CHAMPIONS RETREAT GOLF FOUNDERS, LLC V. COMMISSIONER: GOLF COURSE QUALIFIES FOR CHARITABLE DEDUCTION DUE TO ITS WILDLIFE CONSERVATION

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In *Champions Retreat Golf Founders, LLC v. Commissioner*,[1] the United States Court of Appeals for the Eleventh Circuit addressed whether a taxpayer qualified for a charitable deduction for a donation of a conservation easement that encompassed a private golf course as well as undeveloped land.[2] The Eleventh Circuit vacated the Tax Court's decision to uphold the Commissioner of Internal Revenue's denial of the charitable deduction, "[b]ecause the [Internal Revenue] Code does not disqualify an easement just because it includes a golf course . . . ."[3] Determining that the taxpayer was entitled to the deduction, the Eleventh Circuit remanded the case back to the Tax Court to establish the deduction's amount.[4]

The appellant taxpayer, Champions Retreat Golf Founders, LLC ("Champions"), received 463 acres of undeveloped land along the Savannah River near Augusta, Georgia.[5] On nearly two-thirds of this land, Champions developed a private golf course, which opened in 2005.[6] Additionally, Champions utilized ninety-five acres along the course for sixty-six homesites located away from the nearby Savannah River.[7] Around fifty-seven acres of "bottomland forests and wetlands," including "riparian land on the Little River," a tributary of the Savannah, were left undeveloped.[8]

Champions contributed part of the land as a conservation easement to the North American Land Trust (the "Trust") in 2010 in order to claim a charitable deduction.[9] The Trust is a nationwide organization "that holds and enforces conservation easements . . . [to] preserv[e] natural habitats and environmentally sensitive areas."[10] In the conservation easement, which totaled 348 acres, Champions included the undeveloped land, the golf course, and the driving range, but not the golf course buildings, parking lot, or the

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[1] Champions Retreat Golf Founders, LLC v. Comm'r, 959 F.3d 1033 (11th Cir. 2020).

[2] *Id.* at 1034.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Champions*, 959 F.3d at 1034.

[8] *Id.*

[9] *Id.* at 1035.

[10] *Id.*

homesites.[11] Despite this mixture of developed and undeveloped land, the easement property hosts numerous bird species, "some rare;" the "regionally declining southern fox squirrel;" and the denseflower knotweed, "a rare plant species."[12] And although the property is private, portions of it are viewable from the Savannah and Little rivers.[13]

The Trust accepted the easement, but the Commissioner of Internal Revenue (the "Commissioner") refused to allow Champions to claim a charitable deduction because the easement allegedly failed to satisfy section 170 of the Internal Revenue Code's conservation-purpose requirement.[14] Subsequently, Champions filed an action against the Commissioner, but the Tax Court agreed with the Commissioner's conclusion.[15] Thus, Champions appealed to the Eleventh Circuit.[16] The Eleventh Circuit took the appeal to review whether the Tax Court's legal and factual conclusions were clearly erroneous.[17]

Reviewing the Tax Court's decision *de novo*, the Eleventh Circuit considered the parameters of section 170 of the Internal Revenue Code (the "Code").[18] The Code permits deductions for a "qualified conservation contribution,"[19] which is defined as a contribution "of a qualified real property interest, . . . to a qualified organization, . . . exclusively for conservation purposes."[20] The Commissioner agreed that the easement was a qualified real property interest because it restricts, in perpetuity, the usage of the property, and that the Trust is a qualified organization.[21] As such, whether Champions created the easement "'exclusively for conservation purposes'" was the broad issue.[22]

The court selected the Code provisions defining a conservation purpose that were applicable to Champions' easement property.[23]

