THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas
Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2020-001348
Civil Action No. 2020-CP-36-00093

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

v.

Chad Connelly, Tom Persons, & South Carolina Educational Credit for Exceptional Needs Children Fund ..... Respondents.

INITIAL BRIEF OF RESPONDENTS CHAD CONNELLY, TOM PERSONS, & SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND

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May 21, 2021

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5. **Whether the South Carolina Court of Appeals should affirm the dismissal of Appellant's action seeking a judicial declaration that Exceptional SC expended in excess of two percent of the fund for its administration and related costs in violation of S.C. Code Ann § 12-6-3790 pursuant to the mootness doctrine where the intervening amendment of S.C. Code § 12-6-3790 raises the amount Exceptional SC may expend for administration of the fund and related costs to five percent of the fund.**

6. **Whether the trial court abused its discretion in dismissing Appellant's motion for perjury, contempt, and sanctions for false affidavit where the trial court did not have jurisdiction over Appellant's claims, did not consider whether Appellant owed a security bond after denying his motion for injunctive relief, and made no findings regarding the veracity of the declarations in the subject affidavit.**

STATEMENT OF THE CASE

Respondent South Carolina Educational Credit for Exceptional Needs Children Fund ("Exceptional SC") is a domestic nonprofit entity originally created by a legislative budget proviso and incorporated in South Carolina on June 16, 2016.[1] Exceptional SC is "organized as a public charity as defined by the Internal Revenue Code under Section 509(a)(1) through (4) and consist[s] only of contributions made to the fund." S.C. Code § 12-6-3790(B)(1). Exceptional SC grants tuition scholarships to qualifying special needs students who may benefit from the educational services provided by approved independent institutions with programs designed for students with disabilities. The scholarships are funded entirely by private donations for which donors receive a state tax credit.[2] Exceptional SC is governed by five directors and employs an executive director charged with administering the scholarship program. Respondent Tom Persons ("Persons") formerly served as a director of Exceptional SC. Respondent Chad Connelly ("Connelly") formerly served as executive director of Exceptional SC. At the time of the filing of Appellant's action, South Carolina law provided that Exceptional SC may expend up to two percent of the fund for administration and related costs pursuant to S.C. Code § 12-6-3790(B)(4). However, on May 17, 2021, the Governor of South Carolina signed into law an amendment to S.C. Code § 12-6-3790(B)(4) providing that "[t]he public charity may expend up to five percent of the fund for administration and related costs." Id.

[1] Effective May 18, 2018, South Carolina codified the mandate to create of Exceptional SC in S.C. Code § 12-6-3790.

[2] Pursuant to statute, Exceptional SC may not receive any appropriation of public funds and the amounts on deposit in the fund do not constitute public funds and are not property of the State. S.C. Code § 12-6-3790(B)(1), (2). Exceptional SC is also statutorily prohibited from expending public funds. S.C. Code § 12-6-3790(B)(4).

On February 12, 2020, Appellant, who proceeds *pro se*,[3] filed a summons and complaint as a citizen, resident, taxpayer, registered elector, and donor[4] to Exceptional SC challenging the conduct and administration of Exceptional SC. Specifically, Appellant sought a judicial declaration that Exceptional SC expended in excess of two percent of the fund for its administration and related costs in violation of S.C. Code Ann § 12-6-3790. In addition, Appellant sought immediate injunctive relief to prohibit Exceptional SC from expending any further amounts of the fund for its administration and related costs—the mechanism for processing donations, reviewing scholarship applications, and issuing scholarships. On February 24, 2020, Appellant also filed a Motion for Immediate Temporary Restraining Order and Notice of Motion and Motion for Temporary Injunction in the Injunction Action ("Motion for Injunction") again seeking, *inter alia*, immediate injunctive relief to prohibit Exceptional SC from expending any further amounts of the fund for its administration and related costs.

On February 27, 2020, the Honorable William P. Keesley entered an order denying Appellant's motion for a temporary restraining order and requiring Appellant to serve Respondents with the pleadings prior to consideration of Appellant's motion for preliminary injunction.[5] On March 4, 2020, Respondents filed a motion to deny Appellant's request for a preliminary injunction pursuant to Rule 65, SCRCP, and to dismiss the summons and complaint pursuant to Rules 12(b)(1), (2), (3) and (6), SCRCP. Respondents' motion included as an exhibit, *inter alia*, the Affidavit of Chad Connelly in support of Respondents' position that Appellant must post a security bond in the event the trial court granted the motion for a preliminary injunction.

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[3] Appellant is an attorney licensed to practice law by the State of Georgia. Appellant is not licensed to practice law by the State of South Carolina.

[4] Appellant made a *de minimis* donation to Exceptional SC for the purpose of asserting this challenge. (March 5, 2020 Tr. Hr'g p. 34, ll. 19-21 ("My donation, yes, it was rather de minimis. It was to check their process to make sure they're doing it the right way.").

[5] Appellant did not appeal the order denying the motion for a temporary restraining order.

On March 6, 2020, Respondents also filed a motion for an order imposing sanctions against Appellant for filing and serving pleadings for which there existed no good ground for support and which had been commenced in bad faith pursuant to Rule 11, SCRCP. [6] In support of the motion for sanctions, Respondents argued, *inter alia*, that any reasonable investigation by Appellant would have revealed that South Carolina law expressly reserves standing to challenge the conduct of a nonprofit corporation like Exceptional SC and its officers and directors to the Attorney General or a director or member of the nonprofit corporation. On May 15, 2020, Appellant responded by filing a motion for an order finding that Respondent Connelly committed perjury for filing a false affidavit. In addition, Appellant sought an order for contempt of court and sanctions against Respondent Connelly based upon his allegation that the declarations in the affidavit were false.

