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Fore! Are Private Golf Clubs Destroying the Purpose of Conservation?

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*Fore! Are Private Golf Clubs Destroying the Purpose of Conservation?**

I. INTRODUCTION

A. The Savannah River Region

The heart of the Savannah River cuts right through the Augusta region, inhabiting various species of wildlife. Stretching from the Blue Ridge Mountains to the Atlantic Ocean, the Savannah River plays an important role in the Georgia and South Carolina economy. The robust ecosystem creates a thriving tourist industry, which provides several outdoor recreational experiences designed for people of all ages.[1]

Folks venture from across the country to explore the scenic rivers and trails nestled in the Augusta territory. Hiking, kayaking, canoeing, and mountain biking are just a few activities this area provides for the experienced outdoorsman and the novice adventurer.[2] The Savannah River region is a safe haven for migrating birds as it offers secure nesting grounds.[3] Because of this, a diverse presence of wildlife inhabits the banks of the Savannah River and the surrounding areas, which provides for bird watching opportunities and tours.[4] Beautiful wildflowers cloak the edges of the streams and brooks that meander through the area, affording beautiful scenery for walking or kayaking.

*I would first like to thank my faculty advisor, Professor Monica Roudil, for assisting me throughout the drafting stages and providing valuable comments and critiques. I also want to thank my wife, Abigail Lackey, for her constant support and encouragement.

[1] The Savannah River offers visitors a large amount of opportunities to get outdoors and get on the water. *See Augusta Sports & Outdoors*, VISIT AUGUSTA, https://www.visitaugusta.com/things-to-do/sports-outdoors/ (last visited Oct. 27, 2020).

[2] *Id.*

[3] *Nature on the Augusta Canal*, AUGUSTA CANAL NATIONAL HERITAGE AREA, https://augustacanal.com/nature.php (last visited Oct. 27, 2020).

[4] *Id.*

Additionally, alligators, coyotes, and other predators have been known to roam the area.[5]

Conservation has played a crucial role in the Augusta region by preserving wildlife areas and protecting endangered species. The Central Savannah River and Land Trust ("the River Trust") has been a key player for conservation along the Savannah River.[6] The River Trust has worked with the Georgia Greenspace Program to preserve thousands of acres in the Savannah River region.[7] Some of the projects the River Trust has worked on are the Greystone Preserve, which is a 262 acre preserve in North Augusta,[8] as well as the Savannah River Greenway, which encompasses 150 miles of pathways for people to bike, walk and run.[9] With projects like these, the River Trust's goal is to preserve at least twenty percent of the wildlife areas in urban areas surrounding the Augusta area.[10]

B. Champions

Where the Georgia state line begins to descend upon the "low country" of South Carolina lays the little town of Evans, Georgia. The quaint, charming city of Evans radiates with southern hospitality. Just minutes away from Augusta, the Evans area attracts an influx of visitors, fans, and tourists during the week of the Masters Golf Tournament, which is played annually at the Augusta National Golf Club.

With a rich golf culture, coupled with a range of outdoor activities, it isn't a surprise that resorts in the Evans/Augusta area have had tremendous success in attracting visitors. However, in the wake of the Internal Revenue Service's ("the IRS") recent aggressive stance towards conservation easement transactions, one golf club battled the IRS on a challenged charitable conservation contribution.

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[5] *Id*.

[6] *Saving our Community, Once Acre at a Time*, CENTRAL SAVANNAH RIVER LAND TRUST, https://csrlt.org/ (last visited Oct. 27, 2020).

[7] *The Savannah River Greenway*, CENTRAL SAVANNAH RIVER LAND TRUST, https://csrlt.org/land/savannahrivergreenway/ (last visited Oct. 27, 2020).

[8] The Greystone Preserver, North Augusta, SC, Central Savannah River Land Trust, https://csrlt.org/land/greystone/ (last visited Oct. 27, 2020).

[9] *The Savannah River Greenway*, CENTRAL SAVANNAH RIVER LAND TRUST, https://csrlt.org/land/savannahrivergreenway/ (last visited Oct. 27, 2020).

[10] *Id*.

Champions Retreat Golf Founders, LLC ("Champions") built[11] and established a golf course in 2005.[12] However, the Pollard Land Company ("Pollard") previously owned the land. Pollard originally owned nearly 2,000 acres of undeveloped land that backed up to the Savannah River. The land was situated 13 miles north of Augusta. In 2002, Pollard conveyed some of the undeveloped land, approximately 463 acres, to Champions. When the golf course finally opened up in 2005, the course was only available to its club members and their guests. To this day, the course nevertheless remains private, restricted to its club members.

