

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

CAPITAL ONE PUBLIC FUNDING, )  
LLC, )

Plaintiff, )

v. )

BRIAN P. KEMP, in his individual and )  
official capacities as the Secretary of State )  
of the State of Georgia, TINA )

LUNSFORD, in her individual and )  
official capacities as the Henry County )  
Elections and Registration Director, )

ANDY CALLOWAY, MILDRED )  
SCHMELZ, JON KIRKPATRICK, DAN )  
RICHARDSON, and ARCH BROWN, in )

their individual and official capacities as )  
members of the Henry County Board of )  
Elections and Registration, and JOHN )

DOE, in his individual and official )  
capacities as the Election Superintendent )  
of Henry County, )

Defendants. )

CIVIL ACTION FILE NO. \_\_\_\_\_

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**VERIFIED COMPLAINT FOR PRELIMINARY AND  
PERMANENT INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT**

Plaintiff Capital One Public Funding, LLC (“COPF”) files its Verified  
Complaint as follows:

## INTRODUCTION

1.

On May 8, 2018, Georgia Governor Nathan Deal signed into law Georgia Act 548 and Georgia Act 559 of the 2018 Session of the Georgia General Assembly (the “De-Annexation Acts”), true and correct copies of which are attached hereto as Exhibits A and B. The De-Annexation Acts allow certain residents within the current borders of the City of Stockbridge, Georgia (“Stockbridge”) to vote on November 6, 2018 to “de-annex” themselves from their current City to form a newly-created “City of Eagle’s Landing.”

2.

If the November 6, 2018 referendum passes, the newly-created City of Eagle’s Landing (“Eagle’s Landing”) would emerge as a brand new municipality that will have taken with it approximately 50% of Stockbridge’s *ad valorem* tax base.<sup>1</sup>

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<sup>1</sup> See Carl Vinson Institute of Government – The University of Georgia, “Stockbridge De-Annexation Fiscal Analysis” at 12 (“[T]he de-annexation would significantly impede Stockbridge’s ability to generate any future revenue through property tax by decreasing its non-exempt total assessed value of real property from \$756,736,737 to \$378,777,158.”) (a true and correct copy of which is attached hereto as Exhibit C).

3.

The De-Annexation Acts, to COPF's knowledge, are unprecedented in Georgia because they fail to make any apportionment of Stockbridge's underlying debt and related contractual obligations to the new City of Eagle's Landing. Specifically, the De-Annexation Acts fail to apportion to the City of Eagle's Landing any of the outstanding financial obligations that are payable from and secured by the *ad valorem* tax base that Stockbridge would lose upon de-annexation. In other words, the De-Annexation Acts fail: (i) to attach to the land and property that will be de-annexed from Stockbridge and annexed into Eagle's Landing (*i.e.*, the "Lost Stockbridge Tax Base") any of the financial obligations secured by the Lost Stockbridge Tax Base, and (ii) to provide for the assumption by Eagle's Landing of a share of the financial obligations secured by the Lost Stockbridge Tax Base. Thus, the new Eagle's Landing municipality would be completely freed from any obligation to service Stockbridge's valid and underlying financial commitments.

4.

COPF is an active purchaser of bonds issued by Georgia municipalities and other local governmental authorities throughout the state. COPF currently owns \$11.75 million of the principal amount of bonds issued in 2005 and 2006 by the

Urban Redevelopment Authority of the City of Stockbridge (the “Stockbridge URA”) for the benefit of Stockbridge (collectively, the “Stockbridge Bonds”), true and correct copies of which are attached hereto as Exhibit D. The Stockbridge Bonds, which do not fully mature until 2031, are payable solely from amounts that Stockbridge is obligated to pay under an intergovernmental agreement between the Stockbridge URA and Stockbridge. That intergovernmental agreement functions as the equivalent of a “loan and security agreement,” *i.e.*, a collateral document typically found in a commercial financing transaction. Stockbridge has contractually pledged to levy property taxes on all taxable property within the City of Stockbridge as the underlying security for the Bonds. In connection therewith, the Stockbridge URA has pledged and assigned to COPF (as assignee of the original bondholder) the amounts payable under the intergovernmental agreement for the repayment of the Stockbridge Bonds (other than certain reserved costs and expenses).

5.

Following any such de-annexation, Stockbridge’s existing *ad valorem* tax base (which, as discussed in detail below, was a critical aspect of the credit assessment that induced COPF to purchase the Stockbridge Bonds) will shrink by half. Thus, the collateral that was contractually promised and pledged to COPF as

security under the intergovernmental agreement will be severely reduced and cause COPF irreparable harm should de-annexation occur.

6.

Further, COPF will lose the right to seek mandamus or specific performance against Stockbridge to levy an annual *ad valorem* tax on the entire amount of taxable property originally pledged for the repayment of the Stockbridge Bonds because the Lost Stockbridge Tax Base will be outside the borders of what remains of the City of Stockbridge, thereby substantially impairing and eliminating a significant portion of COPF's underlying security for the Stockbridge Bonds.