After determining that Appellant did not have standing to assert the claims contained in his pleadings, on June 30, 2020, the Honorable Donald B. Hocker filed an order denying Appellant's motion for preliminary injunction and dismissing Appellant's complaint with prejudice pursuant to Rules 12(b)(1) and (6), SCRCP. Judge Hocker also denied Respondents' motion for sanctions against Appellant. On July 13, 2020, Appellant filed a motion for reconsideration of the denial of the motion for preliminary injunction and dismissal of the summons and complaint. In addition, on July 15, 2020, Appellant filed a motion to stay the action so that Appellant could identify and substitute a party who did have standing to serve as a plaintiff in the action.

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6 The Honorable B. Hocker scheduled Appellant's motion for preliminary injunction for hearing on March 5, 2020. Although Respondents filed the Motion to Deny Preliminary Injunction and to Dismiss the Complaint on March 4, 2020, and the Motion for Sanctions on March 6, 2020, all parties consented to the Court's consideration of the motions at the hearing on March 5, 2020. (Or. Den. Mot. for Prelim. Inj. Dismissing Pls' Summons and Compl. with Prejudice and Den. Mot. for Sanctions, p. 1 n.1, June 30, 2020.) In addition, the Court allowed Appellant an additional 10 days to respond to Respondents' motions and Respondents an additional 10 days after service of any such response to serve and file any reply. (March 5, 2020 Tr. Hr'g p. 37 l. 14 – p. 38, l. 5.) After obtaining an extension to respond, Appellant served and filed responses to Respondents' motions and Respondents subsequently served and filed a timely reply.

On September 28, 2020, Judge Hocker filed an order denying Appellant's motions for reconsideration and for stay to substitute a plaintiff with standing, and for perjury, contempt, and sanctions against Respondent Connelly. On October 5, 2020, Appellant moved for reconsideration of the order denying Appellant's motion for perjury, contempt, and sanctions against Respondent Connelly. On October 6, 2020, Judge Hocker filed an order denying Appellant's motion for reconsideration.

On October 7, 2020, Appellant filed the notice of this appeal in which Appellant challenges Judge Hocker's orders denying Appellant's (1) motion for preliminary injunction and dismissing the summons and complaint, (2) motion to stay the action and substitute a plaintiff with standing, and (3) motion for perjury, contempt, and sanctions against Respondent Connelly. Appellant also appeals Judge Hocker's denial of Appellant's subsequently denied motions for reconsideration.

STANDARDS OF REVIEW

The trial court dismissed Appellant's summons and complaint pursuant to Rules 12(b)(1) and 12(b)(6), SCRCP. "The question of subject matter jurisdiction is a question of law for the court." Capital City Insurance Company v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) (quoting Chew v. Newsome Chevrolet, Inc., 315 S.C. 102, 104, 431 S.E.2d 631, 631 (Ct. App. 1993)). An appellate court reviews questions of law *de novo*. Id. In reviewing a trial court's dismissal for failure to state a claim pursuant to Rule 12(b)(6), SCRCP, an appellate court applies the same standard as the trial court—the pleadings must be construed liberally and all well-pled facts must be presumed true. Doe v. Bishop of Charleston, 407 S.C. 128, 134, 754 S.E.2d 494, 498-99 (2014). A claim should be dismissed when the facts alleged in the complaint do not support relief. Brouwer v. Sisters of Charity Providence Hospital, 409 S.C. 514, 519, 763 S.E.2d 200, 202 (2014). The prejudicial effect of a dismissal is determined by the trial court's exercise of its discretion, which will be reversed only for an abuse of discretion. See Berry v. McLeod, 328

S.C. 435, 449-50, 492 S.E.2d 794, 802 (Ct. App. 1997); Newman v. Old West, Inc., 286 S.C. 394, 396-97, 334 S.E.2d 275, 276 (1985). "An abuse of discretion occurs when the trial court's decision is unsupported by the evidence or controlled by an error of law." Strategic Resources Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) (citing County of Richland v. Simpkins, 348 S.C. 664, 668-69, 560 S.E.2d 902, 904 (Ct. App. 2002)). The trial court denied Appellant's motion for preliminary injunction pursuant to Rule 65, SCRCP. "An order granting or denying an injunction is [also] reviewed for abuse of discretion." Strategic Resources Co., 367 S.C. at 544, 627 S.E.2d at 689 (citing County of Richland, 348 S.C. at 668-69, 560 S.E.2d at 904). "The imposition of sanctions [also] will not be disturbed on appeal absent a clear abuse of discretion by the lower court." Runyon v. Wright, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996); see also Mauldin v. Heide, No. 2014-UP-081, 2014 WL 2579942, Feb. 26, 2014 at *1 ("A trial court's decision to award or deny sanctions will not be disturbed absent a clear abuse of discretion.").

ARGUMENT

I. The trial court properly dismissed Appellant's claims against Exceptional SC and its officer and director because South Carolina law does not accord Appellant standing to challenge the conduct of the nonprofit corporation and its officers and directors.

"Standing to sue is a fundamental requirement in instituting an action." Blandon v. Coleman, 285 S.C. 472, 475, 330 S.E. 2d 298, 299 (1985). "Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." Michael P. v. Greenville County Dept. of Social Services, 385 S.C. 407, 415, 684 S.E.2d 211, 215 (Ct. App. 2009). "To have standing . . . one must be a real party in interest. A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." Charleston County School District v. Charleston

County Election Commission, 336 S.C. 174, 181, 519 S.E.2d 567, 571 (1999) (quoting Anchor Point, Inc. v. Shoals Sewer Co., 308 S.C. 422, 428, 418 S.E.2d 546, 549 (1992)).