Of the 463 acres conveyed to Champions, the golf course only covered two-thirds of the property. Champions sold 66 lots for future home sites on the west side of the golf course (opposite direction of the Savannah River). For individuals to access the course and the home sites, they must enter through a single security entrance that is controlled by staff around the clock.

About fifty-seven acres of Champions' land remains undeveloped, largely entailing wetlands, marshes, and dense forests. Within this portion lies the Little River, which is a smaller waterway spinning off of the Savannah River. Germain Island rests in between this fork in the river. Germain Island, while for the most part is still undeveloped, includes six holes of the golf course.

During the recession of 2009, Champions' golf course was fraught with financial hardships. Seeking refuge from the recession, Champions contributed 348 of its 468 acres to the North American Land Trust ("the Trust") for the purpose of claiming a charitable deduction.[13] What enticed Champions to contribute this conservation easement was a Tax Court decision[14] that "allow[ed] a charitable deduction for a conservation easement over a golf course property."[15]

The easement property here, consisting of 348 acres, included the golf course, driving range, and undeveloped land, but excluded the golf course buildings and parking lots. A vast number of species, including some rare plants and animals, reside on the property.[16] Two important rare species native to the property are the southern fox squirrel and the

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[11] The three nine-hole courses were designed by none other than Gary Player, Jack Nicklaus, and Arnold Palmer. Champions Retreat Golf Founders, LLC v. Comm'r of IRS, 959 F.3d 1033, 1034 (11th Cir. 2020).

[12] *Id*. at 1034.

[13] *Id*. at 1035.

[14] *Id*. *See*, Kiva Dunes Conservation, LLC v. Commissioner, T.C. Memo. 2009–15 (2009).

[15] *Id*. at 1035.

[16] *Id*. at 1034.

denseflower knotweed. There is also a significant amount of birds that dwell on the easement property, although some are perhaps migratory or seasonal.[17] The public cannot access the easement property, but the public that enjoys watersports like kayaking can view the property from the Little River and Savannah River.[18]

As a result of this contribution, Champions claimed a charitable deduction.[19] The IRS denied the deduction and litigation ensued.[20]

II. THE FOUNDATION AND HISTORY OF § 170(H)

A. Scope of Article

Undoubtedly, anyone who has ever stumbled across I.R.C. § 170 ("§ 170")[21] and the pertaining regulations knows that § 170 is a complex statute. The purpose of this Comment is to provide a broad sweeping, birds-eye-view narrative concerning a specific subsection of § 170. More precisely, the principal goal is to analyze what it means to make a contribution for conservation purposes under § 170(h)(4). This article seeks to raise important questions about the purpose of conservation easements as well as provide a practical discourse regarding the application of the Code.

This Comment involves three cases that contain similar facts. Each case involves a private golf course and a conservation easement. However, each court adopts a different approach. One of the objectives of this Comment is to analyze the framework of § 170(h) while dissecting each court's approach to applying the Tax Code ("the Code") and Treasury Regulations.

B. History of § 170(h)

The original language of the charitable deduction provided in the War Income Tax Revenue Act of 1917 read as follows:

> Contributions or gifts actually made within the year to corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or to societies for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual, to an amount not in excess of fifteen per centum of the

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[17] *Id.* at 1037.

[18] *Id.* at 1034–35.

[19] *Id.* at 1035.

[20] *Id.*

[21] I.R.C. § 170.

> taxpayer's taxable net income as computed without the benefit of this paragraph. Such contributions or gifts shall be allowable as deduction only if verified under rules and regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.[22]

It wasn't until 1954, however, that Congress decided to renumber the charitable contribution deduction statute to its current position of § 170.[23] Along with the numerical reorganization of § 170, this was the first time Congress extended such generous deductions to encourage the American people to make charitable contributions.[24] The language from the 1954 Tax Code regarding § 170(h)(1) provided: "For purposes of subsection (f)(3)(B)(iii), the term 'qualified conservation contribution' means a contribution—(A) of a qualified real property interest, (B) to a qualified organization, (C) exclusively for conservation purposes."[25] The 1954 Code then provides in § 170(h)(4)(A) the definition of conservation purpose:

> (A) For purposes of this subsection, the term "conservation purpose" means—(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 fish, wildlife, or plants, or similar ecosystem, (iii) the preservation or 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.[26]

For the most part, the four conservation purposes listed above under § 170(h)(4) have remained the same for the last sixty plus years. In a 1980 Senate Report regarding § 170, the language offers insight to the purpose behind the enactment of § 170.