7.

If the November 6, 2018 referendum mandated by the De-Annexation Acts is allowed to take place and the voters approve such de-annexation without apportionment of Stockbridge's financial obligations securing the Stockbridge Bonds to taxpayers in the de-annexed area, any actions taken by Defendants in furtherance of the de-annexation or in implementing the De-Annexation Acts would violate the respective Contracts Clauses of the U.S. Constitution and the Georgia Constitution. The result is the substantial impairment and loss of COPF's contractual rights, collateral, and the benefit-of-the-bargain upon which COPF relied in making its decision to purchase the Stockbridge Bonds. Moreover, the

De-Annexation Acts fail to provide a justification for such impairment and loss of COPF's contractual rights as there is no legitimate public interest in affording some taxpayers the option to excuse themselves from servicing their share of municipal debt obligations that were validly incurred by their local governing officials.

8.

COPF has already suffered concrete injuries as a result of the enactment of the De-Annexation Acts, and it will be further irreparably harmed if the November 2018 referendum is allowed to go forward without apportioning the financial obligations secured by the Lost Stockbridge Tax Base and without protecting and restoring the benefit of COPF's bargain and the contract rights that induced COPF to purchase the Stockbridge Bonds in the first place.

9.

Accordingly, based on the unconstitutional outcome that would result from de-annexation as provided in the De-Annexation Acts, COPF is entitled to (i) preliminary and permanent injunctive relief prohibiting Defendants—the Secretary of State for the State of Georgia and Henry County's election officials—from conducting and effectuating the November 6, 2018 referendum election, as well as (ii) a declaratory judgment that any final result of the November

referendum resulting in the de-annexation of land that currently belongs to Stockbridge without (a) apportionment to the new City of Eagle's Landing of its share of the liability for the Stockbridge Bonds and/or Stockbridge's financial obligations under the intergovernmental agreement, or (b) other equitable relief to maintain COPF's originally bargained-for interests, is invalid because it violates the U.S. and Georgia Constitutions.

### **PARTIES**

10.

COPF is a national, direct municipal lending group whose ultimate parent company is Capital One Financial Corporation. COPF provides direct funding to state and local government entities throughout the United States through lease-purchase agreements, direct bond purchases, loan agreements, and related municipal finance instruments.

11.

COPF is a limited liability company organized under New York law and has its principal place of business in Melville, New York. COPF has a single member, Jamsab Realty Corporation, which is a corporation organized under New York law that has its principal place of business in New York.

12.

Defendant Brian P. Kemp is the Secretary of State of the State of Georgia. He is the chief election official for the State of Georgia. As such, Secretary Kemp is charged with certification of the results of the referendum vote mandated by the De-Annexation Acts, both of which are unconstitutional. He is being sued in his official and individual capacities for the prospective relief sought herein, including to enjoin unconstitutional acts to be taken by Secretary Kemp under color of state law, within the meaning of 42 U.S.C. § 1983.

13.

Secretary Kemp may be served with process at his office, located at 214 State Capitol, Atlanta, Georgia, 30334.

14.

Defendant Tina Lunsford is a resident of Henry County and serves as the Henry County Elections and Registration Director. Upon information and belief, Ms. Lunsford's position as Henry County Elections and Registration Director encompasses all of the powers and duties of the election superintendent of Henry County, as that phrase is defined in the De-Annexation Acts and otherwise. As such, Ms. Lunsford is charged with enforcement and implementation of the referendum vote mandated by the De-Annexation Acts, both of which are

unconstitutional. She is being sued in her individual and official capacities for the prospective relief sought herein, including to enjoin unconstitutional acts to be taken under color of state law, within the meaning of 42 U.S.C. § 1983. To the extent Ms. Lunsford's position does not encompass all of the powers and duties of the election superintendent of Henry County, as that phrase is defined in the De-Annexation Acts and otherwise, COPF names Defendant John Doe as the election superintendent. COPF will amend the Complaint to allege the true name of this Defendant, to the extent necessary, when it is ascertained.

15.

Ms. Lunsford may be served with process at her office, located at 40 Atlanta Street, McDonough, Georgia, 30253.

16.

Defendant Andy Callaway is a resident of Henry County and serves as a member of the Henry County Board of Elections and Registration. As such, Mr. Callaway is charged with enforcement and implementation of the referendum vote mandated by the De-Annexation Acts, both of which are unconstitutional. He is being sued in his individual and official capacities for the prospective relief sought herein, including to enjoin unconstitutional acts to be taken under color of state law, within the meaning of 42 U.S.C. § 1983.

17.

Mr. Callaway may be served with process at the Henry County Board of Commissioners' office, located at 40 Atlanta Street, McDonough, Georgia, 30253.

18.

Defendant Mildred Schmelz is a resident of Henry County and serves as a member of the Henry County Board of Elections and Registration. As such, Ms. Schmelz is charged with enforcement and implementation of the referendum vote mandated by the De-Annexation Acts, both of which are unconstitutional. She is being sued in her individual and official capacities for the prospective relief sought herein, including to enjoin unconstitutional acts to be taken under color of state law, within the meaning of 42 U.S.C. § 1983.