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[11] *Id.*
[12] *Id.* at 1034.
[13] *Champions*, 959 F.3d at 1034–38.
[14] *Id.*; I.R.C. § 170. *See also* Champions Retreat Golf Founders, LLC v. Comm'r, 116 T.C.M. (CCH) 262 at *7 (2018), *vacated*, 959 F.3d 1033 (11th Cir. 2020) (denying the deduction because "the conservation easement did not me[e]t the requirements of section 170").
[15] *Champions*, 959 F.3d at 1035.
[16] *Id.*
[17] *Id.*
[18] *Id.*; I.R.C. § 170.
[19] I.R.C. § 170(f)(3)(B)(iii).
[20] I.R.C. § 170(h)(1).
[21] *Champions*, 959 F.3d at 1035.
[22] *Id.* (quoting I.R.C. § 170(h)(1)).
[23] *Id.* at 1035–36. See I.R.C. § 170(h)(4)(A)(i)–(iv), which defines "conservation purpose" as:

> (i) the preservation of land areas for outdoor recreation by, or the education of, the general public, (ii) the protection of a relatively natural habitat of

Champions' easement was exclusively for conservation purposes if it was "contributed . . . for 'the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,' *or* for 'the preservation of open space . . . for the scenic enjoyment of the general public [that] will yield a significant public benefit.'"[24] Accordingly, for the deduction to qualify, the court needed to find that the easement property provides (1) proper protection of a sufficient habitat or ecosystem, or (2) a public benefit due to scenic enjoyment.[25] In addition to the statutory language of section 170, the court also examined the corresponding tax regulation to assist in the analysis.[26]

The corresponding Treasury regulation for the first code provision—protection of a habitat or ecosystem—states that easements for the "'protect[ion] [of] a significant relatively natural habitat in which a fish, wildlife, or plant community, or similar ecosystem normally lives'" will satisfy the Code's conservation-purpose provision.[27] The regulation defines three qualifying significant habitats or ecosystems, two of which the court found relevant to the case at hand.[28] More specifically, Champions qualified for the deduction "if its easement include[d] [a] habitat for 'rare, endangered, or threatened species of animal, fish, or plants,' *or* if the easement contribute[d] to the 'ecological viability' of the adjacent national forest."[29]

To determine if Champions' easement met the Treasury regulation as a "rare, endangered, or threatened species" habitat, the court relied on expert testimony about the existing wildlife on the property.[30] Champions' easement property undisputedly accommodated many species of birds.[31] One expert observed a total of sixty-one bird species, twenty-six of which were "listed as a priority by one or more conservation organizations."[32] However, a particular bird's priority level according to these groups was not dispositive.[33] Instead, the court reasoned that just "the presence of these

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> fish, wildlife, or plants, or similar ecosystem, (iii) the preservation of open space (including farmland and forest land) where such preservation is—(I) for the scenic enjoyment of the general public, or (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or (iv) the preservation of an historically important land area or a certified historic structure.

[24] *Champions*, 959 F.3d. at 1036 (quoting I.R.C. § 170(h)(4)(A)(ii)–(iii)) (emphasis added).
[25] *Id.* at 1036.
[26] *Id. See* I.R.C. § 170(a)(1) ("A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.").
[27] *Champions*, 959 F.3d at 1036 (quoting 26 C.F.R. § 1.170A-14(d)(3)(i) (2019)).
[28] *Id.*
[29] *Id.* at 1037 (quoting 26 C.F.R. § 1.170A-14(d)(3)(i)–(ii)) (emphasis added).
[30] *Id.* (quoting 26 C.F.R. § 1.170A-14(d)(3)(ii)).
[31] *Id.*
[32] *Id.*
[33] *Champions*, 959 F.3d at 1037.

many species, including some of substantial conservation concern, show[ed] that the property [was] a significant habitat for 'rare, endangered, or threatened species.'"[34] In addition to birds, the existence of the "declining southern fox squirrel" and the presence of the denseflower knotweed, a "rare species," contributed to the conclusion that the easement satisfied the statutory meaning.[35]