> The committee believes that the preservation of our country's natural resources and cultural heritage is important, and the committee

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[22] For an excellent overview of the history and statutory amendments made to § 170, *see* Vada Waters Lindsey, *The Charitable Contribution Deduction: A Historical Review and A Look to the Future*, 81 Neb. L. Rev. 1056 at 1061 (2003) (citing War Income Tax Revenue Act of 1917, ch. 63, § 1201(2)).

[23] *Id*. at 1062.

[24] *Id*. at 1063.

[25] STEPHEN J. SMALL, THE FEDERAL TAX LAW OF CONSERVATION EASEMENTS A-1 (1997).

[26] *Id*.

> recognizes that conservation easements now play an important role in preservation efforts. The committee also recognizes that it is not in the country's best interest to restrict or prohibit the development of all land areas and existing structures. Therefore, the committee believes that the provisions allowing deductions for conservation easements should be directed at the preservation of unique or otherwise significant land areas or structures.
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> In particular, the committee found it appropriate to expand the types of transfers which will qualify as deductible contributions in certain cases where the contributions are likely to further significant conservation goals without presenting significant potential for abuse. In addition, the committee bill would restrict the qualifying contributions where there is no assurance that the public benefit, if any, furthered by the contribution would be substantial enough to justify the allowance of a deduction.[27]

Under this lens, it is clear that Congress' primary purpose in enacting § 170(h) was to encourage individuals to make charitable donations of property in order to conserve land and protect wildlife. Conversely, it is also clear that Congress desires to eliminate any "potential for abuse" under § 170(h).

C. Operation of the Law

Under § 170(a)(1), the general rule is that individual taxpayers are permitted to deduct the value of their charitable contributions made during the taxable year.[28] The Code is clear, however, under § 170(f)(3), that taxpayers are precluded from deducting the value of their gifts if the property that is being contributed is less than the taxpayer's total interest in the property.[29] But, there is an exception under this rule, located in § 170(f)(3)(B)(iii). This allows taxpayers to deduct the value of a contribution, even if it is a partial interest in the property, if that property satisfies the requirements of a "qualified conservation contribution" under § 170(h)(1).[30] As stated above, a taxpayer has the burden of showing that the contribution is (1) a "qualified real property interest," (2) to a "qualified organization," and (3) "exclusively for conservation purposes."[31] Once a taxpayer shows that these

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[27] S. REP. NO. 96–1007, at 9–10 (1980).

[28] Butler v. Comm'r, 103 T.C.M. (CCH) 1359, 25 (T.C. 2012).

[29] *Id.*

[30] *Id.*

[31] *Id.*

requirements have been met, the contribution needs to fulfill the conditions under § 170(h)(4) (conservation purposes) and § 170(h)(5) (exclusively for conservation purposes).[32] The contribution only needs to meet one of the contribution prerequisites under § 170(h)(4) in order for the taxpayer to claim a deduction on the contribution.[33]

III. DISCUSSION

A. Introduction

This next section will explore several opinions that analyze I.R.C. § 170(h)(4) as it applies specifically to easement property that includes golf courses. The analysis will focus on what facts the courts choose to emphasize and which ones they ignore in rendering their decision.

B. Court Opinions

1. Atkinson v. Comm'r of Internal Revenue, 110 T.C.M (CCH) 550 (T.C. 2015)

Atkinson v. Comm'r [34] involved two conservation easements that included golf courses.[35] The St. James Plantation community, which lies south of Wilmington, North Carolina, was established in 1991, and it covers roughly ninety-one percent of the town of St. James.[36] St. James Plantation consists of mostly residential areas, accompanied by facilities, including golf courses, and undeveloped land.[37] There are only three roadways that enable patrons to enter the development.[38] These roadways are gated and guarded by staff, and individuals must state the purpose of their visit to acquire entry. The St. James Plantation worked with the North American Land Trust ("the NALT") to establish easements over the property with the purpose to preserve the habitat and wildlife in the area.[39] These easements, along with all of the houses and businesses in St. James Plantation, can only be accessed on the road that maintains a gated entrance.[40]

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[32] *Id.* at 26.