19.

Ms. Schmelz may be served with process at the Henry County Board of Commissioners' office, located at 40 Atlanta Street, McDonough, Georgia, 30253.

20.

Defendant Jon Kirkpatrick is a resident of Henry County and serves as a member of the Henry County Board of Elections and Registration. As such, Mr. Kirkpatrick is charged with enforcement and implementation of the referendum vote mandated by the De-Annexation Acts, both of which are

unconstitutional. He is being sued in his individual and official capacities for the prospective relief sought herein, including to enjoin unconstitutional acts to be taken under color of state law, within the meaning of 42 U.S.C. § 1983.

21.

Mr. Kirkpatrick may be served with process at the Henry County Board of Commissioners' office, located at 40 Atlanta Street, McDonough, Georgia, 30253.

22.

Defendant Dan Richardson is a resident of Henry County and serves as a member of the Henry County Board of Elections and Registration. As such, Mr. Richardson is charged with enforcement and implementation of the referendum vote mandated by the De-Annexation Acts, both of which are unconstitutional. He is being sued in his individual and official capacities for the prospective relief sought herein, including to enjoin unconstitutional acts to be taken under color of state law, within the meaning of 42 U.S.C. § 1983.

23.

Mr. Richardson may be served with process at the Henry County Board of Commissioners' office, located at 40 Atlanta Street, McDonough, Georgia, 30253.

24.

Defendant Arch Brown is a resident of Henry County and serves as a member of the Henry County Board of Elections and Registration. As such, Mr. Brown is charged with enforcement and implementation of the referendum vote mandated by the De-Annexation Acts, both of which are unconstitutional. He is being sued in his individual and official capacities for the prospective relief sought herein, including to enjoin unconstitutional acts to be taken under color of state law, within the meaning of 42 U.S.C. § 1983.

25.

Mr. Brown may be served with process at the Henry County Board of Commissioners' office, located at 40 Atlanta Street, McDonough, Georgia, 30253.

26.

Pursuant to O.C.G.A. § 9-4-7(c), the Attorney General of Georgia shall be served with a copy of this Verified Complaint because it challenges the constitutionality of the De-Annexation Acts.

27.

Attorney General Christopher M. Carr may be served with process at his official address at 40 Capitol Square, SW, Atlanta, Georgia, 30334.

## JURISDICTION AND VENUE

28.

This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) because COPF is suing Defendants pursuant to 42 U.S.C. § 1983 for violations of its rights under the Contracts Clause of Article I, section 10 of the U.S. Constitution. Section 1983 creates a civil cause of action for a party who suffers a violation of rights protected by the U.S. Constitution—such as those provided for in the Contracts Clause—that is proximately caused by the conduct of a person acting under color of state law.

29.

This Court also has subject-matter jurisdiction over this action under 28 U.S.C. § 1332 because there is complete diversity of citizenship between COPF, a New York limited liability company whose only member is a citizen of the State of New York, and Defendants, all of whom are citizens and residents of the State of Georgia. The value of the injunctive and declaratory relief sought in this lawsuit exceeds \$75,000, exclusive of interest and costs.

30.

This Court has supplemental jurisdiction over COPF's claim that the De-Annexation Acts are unconstitutional under the Contracts Clause of the Georgia

Constitution pursuant to 28 U.S.C. § 1367, because this claim is so closely related to COPF's claim pursuant 42 U.S.C. § 1983 that they form part of the same case or controversy under Article III of the U.S. Constitution.

31.

This Court has jurisdiction to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201–02. Such relief is appropriate and necessary to avoid enforcement of legislation that would violate COPF's rights under the Contracts Clause of the U.S. Constitution.

32.

Venue is proper under 28 U.S.C. § 1391(b) because all Defendants reside in Henry County, which is within the Northern District of Georgia—Atlanta Division. Venue is also proper in this Court because a substantial part of the events giving rise to COPF's claims occurred in the Northern District of Georgia—Atlanta Division, where both Stockbridge and the proposed City of Eagle's Landing are located.

## **BACKGROUND**

### **Overview of Georgia's Municipal Bond Market**

33.

Georgia's municipal bond market provides an efficient means for local governments to borrow money for public purposes, including for equipment acquisitions and infrastructure improvements. Specifically, Georgia municipalities are authorized to issue and sell bonds to bond purchasers in consideration for immediate funds from the purchaser, which can then be dedicated to appropriate public purposes. In exchange, the bond purchaser receives a contractual right to receive—from identified, statutorily authorized municipal revenue sources—regular repayments of principal and interest. This can be in the form of a pledge of a particular revenue stream or in the form of a pledge of a public entity's interests in a particular contract.

34.

Repayment obligations of municipal bond issuers often are secured by the municipality's obligation to levy property taxes on all taxable property within the municipality. Obligations carrying this security feature are commonly referred to as municipal "full faith and credit" or "general" obligations. They may be issued directly by municipalities or through development authorities such as the

Stockbridge URA. Each approach is common in Georgia and based on well-settled state law.

