CORRECTED VERSION[1]

TO: CHAIRMAN AND MEMBERS SENATE EDUCATION COMMITTEE

FROM: JAY BENDER
DATE: FEBRUARY 10, 2026
SUBJECT: HOUSE BILL 4902

This bill is a betrayal. It is a betrayal of a commitment made by this General Assembly to the people of South Carolina more than 50 years ago when in 1972 it adopted the South Carolina Freedom of Information Act, stating:

> The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and the formulation of public policy.

"Vital in a democratic society." The appellate courts of South Carolina have consistently held that this commitment to the people of South Carolina is "to protect the public from secret government activity." *Campbell v. Marion County Hosp. Dist.*, 354 S.C. 274, 580 S.E.2d 163, 164 (Ct. App. 2003) (copy attached), citing *Wiedmann v. Town of Hilton Head Island,* 330 S.C. 532, 500 S.E.2d 783 (1994); *South Carolina Tax Comm'n v. Gaston Copper Recycling Corp.,* 316 S.C. 163, 447 S.E.2d 843 (1994); *Bellamy v. Brown,* 305 S.C. 291, 408 S.E.2d 219 (1991); *Quality Towing, Inc. v. City of Myrtle Beach,* 345 S.C. 156, 547 S.E.2d 843 (2001).

Members of the public are justifiably concerned about how their public officials spend public money. A recent case reported in the news revealed a sheriff who was using county funds for personal purposes. Another was a Richland County Council member charged criminally with using a county credit card for personal expenses. A probate judge misusing a county credit card

[1] Everyone needs an editor. Unfortunately I did not have one for the original version of this memorandum. Please substitute this corrected version for the original version transmitted on February 9, 2026.

came to the public's attention resulting in a partial reimbursement from the judge. The amount of money involved in these cases and others like them is miniscule in comparison to the millions of dollars in public funds that would be hidden from public view if this bill were to pass.

Under an agreement to settle an antitrust suit brought by athletes against the N.C.A.A., schools such as USC and Clemson each will be allowed to distribute up to $20.5 Million to athletes during the 2025-2026 school year. The amount will increase in future years. If this legislation were to pass those millions of dollars of public funds would be spent by schools secretly and away from public scrutiny.

I suspect members of the General Assembly are being told that the schools will spend the money responsibly and appropriately. Before that assertion is accepted there is a history to be considered to place it in context. Some members were around when Jim Holderman was the president of the University of South Carolina. Millions of dollars in public funds were funneled into the Carolina Research and Development Foundation from a variety of sources including the sale of university property. The University tried to hide the expenditure of these funds from public scrutiny by claiming that the Foundation was a not-for-profit corporation separate from the University and not subject to the disclosure requirements of the Freedom of Information Act. A trial court and then the Supreme Court of South Carolina ruled that the Foundation was not separate from the University and was indeed subject to the FOIA. It would be instructive to read the Supreme Court opinion in *Weston v. Carolina Research & Dev. Found.* 303 S.C. 398, 401 S.E.2d 161 (1990) (copy attached) to see how closely the arguments rejected by the courts model the arguments being advanced by the University in a current FOIA case seeking contracts with athletes. When the Foundation records were finally dug up in a city landfill where the

Foundation had tried to dispose of them while the case was under appeal, the records revealed lavish, unreviewed spending by the school's president and other officials.

The legitimate expenditure of public money is of great concern to members of the public and should be of paramount concern to this committee and the General Assembly. History suggests that promises of fiscal responsibility are not worthy of credibility. No rational justification exists to hide from public scrutiny and oversight millions of dollars in annual spending by universities just because the money is supposed to be paid to athletes. This legislation invites and endorses secret government activity on a grand scale.

This legislation is also a betrayal of the legislative process. The bill was introduced in the House on January 14, 2026, and given first reading. The bill received second reading approval on January 15, 2026. Pro-forma third reading approval was given on January 16, 2026. The bill passed to the Senate where it was introduced on January 20, 2026, and referred to this committee. In the normal legislative process there would have been subcommittee and committee meetings in each chamber to consider the bill. This committee is taking up the bill less than a month after its introduction in the House without it ever been subjected to a subcommittee meeting where public comment could be received. The expedited, extraordinary path of this legislation is a betrayal of public trust in the legislative process where it is hoped that legislation will not be adopted without thoughtful consideration and debate. By rushing this bill through the House and now the Senate members are acting like rulers rather than representatives. "We know what is best and do not need to hear from the public in person on legislation" is hardly the design of a democratic society's legislative process.

Why is this legislation being rushed without the opportunity for members to hear from and ask questions of interested parties? The University has been sued under the FOIA by a citizen seeking access to contracts between the University and athletes. The University has been less than candid with the court in the litigation saying on one hand that it has no documents to comply with the FOIA request and on the other hand saying the documents are between athletes and third parties and would be subject to the "trade secret" exemption from mandatory disclosure. Judge Daniel Coble noted in his October 23, 2025, order in *Heindel v. University of South Carolina,* Case No. 2025-CP-40-6741, "This Court is perplexed at how all of this can exist at the same time…." (Order of 10/23/2026, p. 1) (Copy attached).

The University claimed that the contracts with athletes were "Academic Records" the release of which would violate federal law. The university has claimed that the contracts are with "third parties" and are "trade secrets." None of these arguments in remotely true.

<u>Academic records argument:</u> Attached to this memo is the template used by the University for contracts with athletes. This template is a part of the court file in the Heindel suit. The only reference to academics in the contract is the provision that states the purported third party, Ascend Carolina, may terminate the contract for "academic neglect." (Contract template ⁋ 13.1). The applicable federal law is found at 20 U.S.C. § 1232g, and a reading of the law makes it clear that a contract between a school and an athlete is not an academic record. The University seems to have abandoned this argument.

<u>Third party argument:</u> As the template makes clear the NIL contracts at issue are those between an athlete and Ascend Carolina. Wayne Hiott is identified in the template as the contact person for Ascend Carolina. (Template ⁋ 20). Mr. Hiott is the Chief Executive Officer of the Gamecock Club, the fundraising arm of the University's athletic department. The address for Ascend Carolina is the University's athletic department, and the email address in the template is

through the University's email server. Ascend Carolina is no more a third party to the contracts with athletes than the Research and Development Foundation was separate from the University.

