THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2021-000343

South Carolina Public Interest Foundation and John Crangle, individually and on behalf of all others similarly situated, ... Appellants,

v.

Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefer, P.A., and Davidson, Wren & DeMasters, P.A.,..... Respondents.

MOTION TO DISMISS

Pursuant to Rule 240 of the South Carolina Appellant Court Rules (SCACR), Respondents Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefer, P.A., and Davidson, Wren & DeMasters, P.A. (collectively, the Respondents), submit the within motion and accompanying memorandum in support of their motion to dismiss the above-captioned case based on the failure of Appellants South Carolina Public Interest Foundation and John Crangle (collectively, Appellants) to appeal from the primary underlying order of the circuit court, which was determined to be dispositive on the issue of Appellants' lack of standing to bring this case. The implication of Appellants' failure in this regard is that the unappealed dispositive finding that Appellants lack standing is the law of the case, and this appeal, which amounts to a collateral attack on the lack of standing finding, should be dismissed. In support of this motion, Respondents would show the Court as follows:

1. Appellants initially instituted this action on September 25, 2020, against the Respondent Attorney General, and, several days later, upon learning that the State had paid the Respondent Law Firms the fee to which they were contractually entitled, filed an amended complaint adding claims against Respondents Willoughby & Hoefer, P.A., and Davidson, Wren & DeMasters, P.A. (the Law Firms).
2. In their amended complaint, Appellants raised various arguments regarding the payment of attorneys' fees to the Respondent Law Firms pursuant to the Litigation Retention Agreement entered into between the Attorney General and the Law Firms.[1] Appellants also filed a Motion for Preliminary Injunction.
3. On October 14, 2020, the Honorable Alison Renee Lee denied the Motion for Preliminary Injunction based on Appellants' failure to meet their burden of proof as to the factors required for the imposition of injunctive relief. Separate and apart from that determination, however, and critical to this motion, Judge Lee made a jurisdictional determination that Appellants lacked standing to advance the underlying claims and causes of action of the lawsuit as an independent basis to deny the Motion for Preliminary Injunction. *See* Mem. in Supp., Ex. A, Order Denying Plaintiffs' Motion for Preliminary Injunction Order.
4. Following the entry of Judge Lee's October 14, 2020 order, Respondents filed motions to dismiss the Amended Complaint for lack of standing.
5. Appellants subsequently filed a motion to reconsider Judge Lee's October 14, 2020 order, which Judge Lee denied on December 17, 2020. *See* Mem. in Supp., Ex. B, Order Denying

[1] The State Attorney General and the Law Firms entered into an agreement for the Law Firms to represent the State of South Carolina in litigation against the Federal Government relating to violations of 50 U.S.C.A. § 2566 related to the Mixed Oxide (MOX) Facility at the Savannah River Site.

Plaintiffs' Motion to Alter or Amend. Therein, Judge Lee reaffirmed her independent finding that Appellants lacked standing in this case, specifically holding that "[Appellants]' standing and request for preliminary injunction are separate issues," and that "[t]he question of standing had to be determined" and "[Appellants'] lack of standing … could have ended [the inquiry]." *Id.*

6. Appellants did not appeal from either of Judge Lee's orders within 30 days of the December 17 order.
7. After conducting a hearing on Respondents' motions to dismiss, the Honorable R. Kirk Griffin issued an order on March 5, 2021, dismissing Appellants' amended complaint for lack of standing. Critically, Judge Griffin found that Judge Lee's prior holding that Appellants lack standing was "dispositive" on the issue of standing.
8. Appellants filed their Notice of Appeal with this Court on March 29, 2021, appealing only from Judge Griffin's March 5, 2021 order. Appellants did not identify in or attach to their Notice of Appeal, or otherwise appeal from, either Judge Lee's original October 14, 2020 order denying Appellants' request for a preliminary injunction, or her subsequent December 17, 2020, order denying Appellants' motion to reconsider.
9. Appellants have not appealed from Judge Lee's orders finding that Appellants lacked standing, and the time to appeal from those orders has expired.
10. Judge Lee's unappealed findings that Appellants lack standing are the law of the case and, thus, this appeal should be dismissed.

Therefore, for the reasons listed above, and as more fully articulated in the accompanying memorandum in support of this motion to dismiss, Respondents respectfully move that this case be dismissed.

Respectfully submitted,

s/ J. Emory Smith, Jr.
S.C. Bar No. 5262
Deputy Solicitor General

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
(803)734-3677 (Fax)
esmith@scag.gov

Attorneys for the Attorney General

AND

John S. Simmons, S.C. Bar No. 10260
SIMMONS LAW FIRM, LLC
1711 Pickens Street
Columbia, South Carolina 29201
(803) 779-4600
jsimmons@simmonslawfirm.com

s/ J. Todd Rutherford
J. Todd Rutherford, S.C. Bar No. 12097
THE RUTHERFORD LAW FIRM, LLC
2113 Park Street
Columbia, South Carolina 29201
(803) 256-3003
todd@therutherfordlawfirm.com

Gerald Malloy, S.C. Bar No. 12033
MALLOY LAW FIRM
Post Office Box 1200
Hartsville, South Carolina 29551
(843) 339-3000
gmalloy@bellsouth.net

Attorneys for Respondent
Willoughby & Hoefer, P.A.

AND

DAVIDSON, WREN & DEMASTERS, P.A.

s/ William H. Davidson, II
WILLIAM H. DAVIDSON, II #1558
KENNETH P. WOODINGTON #6213
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222
wdavidson@DML-LAW.com
kwoodington@DML-LAW.com

Attorneys for Respondent Davidson, Wren & DeMasters, P.A.

May 5, 2021
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2021-000343

South Carolina Public Interest Foundation and John Crangle, individually and on behalf of all others similarly situated, ... Appellants,

v.

Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefer, P.A., and Davidson, Wren & DeMasters, P.A.,..... Respondents.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Respondents Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefer, P.A., and Davidson, Wren & DeMasters, P.A. (collectively, the Respondents), pursuant to Rule 240(c)(2), SCACR, submit the within memorandum in support of their motion to dismiss above-captioned case. For the reasons discussed in this memorandum, this appeal should be dismissed because the law of the case is that Appellants South Carolina Public Interest Foundation and John Crangle (collectively, Appellants) lack standing to pursue the action underlying this appeal.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2016, the State of South Carolina, represented by Willoughby & Hoefer, P.A. (W&H), and Davidson, Wren & DeMasters, P.A. (DW&D, and together with W&H, the Law Firms), initiated what ultimately became several lawsuits against the Department of Energy (DOE)

and/or the United States of America related to the Mixed Oxide (MOX) Facility at the Savannah River Site (SRS) and certain weapons grade plutonium stored at SRS. On August 28, 2020, after several years of litigation before multiple different federal district and appellate courts, during which the Federal Government was ordered to and did remove one ton of weapons-grade plutonium from storage at SRS, a Settlement Agreement was executed with the Federal Government providing for a cash payment of $600 million from the Federal Government's "Judgment Fund." The settlement provided DOE a grace period to comply with an obligation to remove additional weapons-grade plutonium from the State while maintaining the ability of the State to force removal of the plutonium and to receive additional payments of up to $1.5 billion should DOE not comply, both of which are contractually enforceable by the State. The Federal Government submitted the settlement payment to the State on September 15, 2020. Thereafter, the State and Federal Government jointly filed with the U.S. Court of Appeals for the Federal Circuit an agreement for voluntary dismissal dismissing the pending litigation on September 29, 2020. Agreement to Voluntary Dismissal of Appeal, *State of South Carolina v. United States*, No. 19-2324 (Fed. Cir. Sept. 29, 2020).

The Litigation Retention Agreement between the State Attorney General and the Law Firms, as amended, provides for the payment of attorneys' fees based upon a decreasing percentage scale contingent upon the amount of the recovery for two cases and flat percentages of recovery for two other cases. The Litigation Retention Agreement provided that the Law Firms would assume 100% of the risk involved in the litigation, requiring them to advance all costs and work the hours necessary to execute the complex legal strategy in consideration of the contractual contingency fee if successful. The State bore no risk under this arrangement; if the lawsuit(s) were successful, then the Law Firms would be paid according to the terms of the agreement, as amended.

If the lawsuit(s) were unsuccessful, the Law Firms could not seek reimbursement or be paid for either their costs or the time worked on behalf of the State. Based on the amount of the settlement negotiated with DOE, the attorneys' fees earned and due under the agreement, including costs and expenses, was $75,000,000. These fees represent 12.5% of the upfront settlement amount recovered on behalf of the State by the Law Firms.[1]

Following receipt of the settlement amount from the Federal Government, the State Attorney General approved payment of the attorneys' fees owed to the Law Firms pursuant to the Litigation Retention Agreement. The payment was approved by the Executive Budget Office (EBO) of the Department of Administration and was authorized by the Comptroller General and Treasurer in the normal course. The State then made a wire transfer to W&H for $75 million, inclusive of attorneys' fees and costs, owed under the Litigation Retention Agreement and as contemplated by the dismissal filed in the Federal Circuit.[2]

Appellants instituted this action in the Richland County Court of Commons Pleas on September 25, 2020, against the State Attorney General, and several days later, filed an amended complaint adding claims against the Law Firms. In their amended complaint, Appellants raised various arguments regarding the payment of attorneys' fees to the Law Firms pursuant to the Litigation Retention Agreement entered into between the Attorney General and the Law Firms. Appellants also filed a motion for temporary restraining order and preliminary injunction.

---

[1] The 12.5% contingency is calculated against the immediate cash settlement payment and does not allocate any of the fees to the additional benefits the Law Firms secured on behalf of the State for the removal of one metric ton of plutonium (estimated at a value of $100 million) and the agreement to remove 9.5 additional metric tons or pay the State the additional sum of $1.5 billion.

[2] The "Agreement To Voluntary Dismissal of Appeal" filed with the Federal Court and executed by all parties to the litigation incorporates the settlement into the dismissal. It specifically states that the settlement agreement is "inclusive of amounts for interest and the State's attorneys' fees and other costs, which are reimbursed and awarded from payment of the settlement amount and the State shall have no further claim against the United States for such fees and costs ...."

On October 1, 2020, the Honorable Alison Renee Lee issued an *Ex Parte* Temporary Restraining Order, but scheduled and then conducted a hearing on the motion for preliminary injunction on October 7, 2020. At the close of the hearing, Judge Lee extended the Temporary Restraining Order an additional seven days while she considered the arguments and information advanced by the parties. On October 14, 2020, Judge Lee denied the motion for preliminary injunction and dissolved the extended Temporary Restraining Order, based on her determination that Appellants lacked standing to bring this action and also her determination that Appellants had not demonstrated that they met the legal standards for the issuance of a preliminary injunction. *See* Ex. A, Order Denying Plaintiffs' Motion for Preliminary Injunction Order (October 14 Order). Appellants subsequently filed a motion to reconsider the October 14 Order, which Judge Lee denied on December 17, 2020. *See* Ex. B, Order Denying Plaintiffs' Motion to Alter or Amend (December 17 Order). In her December 17 Order denying Appellants' motion to reconsider, Judge Lee reaffirmed her finding as to Appellants' lack of standing, specifically holding that "[Appellants]' standing and request for preliminary injunction are separate issues," and that "[t]he question of standing had to be determined" and "[Appellants'] lack of standing … could have ended [the inquiry]." *Id.*

On October 20, 2020, W&H and DW&D filed and served motions to dismiss seeking dismissal pursuant to Rules 12(b)(1) and 12(b)(6), SCRCP, on the grounds that Appellants lacked standing and failed to state facts sufficient to constitute a cause of action against the Respondents. The State Attorney General filed his own motion to dismiss on October 27, 2020, seeking dismissal on similar grounds. On January 26, 2021, the Honorable R. Kirk Griffin conducted a hearing on the motions to dismiss. On February 12, 2021, Judge Griffin provided the parties notice via correspondence that he was granting Appellants' motion, stating definitively that "[t]he Court finds

that Circuit Court Judge Alison Renee Lee's order dated October 14, 2020 is dispositive as to the issue of standing." *See* Ex. C. On March 5, 2021, Judge Griffin issued a formal order dismissing the amended complaint on the basis that Judge Lee's prior findings that Appellants lacked standing were dispositive. *See* Notice of Appeal, Ex. 1, Order Granting Motions to Dismiss (March 5 Order). Judge Griffin also concurred with Judge Lee's analysis and findings. *Id*.

Appellants filed their Notice of Appeal with this Court on March 29, 2021, appealing only from Judge Griffin's March 5 Order. Appellants did not identify in or attach to their Notice of Appeal, or otherwise appeal from, Judge Lee's orders finding that Appellants lacked standing. The time to appeal any orders of the lower court expired on April 5, 2021.

ARGUMENT

In the October 14 Order and the December 17 Order, Judge Lee specifically found that Appellants did not have standing to pursue any of their claims against Respondents. October 14 Order at 14 ("After hearing the issues and arguments of counsel and considering the materials submitted, this Court finds Plaintiffs lack standing…"); December 17 Order at 2 ("This Court properly ruled Plaintiffs lack standing in this matter."). As discussed above, Appellants did not identify in or attach to their Notice of Appeal either of Judge Lee's orders (they only identified and attached Judge Griffin's March 5 Order), and the time to appeal has expired.[3] *See* Rule 203, SCACR (providing, in part, that a party intending to appeal from the Court of Common Pleas shall serve a notice of appeal within 30 days of receipt of written notice of entry of the order or judgment and that the notice of appeal shall be accompanied by a "copy of the order(s) and judgment(s) to be challenged on appeal"). Because Appellants have not appealed the October 14 Order or the

[3] Also, Appellants did not appeal from the October 14 Order and the December 17 Order within thirty (30) days of the issuance of the December 17 Order.