Although both parties agreed that various species requiring protection exist within the land at issue, the Commissioner and its expert argued that the habitat "[was] not relatively natural" within the meaning of the statute.[36] As evidence of this, they pointed to the non-native bermuda and bent grass planted on the golf course's fairways and greens.[37] Ultimately, the court found this argument unpersuasive, because "[w]hat matters under the Code and regulation is not so much whether all the *land* is natural, but whether the *habitat* is natural."[38] Thus, land alteration is "not disqualifying . . . so long as 'the fish, wildlife, or plants continue to exist there in a relatively natural state.'"[39] Essentially, the construction and existence of the golf course was not enough to disrupt the birds' natural state, and, given the presence of so many species, the court noted that "[the birds] apparently [found] the habitat quite suitable."[40]

The Commissioner also attempted to downplay the presence of the southern fox squirrels and the denseflower knotweed as contributing to the easement's conservation purpose.[41] The Commissioner minimized the importance of protecting the fox squirrel, despite its regional decline, because the state of Georgia permits a six-month hunting season of the fox squirrel.[42] However, the court found this unconvincing, because Georgia's choice not to protect the squirrels did not justify a denial of their protection under federal law.[43] Further, the Commissioner highlighted the fact that the knotweed "exist[ed] on only . . . 7%, with the capacity to occupy up to 17%," of the easement.[44] However, the court reasoned that its existence alone, given its rarity, was "worthy of protection," and noted that "[f]ull coverage of a species is not required . . . ."[45]

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[34] *Id.* at 1037 (quoting 26 C.F.R. § 1.170A-14(d)(3)(ii)).
[35] *Id.* at 1038–39.
[36] *Id.* at 1038.
[37] *Id.*
[38] *Id.*
[39] *Champions*, 959 F.3d at 1038 (quoting 26 C.F.R. § 1.170A-14(d)(3)(i)).
[40] *Id.*
[41] *Id.* at 1038–39.
[42] *Id.* at 1038.
[43] *Id.*
[44] *Id.* at 1039.
[45] *Champions*, 959 F.3d at 1039.

Additionally, the Commissioner emphasized the fact that the golf course drained into the part of the property where the knotweed was located, therefore subjecting the knotweed to the potentially harmful chemicals used on the course.[46] Though it did not deny this possibility, the court was satisfied with the that fact that "the easement explicitly require[d] Champions to follow the best environmental practices prevailing in the golf industry—an obligation the Trust is entitled to enforce."[47] Regardless, the relevant inquiry concerned whether the easement increased the possibility of the knotweed's preservation, not the possibility of chemicals from the course damaging it.[48] And, in fact, the easement provides such protection.[49] Without the easement, Champions would not be obligated to utilize the "best environmental practices," and the easement prevents "unrestrained development of the land where the knotweed is located," which, according to the court, would endanger the plants much more than the golf course.[50] Given the presence of the bird species, southern fox squirrels, and the rare denseflower knotweed, the court concluded that Champions' conservation easement was indeed "for the protection of a relatively natural habitat" and therefore qualified as a conservation purpose.[51]

In addition to assessing whether the easement protected a relatively natural habitat, the Eleventh Circuit also examined whether the easement was included in or contributed to the "ecological viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area, or other similar conservation area."[52] Champions argued that because its property is only 700 feet away from a national forest, the property's birds could fly there, and the easement thus "contribut[es] to the ecological viability" of the national forest.[53] The court rejected this argument because even though the easement may make such a "contribut[ion]," more is required to establish a conservation purpose.[54]

Finally, the court ended its analysis with the second Code provision, determining whether the easement was also made for "'the preservation of open space . . . for the scenic enjoyment of the general public'" and whether "the contribution 'will yield a significant public benefit.'"[55] The corresponding regulation states:

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[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Champions*, 959 F.3d at 1039 (quoting I.R.C. § 170(h)(4)(A)(ii)).
[52] *Id.* at 1036 (quoting 26 C.F.R. § 1.170A-14 (d)(3)(ii)).
[53] *Id.* at 1039.
[54] *Id.* at 1040.
[55] *Id.* (quoting I.R.C. § 170(h)(4)(A)(iii); 26 C.F.R. § 1.170A-14(d)(4)(i)(B)).