35.

COPF considers the pledge by a municipality to levy property taxes to meet its repayment obligations, whether directly or through an intergovernmental agreement, as a critical security feature since specialized municipal facilities, like a City Hall, do not themselves produce revenues and rarely offer sufficient market value to serve as adequate collateral. Also crucial to COPF is the assumption that such a pledge, as set forth in the contract at the time of bond acquisition, will be preserved and enforced under Georgia law and not subsequently altered or diminished by a legislative act of the General Assembly during the (often long) term of the contract.

**The Stockbridge Bonds Represent a Common Type of Financing for Georgia Municipalities**

36.

The Stockbridge Bonds were issued by the Stockbridge URA in 2005 and in 2006 and acquired by COPF in 2015. The Stockbridge URA was created by duly elected Stockbridge officials to provide for the issuance of the Stockbridge Bonds

to assist Stockbridge in urban redevelopment, including the building of public facilities for the benefit of Stockbridge.

37.

The Stockbridge URA is only obligated to pay bondholders to the extent it receives funds paid from Stockbridge to it under the intergovernmental agreement between the two parties.

38.

Specifically, to secure and service the Stockbridge Bonds, Stockbridge agreed under the intergovernmental agreement to: (1) make installment payments of the purchase price to the Stockbridge URA in amounts sufficient to enable the Stockbridge URA to pay the principal of, premium, if any, and interest on the Stockbridge Bonds when due, and (2) levy an annual *ad valorem* tax on all taxable property located within the corporate limits of the City of Stockbridge, ***as then existent and as the same may be extended***, in an amount necessary to fulfill its obligations under the intergovernmental debt agreement.

39.

The intergovernmental agreement consists of: the Agreement of Sale by and between the Stockbridge URA, as seller, and the City of Stockbridge, as purchaser, dated as of November 14, 2005 (the “Original Sale Agreement”), as amended by

the First Amendment to Agreement of Sale dated as of December 14, 2005 (the “First Amendment”) (with respect to the 2005 Bonds), and the Second Amendment to Agreement of Sale, dated as of December 21, 2006 (the “Second Amendment”) (with respect to the 2006 Bonds) (the Original Sale Agreement, as amended by the First Amendment and the Second Amendment, collectively, the “Debt Agreement”). A true and correct copy of the Debt Agreement is attached hereto as Exhibit E.

40.

Wachovia Bank, National Association (“Wachovia”) (and Wells Fargo Bank, N.A., following its acquisition of Wachovia) previously owned the Stockbridge Bonds and had since their initial issuance. Thus, when the Stockbridge Bonds were issued, the Stockbridge URA pledged and assigned to Wachovia as the original owner of the Stockbridge Bonds, a first priority security interest in all of Stockbridge URA’s right, title, interest, remedies, powers, options, benefits, and privileges in, to, and under the Debt Agreement (other than certain limited rights to receive certain fees, expenses and indemnification and the ability to approve changes to the public building project) pursuant to that certain Assignment and Security Agreement dated as of November 14, 2005 (the “Original Assignment Agreement”) as amended by that certain First Amendment to

Assignment and Security Agreement, made and entered into as of December 14, 2005, between the Stockbridge URA and Wachovia, with respect to the 2005 Bonds (the “First Assignment Agreement”), and that certain Second Amendment to Assignment and Security Agreement, made and entered into as of December 21, 2006, between the Stockbridge URA and Wachovia, with respect to the 2006 Bonds (the “Second Assignment Agreement,” collectively, with the Original Assignment Agreement and the First Assignment Agreement, the “Assignment”). A true and correct copy of the Assignment is attached hereto as Exhibit F.

41.

Installment payments from Stockbridge under the Debt Agreement to pay principal of and interest on the Stockbridge Bonds are due on a semi-annual basis—in August and February. The final installment payments from Stockbridge under the Debt Agreement to pay principal of and interest on the Stockbridge Bonds are due in 2031.

42.

Pursuant to the Assignment, the owners of the Stockbridge Bonds have direct privity with Stockbridge and became parties to the bilateral contract with Stockbridge (*i.e.*, the Debt Agreement) and possess all contractual rights granted by Stockbridge under the Debt Agreement (other than certain reserved costs and

expenses), including the pledge of Stockbridge's full faith and credit and unlimited *ad valorem* tax base to pay amounts needed to repay the Stockbridge Bonds.

43.

Bond counsel opinions issued on behalf of Stockbridge and the Stockbridge URA, respectively, affirm the validity of the Stockbridge Bonds, the Debt Agreement and the Assignment and indicate that the Assignment creates a valid lien on the security pledged under the Debt Agreement.

#### **COPF's Purchase of the Stockbridge Bonds**

44.

COPF currently owns 100% of the outstanding Stockbridge Bonds.

45.