December 17 Order, Judge Lee's conclusion that Appellants lack standing is the law of the case. *See ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding that an unappealed ruling is law of the case).

"A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy." *See Peoples Fed. Sav. & Loan Ass'n v. Res. Plan. Corp.*, 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004) (quoting *Lennon v. S.C. Coastal Council*, 330 S.C. 414, 415, 498 S.E.2d 906, 906 (Ct. App. 1998)); *Jowers v. S.C. Dep't of Health & Env't Control*, 423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018) ("Our courts will not address the merits of any case unless it presents a justiciable controversy."). The concept of justiciability includes the doctrine of standing. *Jackson v. State*, 331 S.C. 486, 490 n.2, 489 S.E.2d 915, 917 n.2 (1997). "No justiciable controversy is presented unless the plaintiff has standing to maintain the action." *Lennon*, 330 S.C. at 415, 498 S.E.2d at 906 (quoting *Brock v. Bennett,* 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct. App. 1994)). Because it is the law of the case that Appellants do not have standing in this matter, there is no justiciable controversy, and this appeal must be dismissed.

This straightforward and inescapable conclusion is not altered because the Appellants have appealed from Judge Griffin's March 5 Order dismissing Appellants' amended complaint. In his order, Judge Griffin recognized that Judge Lee's findings that Appellants lacked standing were "dispositive and require[d] dismissal." March 5 Order at 4-5. But, critically, an appeal of Judge Griffin's order is not also an appeal of Judge Lee's orders. Two prior decisions—one by the Supreme Court and one by this Court—confirm this.

In *Bakala v. Bakala*, 352 S.C. 612, 576 S.E.2d 156 (2003), the Supreme Court considered the appeal of an order of a family court judge denying a motion to quash a bench warrant. The appellant had filed a motion to quash, which had been denied by the family court on the basis that

the court lacked jurisdiction to grant the motion. Several months later, the appellant moved for the same relief from another family court judge. The second family court judge denied the motion for the same reason (lack of jurisdiction) as the first family court judge. Pertinent here, the appellant ***only*** appealed the order of the second family court judge. On appeal, the Supreme Court agreed with the appellant that the family court erred in finding that it lacked jurisdiction to quash the bench warrant but held that the second motion to quash was properly denied because the second family court judge "could not overrule the prior order" of the first judge and the first judge's "unappealed ruling finding no jurisdiction [was] therefore the law of the case." *Bakala*, 352 S.C. at 631-32, 576 S.E.2d at 166 (Internal citations omitted).

Similarly, in *McAleese v. McAleese*, 309 S.C. 548, 424 S.E. 2d 558 (Ct. App. 1992), this Court also considered an appeal from a family court order. As described by this Court in its opinion, the "appealed order" had found that two prior orders "were dispositive of the issues presented by the pleadings of this case." *McAleese*, 309 S.C. at 550, 424 S.E. 2d 559. Like in this case, the appellant did not appeal the two prior orders. In affirming, this Court held that because the two prior orders were not appealed, they constituted the law of the case. *Id*. at 551, 424 S.E. 2d at 559-60.

In short, to the extent Appellants intended to challenge the finding that they lacked standing to pursue their claims against Respondents—which was, of course, necessary for them to do to proceed with this case—they needed to appeal from and challenge Judge Lee's October 14 and December 17 Orders, which were dispositive as to that issue. They failed to do so and, therefore, the law of the case is that Appellants lack standing. Because Appellants lack standing, there is no justiciable controversy, and this appeal should be dismissed.

CONCLUSION

For the foregoing reasons, Respondents hereby respectfully move that this appeal be dismissed, as Appellants' failure to appeal from the dispositive orders of Judge Lee renders her findings the law of the case and this appeal non-justiciable.

Respectfully submitted,

s/ J. Emory Smith, Jr.
S.C. Bar No. 5262
Deputy Solicitor General

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
(803)734-3677 (Fax)
esmith@scag.gov

Attorneys for the Attorney General

AND

John S. Simmons, S.C. Bar No. 10260
SIMMONS LAW FIRM, LLC
1711 Pickens Street
Columbia, South Carolina 29201
(803) 779-4600
jsimmons@simmonslawfirm.com

s/ J. Todd Rutherford
J. Todd Rutherford, S.C. Bar No. 12097
THE RUTHERFORD LAW FIRM, LLC
2113 Park Street
Columbia, South Carolina 29201
(803) 256-3003
todd@therutherfordlawfirm.com

Gerald Malloy, S.C. Bar No. 12033
MALLOY LAW FIRM
Post Office Box 1200
Hartsville, South Carolina 29551
(843) 339-3000
gmalloy@bellsouth.net

Attorneys for Respondent
Willoughby & Hoefer, P.A.

AND

DAVIDSON, WREN & DEMASTERS, P.A.

s/ William H. Davidson, II
WILLIAM H. DAVIDSON, II #1558
KENNETH P. WOODINGTON #6213
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222
wdavidson@DML-LAW.com
kwoodington@DML-LAW.com

Attorneys for Respondent Davidson, Wren & DeMasters, P.A.

May 5, 2021
Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
South Carolina Public Interest Foundation and John Crangle, individually and on behalf of all others similarly situated, Plaintiffs, v. Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefer, P.A., and Davidson, Wren & DeMasters, P.A., Defendants.	Docket No. 2020-CP-40-04603 **ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

This matter came before the Court on October 7, 2020, on a Motion for Preliminary Injunction (Motion) filed by Plaintiffs South Carolina Public Interest Foundation and John Crangle, individually and on behalf of all others similarly situated (collectively Plaintiffs). James Griffin, Esq. and Badge Humphries, Esq. of Griffin Humphries appeared on behalf of Plaintiffs. J. Todd Rutherford, Esq., John Simmons, Esq., and Gerald Malloy, Esq. appeared on behalf of Defendant Willoughby & Hoefer, P.A. Will Davidson, Esq. and Ken Woodington, Esq. appeared on behalf of Defendant Davidson, Wren & DeMasters, P.A. J. Emory Smith, Esq. of the Office of the Attorney General appeared on behalf of Defendant Alan Wilson.