[33] *Id.*

[34] Atkinson v. Comm'r of Internal Revenue, 110 T.C.M. (CCH) 550 (T.C. 2015).

[35] *Id.* at 2.

[36] *Id.* at 5.

[37] *Id.*

[38] *Id.*

[39] *Id.* at 6.

[40] *Id.* at 5.

a. 2003 and 2005 Easements

The two easements at issue here are almost identical and involve the same issues. There is a 2003 easement that encompassed a nine-hole portion of a golf course, known as the "Cate 9." The 2003 easement was conveyed to the NALT and covered roughly eighty acres. The easement property includes property on the nine-hole course, around the course, and is adjacent to residential property and wetlands. More precisely, the easement property consists of fairways, greens, tee boxes, ranges, rough, ponds, and wetland areas. Only five percent of the easement property includes wetlands, while approximately seventy percent of the property is devoted to the golf course.[41]

In 2005, another conservation easement was conveyed to the NALT, which included just under ninety-one acres.[42] The easement property encompasses almost all of the Reserve Club Golf Course. As with the 2003 easement, the 2005 easement property backs up to residential lots and includes tees, bunkers, fairways, greens, ponds, and wetlands. Here, however, the wetland area makes up almost thirty-eight percent of the easement property, while the golf course area only includes forty-two acres. The rest of the property (twenty percent) is labeled as "other."[43]

b. Easement Terms

The terms of both the 2003 and 2005 easements are almost identical.[44] Both deeds include the same conservation purposes and reserved rights.[45] The conservation purposes in the deeds are:

> Preservation of the Conservation Area as a relatively natural habitat of fish, wildlife, or plants or similar ecosystem; and Preservation of the Conservation Area as open space which, if preserved, will advance a clearly delineated Federal, State or local governmental conservation policy and will yield a significant public benefit.[46]

Along with these terms, St. James Plantation retains the right to make changes to and operate the golf course, including engaging in certain construction to make these changes.[47] More specifically, the easement permits excavating, digging, or replacing topsoil in order to

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[41] *Id*. at 6–7.

[42] *Id*. at 13.

[43] *Id.* at 13–14; *See* Table 3.

[44] *Id*. at 14.

[45] *Id*.

[46] *Id*. at 7.

[47] *Id*. at 8.

maintain the course's sand traps and sod. Trees that are either on the course or within thirty feet of the course can also be removed if the removal is deemed suitable for the operation and maintenance of the course. The easement terms do not preclude the application of insecticides and other chemicals to the tee boxes, fairways, and rough.[48] Lastly, St. James Plantation reserves the right to build and maintain stands for hunting or wildlife observation.[49]

c. Wildlife on the Property

There are also substantial similarities between the two properties regarding the species of wildlife inhabiting both properties. Interestingly, both properties lie within the Cape Fear Arch.[50] This area has been labeled a biodiversity hotspot as it has the highest biological diversity compared to every other area on the Atlantic Coast north of Florida.[51] A conservation biologist produced a report regarding the properties.[52] Some of the species found on the easement properties were Fish Crows, Great Blue Herons, and American Kestrel. The golf course superintendent also noted that an American Alligator was occasionally seen on the course's ponds. Venus Flytraps, which are designated as a "Federal Species of Concern,"[53] were also mentioned in the reports for both the 2003 and 2005 easement properties, but there were issues as to whether the Venus Flytraps were ever spotted on the 2003 property.[54] Exclusively only to the 2005 easement property, the biologist saw the Eastern Fox Squirrel, which is designated as "significantly rare" by the state of North Carolina.[55]

d. Opinion

St. James Plantation took deductions for its charitable contribution equating to: $5,223,000 for the 2003 easement property[56] and $2,657,500 for the 2005 easement property.[57] After the IRS denied these deductions, St. James Plantation argued the contribution was made

[48] *Id.* at 9.
[49] *Id.* at 15.
[50] *Id.* at 9.
[51] *Id.* at 9–10.
[52] *Id.* at 10.
[53] *Id.* at 11.
[54] *Id.*
[55] *Id.* at 17.
[56] *Id.* at 13.
[57] *Id.* at 17.