Trade secrets argument: The University argued before Judge Coble that the contracts with athletes were "trade secrets" and exempt from mandatory disclosure under the FOIA. An identical argument that contracts were "trade secrets" was rejected by the South Carolina Court of Appeals in its opinion in *Campbell v. Marion County Hosp. Dist.* This case controls here and the contracts are not trade secrets under South Carolina law.

Members have also been told that this legislation will protect the athletes and disclosure would put the University at a competitive disadvantage.

Protecting the athletes: This argument is laughable in the context of years of exploitation of athletes by schools. If athletes had been previously protected and not exploited there would have been no need for the litigation that resulted in the millions of dollars to be paid now. And, secrecy of compensation is a classic wage suppression tactic benefitting only employers.

Competitive disadvantage: The argument is that if another school knows what the University is paying its tight end, power forward other star player the player would be poached by a richer school. The same argument is used to hide economic development incentives from the taxpayers who fund the incentives. "If we tell you what we're paying to get Widget Manufacturing to locate in South Carolina we will only be outbid by Georgia" the argument goes. Well, isn't that the free market capitalism so urgently promoted in these halls? The competitive advantage sought will come only at the disadvantage of the athletes.

This committee should acknowledge that this is special interest legislation. And it seems no interest is more special in South Carolina than football. Government at all levels jumped at the chance to spend millions of dollars of public money to support a billionaire football team owner's plan to build a practice facility in York County. Public money was spent but no facility was ever built and no practices were ever held in South Carolina.

Contracts with public bodies such as the University and by extension Ascend Carolina are declared "public records" in Section 30-4-50(A)(6) of the South Carolina Code of Laws. Why should a contract with an athlete be hidden from public view when a contract between a physician and a public hospital is not?

This legislation will not "save college sports." It will not make Carolina a national champion in football. It only serves the interests of the schools at the expense of the public, the players, and the credibility of the General Assembly. This bill should not be voted out of committee.

Thank you for consideration of these points.

Campbell v. Marion County Hosp. Dist.

Court of Appeals of South Carolina

March 12, 2003, Heard ; March 31, 2003, Filed

Opinion No. 3620

Reporter
354 S.C. 274 *; 580 S.E.2d 163 **; 2003 S.C. App. LEXIS 44 ***

Dr. Treadwell Campbell, Appellant, v. Marion County Hospital District, d/b/a The Mullins Hospital, Respondent.

Subsequent History: [***1]

Rehearing denied by Campbell v. Marion County Hosp., 2003 S.C. App. LEXIS 83 (S.C. Ct. App., May 21, 2003)

Prior History: Appeal From Marion County. John M. Milling, Circuit Court Judge.

Disposition: AFFIRMED IN PART, REVERSED IN PART, and REMANDED.

Counsel: Brenda Reddix Smalls, of Columbia, for Appellant.

Ralph W. Barbier and Joseph M. Kahn, both of Columbia, for Respondent.

Judges: ANDERSON, J. HUFF, J., and MOREHEAD, Acting Judge, concur.

Opinion by: ANDERSON

Opinion

[164]** **[*277]** **ANDERSON, J.:** Dr. Treadwell Campbell (Dr. Campbell) sued Marion County Hospital District, d/b/a The Mullins Hospital (the Hospital), under the *South Carolina Freedom of Information Act* (FOIA) for information including, among other things, salaries, compensation, benefits, and bonuses offered to all physicians recruited by the Hospital, as well as the prices paid for physician practices purchased by the Hospital. The Circuit Court ordered the Hospital to disclose a portion of the requested information, but it further held that information regarding physicians' salaries, compensation, and purchase **[*278]** prices of practices were "trade secrets." We affirm in part, reverse in part, and remand.

FACTS/PROCEDURAL BACKGROUND

In relation to a pending lawsuit, **[***2]** Dr. Campbell requested that the Hospital produce certain information pursuant to the FOIA. Specifically, Dr. Campbell requested the Hospital provide information regarding: (1) the compensation, benefits, and bonuses offered to physicians recruited by the Hospital from 1988 to 1999; (2) the prices paid for the purchase of physician practices; (3) the salaries of physicians whose practices were purchased by the Hospital; (4) the salaries of specific physicians; (5) the amount of rent **[**165]** paid to physician practices since 1988; and (6) the purchase price and a copy of the invoice of purchase if the Hospital purchased the Marion Medical Group. The Hospital indicated it would provide the information regarding the amount of rent paid to any physician or physician practice since 1988, but Dr. Campbell would have to post a deposit of $ 1,500 to cover the expenses of researching and copying the information. The Hospital refused to provide any of the other information stating information regarding physicians recruited, but not employed, by the Hospital was incidental to proposed contractual arrangements and thus exempt from disclosure. The Hospital asserted the requested information regarding physicians' **[***3]** salaries and the purchase prices of physician practices constituted "trade secrets" which were exempt from disclosure under the FOIA.

Dr. Campbell sued the Hospital under the FOIA, requesting that the Circuit Court (1) deem the withheld information to be public information within the meaning of the FOIA; (2) enjoin the Hospital from withholding the information; and (3) award Dr. Campbell costs and attorney's fees. The Hospital denied the allegations of the complaint and maintained the allegations failed to state a claim upon which relief could be granted. With the exception of the amounts of physician lease fees, the Hospital averred the requested information was exempt from disclosure as "trade secrets." Both parties moved for summary judgment.

After hearing arguments from both parties, the Circuit Court judge issued an order: (1) finding the information **[*279]** regarding physicians recruited, but not actually hired, by the Hospital was exempt from disclosure; (2) requiring the Hospital to produce the information relating to physicians' salaries and the purchase price of practices, but barring Dr. Campbell from disclosing the information to third parties; (3) directing the Hospital to disclose **[***4]** information relating to the rents paid to physician practices; (4) compelling Dr. Campbell to pay a $ 500 deposit to cover the costs of providing the information; and (5) concluding Dr. Campbell was not entitled to attorney's fees. Dr. Campbell filed a *Rule 59(e), SCRCP*, motion for reconsideration, which was denied by the Circuit Court.

ISSUES

I. Did the Circuit Court err in holding that Dr. Campbell's request for disclosure of physicians' salaries, bonuses, compensation, and purchase prices of physician practices constituted "trade secrets" requiring a protective order?