In the Amended Complaint, Plaintiffs instituted this action against the Attorney General of South Carolina and the law firms of Willoughby & Hoefer, P.A. (W&H) and Davidson, Wren & DeMasters, P.A. (DW&D, and together with W&H, the Law Firms), raising various arguments regarding the payment of attorneys' fees to the Law Firms in the amount of $75 million pursuant

to the Litigation Retention Agreement.[1] Plaintiffs seek a preliminary injunction to freeze the $75 million of settlement proceeds that Plaintiffs allege was unlawfully transferred to Defendant W&H at the direction of Defendant Alan Wilson for the payment of attorneys' fees pending this litigation.

FACTUAL BACKGROUND

It appears from the filings in this matter that, in February 2016, the State of South Carolina, represented by the Law Firms, initiated several lawsuits against the Department of Energy (DOE) related to the mixed oxide fuel fabrication facility (MOX Facility) at the Savannah River Site (SRS) and certain weapons grade (defense) plutonium stored at SRS. On August 28, 2020, a Settlement Agreement was executed with the Federal Government providing for a payment of $600 million from the Federal Government's "Judgment Fund." W&H Resp. to Pls.' Mot. for Prelim. Inj. (W&H Resp.), Ex. 1. The settlement provided DOE a grace period to comply with an obligation to remove additional defense plutonium from the State while maintaining the ability of the State to force removal of the plutonium and to receive additional payments should DOE not comply. *Id*. The Federal Government submitted the settlement payment to the State. The State jointly filed with the Federal Circuit Court an agreement for voluntary dismissal dismissing the pending litigation on September 29, 2020. W&H Resp., Ex. 2, Agreement to Voluntary Dismissal of Appeal.

The Litigation Retention Agreement, as amended, provides for the payment of attorney fees based upon a decreasing percentage scale contingent upon the amount of the recovery for two

[1] The Attorney General Alan Wilson and the Law Firms entered into an agreement for the Law Firms to represent the State of South Carolina in litigation relating to violations of 50 U.S.C.A.§ 2566 related to the MOX Facility. *See* Litigation Retention Agreement for Special Counsel Appointed by the South Carolina Attorney General as to Economic and Impact Assistance for the Violation of 50 USCA § 2566 Related to the Mixed Oxide (MOX) Facility.

cases and flat percentages of recovery for two other cases. The attorneys' fee under the agreement, including costs and expenses, is $75,000,000. This fee represents 12.5% of the cash recovery.

The State Attorney General submitted the request for approval of payment of the attorneys' fees owed pursuant to the Litigation Retention Agreement on September 17, 2020. Attorney General Mem. in Opp'n to First TRO Motion, Ex. 4, Buckley Affidavit. The payment was authorized by the Comptroller General and Treasurer and was approved by the Executive Budget Office (EBO) of the Department of Administration. *Id*. On September 29, 2020, the State made a wire transfer to W&H for $75 million, inclusive of attorneys' fees and costs, owed under the Litigation Retention Agreement and as contemplated by the dismissal filed in the Federal Circuit. *Id*.

On September 29, 2020, virtual hearings on Plaintiffs' first Motion for Temporary Restraining Order against only the Attorney General were held before Judge Debra McCaslin. Thereafter, Judge McCaslin issued an Order Granting Temporary Injunction Pendente Lite (the First TRO) enjoining the Attorney General from "ordering, approving, or facilitating the distribution of any portion of the disputed funds until this Court issues a ruling on Plaintiff's motion."[2] The First TRO also enjoined the State Treasurer from "disbursing any portion of the disputed funds to any persons until such a ruling is made by this Court." When the First TRO was entered, the wire transfer to W&H paying the fees contractually owed of $75 million had already been completed.

Plaintiff filed an Amended Summons and Complaint the next day, September 30, 2020, adding the Law Firms as defendants. Plaintiffs also filed the instant Motion *ex parte*. On

[2] The First TRO was electronically signed on September 29, 2020, and electronically filed on September 30, 2020. It was subsequently dissolved by Judge McCaslin.

September 30, 2020, this Court issued an *Ex Parte* Temporary Restraining Order, electronically filed on October 1, 2020 (the Second TRO). The Second TRO enjoined the Law Firms, members of Law Firms, and "anyone acting in concert with these Defendants" from "transferring, spending, pledging or otherwise encumbering the proceeds of the $75 Million wire transfer received from the State of South Carolina on September 29, 2020." The Second TRO also set a hearing on the Motion for Preliminary Injunction for October 7, 2020. Thereafter, the parties were served with the Amended Summons and Complaint and the Second TRO.

Plaintiffs bring this action on behalf of the taxpayers of this State and assert standing under the public importance exception. At the close of the hearing, the Court issued a Form 4 extending the restraining order until Wednesday, October 14, 2020.

PLAINTIFFS LACK PUBLIC IMPORTANCE STANDING

A plaintiff must have standing to maintain a claim. "Under our current jurisprudence, there are three ways in which a party can acquire this fundamental threshold of standing: (1) by statute; (2) "constitutional standing"; and (3) the public importance exception." *Bodman v. State*, 403 S.C. 60, 66–67, 742 S.E.2d 363, 366 (2013) (citing *ATC South, Inc. v. Charleston Cnty*., 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008)). Plaintiffs do not assert they have statutory standing or constitutional standing, they assert standing through the "public importance" exception.

"Public importance" standing allows citizens in some limited instances to seek judicial resolution of an issue "of such public importance as to require its resolution for future guidance." *Davis v. Richland County Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007). However, the Supreme Court has recognized that courts "must be cautious with this exception, lest it swallow the rule." *Jowers v. S.C. Dep't Health & Envtl. Control*, 423 S.C. 343, 360, 815 S.E.2d 446, 455 (2018) (quoting *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 646,

744 S.E.2d 521, 524 (2013)). Indeed, "standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits." *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004). The key for finding that public importance standing is warranted is a need for future guidance. As the Supreme Court has stated:

> For a court to relax general standing rules, the matter of importance must, ***in the context of the case***, be inextricably connected to the public need for court resolution for future guidance.

ATC, 380 S.C. at 199, 669 S.E.2d at 341(emphasis added).

Plaintiffs contend the meaning of § 1-7-150 of the South Carolina Code of Laws is a matter upon which future guidance is needed. S.C. Code Ann. § 1-7-150(B) states, "All monies, except investigative costs or costs of litigation awarded by court order or settlement, awarded the State of South Carolina by judgment or settlement in actions or claims brought by the Attorney General on behalf of the State or one of its agencies or departments must be deposited in the general fund of the State…." Plaintiffs assert S.C. Code Ann. § 1-7-150 requires all attorney's fees to be approved by court order or be approved in the settlement, and because the Attorney General regularly employs outside counsel there is a need for future guidance on this matter. Plaintiffs also assert that without approval of the fees by court order or in the settlement, all proceeds from the settlement should have been deposited into the General Fund.