exclusively for conservation purposes under § 170(h)(4).[58] Specifically, St. James Plantation argued: (1) the contributions protected a relatively natural habitat and; (2) the contributions preserve open space.[59]

i. Relatively Natural Habitat

The regulations provide that in order to satisfy the "protecting natural habitat" requirement under § 170(h)(4)(A)(ii), the contribution must "protect a significant relatively natural habitat in which a fish, wildlife, or plant community or similar ecosystem, normally lives."[60] The regulations do permit some changes to be made to the environment, as long as the wildlife continues to live there in a "relatively natural state."[61]

The court analyzed the various places on the easement properties to see whether the golf course constituted a relatively natural habitat for the wildlife.[62] First, most ponds on the golf courses didn't contain natural edges that would provide "transition zones" for reptiles and birds.[63] In fact, most of the ponds' edges were either manicured or contained no edge at all. The expert testified that a diverse body of plants and animals could inhabit the edges of the ponds if the edges were not mowed or regularly sprayed.[64] Subsequently, the court held that a pond with no edge could not provide a relatively natural habitat for amphibians and birds.[65]

Next, the court highlighted the fact that the tee boxes, greens, and fairways within the 2003 easement area were sodded with nonnative grasses.[66] The court mentioned that these nonnative grasses could not provide a relatively natural habitat for the Venus Flytrap.[67] Further, although Venus Flytraps were rare to the property, they were not considered threatened or endangered.[68]

The IRS argued that the 2003 easement property was not relatively natural because the golf course sprayed fertilizers, insecticides, and other chemicals on the property.[69] St. James Plantations applied these

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[58] *Id*. at 20.

[59] *Id*.

[60] *Id*. at 24 (quoting Treas. Reg. § 1.170A–14(d)(3)(i) (1986)).

[61] *Id*. at 25 (citing Treas. Reg. § 1.170A–14(d)(3)(i) (1986)).

[62] *Id*. at 26–40.

[63] *Id*. at 30.

[64] *Id*. at 31.

[65] *Id*. at 30.

[66] *Id*. at 36.

[67] *Id*. at 35.

[68] *Id*. at 35–36.

[69] *Id*. at 36.

chemicals to nearly sixty-three percent of the 2003 easement property.[70] The Treasury Regulations state that if an ecosystem "could be injured or destroyed by the use of pesticides[,]" then there is no conservation purpose.[71] Following the expert's testimony, the court concluded that the chemicals sprayed on the property supply nourishment to the nonnative grasses "without regard for any conservation purpose of the 2003 easement."[72] The court ultimately concluded that, based on the evidence presented by both parties' experts, wildlife and plants are not likely to be observed or "normally live" on the easement property.[73]

ii. Preservation of Open Space

The conservation purpose, stated under § 170(h)(4)(A)(iii), can be for the preservation of open spaces.[74] The conservation easement has to be "pursuant to a clearly delineated Federal, State, or local government conservation policy . . . or be for the scenic enjoyment of the general public[.]"[75] Further, in order to satisfy the conservation purpose of preserving open space, the open space must also "yield a specific public benefit."[76]

With regard to a government policy, the court determined that St. James Plantation failed to provide any government policy that would apply to either of the easements.[77] While both easements do include several North Carolina laws, there is no explanation or analysis as to how the easement properties contributed to the stated conservation purposes within those laws.[78] The court quickly dispensed this argument and considered the scenic enjoyment prong of the statute.[79]

The preservation of open space can be for the scenic enjoyment for the general public if "development of the property would interfere with a scenic panorama that can be enjoyed from a park, nature preserve, road, waterbody, trail, or historic structure or land area, and such area or transportation way is open to, or utilized by the public."[80] If only a small portion of the easement property is visible to the public, then this

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[70] *Id*.

[71] *Id*. (quoting Treas. Reg. § 1.170A–14(e)(2) (1986)).

[72] *Id*. at 13.

[73] *Id*.

[74] *Id*. at 52.

[75] *Id*. (citing I.R.C § 170(h)(4)(A)(iii)).

[76] *Id*. (citing I.R.C § 170(h)(4)(A)(iii)).

[77] *Id*.

[78] *Id*.

[79] *Id*. at 53.