II. Did the Circuit Court err in refusing to award attorney's fees and costs to Dr. Campbell where he prevailed and the court ordered the production of all the information requested from the Hospital?

STANDARD OF REVIEW

Although Dr. Campbell filed a motion for summary judgment, he actually requested the Circuit Court to declare whether the withheld information was exempt under the FOIA.

Declaratory judgments in and of themselves are neither legal nor equitable. *See* *Felts v. Richland County, 303 S.C. 354, 400 S.E.2d 781 (1991)*; *Wiedemann v. Town of Hilton Head Island, 344 S.C. 233, 542 S.E.2d 752 (Ct. App. 2001).* **[***5]** The standard of review for a declaratory judgment action is therefore determined by the nature of the underlying issue. *Doe v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n, 347 S.C. 642, 557 S.E.2d 670 (2001)*; *Wiedemann, 344 S.C. at 236, 542 S.E.2d at 753*; *see also* *Travelers Indem. Co. v. Auto World, 334 S.C. 137, 511 S.E.2d 692 (Ct. App. 1999)* (suit for declaratory judgment is neither **[*280]** legal nor equitable, but is determined by nature of underlying issue).

A declaratory judgment action under the FOIA to determine whether certain information should be disclosed is an action at law. *See* *South Carolina Tax Comm'n v. Gaston Copper Recycling Corp., 316 S.C. 163, 447 S.E.2d 843 (1994)*. In an action at law tried without a jury, the appellate court standard of review extends only to the correction of errors of law. *Crary v. Djebelli, 329 S.C. 385, 496 S.E.2d 21 (1998)*; *Townes Assocs., [**166] Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976)*; *Okatie River v. Southeastern Site Prep*, Op. No. 3582 (S.C. Ct. App. filed Jan. 6, 2003) (Shearouse Adv. Sh. No. 1 at 32). **[***6]** Thus, the trial court's factual findings will not be disturbed on appeal unless a review of the record discloses that there is no evidence which reasonably supports the judge's findings. *Harkins v. Greenville County, 340 S.C. 606, 533 S.E.2d 886 (2000)*; *Townes, 266 S.C. at 86, 221 S.E.2d at 775*; *Barnacle Broad., Inc. v. Baker Broad., Inc., 343 S.C. 140, 538 S.E.2d 672 (Ct. App. 2000)*.

LAW/ANALYSIS

I. The Freedom of Information Act (FOIA)

The South Carolina Freedom of Information Act is codified as *sections 30-4-10 to -165* in the South Carolina Code. *See* *S.C. Code Ann. §§ 30-4-10 to -165* (1991 & Supp. 2002). The FOIA provides:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the **[***7]** activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

S.C. Code Ann. § 30-4-15 (1991).

The essential purpose of the FOIA is to protect the public from secret government activity. *Wiedemann v. Town of Hilton Head Island, 330 S.C. 532, 500 S.E.2d 783 (1998)*; *[*281] South Carolina Tax Comm'n v. Gaston Copper Recycling Corp., 316 S.C. 163, 447 S.E.2d 843 (1994)*; *Bellamy v. Brown, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991)*; *see also* *Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 547 S.E.2d 862 (2001)* (the FOIA was enacted to prevent the government from acting in secret). "South Carolina's FOIA was designed to guarantee the public reasonable access to certain activities of the government." *Fowler v. Beasley, 322 S.C. 463, 468, 472 S.E.2d 630, 633*

(1996). The FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature. Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 547 S.E.2d 862 (2001); South Carolina Dep't of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978). **[***8]**

Section 30-4-30(a) of the South Carolina Code provides: "Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40, in accordance with reasonable rules concerning time and place of access." S.C. Code Ann. § 30-4-30(a) (1991). The Hospital falls within the definition of "public body" as set forth in § 30-4-20(a), so as to render the FOIA applicable. *See* S.C. Code Ann. § 30-4-20(a) (1991) (defining "public body").

The FOIA meets "'the demand for open government while preserving workable confidentiality in governmental decisionmaking.'" Bellamy v. Brown, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991) (quoting Chrysler Corp. v. Brown, 441 U.S. 281, 292, 60 L. Ed. 2d 208, 99 S. Ct. 1705 (1979)). The FOIA creates an affirmative duty on the part of public bodies to disclose information. Bellamy, 305 S.C. at 295, 408 S.E.2d at 221. The purpose of the Act is to protect the public by providing for the disclosure of information. *Id.* However, the exemptions from disclosure contained in §§ 30-4-40 and 30-4-70 do not create **[***9]** a duty of nondisclosure. *Id.* These exemptions, at most, simply allow the public agency the discretion to withhold exempted materials from public disclosure. *Id.*

II. Trade Secrets

Dr. Campbell contends the Circuit Court erred in finding information relating to physicians' salaries, compensation, and the purchase price of physician practices amounted **[*282]** to "trade secrets" necessitating protection from disclosure.

[1] We agree.

[167]** At trial, the Hospital argued that physicians' salaries and prices paid for practices constituted "trade secrets" because, as a rural county hospital, it needed to keep the information private in order to attract qualified physicians and to compete with wealthier, urban areas. At the summary judgment hearing, Dr. Campbell submitted affidavits from Irance Collins, M.D., and Lewis W. Mustard, Ph.D., **[***10]** regarding the different factors physicians consider in deciding where to practice. Collins, a physician in Rocky Mount, North Carolina, declared that his primary considerations in selecting a hospital for "affiliation and contractual engagement in a rural area" included: "1. Environment; 2. Schools; 3. Support from the hospital staff; 4. Opportunity for expansion; 5. Compensation and benefits; 6. Diversity of the community practice; [and] 7. Patient and proximity to healthcare teaching facilities."

In his affidavit, Mustard, the Chief Executive Officer and President of Healthcare Negligence Control, Inc., in Chapel Hill, North Carolina, stated:

Based upon my experience in the medical field, when physicians are deciding on where to establish their practices, or what hospitals they will work for, they consider a variety of enticements. These factors include whether the area is rural or urban, other healthcare facilities in the area, the quality of the schools in the area, the quality of emergency service, and the hospital resolutions. Compensation, bonuses, and benefits are three of several other requisite factors that physicians consider.