> Preservation of land may be for the scenic enjoyment of the general public if development of the property would impair the scenic character of the local rural . . . landscape or would interfere with a scenic panorama that can be enjoyed from a park, nature preserve, . . . *waterbody*, [or] trail, . . . and such area or transportation way is open to, or utilized by, the public.[56]

Further, the regulation only requires that the public have "visual, not physical, access to or across the property," and the whole property does not need to be visible.[57]

Because the public's opportunity to view Champions' easement property is from the Savannah and Little rivers, which run alongside and through the easement, respectively, the court conducted this portion of its analysis with a kayaker or canoer's perspective in mind.[58] The court also contextualized the easement property's scenery with the surrounding area as a whole.[59] From the rivers, the view consisted of the easement property's undeveloped, natural areas and the golf course.[60] The court easily concluded that the undeveloped, natural areas provided scenic enjoyment, but whether the golf course did as well was arguable.[61] To aid its analysis of the scenic enjoyment of the golf course, the court utilized a video that showed the contrasting views of the easement property with those of developed property downriver "that few canoers or kayakers would find scenic."[62] The court reasoned that a kayaker or canoer's view of the golf course consists mainly of its trees, which "detract[] only a little, if at all" from their scenic enjoyment of the area.[63] And when comparing that view with the nearby development, such as a condominium, "the easement property qualifies as open space providing scenic enjoyment."[64] The "preserv[ation] [of] relatively natural views . . . free [from] development . . . serves a public interest," especially when considering the proximity of the national forest.[65]

In conclusion, the court found that the easement provided scenic enjoyment and served a public interest by curbing extensive development,

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[56] *Id.* (quoting 26 C.F.R. § 1.170A-14 (d)(4)(ii)).
[57] *Champions*, 959 F.3d at 1040 (citing 26 C.F.R. § 1.170A-14 (d)(4)(ii)(B)).
[58] *Id.*
[59] *Id.* at 1041–42.
[60] *Id.* at 1040.
[61] *Id.*
[62] *Id.*
[63] *Champions*, 959 F.3d at 1040.
[64] *Id.*
[65] *Id.*

and therefore satisfied the Code's conservation-purpose requirement.[66] The court noted that the claim that Champions' easement contribution was not for a conservation purpose, either as a sufficient habitat or for its scenic enjoyment, "would [have] be[en] a nonstarter" if the golf course was not part of the easement.[67] Concluding that Champions was entitled to a deduction, the court remanded the case back to the Tax Court to determine the proper amount.[68]

Owners of golf courses and other similarly developed commercial properties likely see *Champions* as a new tax-break opportunity. The Eleventh Circuit's finding that Champions' easement property satisfied the meaning of a relatively natural habitat, despite the use of chemicals, artificial drainage, and introduction of nonnative species, provides a baseline of the extent and type of property modifications that can exist within the limits of the Code.[69] Such precedent can help property owners gauge their own potential eligibility for charitable deductions from conservation easements. *Champions* may also indicate the court's willingness to allow commercial activity on conservation easements, which could open the door to properties developed similarly to golf courses for comparable charitable deductions. Regardless, the Eleventh Circuit's accommodating interpretation of Section 170 of the Code is positive news for golf course owners with properties containing habitats like Champions'.

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[66] *Id.* at 1041.
[67] *Id.* at 1039.
[68] *Id.* Judge Grant concurred with the majority's holding that Champions was entitled to the deduction because of the easement property's "scenic enjoyment." *Champions*, 959 F.3d at 1041 (Grant, J., concurring in part and dissenting in part). However, Judge Grant was not only unconvinced that Champions' easement property was a "relatively natural habitat," but also that the court should make such a determination. *Id.* at 1041–42.
[69] *Id.* at 1038–39 (majority opinion).