

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Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC
Washington, DC

October 7, 2020

VIA HAND DELIVERY AND EMAIL CTAPPFILINGS@SCCOURTS.ORG
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Appellate Case No: 2020-001323

CareAlliance Health Services, *et al.* vs. South Carolina DHEC, *et al.* AND Walterboro Community Hospital, Inc. d/b/a Colleton Medical Center v. South Carolina DHEC, *et al.* AND Trident Medical Center, LLC, d/b/a Trident Medical Center and Summerville Medical Center vs. SC DHEC, *et al.*

Dear Ms. Kitchings:

Enclosed for filing in connection with the above, please find the Joint Motion of the Appellants Trident Medical Center, LLC and Walterboro Community Hospital, Inc. for Relief from Appeal Bond Required by S.C. Code § 44-7-220(B) and Memorandum in Support. Also enclosed please find the Proof of Service and this Firm's check in the amount of $50 in satisfaction of the Appellate Court's filing fee.

By copy of this letter and pursuant to the Court's standing Order, we are serving a copy of the Joint Motion via email and U.S. Mail upon and all counsel of record.

With best regards, I am

Sincerely,

David B. Summer, Jr.

DBSjr/ccq
Enclosures
cc: Vito M. Wicevic, Esquire (w/enclosures via email and U.S. Mail)
Rupinderjit S. Grewal, Esquire (w/enclosures via email and U.S. Mail)
Jennifer J. Hollingsworth, Esquire (w/enclosures via email and U.S. Mail)
Shannon V. Lipham, Esquire (w/enclosures via email and U.S. Mail)
Cheryl D. Shoun, Esquire (w/enclosures via email and U.S. Mail)
M. Elizabeth Crum, Esquire (w/enclosures via email and U.S. Mail)
Pamela A. Baker, Esquire (w/enclosures via email and U.S. Mail)
Celeste T. Jones, Esquire (w/enclosures via email and U.S. Mail)

Parker Poe
1221 Main Street, Suite 1100
Columbia, SC 29201

To: The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201