According to Mustard, because physicians **[***11]** consider so many factors, the release of information regarding compensation, bonuses, and benefits paid to physicians as well as purchase prices of physician practices would not impede a hospital's ability to recruit and retain physicians or to compete with other area hospitals. Mustard professed that public policy is furthered by disclosing information regarding compensation, bonuses, benefits, and purchase prices of physician practices **[*283]** paid by public hospitals. He declared that public policy favors disclosing information as to how the taxpayers' money is spent, as the public has the right to be informed and governmental agencies must be held to some level of accountability. Mustard explained that information as to the compensation, bonuses, and benefits, as well as purchase prices of physician practices paid by public hospitals is generally disclosed under the FOIA. He said that such information does not constitute commercially valuable plans or processes; work products, in whole or in part collected or produced for sale or resale; competitive information; formula, pattern compilation, program, method or process that derives independent economic value to the hospital; or valuable **[***12]** information to a hospital, giving it the opportunity to

[1] Dr. Campbell does not appeal the Circuit Court's finding that information relating to physicians recruited, but not actually hired, is exempt from disclosure under the FOIA.

obtain a significant advantage over its competition.

After considering the parties' arguments, the Circuit Court ordered the disclosure of the information relating to physician salaries and purchase prices of practices. However, the court noted the requirements of the "trade secret" exemption to the FOIA in prohibiting Dr. Campbell from further disclosing the information:

[Dr. Campbell's] request for information relating to salaries paid to physicians employed by the [Hospital] and the purchase price paid by the [Hospital] for physician practices raises a novel issue in South Carolina as to whether such information falls within the trade secrets exemption as defined under S.C. Code Ann. § 30-4-40(a)(1). . . .

This Court finds that the [Hospital] is a public body that markets services in competition with others. This Court further recognizes that the healthcare industry is a very competitive industry and that a public hospital such as the [Hospital] could be at a disadvantage in the recruitment and retention of physicians if information relating to physician salaries and purchase prices paid **[***13]** for physician practices is made public. However, this Court notes that there is no South Carolina precedent in which physician salaries and prices paid for physician practices have been found to be "competitive information." Therefore, this Court orders that the [Hospital] produce the information requested by [Dr. Campbell] relating to physician salaries and the prices **[*284]** **[**168]** paid by the [Hospital] for physician practices with the following limitations:

[Dr. Campbell] shall not disclose to anyone not [a] party or legal counsel to the parties in the case pending between [Dr. Campbell] and the [Hospital] in the Circuit Court for Marion County, Case No. 99-CP-33- 394, any information produced by the [Hospital] relating to physician salaries and prices paid for physician practices.

In its order denying Dr. Campbell's motion for reconsideration, the Circuit Court further clarified its findings:

This Court finds that the [Hospital] is a public body that markets services in competition with others. This Court further recognizes that the healthcare industry is a very competitive industry and that a public hospital such as the [Hospital] could be at a disadvantage in the recruitment **[***14]** and retention of physicians if information relating to physician salaries and purchase prices paid for physician practices is made public. Although this Court notes that there is no South Carolina precedent in which physician salaries and prices paid for physician practices have been found to be "competitive information," *I am persuaded by the [Hospital's] argument that such information may constitute "trade secrets" as defined under S.C. Code Ann. § 30-4-40(a)(1).* Therefore, this Court rejects [Dr. Campbell's] contention that it was improper for this Court to order the [Hospital] to produce this information under a protective order. (Emphasis added).

The FOIA provides that any person has a right to inspect or copy "any public record of a public body" unless an exemption listed in § 30-4-40 applies. South Carolina Tax Comm'n v. Gaston Copper Recycling Corp., 316 S.C. 163, 447 S.E.2d 843 (1994); S.C. Code Ann. § 30-4-30(a) (1991); *see also* Beattie v. Aiken County Dep't of Soc. Servs., 319 S.C. 449, 462 S.E.2d 276 (1995) (observing the FOIA provides the right to inspect or copy any public **[***15]** record of a public body; however, the FOIA enumerates certain exemptions). Matters which public bodies may, but are not required to, exempt from disclosure under the FOIA include "trade secrets":

Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, **[*285]** which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential; and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information. *Trade secrets also include, for those public bodies who market services or products in competition with others, feasibility, planning, and marketing studies, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation.*

S.C. Code Ann. § 30-4-40(a)(1) (1991 & Supp. 2002) (emphasis added). Additionally, the FOIA allows a public body to exempt from disclosure all compensation paid to employees unless the employee receives "compensation of fifty thousand dollars **[***16]** or more annually." S.C. Code Ann. § 30-4-40(a)(6)(A) (1991 & Supp. 2002).

The Federal FOIA exempts "trade secrets" from disclosure. It states that the disclosure requirements of the FOIA do not apply to matters that are "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4) (1996). The phrase "trade secrets" is not defined in the Federal FOIA. However, cases interpreting the section have defined a "trade secret" for the purposes of the FOIA as a "'secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.'" *Center for Auto Safety v. National Hwy. Traffic Safety Admin., 345 U.S. App. D.C. 248, 244 F.3d 144, 150-51 (D.C. Cir. 2001)*; *Herrick v. Garvey, 298 F.3d 1184, 1190 (10th Cir. 2002)*.

Although the Federal courts have interpreted "trade secrets" to mean something of commercial benefit in preparing commodities for the market, South Carolina courts **[***17]** have **[**169]** never directly addressed the "trade secret" exemption to the FOIA. We must first look at the plain meaning of "trade secrets" in the statute in order to determine whether salaries, compensation and purchase prices of physician practices constitute "trade secrets." Salaries, compensation, and purchase prices of practices do not constitute unpatented, secret, commercially valuable plans or processes used for making, preparing, or **[*286]** processing trade commodities obtained from a third party. *See S.C. Code Ann. § 30-4-40(a)(1)* (1991 & Supp. 2002). This information does not qualify as work product collected for sale or resale or paid subscriber information. *See § 30-4-40(a)(1)*.

The statute specifically defines "trade secrets" for public bodies, such as the Hospital, that market services. "Trade secrets" include "feasibility, planning, and marketing studies, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation." *S.C. Code Ann. § 30-4-40(a)(1)* (1991 & Supp. 2002). It is evident from reading the entire "trade secret" section that the legislature intended the **[***18]** "trade secret" exemption to protect an organization's studies or preparations in its quest to produce or sell its product or service to "potential customers," not in its internal quest to obtain employees. Compensation and salary information regarding physicians and the purchase price of physician practices indubitably do not meet this unambiguous definition. Concomitantly, the Circuit Court erred in finding the information constituted "trade secrets" that mandated protection.