[80] *Id*. (quoting Treas. Reg. § 1.170A–14(d)(4)(ii) (1986)).

may be inadequate to satisfy the charitable donation, but the entire property need not be visible to the public.[81]

The court held that St. James Plantation could not establish that either easement property met the scenic enjoyment of the general public or significant public benefit requirements.[82] First, the court focused on the access to the property.[83] In order to access any of the golf courses, one has to be a member or a guest of a member belonging to St. James Plantation.[84] While the public may be able to gain access into St. James Plantation, guards at each of the posts monitor the access to the community.[85] Second, St. James Plantation argued that the regulations only require that the public has visual access to the property, not physical access.[86] This is true. However, the court said that there was no evidence that even visual access was attainable by the public.[87] The public could not view the easement property from waterways or public highways.[88] Ultimately, the court said that the "barriers" to visual access, including the residential properties within the development, is probably a reason why neither the 2003 nor 2005 easement deed listed "scenic enjoyment of the general public" as a conservation purpose.[89]

2. *PBBM-Rose Hill, Ltd. v. Comm'r*, 900 F.3d 193 (5th Cir. 2018)

PBBM v. Comm'r[90] involved an easement property that encumbered a golf course.[91] In 2002, Rose Hill County Club conveyed roughly 241 acres to PBBM Rose Hill, Ltd ("PBBM"). The property consisted of a twenty-seven-hole course, golf facilities, and a clubhouse for the residential community. In 2002, PBBM conveyed 234 of the 241 acres to the North American Land Trust ("the Land Trust"). The golf course was included in the conservation property. The seven acres that were not conveyed to the Land Trust consisted of the clubhouse and course maintenance areas. The listed conservation purposes in the deed were a direct reflection of § 170(h)(4)(A). Later, Rose Hill Plantation Property Owners Association, Inc. ("POA") bought the property. After filing its

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[81] *Id.*

[82] *Id.*

[83] *Id.* at 53–54.

[84] *Id.* at 53.

[85] *Id.* at 53–54.

[86] *Id.* at 54 (citing Treas. Reg. § 1.170A–14(d)(4)(ii)(B) (1986)).

[87] *Id.*

[88] *Id.*

[89] *Id.*

[90] PBBM-Rose Hill, Ltd. v. Comm'r, 900 F.3d 193 (5th Cir. 2018).

[91] *Id.* at 198.

partnership tax return for the 2007 tax year, PBBM claimed a deduction of $15,160,000 for donating the property as a conservation easement.[92] It wasn't until 2014 that the IRS denied the deduction and tacked on penalties for overvaluing the conservation easement. The court below, the United States Tax Court, held that the contribution did not satisfy any of the conservation purposes under § 170(h)(4)(A)(i)–(iii), and the value of the conservation easement property was only $100,000.[93] The Court of Appeals for the Fifth Circuit ultimately determined that the contribution did, in fact, satisfy the conservation purpose of "preserving land for outdoor recreation by the general public" under § 170(h)(4)(a).[94] However, the contribution failed to meet the perpetuity requirement § 170(h)(5). Thus, PBBM was barred from claiming a deduction from its contribution.[95]

a. Use and Access by the General Public

In order for PBBM to satisfy the use by the general public requirement, the regulations state that the easement property must be "for the substantial and regular use of the general public."[96] There were two provisions in the deed that seemed to conflict with each other regarding the use of the general public. One provision provided that the easement property must "be open for use by the general public,"[97] while another clause expressed that there was no right of access by the general public.[98] Below, the United States Tax Court concluded that the contribution of the property did not preserve the property for outdoor recreation and public use of the property.[99] The Tax Court based its decision on how the property was used, once the conservation easement was established.[100] Notably, once POA bought the easement property, which included the golf course, POA transformed a section of the property into a park.[101]

Some key facts regarding the public's use and access are as follows. First, in order for someone to gain access to the community, they must enter through a controlled gatehouse. Upon entry, the patron is

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[92] *Id*. at 199.
[93] *Id*. at 200.
[94] *Id*. at 201.
[95] *Id*.
[96] *Id*. (quoting Treas. Reg. § 1.170A–14(d)(2)(ii) (1986)).
[97] *Id*.
[98] *Id*.
[99] *Id*.
[100] *Id*. at 201–02.
[101] *Id*. at 202.

provided a restricted pass for their vehicle. The pass lays out the visitor's access to specified amenities (like the golf course and restaurant) and warns visitors that access to other areas outside the scope of their visit amounts to trespassing.[102]