Plaintiffs challenge the one-time payment of the attorneys' fees here based upon this particular settlement and pursuant to this Litigation Retention Agreement. Any judicial ruling on this matter would be entirely limited to the Litigation Retention Agreement and payment for services performed pursuant to this single contract. *Cf. City of Charleston v. Masi*, 362 S.C. 505, 509, 609 S.E.2d 301, 304 (2005) (denying public importance standing with respect to right to vote in certain municipal elections because "the pertinent issue does not present a recurring dilemma

such that this issue should be addressed to clarify the law"). Plaintiffs acknowledge that it is because of the amount of the fee the statute requires interpretation.

Plaintiffs do not challenge the Attorney General's authority to enter into retention agreements with outside counsel. The subject of this action is not the Attorney General's authority to enter into contracts for outside litigation counsel to represent the State. S.C. Code Ann. § 1-7-170 grants the Attorney General the authority to enter into an agreement or to hire private counsel on a contingency basis. Additionally, S.C. Code Ann. § 1-7-85 expressly states that "the Attorney General may obtain reimbursement for its costs in representing the State in … civil and administrative proceedings. These costs may include, but are not limited to, attorney fees…." This Court finds that payment of attorneys' fees is expressly authorized under § 1-7-85 and, pursuant to a valid and binding contract for services rendered in civil proceedings brought on behalf of the State, the fees constitute a cost which the Attorney General is authorized to pay.

S.C. Code Ann. § 1-7-150 is unambiguous and allows the Attorney General to pay cost of litigation from the settlement proceeds. Plaintiffs concede the language is clear and unambiguous. The statute does not require court approval for the payment of the fee, and the appropriate State Officers followed applicable law in disbursing the funds to meet the State's contractual obligations. Thus, the Court finds that this is not a situation requiring future guidance. Public importance standing is inappropriate here because there is no ruling the Court might make that would assist other courts resolving future arguments regarding outside litigation.

Furthermore, future guidance is not needed on this matter because Proviso 59.8 of the State's current budget precludes the Attorney General from transferring ***any*** funds to the General Fund and instead directs him to deposit any funds that "otherwise" would go to the General Fund in a separate account:

> (AG: Litigation Recovery Account) During the current fiscal year, when there is a recovery or an award in any litigation managed by the Attorney General, any funds received that would have otherwise been credited to the General Fund shall be deposited to the credit of a special account created in the Office of State Treasurer entitled "Litigation Recovery Account." The funds deposited in this account must be expended only as prescribed by law.

2019 S.C. Acts 91, Part 1.B, § 59.8 (2019-2020 fiscal year). This proviso continues in effect. 2020 S.C. Acts 135, § 1(A)(2) (extending the effective dates of 2019 Act 91, Part 1.B. "until the effective date for appropriations made in a general appropriations act for Fiscal Year 2020-2021"); *see also* 2019 S.C. Acts 91 ("All acts or parts of acts inconsistent with any of the provisions of … Part 1B of this act are suspended for Fiscal Year 2019-20."); *see Beaufort Cty. v. S.C. State Election Comm'n*, 395 S.C. 366, 374, 718 S.E.2d 432, 436 (2011) (holding that a budget proviso that conflicts with a permanent statute suspends the statute for the period during which the proviso is effective).

Because Proviso 59.8 suspended the requirements of § 1-7-150(B) with respect to funds that "otherwise" would go to the General Fund, even if Plaintiffs were correct that the entire settlement, including the money for attorneys' fees, should be deposited in the General Fund under § 1-7-150(B), the Proviso would prevent such action in this case. The argument articulated by Plaintiffs is therefore inapplicable.

The payment of the contractual attorneys' fees also constituted a "disposition required by law" and an "expend[iture] … prescribed by law" because the EBO approved the payment of the contract fees as expressly authorized by the General Assembly. 2020 S.C. Acts 135, § 7 ("The Executive Budget Office is authorized to approve agency requests for federal and other fund authorization adjustments."). Moreover, as Plaintiffs acknowledge, the Treasurer's Office processed the payment for the attorneys' fees pursuant to a warrant from the Comptroller General. *See* Mot., pp. 4-5 & Am. Compl., Ex. 19.

Plaintiffs claim that additional approval by the Joint Other Funds Oversight Committee was required and allege "the EBO Director apparently by-passed the approval process." Pls.' Suppl. Mem., p. 11. However, the Attorney General as the Chief Legal Officer of the State is specifically charged with administering § 1-7-150. The EBO is responsible for overseeing the expenditure of funds in this State. Both approved and authorized the payment of the attorneys' fees. The payment also was authorized by the Comptroller General and the Treasurer. Pursuant to the current continuing resolution passed by the General Assembly, the General Assembly expressly provided the EBO with complete authority to approve requests like the Attorney General's payment request ***without*** seeking any additional approvals. 2020 S.C. Acts 135, §7; W&H Resp., Ex. 3, Stavrinakis Aff. ¶ 6 ("[T]he Executive Budget Office has full and complete authority to approve agency requests for other fund authorization adjustments without any action or review by the Joint Other Funds Oversight Committee…. [A]ny authority of the Joint Other Funds Oversight Committee has been delegated to the [EBO]."). The EBO Director therefore did not by-pass the requisite approval process. Thus, the agencies charged with administrating § 1-7-150 necessarily have determined that payment of the fees was authorized pursuant to the statute. *See Kiawah Development Partners, II v. S.C. Dep't of Health & Envtl. Control*, 766 S.E.2d 707, 718, 411 S.C. 16, 34 (2014) ("[O]ur deference doctrine provides that courts defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration."). Plaintiffs' contention that further approvals were required is incorrect.

Therefore, without a showing that future guidance needed on this issue, Plaintiffs lack standing under the public importance exception.

PLAINTIFFS LACK DERIVATIVE STANDING

Plaintiffs also assert they have derivative standing to pursue claims for the recovery of State funds asserted under *Ex parte Hart*, 190 S.C. 473, 2 S.E.2d 52 (1939). *Ex parte Hart* allowed a citizen of a county to assert a plain claim on behalf of that county. Plaintiffs argue derivative standing should be extended to the State even though it is a sovereign entity and there is no "plain" claim. Pls.' Suppl. Mem., p. 16.