Furthermore, the information Dr. Campbell sought regarding physicians' salaries, compensation, and the purchase price of physician practices was not exempt under other subsections. The legislature specifically noted that FOIA requests for salaries "of fifty thousand dollars or more annually" were not exempt. *S.C. Code Ann. § 30-4-40(a)(6)(A)* (1991 & Supp. 2002). The Hospital admitted that most of its physicians made more than $ 50,000 in compensation. A clear application of the entire exemption statute, as a whole, demonstrates that the information sought by Dr. Campbell was not exempt.

We next turn to whether the Circuit Court erred in prohibiting Dr. Campbell from further disclosing **[***19]** the information regarding salaries, compensation and purchase prices of physician practices. The purpose of the FOIA is to keep the public informed and to protect the public from secret government activity. *Section 30-4-15* indicates the FOIA should be construed in favor of allowing citizen access to the public body's information. *See S.C. Code Ann. § 30-4-15* (1991).

[*287] Information obtained pursuant to the FOIA from a public body is not protected by a restraining order. In fact, the South Carolina Attorney General's 1998 "Public Official's Guide to Compliance with South Carolina's Freedom of Information Act," states the FOIA must be construed "liberally to carry out its intent that citizens obtain public information at the least cost, inconvenience, or delay. Consistent with this mandate, my Office has adopted the following guiding principles in opinions construing the: When in doubt, disclose. . . ." Liberally construing the statute, it is luculent that information obtained pursuant to the FOIA is for the protection of the public in general, not just the individual seeking the information. There is no provision in the FOIA allowing the disclosure to be **[***20]** subject to a protective order.

Moreover, an evidentiary review reveals that a protective order was not necessary. Evidence in the record shows that physicians' salaries, compensation, and the potential purchase price for practices are only three of many considerations a potential employee looks to in deciding where to practice. Therefore, disclosure of that information would not impede a hospital's efforts to hire. Accordingly, we find the Circuit Court erred in prohibiting Dr. Campbell from further disclosing information regarding physicians' salaries, compensation, and purchase prices of physician practices obtained pursuant to the FOIA.

In summary, the Circuit Court correctly granted Dr. Campbell access to the information regarding physician compensation and prices for physician practices. The Circuit Court erred in finding this information constituted "trade secrets" and in granting a protective order of the disclosure of the information.

[170] III. Attorney's Fees**

Dr. Campbell claims the Circuit Court abused its discretion in denying his request for attorney's fees and costs when he was the prevailing party.

In denying Dr. Campbell's request for attorney's fees and costs, **[***21]** the Circuit Court held:

It is within this Court's discretion to award attorney's fees in an action brought under the South Carolina Freedom of **[*288]** Information Act. This Court finds that the [Hospital] made a good-faith argument under the law to support its objection relating to [Dr. Campbell's] request for information. The [Hospital] raised legitimate concerns about the disclosure of sensitive information and the effect such disclosure could have on its ability to compete in a competitive marketplace. Therefore, the Court denies Dr. Campbell's request for attorney's fees.

In its order denying Dr. Campbell's motion for reconsideration, the Circuit Court reiterated its reasoning that the Hospital made a good-faith argument against disclosure of the information. The court stated that only a part of the information originally sought by Dr. Campbell was actually ordered to be disclosed.

Inferentially, the order of the Circuit Court indicates Dr. Campbell sought information regarding proposed compensation of physicians recruited, but not hired, by the Hospital. The court found this information exempt from the FOIA under S.C. Code Ann. § 30-4-40(a)(5) regarding **[***22]** documents incidental to proposed contractual arrangements. Although Dr. Campbell's complaint requests the information on physicians recruited by the Hospital, it does not specify whether he sought information on physicians recruited but not hired. At the summary judgment hearing, Dr. Campbell sought information regarding physicians recruited and actually hired. "Documents of and documents incidental to proposed contractual arrangements . . . are not exempt from disclosure once a contract is entered into." *S.C. Code Ann. § 30-4-40(a)(5)* (Supp. 2002).

The FOIA provides for attorney's fees to a prevailing party seeking relief under the act. Pursuant to *§ 30-4-100(b)*, "if a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof." *S.C. Code Ann. § 30-4-100(b)* (1991); *see also Society of Prof'l Journalists v. Sexton, 283 S.C. 563, 324 S.E.2d 313 (1984)* (recognizing that *section 30-4-100* allows award **[***23]** of attorney's fees to prevailing plaintiff in FOIA case). Under this section, the only prerequisite **[*289]** to an award of attorney's fees and costs is that the party seeking relief must prevail, in whole or in part. Where a plaintiff prevails on his request for declaratory relief, it is within the trial judge's discretion to award attorney's fees and costs to the plaintiff. *See Cockrell by Cockrell v. Trustees of Dist. 20 Constituent Sch. Dist., 299 S.C. 155, 382 S.E.2d 923 (1989)*; *see also Litchfield Plantation Co. v. Georgetown County Water & Sewer Dist., 314 S.C. 30, 443 S.E.2d 574 (1994)* (as *§ 30-4-100(b)* provides attorney's fees *may* be awarded, judge has discretion to award fees).

The decision on whether to award attorney's fees is discretionary in nature. The Circuit Court abused its discretion in this instance. The FOIA creates a mechanism for members of the public to obtain information from an obstinate or otherwise uncooperative public body. Where one party prevails in his or her claim for information under the FOIA, the Circuit Court has the discretion to award attorney's fees. Here, the court based its decision to deny attorney's fees on **[***24]** the fact that the issue regarding "trade secrets" was a novel, but legitimate, concern and the court's belief that Dr. Campbell only received a portion of the information he sought. Dr. Campbell was actually awarded all of the information he requested. The Circuit Court's finding regarding "trade secrets" was erroneous. The court's decision denying Dr. Campbell attorney's fees is in contrariety to the evidence. We reverse the Circuit Court as to this issue and remand the matter to the court for a new hearing to determine if Dr. Campbell was entitled to attorney's fees.