"Standing may be acquired: (1) by statute; (2) through the rubric of "constitutional standing;" or (3) under the "public importance" exception." ATC South Inc. v. Charleston County, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). "A party seeking to establish standing bears the burden of proving it." South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank, 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013). A *pro se* litigant "cannot obtain standing by alleging he is acting in another's interest if he himself has suffered no individual injury." Lennon v. South Carolina Coastal Council, 330 S.C. 414, 416, 498 S.E.2d 906, 907 (Ct. App. 1998).

A. South Carolina's Code of Laws expressly and unambiguously reserves standing to challenge the actions of Exceptional SC and its officers and directors to the nonprofit corporation's directors and members and the South Carolina Attorney General.

"Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation." Youngblood v. S.C. Department of Social Services, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013). "'When the language of a statute is plain, unambiguous, and conveys a clear and definite meaning, the application of standard rules of statutory interpretation is unwarranted.'" Tilley v. Pacesetter Corporation, 355 S.C. 361, 373, 585 S.C. 292, 298 (2003) (quoting State v. Benjamin, 341 S.C. 160, 163, 533 S.E.2d 606, 607 (Ct. App. 2000). "The statutory terms, therefore, must be applied according to their literal meaning." Id. "In such circumstances, [a] Court simply lacks the authority to look for or impose another meaning and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope." Id. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533

S.E.2d 578, 581 (2000) (citing Charleston County School District v. State Budget and Control Board, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993)). "The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute." Freemantle v. Preston, 398 S.C. 186, 194, 728 S.E.2d 40, 44 (2012).

In this case, the South Carolina Nonprofit Corporation Act expressly and unambiguously reserves standing to challenge the actions of nonprofit corporations like Exceptional SC and its officers and directors to the entity's directors and members and the South Carolina Attorney General. The South Carolina Nonprofit Corporation Act expressly provides:

> [a nonprofit] corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights . . . by the Attorney General, a director, or by a member or members in a derivative proceeding.

S.C. Code § 33-31-304; see also Williamson v. Bermuda Run Investor Development Group, Inc., No. 2006-IP-279, 2006 WL 7286063 at *3-4 (Ct. App. June 13, 2006) (affirming dismissal of an ultra vires action where the pleadings did not strictly comply with S.C. Code § 33-31-304). The South Carolina Reports' Comments to this statute emphasize the intentional difference in treatment of challenges to the actions of those in charge of nonprofit corporations to those in charge of for-profit corporations, which are governed by the South Carolina Business Corporation Act, as follows:

> Under this section of the Nonprofit Act, a member of a nonprofit corporation has no right to bring a direct attack against a proposed action. The claim may only be brought derivatively. If an action has been accomplished and the members believe that the directors or others in charge have done something wrong, have acted "ultra vires," the members may bring a derivative action against the alleged wrongdoers. There was consideration of adopting language more similar to the South Carolina Business Corporation Act. However, the South Carolina Business Corporation Act, as noted, provides for damage actions against the board which was viewed as undesirable in the context of nonprofit corporations. Consideration was also given as to whether the Attorney General should have authority to bring an action against directors of mutual benefit corporations as well as against directors of public benefit

> corporations. It was determined that the members of these corporations would have sufficient interest in the entity to adequately police any alleged wrongdoing.

S.C. Code § 33-31-304 South Carolina Reporters' Comments. This statute accords with South Carolina common law, which has long held that the doctrine of ultra vires cannot be used as a sword by a third party to try and invalidate an action by a nonprofit corporation. Deborde v. St. Michaels and All Angels Church, 272 S.C. 490, 502, 252 S.E.2d 876, 881 (1979) (holding that parties who are not members of a nonprofit corporation have no standing to challenge the conduct of the corporation).

The South Carolina Nonprofit Corporation Act further guards against outside challenges to the administration of nonprofit corporations by similarly reserving standing to remove a director of a nonprofit corporation to the corporation, certain of its members, and the South Carolina Attorney General. S.C. Code § 33-31-810. In addition, the Act provides that:

> director[s] shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferror of the property.

S.C. Code § 33-31-830(e). These statutes similarly accord with South Carolina's long common law tradition of strictly limiting who may challenge to the operation of nonprofit corporations. Davis v. Hamm, 300 S.C. 284, 288, 387 S.E.2d 676, 678 (Ct. App. 1989) ("[T]he liability of directors or officers of a corporation for loss to the corporation due to their mismanagement is an asset of the corporation and [] any recovery on such a cause of action belongs solely to the corporation."); see also Ward v. Griffin, 295 S.C. 219, 221, 367 S.E.2d 703, 703-04 (Ct. App. 1988) ("A suit brought by a stockholder is a derivative action if the gravamen of the complaint is injury to the corporation and not injury to the individual interests of the stockholder.")

As discussed above in the South Carolina Reports' Comments, the South Carolina Nonprofit Corporation Act expressly provides that the South the South Carolina Attorney General is the proper party to protect the interests of the public at large in the matter of administering public charities like Exceptional SC. This is expressly reinforced in the statutes creating and empowering the South Carolina Attorney General. See S.C. Code 1-7-117 ("The duties, functions, and responsibilities of the Division of Public Charities of the office of the Secretary of State are devolved upon the Attorney General's office[.]"). In fact, the statutes creating and empowering the South Carolina Attorney General expressly provide that:

> The Attorney General shall enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration thereof and, when necessary, prosecute corporations which fail to make to the General Assembly any report or return required by law.

S.C. Code § 1-7-130; see also Epworth Children's Home v. Beasley, 365 S.C. 157, 163-64 n.3, 616 S.E.2d 710, 713-14 n.3 (2005); Furman University v. McLeod, 238 S.C. 475, 483, 120 S.E.2d 865, 868 (1961) ("It is also the general law that in the matter of administering or enforcing charitable trusts, the Attorney General is the proper party to protect the interest of the members of the public at large, as distinct from those having 'immediate or peculiar interests.'").