This Court finds that *Hart* is inapplicable here. *Hart* allowed a county resident to assert a "plain" claim on behalf of a county. *See Hart*, 190 S.C. at 477, 2 S.E.2d at 53. However, *Hart* and the few decisions that follow its analysis involve claims with respect to counties, municipalities, and local government entities. *Berry v. McLeod*, 328 S.C. 435, 447, 492 S.E.2d 794, 800 (Ct. App. 1997) (municipality) ("[T]his power cannot normally be controlled or exercised by a taxpayer to bring an action on behalf of a town, unless it is clear that the governmental entity has unjustifiably refused to assert the claim."); *Hart*, 190 S.C. at 477, 2 S.E.2d at 53 (municipality); *see also Newman v. Richland County Historic Preservation Comm'n*, 325 S.C. 79, 480 S.E.2d 72 (1997) (county, city, and county historic preservation commission); *Johnston v. City of Myrtle Beach*, 285 S.C. 453, 454, 330 S.E.2d at 321, 322 (Ct. App. 1985) (municipality) ("Generally, a private citizen cannot test the validity of executive or legislative action unless he or she has sustained or will sustain prejudice not common to the public from such action").

The Attorney General's authority to represent State interests is rooted in the Constitution, statutes, and the common law. Our courts have repeatedly emphasized that the Attorney General of South Carolina is the State's chief legal officer with broad authority to direct and control the State's legal affairs. The Supreme Court noted in *Cooley, et al. v. South Carolina Tax Commission*, 204 S.C. 10, 28 S.E.2d 445, 450 (1943), "[t]he office of Attorney General is created by the

Constitution." According to the Court, the various statutes relating to the Office demonstrate the "wide scope of authority and duties of the Attorney General as the legal representative of the state and of its several administrative departments." 28 S.E.2d at 451. The Court, in *Cooley*, recognizing the creation of the Office of Attorney General by the state Constitution, as well as the broad powers of the Office, concluded the Attorney General had the authority to settle that case.

Also, in *State ex rel. Condon v. Hodges*, 349 SC. 232, 562 S.E.2d 623 (2002), our Supreme Court addressed the question of the Attorney General's statutory and inherent common law authority as the State's chief legal officer. In *Condon*, the Court confronted the issue of the Attorney General's power to enforce the Constitution and laws of the State in the context of the improper or illegal expenditure of public funds. There, the Court stated:

> [T]he General Assembly has elaborated on the Attorney General's duties in several statutes. First, pursuant to S.C. Code Ann. § 1-7-40 (Supp. 2001), the Attorney General must
>
> > appear for the State in the Supreme Court and the court of appeals in the trial and argument of all causes, criminal and civil, in which the State is a party or interested, and in these causes when required by the Governor or either branch of the General Assembly.
>
> . . . The General Assembly has also provided that the Attorney General, upon written request of a state officer has a duty to appear and defend that officer when the officer is being prosecuted in a civil or criminal action or other special proceeding, due to an act done or omitted in good faith in the course of employment. S.C. Code Ann. § 1-7-50 (1986) [footnote omitted]. The Attorney General also must 'give his opinion upon questions of law submitted to him by either branch' of the General Assembly or by the Governor. S.C. Code Ann § 1-7-90 (1986).... Further,
>
> > '[a]s the chief law officer of the State, [the Attorney General] may, in the absence of some express legislative restriction to the contrary, exercise all such *power* and *authority*, as public interests may from time to time require, and may institute, conduct, and maintain all such suits and *proceedings* as *he deems necessary for the enforcement of the laws of the State,* the *preservation of order,* and the *protection* of *public rights.*'

> *State ex rel. Daniel v. Broad River Power Co.*, 157 S.C. 1, 68, 153 S.E. 537, 560 (1929), *aff'd* 282 U.S. 187, 51 S.Ct. 94, 75 L.Ed. 287 (1930) (citation omitted and italics added by *Daniel* Court). *Cf. State v. Beach Co*., 271 S.C. 425, 248 S.E.2d 115 (1978) (while Attorney General has broad statutory authority, and arguably common law authority, to institute actions involving welfare of State, that authority is not unlimited).

State ex rel. Condon v. Hodges, 349 S.C. at 239, 240. In *State ex rel. McLeod v. v. McInnis*, 278 S.C. 307, 311, 295 S.E.2d 633, 635 (1982), the Court explained that the Attorney General, by bringing this action in the name of the State, speaks for all its citizens, and may, on their behalf, bring to the Court's attention for adjudication charges that there is an infringement in the separation-of-powers area.

Moreover, in *Condon v. State*, 354 S.C. 634, 641, 583 S.E.2d 430, 434 (2003), the Court reiterated that "[t]his Court has recognized that the Attorney General has broad statutory and common law authority in his capacity as the chief legal officer of the State to institute actions involving the welfare of the State and its citizens, including vindication of wrongs committed collectively against the citizens of the State." *State v. Southern* Ry. Co., 82 S.C. 12, 62 S.E. 1116 (1908) (the Court expresses it does not believe it was the Legislature's intent to deny the Attorney General "the power and responsibility of conducting the litigation according to his judgment.").

Accordingly, Plaintiffs have no authority to represent State interests in this proceeding. The Attorney General is the State's chief legal officer, and he properly exercised his authority to contract with the W&H law firm to represent the State in its action against the United States and to pay them pursuant to that contract from the settlement proceeds. As Judge Cooper stated in *Cephalon v. Wilson*, Civil Action No. 2012-CP-400737 (June 6, 2014), "[t]he Attorney General possesses the authority to associate outside attorneys to assist with enforcement actions … and to pay those outside attorneys on a contingency fee basis with money received in any settlement or

judgement obtained in the case." Order at 9 (Exhibit 3 to Attorney General's Memorandum).

Judge Roger Couch, in *State v. Eli Lilly*, 2007-CP-42-1855 (Sept. 22, 2009), also concluded § 1-7-150 "expressly authorizes payment of 'the costs of litigation' out of litigation proceeds and a 'cost of litigation' is certainly what legal fees are." Order at p. 19. He added, "Section 1-7-150 gives the Attorney General the right to withhold certain funds (investigative costs and costs of litigation) from the proceeds of litigation such as this." Order at 20. Similarly, in *Cephalon, supra,* Judge Cooper concluded that "the costs of litigation include attorneys' fees, [§1-7-150(B)] expressly provides the Attorney General the authority to pay attorneys' fees to outside counsel and other costs of litigation from the proceeds of any judgment or settlement without those funds being first deposited in the general fund." Order at p. 18.

Contrary to Plaintiffs' second assertion, these fees were also "awarded by settlement." The settlement provides that each party bears its own fees thereby allowing the payment to be made from the settlement proceeds. This understanding is ratified by the parties to the settlement in documents presented to the U.S. Court of Appeals for the Federal Circuit. The "Agreement To Voluntary Dismissal of Appeal" filed with the Federal Court and executed by all parties to the litigation incorporates the settlement into the dismissal. It specifically states that the settlement agreement is "inclusive of amounts for interest and the State's attorneys' fees and other costs, which are reimbursed and awarded from payment of the settlement amount and the State shall have no further claim against the United States for such fees and costs . . . ."