CONCLUSION

We rule that physician salaries, compensation and the prices paid for physician practices **[**171]** are ***NOT "trade secrets" exempt from the FOIA***. We hold that the information disclosed pursuant to the FOIA action is ***not*** subject to a protective order. Finally, the court erred in basing its decision to deny attorney's fees on its erroneous belief that Dr. Campbell was not entitled to attorney's fees where the issue was novel.

Accordingly, we **AFFIRM** the Circuit Court's order to disclose the information regarding physician salaries, compensation and prices paid for physician **[***25]** practices, **REVERSE** the **[*290]** court's finding that this information constituted a "trade secret" exempt from the FOIA, **REVERSE** the protective order, **REVERSE** the court's denial of attorney's fees, and **REMAND** the case for a hearing to determine if Dr. Campbell was entitled to attorney's fees and costs.

AFFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

HUFF, J., and MOREHEAD, Acting Judge, concur.

End of Document

Weston v. Carolina Research & Dev. Found.

Supreme Court of South Carolina

November 27, 1990, Heard ; February 11, 1991, Filed

No. 23341

Reporter

303 S.C. 398 *; 401 S.E.2d 161 **; 1991 S.C. LEXIS 47 ***; 18 Media L. Rep. 1821

Chris Weston and Multimedia, Inc., d/b/a The Greenville News-Piedmont Company, Respondents, v. Carolina Research and Development Foundation, Christopher Vlahoplus, Arthur M. Williams, Jr., John L. M. Tobias, Richard E. Day, Gayle O. Averyt, William R. Bruce, Robert E. Roberson, Guy F. Lipscomb, Jr., and William Weston, Jr., Appellants. and John C. Shurr and The Associated Press, Respondents, v. Carolina Research and Development Foundation, Christopher Vlahoplus, Arthur M. Williams, Jr., John L. M. Tobias, Richard E. Day, Gayle O. Averyt, William R. Bruce, Robert E. Roberson, Guy F. Lipscomb, Jr., and William Weston, Jr., Appellants

Prior History: [*1]** Appeal From Richland County; Carol Connor, Judge.

Disposition: AFFIRMED.

Counsel: Thomas E. McCutchen and Hoover C. Blanton, both of Whaley, McCutchen, Blanton and Rhodes, of Columbia, for Appellants.

Carl F. Muller and Wallace K. Lightsey, both of Wyche, Burgess, Freeman and Parham, P.A., of Greenville, for Respondents.

Amici Curiae: Jay Bender, of Belser, Baker, Barwick, Ravenel and Bender, of Columbia.

Judges: Harwell, A.C.J. Chandler, A.J., Bruce Littlejohn, James E. Moore and William J. McLeod, Acting Associate Justices, concur.

Opinion by: HARWELL

Opinion

[*400] [162]** This case involves the applicability of the South Carolina Freedom of Information Act [1] (FOIA) to the Carolina Research and Development Foundation (Foundation). The dispositive issue in this case is whether the activities of the Foundation bring it within the definition of a "public body" contained in the FOIA.

I. **[***2]** *FACTS*

The Foundation is a South Carolina eleemosynary corporation incorporated under the non-profit corporation provisions of S.C. Code Ann. § 33-31-10 to § 33-31-450 (1990). The Foundation operates exclusively for the benefit of the University of South Carolina. Respondents instituted these actions alleging that the Foundation is a "public body" under the South Carolina FOIA and as such, is subject to the provisions of the FOIA. [2] Respondents sought **[**163]** an injunction compelling the Foundation to disclose certain records which it had previously requested under the FOIA. Early in the litigation, the Foundation obtained a protective order which substantially restricted the discovery that respondents could pursue. The trial judge heard cross-motions for summary judgment on the issue of whether the Foundation was a "public body". The parties agreed that the cross-motions were dispositive of the cases and that a trial was unnecessary. The trial judge granted respondents' motion for summary judgment finding that the Foundation was a "public body" within the meaning of the FOIA. This appeal followed.

[*3]** II. *DISCUSSION*

In order to be subject to the FOIA, the Foundation must fall within the FOIA's definition of a "public body". The FOIA defines a "public body" as:

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[1] S.C. Code Ann. § 30-4-10 to § 30-4-110 (Supp. 1989).

[2] Respondent Chris Weston and Multimedia, Inc., d/b/a The Greenville News-Piedmont Company, and respondent John C. Shurr and the Associated Press instituted two separate actions against the Foundation. Since the issues in both cases are the same, the cases have been consolidated for the purposes of this appeal.

any department of the State, any state board, commission, agency, and authority, any public or governmental **[*401]** body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, *or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds . . . .*

S.C. Code Ann. § 30-4-20(a) (Supp. 1989) (emphasis added). The trial judge held that the Foundation is a "public body" under the FOIA because it is supported in whole or in part by public funds and has expended public funds. We agree; an analysis of specific activities of the Foundation supports the conclusion reached below that it is a "public body."

Respondents claim that four transactions involving the Foundation demonstrate that the Foundation is supported by public funds and has expended public funds. The first transaction involved the sale of the Wade Hampton Hotel. The Wade Hampton Hotel was a student residence hall owned by the University **[***4]** of South Carolina (University). When the University sold the Wade Hampton Hotel, the Foundation received $ 2,000,000 of the total consideration of $ 5,001,801. The Foundation argues that the money it received did not come from public coffers because the money was given to it by a private purchaser as a gift. However, these funds were transferred to the Foundation in consideration for the sale of public real estate. By accepting a portion of the purchase price paid for publicly owned real estate, the Foundation accepted the support of public funds.

The second transaction involves the development of the Swearingen Engineering Center. In connection with the construction of the building, the Foundation accepted $ 16,300,000 in federal grant money and undertook to administer the expenditure of this money. This money was originally earmarked for the University, but was redirected to the Foundation after the University's General Counsel represented to the granting federal agency that the University was "acting through" the Foundation, which in turn, was acting on "behalf" of the University as its "agent". The grant was awarded to "the University of South Carolina acting through the Carolina **[***5]** Research and Development Foundation." The trial judge held that by accepting these funds and managing **[*402]** their expenditure, the Foundation has received support from public funds and has expended public funds.