Appellant does not refute the language of these statutes or cite any other statute that might provide him standing. Appellant, instead, argues that South Carolina courts should ignore these statutes and create a special exception for him to challenge the conduct of Exceptional SC and its officers and directors because the State of South Carolina mandated the creation of Exceptional SC. If the General Assembly intended to distinguish Exceptional SC from other nonprofit corporations and public charities, the General Assembly would have expressed that intent in the statute governing Exceptional SC. Instead, the statute mandating the creation of Exceptional SC does nothing to distinguish Exceptional SC from other public charities or provide for any private

right of action to enforce its provisions. See S.C. Code § 12-6-3790. In fact, the statute expressly provides that "[t]he fund must be organized as a public charity[.]" S.C. Code § 12-6-3790(B)(1).

The language of these statutes is clear and unambiguous. Standing to challenge the actions or conduct of Exceptional SC and its officers and directors remains expressly and unambiguously reserved to the entity's directors and members and the South Carolina Attorney General—not a *pro se* litigant alleging that he is acting on behalf of others' interests. This Court, therefore, should affirm the trial court's determination that Appellant does not have standing to challenge the actions of Respondents because South Carolina law expressly and unambiguously provides that Appellant lacks standing to bring the asserted claims.

B. South Carolina common law does not otherwise accord Appellant constitutional standing to challenge the conduct of Exceptional SC and its officers and directors because Appellant has not suffered a concrete and particularized injury-in-fact caused by Exceptional SC capable of being redressed by a favorable decision under South Carolina law.

"In order to have standing to present a case before the courts of this State, a party must have a personal stake in the subject matter of the lawsuit." Duke Power Co. v. South Carolina Public Service Commission, 284 S. C. 81, 96, 326 S. E. 2d 395, 404 (1985). "Standing is comprised of three elements: (1) the plaintiff must have suffered an injury-in-fact that is concrete and particularized, and actual and imminent as opposed to hypothetical; (2) the injury and the conduct complained of the defendant must be causally connected; and (3) it must be likely that the injury will be redressed by a favorable decision." Michael P., 385 S.C. at 416, 684 S.E.2d at 215. "To meet the 'stringent' test for standing, 'the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not 'conjectural' or 'hypothetical.'" Jowers v. South Carolina Department of Health and Environmental Control, 423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018) (quoting Sea Pines

Association for Protection of Wildlife, Inc. v. S.C. Department of Natural Resources, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001)).

Appellant alleges constitutional standing to challenge the actions and conduct of Exceptional SC and its officer and director based solely on his status as a donor to the nonprofit corporation. (See Appellant's Initial Brief, pp. 6-11.) Appellant, however, concedes that South Carolina's common law does not provide standing to donors to bring such a challenge against nonprofit corporations. (Appellant's Initial Brief, pp. 6-7) ("Appellant agrees that the general rule states that 'typical' donors to 'typical' non-profits do not have standing to sue over the use of funds.").) Instead, Appellant argues that this Court should ignore South Carolina law and adopt foreign common law that directly conflicts with South Carolina law to accord him standing as a donor to Exceptional SC under the theory that Exceptional SC is different than other nonprofit corporations because the State of South Carolina caused the formation of Exceptional SC.

As a threshold matter, Exceptional SC is not unique by virtue of having been formed pursuant to statute. South Carolina law has caused the formation of various other nonprofit corporations for various purposes. For example, the State of South Carolina has caused to be formed a nonprofit eleemosynary corporation for the purpose of administering scholarships and other financial assistance to The Citadel. S.C. Code § 59-121-55(a) ("The Board of Visitors, or individual members or employees of the board or college as designated by the board, are authorized to form or cause to be formed a nonprofit eleemosynary corporation pursuant to Chapter 31 of Title 33, the purpose of which is to provide scholarship and other financial assistance or support to the college."). The State of South Carolina has similarly enacted a statute that created the Special School of Science and Mathematics Endowment Fund. S.C. Code § 59-48-70 ("The endowment fund must be organized on a nonprofit basis as a separate legal entity recognized under and in

compliance with the laws of this State."). The State of South Carolina has also "established the Children's Trust Fund of South Carolina, an eleemosynary corporation, the resources of which must be used to award grants to private nonprofit organizations and qualified state agencies in order to stimulate a broad range of innovative child abuse and neglect prevention programs to meet critical needs of South Carolina's children." S.C. Code § 63-11-910.

As discussed above, Appellant's theory that his status as a donor accords him standing also directly contravenes the South Carolina Nonprofit Corporation Act. The two foreign cases cited to support Appellant's theory that his donation created either an implied contract subject to a condition subsequent or a charitable trust directly conflict with South Carolina law because their determinations and reasoning are expressly predicated upon the statutes and common law applicable in their respective jurisdictions, which expressly conflict with South Carolina law. Moreover, the cases are distinguishable from the instant case in that the donations in each case included express written conditions that limited the use of the donations and empowered the donee to enforce those limitations, which Appellant does not allege.

In LB Research and Education Foundation v. UCLA Foundation, 29 Cal.Rptr.3d 710 (Cal. Ct. App. 2005), the California Court of Appeals determined that California law permits the donor of a gift given subject to express written conditions to challenge the use of the donated funds because the California Uniform Supervision of Trustees for Charitable Purposes Act expressly permits such actions. Id. at 714-16 (citing Cal. Gov. Code §§ 12591, 12598; City of Palm Springs v. Living Desert Reserve, 82 Cal.Rptr.2d 859 (Cal. Ct. App. 1999); Holt v. College of Osteopathic Physicians & Surgeons, 40 Cal.Rptr. 244, 247 (Cal. 1964). The California Uniform Supervision of Trustees for Charitable Purposes Act provides as follows:

> The Attorney General may institute appropriate proceedings to secure compliance with this article and to invoke the jurisdiction of the court. The powers and duties