In December 2015, COPF, as assignee, and Wells Fargo Bank, N.A., as assignor ("Wells"), entered into that certain Assignment Agreement No. 2015-3 dated as of December 30, 2015, which incorporates the terms of that certain Master Absolute Assignment Agreement (For State and Local Government Loan Obligations) dated as of October 15, 2014 and an Assignment Agreement dated as of December 30, 2015 (collectively, the "Wells Assignment"), pursuant to which Wells, as successor-in-interest to Wachovia, sold and assigned to COPF all of its right, title and interest in the Stockbridge Bonds, the Debt Agreement, the

Assignment and related documents. A true and correct copy of the Wells Assignment is attached as Exhibit G.

46.

Prior to entering into the Wells Assignment, COPF undertook thorough diligence surrounding the relative credit quality of, and repayment prospects for, the Stockbridge Bonds. One critical factor in COPF's analysis was Stockbridge's pledge to generate revenues from a levy of a property tax on taxable properties within the City's *ad valorem* tax base. This represents COPF's ultimate repayment source for the Stockbridge Bonds. COPF's analysis also included a comprehensive review of Stockbridge's credit quality including, but not limited to, revenue viability, fund balance levels, and overall financial performance; its existing debt levels as measured against its tax base; residential and commercial growth patterns; the composition of major employers within Stockbridge's borders and their importance to the tax base; median household income and other socioeconomic indices; and historic and current levels of taxable property valuation.

47.

In making the credit decision to purchase the Stockbridge Bonds, COPF relied on Stockbridge's pledge in the Debt Agreement to "levy an annual *ad valorem* tax on all taxable property located within the corporate limits of

[Stockbridge], *as now existent and as the same may hereafter be extended* (emphasis added), at such rate or rates, without limitation as to rate or amount, as may be necessary to produce in each year revenues sufficient to fulfill [Stockbridge's] obligations” to enable Stockbridge to pay its obligations to the Stockbridge URA under the Debt Agreement.

48.

The above-quoted language from the Debt Agreement explicitly states that Stockbridge pledged not only the *ad valorem* tax base within the corporate limits of Stockbridge at the time the Stockbridge Bonds were issued, but it also pledged all extensions of its *ad valorem* tax base. Notably, the tax pledge language in the Debt Agreement does not permit or contemplate any reductions (*i.e.*, de-annexations) of Stockbridge's *ad valorem* tax base. It only permits and contemplates extensions (*i.e.*, annexations) to the *ad valorem* tax base pledged to the bondholders under the Debt Agreement.

49.

COPF relied upon this contractual, statutorily authorized language to analyze the risk of purchasing the Stockbridge Bonds.

50.

COPF relied on Stockbridge's pledge under the Debt Agreement to levy property taxes on all taxable property within the City's borders (as they existed at the time of the issuance of the Bonds and as such borders are extended) to support repayment of the Stockbridge Bonds as a threshold factor in considering the risk of repayment between its acquisition of the Stockbridge Bonds (in 2015) and the final maturity of the Stockbridge Bonds (in 2031). The pledge of Stockbridge's *ad valorem* tax base as it existed at the time of acquisition was a material reason why COPF chose to purchase the Stockbridge Bonds.

51.

This analysis is consistent with Moody's Investors Service's ("Moody's") General Obligation Rating Methodology, the principal methodology used in ratings for similar Georgia revenue bond structures (*e.g.*, Moody's report on \$12 million Revenue Bonds (Parking Garage Project), Series 2017, issued by the Urban Redevelopment Agency of Augusta, which based the bond rating on the underlying city's general obligation rating, summarizing the credit as follows: "Legal Security: The bonds are issued by the Urban Redevelopment Agency of Augusta, but secured by the consolidated government's GO pledge through an

intergovernmental contract.”) (See Credit Opinion, Moody’s Investors Service, dated May 19, 2017, attached as Exhibit H at p. 4.)

52.

COPF was unaware, when it purchased the Stockbridge Bonds and entered into the Debt Agreement and the Assignment in 2015, of any consideration by the Georgia General Assembly of any legislative proposals such as the De-Annexation Acts, that both: (a) reduce the borders of an already-incorporated local government in Georgia (and the property subject to *ad valorem* taxation therein), and (b) fail to provide relief to affected creditors of such local government.

### **The De-Annexation Acts**

53.

Stockbridge is a city located in Henry County, approximately 20 miles south of Atlanta. Stockbridge, as it presently exists, is home to roughly 29,000 Georgians. The total assessed property value of real property within Stockbridge is approximately \$757 million. See footnote 1, *supra*.

54.

Eagle’s Landing is located in an area of Stockbridge.

55.

As part of the formation of the proposed City of Eagle's Landing, a group of residents in the Eagle's Landing area started an effort to de-annex their community from Stockbridge. That effort ultimately culminated in the General Assembly's decision to pass the De-Annexation Acts on March 5, 2018 and March 29, 2018, respectively and Governor Nathan Deal's decision to sign both bills into law on May 8, 2018.

56.