The Foundation first argues that the grant did not support the Foundation, but that the money went towards the cost of constructing the Swearingen Engineering Center. This may be true, but due to the protective order respondents were not able to ascertain how the grant money was actually expended. Regardless, the Foundation used University personnel on University payroll in conjunction with the construction project. This establishes, at a minimum, partial support from public funds for the Foundation. In addition, the Foundation clearly directed the expenditure of the funds it received.

The Foundation also contends that the federal grant did not constitute public funds because federal grant recipients are not subject to the federal Freedom of Information **[**164]** Act. This argument is fallacious. Here, we are dealing with the South Carolina FOIA which mandates that the public be provided with information regarding the expenditure of public funds. These were clearly University funds, and thus **[***6]** public funds under the FOIA.

In the third transaction, the development of the Koger Center, the Foundation accepted a conveyance of real estate from the City of Columbia, a $ 2,000,000 cash grant from the City of Columbia, and a $ 3,750,000 cash grant from Richland County. The Foundation argues that these funds were given to it by the City and County pursuant to a contractual agreement and that once the City and County transferred the property in performance of their contractual agreement, the expenditure of public funds ended. This argument is not persuasive. Funds from the public coffer were given to the Foundation which managed the expenditure of the funds and the development of the real estate. By these actions, the Foundation received support from and expended public funds.

The last transaction involves research and development contracts which the University received from private third parties in exchange for research performed by University employees. The University routed these contracts through the Foundation, which retained 15% to 25% of the total contract amount. The Foundation claims that this sum was an administrative fee which it earned for **[*403]** handling the administration **[***7]** of the contracts. However, the Foundation did not present any evidence that its personnel actually performed any services to earn this fee. The University could have retained the full payment for the research and development activities of its personnel and facilities. By taking part of this money, the Foundation has received support from public funds.

Each of the above transactions alone would bring the Foundation within the FOIA's definition of "public body". Taken together, they lead to the unavoidable conclusion that the Foundation is a "public body". This conclusion is mandated by the clear language of the FOIA. The Foundation's argument that the FOIA only applies to governmental and quasi-governmental bodies would rewrite the statutory definition of "public body" by deleting the phrase, "or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds." According to the Foundation's position, a corporation that cannot be labeled governmental or quasi-governmental would be exempt from the FOIA, regardless of whether it received support from public funds or expended public funds. Such a construction would obliterate both the intent **[***8]** and the clear meaning of the statutory definition.

In addition, we reject the Foundation's contention that the common law distinction between "public" and "private" corporations overrides the clear language of the FOIA. Under the common law, a "private" corporation does not lose its "private" character by receiving support of public funds. *Trustees of Columbia Academy v. Board of Trustees, 262 S.C. 117, 202 S.E.2d 860 (1974)*. The Foundation contends that it is a private corporation and that the FOIA does not apply to private corporations, regardless of whether they receive the support of public funds. However, the unambiguous language of the FOIA mandates that the receipt of support in whole or in part from public funds brings a corporation within the definition of a public body. The common law concept of "public" versus "private" corporations is inconsistent with the FOIA's definition of "public body" and thus cannot be superimposed on the FOIA. It is "well settled that a legislative body has the power within reasonable limits to prescribe legal definitions of its own language, and when an Act **[*404]** passed by it embodies the definition, it is generally binding upon the Courts." *Windham [***9] v. Pace, 192 S.C. 271, 283, 6 S.E.2d 270, 275 (1939)*. *See also Bell Finance v. South Carolina Dept. of Consumer Affairs, 297 S.C. 111, 374 S.E.2d 918 (Ct. App. 1988)* (statutory definitions should be followed in interpreting the statute); *Freuhauf Trailer Co. v. South Carolina Electric Gas Co., 223 S.C. 320, 75 S.E.2d [**165] 688 (1953)* (lawmaking body's construction of its language by means of definitions of the terms employed should be followed in the interpretation of the act to which it relates and is intended to apply).

As the trial judge correctly noted, this decision does not mean that the FOIA would apply to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arms 0length basis. In that situation, there is an exchange of money for identifiable goods or services and access to the public body's records would show how the money was spent. However, when a block of public funds is diverted *en masse* from a public body to a related organization, or when the related organization undertakes the management of the expenditure of public funds, the only way that the public can determine with specificity how those funds **[***10]** were spent is through access to the records and affairs of the organization receiving and spending the funds.

The Foundation also contends that the trial judge erred in settling the record on appeal by including the memoranda by the parties before the trial judge and argument on the cross-motions for summary judgment. The memoranda and argument were relevant and appropriate. *See Gilmore v. Ivey, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986)*.

Finally, the Foundation asserts that the injunction is overbroad because it requires production of documents that are exempt under the FOIA. See *S.C. Code Ann. § 30-4-40* (Supp. 1989). We do not read the trial judge's order as compelling the production of records which are exempt under the FOIA. To the extent that any of the Foundation's records are exempt under *Section 30-4-40* of the FOIA, the Foundation is not obligated to disclose them.

Since we have determined that the Foundation is a public body due to its activities involving public funds, we conclude **[*405]** that summary judgment was appropriately granted to respondents. Accordingly, the order of the trial judge is affirmed.

End of Document

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
Frank Heindel,	)	Civil Action No. 2025-CP-40-6741
Plaintiff,	)	
v.	)	**ORDER**
University of South Carolina,	)	
Defendant.	)	

On October 10, 2025, this Court held an initial hearing on Plaintiff's FOIA action. At the hearing the Court instructed the Defendant ("the University") to produce affidavits or other documents so that the Court could conduct an *in camera* review. The purpose of this review is to determine whether the University has complied with the FOIA request or if more information is needed. Particularly, the Court wanted more information related to any analysis under *Weston v. Carolina Rsch. & Dev. Found.*, 303 S.C. 398, 400, 401 S.E.2d 161, 162 (1991) ("The dispositive issue in this case is whether the activities of the Foundation bring it within the definition of a 'public body' contained in the FOIA.").

I

On October 20, 2025, the University provided the Court an affidavit and an attachment for an *in camera* review. After a thorough review of all documents provided, this Court finds that the affidavit contains no confidential or privileged information. At the initial hearing, the University maintained that it does not have knowledge of any documents related to Plaintiff's request, but that any documents fall under the "trade secrets" exception to FOIA, and that the documents are with third parties and thus not public. This Court is perplexed at how all of this can exist at the same time, while simultaneously this Court has not ruled on any of those issues or facts. Perhaps some of these arguments are correct and carry weight, but the Court has not even been able to rule on these issues, much less hear arguments about why they are applicable.