The Attorney General had the authority to pay the attorney's fees from settlement proceeds without depositing the money into a particular account. Therefore, Plaintiffs no authority to act for the State as to this matter.

PLAINTIFFS FAILED THEIR BURDEN FOR A PRELIMINARY INJUNCTION

Even if this Court has improperly determined that Plaintiffs do not have standing to pursue this claim, Plaintiffs have failed to meet their burden for a preliminary injunction.[3] "A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law." *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc*., 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010). An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002). "Generally, to obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and an inadequate remedy at law." *Id.*

Plaintiffs ultimately seek to prevent the Law Firms from spending the money paid to them pursuant to the agreement. Plaintiffs' claims can be remedied by money damages if they were to succeed, especially since no unique property was transferred to the Law Firms. "The applicable rule, reaffirmed in almost every case dealing with the matter, is that in the absence of some positive provision of the law to the contrary, an injunction will not be granted in cases where there is a choice between the ordinary processes of law and the extraordinary remedy by injunction, and where the remedy at law is sufficient to furnish the injured party the full relief to which he is entitled in the circumstances." (Emphasis added). *Van Robinson Ins. Agency, Inc. v. Harleysville Mut. Ins. Co*., 272 S.C. 127, 129, 249 S.E.2d 744, 745 (1978). Plaintiffs also have not shown a

[3] This Court does not address each and every claim raised by Plaintiffs, but briefly addresses only those elements that demonstrate Plaintiffs have not met their burden.

likelihood of success on their claim that the Attorney General lacked the authority to pay fees to W&H from the settlement proceeds. As noted above, S.C. Code Ann. §1-7-150 is unambiguous and allows the Attorney General to pay cost of litigation from the settlement proceeds. The statute does not require court approval for the payment of the fee, and the appropriate State Officers followed applicable law in disbursing the funds to meet the State's contractual obligations.

CONCLUSION

After hearing the issues and arguments of counsel and considering the materials submitted, this Court finds Plaintiffs lack standing and have failed to meet their burden for a Preliminary Injunction in this matter. Plaintiffs' Motion for Preliminary Injunction is **DENIED.** Accordingly, this Court dissolves the Temporary Restraining Order.

AND IT IS SO ORDERED.

[Electronic Signature to Follow]

Richland Common Pleas

Case Caption: South Carolina Public Interest Foundation , plaintiff, et al vs Alan Wilson , defendant, et al

Case Number: 2020CP4004603

Type: Order/Other

IT IS SO ORDERED!

s/ Alison Renee Lee

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
South Carolina Public Interest Foundation and John Crangle, individually and on behalf of all others similarly situated, Plaintiffs, v. Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefer, P.A., and Davidson, Wren & DeMasters, P.A., Defendants.	)	Case No. 2020-CP-40-04603 **ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND**

This matter came before the Court on October 23, 2020, by Plaintiffs South Carolina Public Interest Foundation and John Crangle, individually and on behalf of all others similarly situated (collectively Plaintiffs), Motion Pursuant to Rules 52(b) and 59(a), SCRCP, to Alter or Amend Order. Plaintiffs previously moved for a preliminary injunction to freeze the $75 million of settlement proceeds that Plaintiffs allege was unlawfully transferred to Defendant Willoughby & Hoefer P.A. and Davidson, Wren & DeMasters, P.A. law firms. Plaintiffs raised various arguments regarding the disbursement of the attorneys' fees. This Court issued an order on October 14, 2020, denying Plaintiffs' Motion for Preliminary Injunction and dissolved the Court's previous Temporary Restraining Order issued October 1, 2020. Plaintiffs now bring this Motion asserting this court failed to consider several arguments presented by Plaintiffs.

The Order denying preliminary injunction appropriately considered all the arguments. Plaintiffs argue this Court failed to appropriately consider *Adams v. McMaster*, 2020 WL 5939936, Op. No. 2020-001069 (Slip. Op. Oct. 7, 2020). This Court properly considered the legal issue relating to standing. However, the facts in Adams are distinguished from those in this case. Here, there is no need for future guidance on this matter.

This Court appropriately applied and considered the language of S.C. Code Ann. § 1-7-150(B) and S.C. Code Ann. § 1-7-85. For clarification on Proviso 59.8, the Court does not rely on Proviso 59.8 as the prevailing reason for its decision, nor does it consider the Proviso to be an

exception to the statute. The Court simply relies on the Proviso to demonstrate that the money from the settlement would not go to the General Fund as Plaintiffs indicate the statute requires. Additionally, the Court references the EBO's approval of the disbursements to show the Attorney General followed appropriate procedure for disbursement of funds and the disbursement was processed through several departments.

Furthermore, this Court reiterates the language of the Litigation Retention Agreement gave the Attorney General the discretion to seek Court approval. The Litigation Retention Agreement states, "When possible, the attorneys' fees and costs awarded to Special Counsel shall be approved by a Court of competent jurisdiction." *See* Plaintiff Exhibit 7 – Litigation Retention Agreement. This agreement provides the Attorney General with discretion in determining when and if the Court needs to approve the agreement. The Attorney General had a duty to fulfill his contractual obligations. Plaintiffs have no standing to challenge the terms of the Litigation Retention Agreement between the Attorney General and the law firms involved.

Lastly, this Court properly ruled Plaintiffs lack standing in this matter. Plaintiffs' standing and request for preliminary injunction are separate issues. The matter before the Court was to determine if a preliminary injunction was appropriate. The question of standing had to be determined. While this Court found Plaintiffs lack standing and the inquiry could have ended at that point, for judicial economy this Court also determined that a preliminary injunction could not be granted because Plaintiffs could not establish all of the criteria for its issuance.

CONCLUSION

Based on the evidence in the record and the arguments of counsel, this Court is unable to discover any material fact or principle of law that was overlooked or disregarded and further finds no error of law or facts not appropriately considered. Pursuant to SCRCP Rule 59(f), oral argument is not necessary.

Therefore, Defendant's Motion to Alter or Amend is **DENIED**.

AND IT IS SO ORDERED.