The De-Annexation Acts require a referendum on the November 6, 2018 general election ballot, allowing only those voters who reside in the limits of the proposed City of Eagle's Landing to vote on their de-annexation from Stockbridge and the incorporation of the City of Eagle's Landing. The remaining Stockbridge residents whose real property will remain subject to the *ad valorem* tax pledge that Stockbridge made to COPF will not be permitted to vote in the referendum.

57.

The De-Annexation Acts require the ballot for the referendum election to include the following:

Shall the Act incorporating the City of Eagle's Landing in Henry County, imposing term limits, prohibiting conflicts of interest, and creating community improvement districts be approved?

YES

NO

58.

The De-Annexation Acts require the Elections and Registration Director of Henry County to hold and conduct the election and to certify the results thereof to the Secretary of State.

59.

If the referendum is approved by a majority of the voters voting in the referendum, then approximately 50% of Stockbridge's total assessed property—\$379 million in Stockbridge's real property assessed value—would be de-annexed from the existing boundaries of Stockbridge. See footnote 1, *supra*. This area,

along with the more than 9,000 residents who occupy it,<sup>2</sup> would then be annexed into the proposed City of Eagle's Landing, along with certain other portions of unincorporated Henry County.

60.

While the De-Annexation Acts provide for the removal of approximately 50% of the *ad valorem* tax base that ultimately secures the Stockbridge Bonds (upon which COPF relied in making its decision to purchase the Bonds), footnote 1, *supra*, the De-Annexation Acts do not provide for the apportionment of Stockbridge's obligations under the Debt Agreement or the Stockbridge Bonds to the new City of Eagle's Landing, nor do they provide any other mechanism to maintain COPF's originally bargained-for contractual rights, security and collateral, specifically, the entire tax base of Stockbridge as it existed at the time of the issuance of the Stockbridge Bonds.

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<sup>2</sup> Carl Vinson Institute of Government – The University of Georgia, “Stockbridge De-Annexation Fiscal Analysis” at 10 (“The General Apportionment Office provided an estimated 2016 population of 9,267 for the study area.”) (Exhibit C).

**The De-Annexation Acts Substantially Impair and Reduce the Collateral Securing COPF's Contract with Stockbridge**

61.

If successful, the de-annexation vote by the residents eligible to participate in the November 2018 referendum would have a further significant effect on both COPF's contractual rights under the Debt Agreement and on Stockbridge's general operating revenues.

62.

The Stockbridge Bonds are secured by a pledge and assignment of payments under the Debt Agreement which contains a valid and legally enforceable obligation by Stockbridge to levy taxes on all taxable property "within the corporate limits" of Stockbridge "as now existent and as the same may hereafter be extended," to meet its repayment obligations. *See* Exhibit E.

63.

Moreover, the de-annexation would result in an estimated loss of close to 50% of Stockbridge's general operating revenues, from a fiscal year 2016 total of \$9,062,888 to a projected post-de-annexation total of \$4,832,249, according to the feasibility study attached as Exhibit C.

64.

An affirmative vote for de-annexation in the November 6, 2018 referendum mandated by the De-Annexation Acts would infringe COPF's constitutional rights under the respective Contracts Clauses of the U.S. and Georgia Constitutions by taking away: (a) a significant part of its security and source of repayment that is pledged under the Debt Agreement that COPF relied on in purchasing the Stockbridge Bonds (*i.e.*, the real property *ad valorem* tax base of Stockbridge as it existed at the time of the issuance of the Stockbridge Bonds) and (b) COPF's ability to seek mandamus or specific performance against Stockbridge to levy an annual *ad valorem* tax on the entire amount of taxable property pledged for the repayment of the Stockbridge Bonds, thereby substantially impairing and eliminating a significant portion of COPF's contractual rights under the intergovernmental agreement that is pledged to secure the Stockbridge Bonds.

65.

Upon de-annexation, absent apportionment of the Stockbridge Bonds to the former Stockbridge (now Eagle's Landing) residents, a guarantee by the City of Eagle's Landing, or other equitable methods to maintain or approximate COPF's originally bargained-for security, COPF will suffer substantial loss of a significant

portion of its contractual rights during the thirteen years remaining before Stockbridge's obligations under the Debt Agreement expire.

66.

Specifically, if the De-Annexation Acts are approved in the November referendum, Stockbridge's *ad valorem* tax base as it existed when the Stockbridge Bonds were originally issued will shrink by half. Thus, the revenues and source of repayment contractually promised to COPF as security under the Debt Agreement will be severely reduced should de-annexation occur.

67.

Rating agencies and the municipal finance market generally have reacted negatively to the passage of the De-Annexation Acts and warned of broader implications due to a weakening of the legal framework supporting the Stockbridge Bonds and similar obligations issued by municipalities throughout Georgia.

68.

For example, on May 14, 2018, Moody's issued a report ("Moody's Report") stating that "[d]e-annexation would reduce [Stockbridge's] tax base and [the De-Annexation Acts] include no provisions to reapportion outstanding debt." The Moody's Report further states: "The bills are also credit negative for local governments in Georgia generally because they establish a precedent that the state

can act to divide local tax bases, potentially lowering the credit quality of one city for the benefit of another.”