> of the Attorney General provided in this article are in addition to the Attorney General's existing powers and duties. **This article does not impair or restrict the jurisdiction of any court with respect to any of the matters covered by it, except that a court shall not have jurisdiction to modify or terminate any trust of property for charitable purposes unless the Attorney General is a party to the proceedings.**
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> **The primary responsibility for supervising charitable trusts in California, for ensuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations, resides in the Attorney General.**

Cal. Gov. Code 12591, 12598 (emphasis added). Accordingly, the California Court of Appeals held that "[a]lthough the [California] Attorney General has primary responsibility for the enforcement of charitable trusts, the need for adequate enforcement is not wholly fulfilled by the authority given him." LB Research and Education Foundation, 29 Cal.Rptr.3d at 717. Nevertheless, the California Court of Appeals warned that such standing is limited "'to enforcement by the fiduciaries who are both few in number and charged with the duty of managing the charity's affairs.'" Id. (quoting Holt, 40 Cal.Rptr. at 248).

Similarly, in Smithers v. Saint Luke's-Roosevelt Hospital Center, 723 N.Y.S.2d 426 (N.Y. App. Div. 2001), the New York Court of Appeals determined that New York common law permits the estate of a donor of a charitable gift has standing to sue the donee to enforce the terms of the gift where the deceased donor expressly reserved to himself the right enforce the express terms of the gift. The Smithers Court recognized that New York common law "explicitly forecloses the conclusion that the [New York] Attorney General's standing in these actions is exclusive" and that "[i]nstead, the [New York] Attorney General [only] has the statutory power and duty to represent the beneficiaries of any disposition for charitable purposes." Id. at 433.

By contrast, as discussed above, the South Carolina Nonprofit Corporation Act expressly reserves standing to challenge the actions of a nonprofit corporation to the entity's directors and members and the South Carolina Attorney General. S.C. Code § 33-31-304 & South Carolina Reports' Comments; Deborde, 272 S.C. at 502, 252 S.E.2d at 881 (holding that parties who are not members of a nonprofit corporation have no standing to challenge the conduct of the corporation). Unlike in the foreign jurisdictions cited by Appellant, there is no statutory provision in the South Carolina Code of Laws or South Carolina common law that provides standing to a donee to challenge the administration of a nonprofit corporation—let alone where the donor did not expressly reserve to himself the right to enforce the express terms of the gift. Accordingly, under South Carolina law, Appellant does not have standing to challenge the actions or conduct of Exceptional SC and its officer and director under the theory that his *de minimis* and unconditional donation created either an implied contract subject to a condition subsequent or a charitable trust.

Absent obtaining constitutional standing by virtue of his status as a donor, Appellant's commonality with every other citizen of South Carolina would necessarily defeat the constitutional requirement of a concrete and particularized injury. ATC South Inc., 380 S.C. at 198, 669 S.E.2d at 340-41. Accordingly, this Court should affirm the trial court's determination that Appellant does not have standing to challenge the actions of Respondents because South Carolina law expressly and unambiguously provides that Appellant lacks standing to bring the asserted claims.

C. Appellant does not have taxpayer standing to challenge the conduct of Exceptional SC and its officers and directors because Exceptional SC is a nonprofit corporation that cannot receive or expend public funds.

"[A] taxpayer may maintain an action in equity, on behalf of himself and all other taxpayers, to restrain public officers from paying out public money for purposes unauthorized by law." Kirk v. Clark, 191 S.C. 205, 205, 4 S.E.2d 13, 15 (1939) (internal citations omitted).

However, "[t]he general rule is that a taxpayer may not maintain a suit to enjoin the action of State officers when he has no special interest and his only standing is the exceedingly small interest of a general taxpayer." Crews v. Beattie, 197 S.C. 32, 49, 14 S.E.2d 351, 357–58 (1941). "The individual tax-payer, as such merely, can obtain a standing in court only by alleging and proving that the illegal act complained of will inflict damage special and peculiar to himself, etc." Mauldin v. City Council of Greenville, 33 S.C. 1, 1, 11 S.E. 434, 434-35 (1890).

Appellant generally alleges standing to challenge the actions and conduct of Exceptional SC and its officer and director based on his status as a taxpayer. Taxpayer standing, however, requires the allegation that public funds are being expended in a manner or for a purpose unauthorized by law that causes particular harm to the plaintiff. Id. In this case, Appellant has failed to allege either of these two required elements.

First, Appellant does not and cannot allege that Respondents expended public funds. Exceptional SC is a nonprofit corporation public charity that cannot receive any appropriation of public funds or expend public funds. S.C. Code § 12-6-3790(B)(1), (2). In fact, South Carolina law expressly establishes that any amounts on deposit in the fund do not constitute public funds and are not property of the State. S.C. Code § 12-6-3790(B)(1). The State of South Carolina also does not have any claim to or interest in the amounts on deposit. § 12-6-3790(B)(2). Exceptional SC also may not expend public funds to administer the program. § 12-6-3790(B)(4). Accordingly, South Carolina law does not accord Appellant taxpayer standing to challenge the conduct of Exceptional SC and its officer or director.

Second, Appellant does not allege any particular damage distinguishable from that which is alleged to have been suffered by any other taxpayer in South Carolina. Appellant merely alleges that Exceptional SC expended in excess of two percent of the fund for its administration and related

costs in violation of S.C. Code Ann § 12-6-3790. Accordingly, any alleged damage suffered by Appellant would necessarily be common to all taxpayers in South Carolina. As a result, even if Exceptional SC did receive, hold, or expend public funds, Appellant's alleged interest in the action would be only the exceedingly small interest of a general taxpayer.

As a result, Appellant cannot have taxpayer standing to challenge the conduct of Exceptional SC and its officers and directors. Accordingly, this Court should affirm the trial court's determination that Appellant does not have standing to challenge the actions of Respondents.