[Electronic Signature to Follow]

Richland Common Pleas

Case Caption: South Carolina Public Interest Foundation , plaintiff, et al vs Alan Wilson , defendant, et al

Case Number: 2020CP4004603

Type: Order/Other

IT IS SO ORDERED!

s/ Alison Renee Lee

EXHIBIT C

State of South Carolina
The Circuit Court of the Third Judicial Circuit

R. Kirk Griffin
Judge

215 North Harvin Street, Suite 226
Sumter, SC 29150
Phone: (803) 436-2150
Fax: (803) 436-2403
rgriffinj@sccourts.org

February 12, 2021

TO: JAMES G. CARPENTER, ESQUIRE
JAMES M. GRIFFIN, ESQUIRE
BADGE HUMPHRIES, ESQUIRE
WILLIAM H. DAVIDSON, ESQUIRE
GERALD MALLOY, ESQUIRE
JAMES T. RUTHERFORD, ESQUIRE
JOHN S. SIMMONS, ESQUIRE
J. EMORY SMITH JR., ESQUIRE
JOSEPH P. STROM, ESQUIRE
KENNETH P. WOODINGTON, ESQUIRE

FROM: R. KIRK GRIFFIN

RE: SOUTH CAROLINA PUBLIC INTEREST FOUNDATION AND JOHN CRANGLE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED V. ALAN WILSON, ATTORNEY GENERAL FOR THE STATE OF SOUTH CAROLINA WILLOUGHBY & HOEFER, P.A. AND DAVIDSON, WREN AND DEMASTERS, P.A.
2020-CP-40-04603

This matter was held via WebEx on January 26, 2021 with all parties represented by counsel. After reviewing the issues under advisement and all items submitted by the parties, **I respectfully grant the Defendants' Motions to Dismiss.**

The Court finds that Circuit Court Judge Alison Renee Lee's order dated October 14, 2020 is dispositive as to the issue of standing. As the Plaintiffs lack standing to maintain a claim, the Defendants' Motions to Dismiss must be granted. Because the standing issue is dispositive of the matters before the Court, the Court declines to rule on the remaining grounds for dismissal raised in the Defendants' memoranda.

Defense Counsel please draft a single proposed order within 30 days. Please include a detailed procedural history and factual background. Upon completion, please forward the proposed order to Plaintiffs' counsel. Upon review, please submit the order via efiling, and I will sign if appropriate.

If you have any questions, please feel free to contact my office.

RECEIVED
May 05 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2021-000343

South Carolina Public Interest Foundation and John Crangle, individually and on behalf of all others similarly situated, ... Appellants,

v.

Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefer, P.A., and Davidson, Wren & DeMasters, P.A., ... Respondents.

PROOF OF SERVICE

This is to certify that the undersigned counsel, an attorney with The Rutherford Law Firm, LLC, has caused to be served this day one (1) copy of Respondents Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefer, P.A. and Davidson, Wren & DeMasters, P.A.'s Motion to Dismiss and one (1) copy of Respondents Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefer, P.A. and Davidson, Wren & DeMasters, P.A.'s Memorandum in Support of Motion to Dismiss via electronic mail at the email addresses as stated in the Attorney Information System and as set forth below:

J. Emory Smith, Jr., Esquire
Alan M. Wilson, Esquire
Robert D. Cook, Esquire
Office of the Attorney General
esmith@scag.gov
awilson@scag.gov
bcook@scag.gov

William H. Davidson, II, Esquire
Kenneth P. Woodington, Esquire
Davidson, Wren & DeMasters, P.A.
wdavidson@dml-law.com
kwoodington@dml-law.com

James M. Griffin, Esquire
Badge Humphries, Esquire
Margaret N. Fox, Esquire
Griffin Humphries LLC
jgriffin@griffindavislaw.com
jgriffin@griffinhumphries.com
bhumphries@griffinhumphries.com
mfox@griffindavislaw.com

James G. Carpenter, Esquire
The Carpenter Law Firm, PC
james.carpenter@carpenterlawfirm.net

A copy of the email serving counsel as stated above is attached hereto.

s/J. Todd Rutherford
J. Todd Rutherford, S.C. Bar No. 12097

May 5, 2020
Columbia, South Carolina

Todd Rutherford

From:	Todd Rutherford
Sent:	Wednesday, May 5, 2021 4:24 PM
To:	jgriffin@griffindavislaw.com; jgriffin@griffinhumphries.com; bhumphries@griffinhumphries.com; mfox@griffindavislaw.com; james.carpenter@carpenterlawfirm.net
Cc:	esmith@scag.gov; awilson@scag.gov; bcook@scag.gov; William H. Davidson II; kwoodington@dml-law.com; Gerald Malloy; jsimmons@simmonslaw.com
Subject:	SC Public Interest Foundation et al v Wilson et al; Appellate Case No. 2021-000343
Attachments:	2021-05-05 Filing Ltr re Mot to Dismiss Memo in Support.pdf; 2021-05-05 Respondents' Motion to Dismiss.pdf; 2021-05-05 Respondents' Memo ISO Motion to Dismiss (w Exs).pdf

Counsel:

As permitted by part (g)(3) of Supreme Court Order 2020-05-29-02, I am herewith serving via email Respondents Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefer, P.A. and Davidson, Wren & DeMasters, P.A.'s Motion to Dismiss and Memorandum in Support of Motion to Dismiss (with Exhibits A, B, and C) in the above-captioned case. Shortly, I will be filing these documents with the Court of Appeals electronically as permitted by part c(6) of the Order, and will attach this email to the proof of service of same.

THE RUTHERFORD LAW FIRM, LLC
J. TODD RUTHERFORD
ATTORNEY AT LAW

2113 PARK STREET
P.O. BOX 1452
COLUMBIA, SC 29202

TELEPHONE: (803) 256-3003
FACSIMILE: (803) 256-9698

May 5, 2021

VIA ELECTRONIC FILING
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *South Carolina Public Interest Foundation and John Crangle, Individually and on behalf of all others similarly situated, v. Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefer, P.A., and Davidson, Wren & DeMasters, P.A.,* Appellate Case No. 2021-000343

Dear Ms. Kitchings:

Attached for electronic filing in accordance with Supreme Court Order 2020-05-29-02, part (c)(6), and pursuant to Rule 240 of the South Carolina Appellate Court Rules, please find Respondents Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefer, P.A. and Davidson, Wren, & DeMasters, P.A.'s Motion to Dismiss and Memorandum in Support. As permitted by Order 2020-05-29-02, part (d), no other copies, whether paper or electronic, are being provided.

By copy of this letter, we are serving all counsel of record via email as permitted by Order 2020-05-29-02, part (g)(3), and attached is a proof of service to that effect.

A check in the amount of $50.00 for the filing fee associated with this motion is being forwarded to your attention via U.S. Mail.

Thank you. If you have any questions, please call.

Sincerely,

THE RUTHERFORD LAW FIRM, LLC

s/J. Todd Rutherford

J. Todd Rutherford

Attachments

cc: James M. Griffin, Esquire
Badge Humphries, Esquire
Margaret N. Fox, Esquire
James G. Carpenter, Esquire

William H. Davidson, II, Esquire
Kenneth P. Woodington, Esquire
J. Emory Smith, Jr., Esquire
Alan M. Wilson, Esquire
Robert D. Cook, Esquire
(*all via email*)