II

The trade secrets exception might well in fact apply. *See* S.C. Code Ann. § 30-4-40(a)(1). Trade secrets are industry specific, and the landscape of College Athletics has transformed tremendously in recent years. *Nat'l Collegiate Athletic Ass'n v. Alston*, 594 U.S. 69, 93, 141 S. Ct. 2141, 2158, 210 L. Ed. 2d 314 (2021) ("When it comes to college sports, there can be little doubt that the market realities have changed significantly since 1984."); *Osuna v. Nat'l Collegiate Athletic Ass'n*, No. 3:25-CV-62, 2025 WL 684271, at *4 (E.D. Tenn. Mar. 3, 2025) ("The Court is left with an uncertain and clearly evolving legal landscape."); *Pavia v. Nat'l Collegiate Athletic Ass'n,* 760 F. Supp. 3d 527, 532 (M.D. Tenn. 2024) ("At its inception, and for over a hundred years, the NCAA limited compensation of student athletes in an attempt to maintain amateurism across college sports.")

Additionally, the exception under South Carolina Code section 30-4-40(a)(2) could apply. As argued by the University, "given the small number of student-athletes to which the NIL licensing agreements apply, it is not inconceivable that the identities of the student-athletes may be ascertained even if their names are redacted on the records." *See* Defendant's Memorandum of Law for 10-Day Hearing, p. 5.

III

As stated in the initial hearing, the University believes that releasing information related to the FOIA request could be unfair and harm competition. This Court agreed that this is a serious issue and noted that it would consider those arguments. This Court also stated that no single public institution in South Carolina should be treated differently than others. As a member of the Southeastern Conference ("SEC"), the University has a valid interest in its trade secrets and ensuring that it can compete with other institutions. The Court does not take these considerations lightly.

But the fact remains that the Court has not been able to make it to this stage of the FOIA process to consider and rule upon these arguments.

It is hereby **ORDERED**:

The University shall turn over to the Plaintiff the affidavit it provided on October 20, 2025.

The University, at this time, shall not turn over the attachment provided on October 20, 2025, but the University shall provide a general description of the document to the Plaintiff.

October 23, 2025

Richland Common Pleas

Case Caption: Frank Heindel vs University Of South Carolina

Case Number: 2025CP4006741

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774

CONTRACT TEMPLATE (Ascend Carolina NIL Agreement)
1.1 Agreement. "Agreement" means this agreement and its exhibits.
1.3 Collegiate Sports Commission. "Collegiate Sports Commission, LLC" ("CSC") is a limited liability company registered with the Delaware Secretary of State...
1.4 Competitive Proposal. "Competitive Proposal" means any inquiry, proposal or offer from any college or university other than South Carolina relating to Licensor transferring...
1.5 Content. "Content" means work product developed, created, made, produced or generated by Licensor...
1.6 Effective Date. "Effective Date" means the date set forth in Section 2.1.
1.8 Endorsement Agreement. "Endorsement Agreement" means any proposed, accepted, or rejected agreement related to Endorsement...
1.9 Endorsement Fees. "Endorsement Fees" means those amounts set forth in Exhibit B.
1.10 Expiration Date. "Expiration Date" means the date set forth in Section 2.2.
1.11 Governing Rules. "Governing Rules" means any applicable law, rule, regulation, or policy...
1.12 License. "License" means all rights granted pursuant to Section 3.
1.13 Licensees. "Licensees" means Ascend Carolina AND the University of South Carolina and each of their affiliates, subsidiaries, assignees, and sponsors...
1.15 Licensing Fees. "Licensing Fees" means those amounts set forth in Exhibit B.
1.17 NIL. "NIL" means name, image, likeness, nickname, signature, pseudonym, initials, jersey number, photograph, facsimile, gifs...
1.18 Representatives. "Representatives" means Licensor's parents, guardians, attorneys...
1.19 Settlement Agreement. "Settlement Agreement" means the Amended Stipulation...
1.20 Term. "Term" means the period of time set forth in Section 2.
1.21 Third Party. "Third Party" means any individual, corporation, trust, estate, partnership, joint venture, company, association, or any other entity other than Licensor or Licensees.
1.22 Third-Party Agreements. "Third-Party Agreement(s)" means any agreement between Licensor and a Third Party...
2. Term.
2.1 Effective Date. Agreement is based on Licensor's NIL value stemming from enrollment and athletics participation at South Carolina.
2.2 Expiration Date. Term expires June 30, 2026.
3. Intellectual Property.
3.1 License. Licensor grants Licensees a non-exclusive worldwide license...
3.2 Content. All Content is deemed "work made for hire"...
3.3 Licensee IP. Licensees retain all rights to Licensee IP...
3.4 Post-Termination Rights...
3.5 Broadcast Rights...
3.6 Written Consent...
4. Exclusivity.
4.1 Licensor must disclose all Third-Party Agreements...
4.4 Ascend Carolina may reject proposed agreements in its sole discretion...
5. No Obligation to Use NIL.
6. Grant of Option.
6.1 Licensor agrees to provide Endorsements...
7. Compensation.
7.1 Based on projected NIL value, Licensor receives monthly fees as in Exhibit B...
8. Representations and Warranties...
13. Termination.
13.1 Ascend Carolina may terminate if:
- material breach
- withdrawal from USC team
- criminal conduct
- academic neglect

- misrepresentation of background
- ineligibility
- etc.

13.4 Liquidated Damages. Licensor owes lump-sum damages if terminated for cause.
14. Effect of Termination.
15. Relationship of the Parties. Independent contractor.
16. Waiver.
17. Assignment prohibited.
18. Confidentiality.
19. Force Majeure.
20. Notices.

Notice to Licensor: (Athlete details)
Notice to Ascend Carolina:
Wayne Hiott
1304 Heyward Street
Columbia, SC 29208
AscendCarolina@sc.edu

21–34. Standard provisions (Amendment, Indemnification, Severability, Arbitration, Jury Trial Waiver, Governing Law, Refund Clause, Offset Clause, Entire Agreement).
Exhibit B – Compensation.
Monthly Fees: Licensor receives [$####] per month, prorated.