69.

On May 30, 2018, S&P Global issued a ratings report (“S&P Ratings Report”) in which it noted that the De-Annexation Acts “provide for the separation of a significant share of the City of Stockbridge’s incorporated area and assessed value (approximately 44%; this includes proposed property that Stockbridge would annex as part of SB 262), without consideration for the apportionment of the city’s nonvoted debt.” If the referendum regarding the incorporation of Eagle’s Landing were to pass, the S&P Ratings Report notes that, “Stockbridge would face a weakened leverage position relative to its prospective population, tax base, and budget. Additionally, Stockbridge may face operational challenges, as it will lose an estimated 37% to 57% of its revenue, based on analyses by the University of Georgia and the City, respectively, along with challenges in proportionately reducing expenditures as a result of scale and overhead issues associated with the provision of services across its population.”

**There is No Legitimate Public Interest in Allowing Property Contained Within a Georgia Municipality to be Relieved of the Municipality's Financial Obligations Through De-Annexation**

70.

While the State of Georgia has long allowed for the creation of new municipalities from unincorporated areas of counties, the State of Georgia has not, to COPF's knowledge, previously allowed an area of an incorporated city to both de-annex itself *and* relieve the departing taxpayers from bond obligations or other agreements serving as collateral and security for bond obligations (both of which are the relevant features of the De-Annexation Acts).

71.

The De-Annexation Acts fail to identify and do not provide any public purpose or justification for the loss and impairment of COPF's contractual rights that result from de-annexation of Stockbridge's existing *ad valorem* tax base.

72.

Allowing de-annexation without apportionment (or other equitable relief) for validly issued financial obligations of Georgia municipalities is contrary to the public interest because, among other things, it diminishes the collateral and security originally promised to the holders of such obligations and deprives them of existing contractual obligations.

**CLAIMS FOR RELIEF**

**COUNT I  
(Declaratory and Injunctive Relief)**

**VIOLATION OF THE CONTRACTS CLAUSE  
(U.S. Const. Article I, section 10; 42 U.S.C. § 1983)**

73.

COPF re-alleges and incorporates by reference all of the allegations contained in the precedent paragraphs, as if fully alleged and set forth herein.

74.

Pursuant to Article I, section 10 of the United States Constitution, “No State shall . . . pass any . . . Law impairing the Obligation of Contracts.” U.S. Const. art. I, § 10, cl. 1.

75.

An affirmative vote for de-annexation in the November 6, 2018 referendum election mandated by the De-Annexation Acts would substantially interfere with and impair the contracts securing the Stockbridge Bonds purchased by COPF by authorizing the elimination of a significant source of COPF’s bargained-for contract rights. Specifically, an affirmative vote for de-annexation pursuant to these Acts would eliminate approximately 50% of the assessed value of Stockbridge’s property, but would fail to apportion any of Stockbridge’s debt

under the Debt Agreement to the proposed City of Eagle's Landing. This means COPF will lose the right to seek mandamus or specific performance against Stockbridge to levy an annual *ad valorem* tax on the entire amount of taxable property pledged for the repayment of the Stockbridge Bonds. As a result, a significant portion of COPF's lien on the Debt Agreement and the bargained-for source of repayment and underlying security for the Stockbridge Bonds—the *ad valorem* tax base of Stockbridge at the time of the purchase by COPF—will be taken from COPF, resulting in a loss of COPF's contract rights and collateral.

76.

COPF has already suffered concrete injuries as a result of the signing of the De-Annexation Acts, and it will be irreparably harmed if the November 6, 2018 referendum election is conducted and effectuated.

77.

There is no legitimate public purpose in allowing de-annexation to sever taxable real property located within a Georgia municipality from the valid municipal finance obligations payable therefrom without apportionment of the previously made financial commitments.

78.

An affirmative vote for de-annexation in the November 6, 2018 referendum vote mandated by the De-Annexation Acts would further violate COPF's rights under the Contracts Clause of the U.S. Constitution.

79.

COPF is likely to succeed on the merits of its claim for violation of the Contracts Clause of the U.S. Constitution and is likely to suffer irreparable harm in the absence of permanent injunctive relief. COPF's remedies at law are inadequate; the balance of the hardships and the equities tips in COPF's favor; and an injunction is in the public interest.

80.

Accordingly, COPF is entitled to a declaratory judgment that any final result of the November 2018 referendum mandated by the De-Annexation Acts that results in the de-annexation of property belonging to Stockbridge without apportionment of its obligations under the Debt Agreement would violate COPF's rights under the Contracts Clause, and COPF is entitled to preliminary and permanent injunctive relief preventing Defendants from conducting and effectuating the November 6, 2018 referendum election mandated by the De-

Annexation Acts, including but not limited to canvassing and computing the returns of the referendum and certifying and recognizing the results thereof.

81.