D. The public importance exception to the traditional requirements of constitutional standing does not accord Appellant standing to challenge the conduct of Exceptional SC and its officers and directors because Appellant's claims raise no issue of the constitutionality or legality of government action that cannot be asserted by a real party in interest who can show the required injury.

The general rule is that "[a] private individual may not invoke judicial power to determine the validity of an executive or legislative act unless he can show that he has sustained, or is in immediate danger of sustaining, a direct injury as a result of that action." Blandon, 285 S.C. at 475, 330 S.E.2d at 299 (citing Ex parte Levitt, 302 U.S. 633, 633 (1937)). "'Moreover, the injury must be of a personal nature to the party brining the action, not merely of a general nature which is common to all members of the public.'" Sloan v. Greenville County, 356 S.C. 531, 548, 590 S.E.2d 338, 347 (2003) (quoting Joytime Distributors & Amusement Co., Inc. v. State, 338 S.C. 634, 639-40, 528 S.E.2d 647, 650 (1999)). "'[I]t is not sufficient that he has merely a general interest common to all members of the public.'" Sloan v. School District of Greenville County, 342 S.C. 515, 518-19, 537 S.E.2d 299, 301 (Ct. App. 2000) (quoting Florence Morning News, Inc. v. Building Commission, 265 S.C. 389, 398, 218 S.E.2d 881, 884-85 (1975)). "This doctrine is founded upon the salutary public policy of limiting the judicial process to real controversies

between the parties to the proceeding." Crews, 197 S.C. at 49, 14 S.E.2d at 357–58. Accordingly, "[t]he mere fact that the issue is one of public importance does not confer upon any citizen or taxpayer the right to invoke per se a judicial determination of the issue." Id.

"The public importance exception [, however,] grants standing to a party who has not suffered [such] a particularized injury where the issue involved is of such public importance that its resolution is required for future guidance." South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank, 403 S.C. at 645, 744 S.E.2d at 524 (citing ATC South Inc., 380 S.C. at 198, 669 S.E.2d at 341). "Unlike with constitutional standing, a party is not required to show he has suffered a concrete or particularized injury in order to obtain public importance standing." South Carolina Public Interest Foundation v. South Carolina Department of Transportation, 421 S.C. 110, 118, 804 S.E.2d 854, 858 (2017) (citing South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank, 403 S.C. at 645, 744 S.E.2d 521at 524.

This exception is predicated upon the rationale for South Carolina's public importance exception to mootness[7]—that "an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." Sloan v. Greenville County, 361 S.C. 568, 570-71, 606 S.E.2d 464, 465-66 (2004) (quoting Curtis v. State, 345 S.C. 557, 549 S.E.2d 591 (2001)). "Whether an issue of public importance exists necessitates a cautious balancing of the competing interests presented[.]" ATC South, Inc., 380 S.C. at 198, 669 S.E.2d at 341. "This Court has explained:

[7] "'In the civil context, there are three general exceptions to the mootness doctrine. First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review. Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.'" Sloan v. Greenville County, 356 S.C. at 552-53, 590 S.C. at 349-50 (quoting Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001).

> An appropriate balance between the competing policy concerns underlying the issue of standing must be realized. Citizens must be afforded access to the judicial process to address alleged injustices. On the other hand, 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."

Id. (quoting Sloan v. Sanford, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004). "The key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance." ATC South, Inc. v. Charleston County, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008); see also South Carolina Public Interest Foundation v. South Carolina Department of Transportation, 421 S.C. at 118, 804 S.E.2d at 858 ("[S]ince many issues may be of public interest, or importance, '[t]he key ... is whether a resolution is needed for future guidance.'"); Vicary v. Town of Awendaw, 425 S.C. 350, 359, 822 S.E.2d 600, 604 (2018) ("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 public guidance.").

Nevertheless, the public importance exception is inapplicable where "[t]he case presents no issue of the constitutionality or legality of government action [or] the claims asserted could be brought by other parties who can show the required injury." Carnival Corporation v. Historic Ansonborough Neighborhood Associations, 407 S.C. 67, 80-81, 753 S.E.2d 846, 853 (2014). Moreover, South Carolina courts "'must be cautious with this exception, lest it swallow the rule." Jowers, 423 S.C. at 360, 815 S.E.2d at 455 (quoting South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank, 403 S.C. at 646, 744 S.E.2d at 524).

As a threshold matter, the public importance exception does not accord Appellant standing to challenge the conduct of Exceptional SC and its officers and directors because Exceptional SC is a nonprofit corporation governed by the South Carolina Nonprofit Corporation Act, not an

executive or legislative body. In addition, its officers and directors are not executive or legislative officers. Accordingly, whether Exceptional SC expended in excess of two percent of its funds on administrative expenses and related costs does not constitute an executive or legislative act. Instead, Exceptional SC is a nonprofit corporation subject to the review of its members and directors and the South Carolina Attorney General. The public importance exception simply does not accord any citizen of South Carolina standing to challenge the conduct of a nonprofit corporation and its officers and directors. See Carnival Corporation, 407 S.C. at 80-81, 753 S.E.2d at 853; see also S.C. Code § 33-31-304; see also Williamson, No. 2006-IP-279, 2006 WL 7286063 at *3-4. Appellant's challenge also does not concern a public matter in need of urgent court resolution. Appellant's claim is simply a third-party ultra vires action challenging to the conduct of a nonprofit corporation.

South Carolina courts have been justly cautious in applying the public importance exception only to matters implicating the constitutionality or legality of government action that are capable of evading review. See, e.g., South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank, 403 S.C. 640, 744 S.E.2d 521 (2013)(issue of whether statute governing composition of board of directors of state infrastructure bank was unconstitutional); Davis v. Richland County Council, 372 S.C. 497, 642 S.E.2d 740 (2007) (action challenging constitutionality of act altering method for electing members of county commission); Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999) (county issuing tax exempt bonds for purchase of a medical facility affecting the public health and welfare); Sloan v. School District of Greenville County, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000) (unlawful expenditure of money raised by taxation). In general, the public interest involved is the prevention of the unlawful expenditure of money raised by taxation or the accountability and integrity of government action.

See, e.g., Sloan v. Greenville County, 356 S.C. at 550, 590 S.E.2d at 349 (quoting Sloan v. School District of Greenville County, 342 S.C. at 523, 537 S.E.2d at 303). A third-party challenge to the conduct and administration of a nonprofit corporation does not constitute an issue of such public importance as to ignore the South Carolina Nonprofit Corporation Act and grant any citizen standing to challenge its conduct and administration.

Moreover, judicial resolution of Appellant's claims is not needed for future guidance because the relevant provisions of both S.C. Code § 12-6-3790 and S.C. Code § 33-31-304 are clear and unambiguous and enforceable by real parties in interest. The statute mandating the creation of Exceptional SC provides that "[t]he fund must be organized as a public charity [, which] may expend up to two percent of the fund for administration and related costs." S.C. Code § 12-6-3790(B)(1), (4). The South Carolina Nonprofit Corporation Act, in turn, provides that "[a nonprofit] corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights . . . by the Attorney General, a director, or by a member or members in a derivative proceeding." S.C. Code § 33-31-304. Accordingly, there are real parties in interest with standing under South Carolina law to challenge the conduct and administration of Exceptional SC, including the South Carolina Attorney General who is the proper party to protect the interests of the public at large in the matter of administering public charities like Exceptional SC. See S.C. Code 1-7-117; S.C. Code § 33-31-304. As a result, there is no imperative and manifest urgency to establish a rule for the future conduct of Exceptional SC nor any danger of the issue avoiding review so as to confer standing on any citizen of South Carolina to challenge its administration.

As Appellant's claims raise no issue of the constitutionality or legality of government action and no issue that cannot be asserted by a real party in interest, this Court should affirm the

trial court's determination that Appellant does not have standing to challenge the actions of Respondents.

II. The intervening amendment of S.C. Code § 12-6-3790 raised the amount Exceptional SC may expend for administration of the fund and related costs to five percent of the fund moots Appellant's action.

In general, South Carolina courts "may only consider cases where a justiciable controversy exists." Sloan v. Greenville County, 356 S.C. at 552, 590 S.E.2d at 349. "Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case nonjusticiable." Id. (citing Curtis, 345 S.C. at 567, 549 S.E.2d at 596). "This Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." Id. (citing Byrd v. Irmo High School, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy." Id. "This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." Id. (citing Curtis, 345 S.C. at 567, 549 S.E.2d at 596).

At the time of the filing of Appellant's action, South Carolina law provided that Exceptional SC may expend up to ***two percent*** of the fund for administration and related costs pursuant to S.C. Code § 12-6-3790(B)(4). However, on May 17, 2021, the Governor of South Carolina signed into law an amendment to S.C. Code § 12-6-3790(B)(4) providing that "[t]he public charity may expend up to ***five percent*** of the fund for administration and related costs." S.C. Code § 12-6-3790(B)(4) (emphasis added). As the intervening amendment of S.C. Code § 12-6-3790 raises the amount Exceptional SC may expend for administration of the fund and related costs to five percent of the fund, Appellant's action seeking a judicial declaration that Exceptional SC expended in excess of two percent of the fund for its administration and related costs in violation of S.C. Code Ann § 12-6-3790 no longer raises a justiciable controversy. Accordingly,

this Court should affirm the trial court's dismissal of Appellant's action pursuant to the mootness doctrine.

III. The trial court did not abuse its discretion in dismissing Appellant's motion for perjury, contempt, and sanctions for false affidavit where the trial court did not have jurisdiction over Appellant's claims, did not reach the issue in support of which the affidavit had been proffered, and made no findings regarding the veracity of the allegedly false affidavit.

"A court's subject matter jurisdiction is determined by whether it has the authority to hear the type of case in question." Allison v. W.L. Gore & Associates, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011). "A court lacking subject matter jurisdiction . . . has no authority to act[.]" Dove v. Gold Kist, Inc., 314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994). "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Rule 12(h)(3), SCRCP; see also Chet Adams Company v. James F. Pedersen Company, 307 S.C. 33, 36, 413 S.E.2d 827, 828 (1992) (citing Hoover v. Hoover, 271 S.C. 177, 180, 246 S.E.2d 179, 180 (1978)) ("Acts by a court as to a matter over which it has no jurisdiction are void . . . once a lack of jurisdiction was determined, the court would have to dismiss the action and could not order a stay.")).

One requirement of subject-matter jurisdiction is standing.[8] Anders v. South Carolina Parole & Community Corrections Board, 279 S.C. 206, 211, 305 S.E.2d 229, 231 (1983) ("Having found that the plaintiffs lacked standing to bring this action, we hold that the trial judge did not have subject-matter jurisdiction and, accordingly, reverse the Order which granted the injunction."); see also 24th Senatorial District Republican Committee v. Alcorn, 820 F.3d 624, 635

[8] Although the South Carolina Supreme Court has recently held that "the issue of a party's status as real party in interest does not involve subject matter jurisdiction . . . there is a difference between the concepts of 'standing,' 'capacity to sue,' and 'real party in interest.'" Bardoon Properties, NV v. Eidolon Corporation, 326 S.C. 166, 169, 169 n.3, 485 S.E.2d 371, 373, 373 n.3. (1997) (citing Richland County Recreation District v. City of Columbia, 290 S.C. 93, 95, 348 S.E.2d 363, 364 (1986); Anders v. South Carolina Parole & Community Corrections Board, 279 S.C. 206, 305 S.E.2d 229 (1983)).