Further, pursuant to 42 U.S.C. § 1988, COPF is entitled to recover from Defendants its attorneys' fees and costs incurred in enforcing its constitutional rights through this action brought under 42 U.S.C. § 1983.

**COUNT II**  
**(Declaratory and Injunctive Relief)**

**VIOLATION OF THE CONTRACTS CLAUSE**  
**(Ga. Const. Article 1, section 1, Paragraph X)**

82.

COPF re-alleges and incorporates by reference all of the allegations contained in the precedent paragraphs, as if fully alleged and set forth herein.

83.

The Georgia Constitution provides that, "No . . . laws impairing the obligation of contract . . . shall be passed." Ga. Const. art. 1, § 1, ¶ 10.

84.

An affirmative vote for de-annexation in the November 6, 2018 referendum election mandated by the De-Annexation Acts would substantially impair the

contracts securing repayment of the Stockbridge Bonds, which were the basis on which COPF purchased the Stockbridge Bonds.

85.

There is no legitimate public purpose in allowing de-annexation to sever taxable real property located within a Georgia municipality from the valid municipal finance obligations payable therefrom without apportionment of the previously made financial commitments.

86.

An affirmative vote for de-annexation in the November 6, 2018 referendum election mandated by the De-Annexation Acts would further violate COPF's rights under the Contracts Clause of the Georgia Constitution.

87.

COPF is likely to succeed on the merits of its claim for violation of the Contracts Clause of the Georgia Constitution and is likely to suffer irreparable harm in the absence of permanent injunctive relief. COPF's remedies at law are inadequate; the balance of the hardships and the equities tips in COPF's favor; and an injunction is in the public interest.

88.

Accordingly, COPF is entitled to a declaratory judgment that any final result of the November 2018 referendum mandated by the De-Annexation Acts that results in the de-annexation of property belonging to Stockbridge without apportionment of Stockbridge's obligations under the Debt Agreement would violate COPF's rights under the Contracts Clause, and COPF is entitled to preliminary and permanent injunctive relief preventing Defendants from conducting and effectuating the November 6, 2018 referendum election mandated by the De-Annexation Acts, including but not limited to canvassing and computing the returns of the referendum and certifying and recognizing the results thereof.

**PRAYER FOR RELIEF**

WHEREFORE, COPF respectfully requests that the Court:

A. Enter a declaratory judgment declaring that any final result of the November 6, 2018 referendum election mandated by the De-Annexation Acts that results in de-annexation of any portion of the City of Stockbridge without apportionment of Stockbridge Bonds, the obligations owed by Stockbridge under the Debt Agreement, or other equitable relief to maintain COPF's originally bargained-for contract rights, security and collateral is invalid because such a result

would violate COPF's rights under the respective Contracts Clauses of the U.S. Constitution and the Georgia Constitution.

B. Enter a preliminary and permanent injunction that directs the Secretary of State for the State of Georgia, the Henry County Elections and Registration Director and the members of the Henry County Board of Elections and Registration, and their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them, to refrain from conducting and effectuating the November 6, 2018 referendum vote mandated by the De-Annexation Acts, including but not limited to canvassing and computing the returns of the referendum and certifying and recognizing the results thereof.

C. Award COPF its attorneys' fees and costs incurred in this action pursuant to 42 U.S.C. § 1988, and other applicable authority.

D. Order such other and further relief as the Court deems just and proper.

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Respectfully submitted, this 17<sup>th</sup> day of August, 2018.

/s/ David L. Balsler

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

CAPITAL ONE PUBLIC FUNDING, )  
LLC, )

Plaintiff, )

v. )

BRIAN P. KEMP, in his individual and )  
and official capacities as the Secretary of )  
State of the State of Georgia, TINA )  
LUNSFORD, in her individual and )  
official capacities as as the Henry County )  
Elections and Registration Director, )  
ANDY CALLOWAY, MILDRED )  
SCHMELZ, JON KIRKPATRICK, DAN )  
RICHARDSON, and ARCH BROWN, in )  
their individual and official capacities as )  
members of the Henry County Board of )  
Elections and Registration, and JOHN )  
DOE, in his individual and official )  
capacities as the Election Superintendent )  
of Henry County, )

Defendants. )

CIVIL ACTION FILE NO. \_\_\_\_\_

**VERIFICATION**

STATE OF NEW YORK )

COUNTY OF ORANGE )

Jonathan A. Lewis, of lawful age and being first duly sworn on oath, states that he is President for Plaintiff Capital One Public Funding, LLC; that he has read the above and foregoing allegations of the Complaint for Preliminary and Permanent Injunctive Relief and Declaratory Judgment; and that the factual

allegations contained therein are true and correct to the best of his knowledge and belief.



Jonathan A. Lewis  
President  
CAPITAL ONE PUBLIC FUNDING,  
LLC

Subscribed and sworn to before me this 16<sup>th</sup> day of August, 2018.

  
NOTARY PUBLIC

Printed Name: Daniel C. McKane

My Commission Expires:

5/28/21