(4th Cir. 2016) (Traxler, Chief Judge, dissenting) (quoting Miller v. Brown, 462 F.3d 312, 316 (4th Cir. 2006) ("Plaintiffs have 'the burden of establishing standing' in order to show that a district court possesses subject-matter jurisdiction over a case.")). "Constitutional standing is based on Article III of the United States Constitution, which limits the jurisdiction of the federal courts to actual cases and controversies." Preservation Society of Charleston v. South Carolina Department of Health and Environmental Control, 430 S.C. 200, 209, 845 S.E.2d 481, 486 (2020). "One element of the case-or-controversy requirement is that plaintiffs must establish that they have standing to sue." Beck v. McDonald, 848 F.3d 262, 269 (4th Cir. 2017) (affirming a trial court's dismissal for lack of subject matter jurisdiction on the grounds that the plaintiff lacked standing) (quoting Clapper v. Amnesty International USA, 568 U.S. 398, 408 (2013)).

In this case, the trial court determined that Appellant did not have standing to assert the claims contained in his pleadings and, therefore, denied Appellant's motion for injunctive relief and dismissed Appellant's complaint with prejudice upon jurisdictional grounds. (June 30, 2020 Order Denying Plaintiff's Motion for Preliminary Injunction and Dismissing Plaintiff's Summons and Complaint with Prejudice and Denying Motion for Sanctions). Once the trial court determined it lacked jurisdiction, the trial court no longer had the authority to act other than to deny Appellant's motion for injunctive relief and dismiss Appellant's complaint with prejudice. Accordingly, the trial court's denial of Appellant's motion for perjury, contempt, and sanctions cannot constitute an abuse of discretion because denial was the only option available under South Carolina law.

Even if the trial court had subject matter jurisdiction, *arguendo*, the trial court did not err in denying the motion without considering whether Appellant must post a security bond or the subject affidavit because the denial of Appellant's request for injunctive relief mooted whether Appellant must post a security bond in the event the trial court granted the motion for a preliminary

injunction. (September 28, 2020 Order, p. 3); see also Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) ("In light of our disposition of the case, it is not necessary to address Futch's remaining issues."). Accordingly, the trial court did not abuse its discretion in denying the motion without making any factual findings regarding the veracity of the affidavit.

Even if the trial court had questioned the veracity of the affidavit, *arguendo*, the trial court did not err in denying the motion because trial courts are not required to impose sanctions for the filing of an inaccurate affidavit. Rule 11(a), SCRCP ("If a . . . paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it . . . an appropriate sanction[.]") (emphasis added); Runyon, 322 S.C. at 19, 471 S.E.2d at 162 ("The imposition of sanctions . . . will not be disturbed on appeal absent a clear abuse of discretion by the lower court."); see also Mauldin v. Heide, No. 2014-UP-081, 2014 WL 2579942, Feb. 26, 2014 at *1 ("A trial court's decision to award or deny sanctions will not be disturbed absent a clear abuse of discretion.").

Moreover, the subject affidavit is not inaccurate or misleading. In fact, the subject affidavit is expressly clear and unambiguous as to the manner in which Respondent Chad Connelly calculated the allegedly inaccurate amounts contained in the affidavit. As a result, the trial court could not have abused its discretion in denying Appellant's motion for perjury, contempt, and sanctions.

CONCLUSION

For the foregoing reasons, this Court should affirm the trial court's Order dismissing Appellant's claims against Respondents Chad Connelly, Tom Persons, & South Carolina Educational Credit for Exceptional Needs Children Fund.

Respectfully submitted,

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– and –

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May 21, 2021

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas
Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2020-001348
Civil Action No. 2020-CP-36-00093

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

v.

Chad Connelly, Tom Persons, South Carolina Educational Credit for Exceptional Needs Children Fund ……... Respondents.

PROOF OF SERVICE

I, the undersigned employee of Barnwell Whaley Patterson & Helms, LLC, herby certify that pursuant to Rules 208, 209, and 262(b), SCACR, and South Carolina Supreme Court Order No. 2020-05-29-02, I have served the ***Initial Brief of Respondents Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund*** and the ***Designation of Matter to be Included in the Record on Appeal on Behalf of Respondents Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund*** in this matter upon the Clerk of the South Carolina Court of Appeals, all counsel of record, and all *pro se* parties by electronic mail or mailing a copy by United States Mail, postage prepaid, on May 6, 2021, to the following addresses:

The Honorable Jenny Abbot Kitchings
Clerk, South Carolina Court of Appeals
Email: ctappfilings@sccourts.org

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, South Carolina 29615
Email: jeff@apogeetax.com

/s Beverly Mitton
Beverly Mitton

May 21, 2021

EST. 1938
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JUSTIN P. NOVAK
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JNOVAK@BARNWELL-WHALEY.COM

RECEIVED
May 21 2021
SC Court of Appeals

May 21, 2021

Via Email Only
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211
Email: ctappfilings@sccourts.org

RE: Jefferson Davis, Jr., Appellant, v. Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund, Respondents.
Appellate Case No. 2020-001348
Our Matter No. 2026.116

Dear Ms. Kitchings:

Please find attached for filing an electronic copy of the ***Initial Brief of Respondents Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund*** and the ***Designation of Matter to be Included in the Record on Appeal on Behalf of Respondents Chad Connelly, Tom Persons & South Carolina Educational Credit for Exceptional Needs Children Fund*** in the above referenced matter. Also enclosed is a ***Proof of Service*** of these documents. By copy of this letter, I am also serving a copy of these documents upon the Appellant, who is proceeding *pro se*.

Sincerely,

s/ Justin P. Novak
Justin P. Novak

JPN/bbm
Enclosures

cc: Jefferson Davis, Jr., pro se (via U.S. Mail and E-mail)