On appeal, PBBM argued that the court should only be bound to look at the language in the deed itself, rather than the actions of the owner in deciding whether the contribution of the property was exclusively for a conservation purpose. To support its stance, PBBM referenced a regulation regarding public access: "The amount of access afforded the public by the donation of an easement shall be determined with reference to the amount of access permitted by the terms of the easement which are established by the donor, rather than the amount of access actually provided by the done organization."[103] The Fifth Circuit noted that while this provision applies to historic preservation easements, there are a number of other regulations that state public access should be measured by analyzing the precise language of the deed.[104] Ultimately, the court sided with PBBM agreeing that in deciding whether the public access requirement is satisfied the focus of the analysis should be directed toward the terms of the deed itself, rather than the actual use the easement property itself after the contribution.[105]

3. What Happened in *Champions*?

In *Champions Retreat Golf Founders, v. Comm'r*, 959 F.3d 1033 (2020)[106] the primary issue the court needed to address was whether the easement property would satisfy the conservation purposes of protecting wildlife or preserve an open space easement under § 170(h)(4).[107] The Court of Appeals for the Eleventh Circuit noted that the easement property would certainly meet the criteria without the presence of the golf course.[108] However, the court reversed the Tax Court's decision because the Code does not rule out a conservation easement simply due to the fact it includes a golf course.[109] The court

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[102] *Id*.

[103] *Id*. (quoting Treas. Reg. § 1.170–14(d)(5)(iv)(C) (1986)).

[104] *Id*.

[105] *Id*. at 202–03. (also basing decision on "South Carolina's rule of construction that '[t]he intention of the grantor [of the easement] must be found within the four corners of the deed." Windam v. Riddle, 381 S.C. 192, 201, 672 S.E.2d 578, 583 (2009) (quoting Gardner v. Mozingo, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987))).

[106] Champions Retreat Golf Founders, v. Comm'r, 959 F.3d 1033 (2020).

[107] *Id*. at 1036.

[108] *Id*. at 1034.

[109] *Id*. at 1034.

first defined the parameters of the issue by outlining the regulations that applied, because the Tax Code requires that deductions for conservation easements comply with the Treasury Regulations.[110]

a. Ecosystem and Endangered Species

A contribution "to protect a significant relatively natural habitat in which a fish, wildlife, or plant community, or similar ecosystem normally lives" will fulfill the conservation purpose.[111] On appeal, Champions argued that because the word "significant" doesn't appear in the Code, and that this requirement conflicts with the Code.[112] However, the court provided that the Code would not be interpreted to apply to a "trivial habitat" such as a few ants on the property or animals that were not in serious need of protection.[113] Further, the court said that the regulation encompasses three kinds of qualifying significant habitats and ecosystems.[114] Nevertheless, only two are relevant here.[115]

The first is "habitats for rare, endangered, or threatened species of animal, fish, or plants."[116] The second is "natural areas which are included in, or which contribute to, the ecological viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area, or other similar conservation area."[117] A pertinent fact here is the conservation property extends to the bank of the Savannah River, and, just across the river, is a large national forest.[118] In sum, Champions can claim a deduction for its contribution if the easement property includes rare or endangered species or if the property supports the "ecological viability" of the neighboring national forest.[119]

The fact that a golf course was included in the easement property did not change the court's analysis.[120] The court noted that the Code simply requires a "relatively natural habitat . . . or similar ecosystem,"[121] not that the property itself be relatively natural.[122]

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[110] *Id*. at 1036 (citing I.R.C. § 170(a)(1)).

[111] *Id*. (quoting Treas. Reg. § 1.170A–14(d)(3)(i) (1986)).

[112] *Id*.

[113] *Id*.

[114] *Id*.

[115] *Id*.

[116] *Id*. (quoting Treas. Reg. § 1.170A–14(d)(3)(ii) (1986)).

[117] *Id*. (quoting Treas. Reg. § 1.170A–14(d)(3)(ii) (1986)).

[118] *Id*. at 1036–37.

[119] *Id*. at 1037.

[120] *Id*.

[121] *Id*. (quoting I.R.C. § 170(h)(4)(A)(ii)).

[122] *Id*.

Further, the deduction will be allowed although the property "has been altered to some extent by human activity,"[123] as long as "the fish, wildlife, or plants continue to exist there in a relatively natural state."[124] The court of appeals cited cases, as well as *PBBM*, noting that the golf courses can be included in easement properties as long as they satisfy the requirements.[125]

The court next examined the facts indicating the types of species that dwell on the easement property.[126] First, the court focused on the species of birds located or observed on the property.[127] Altogether, the parties' experts observed sixty-one species of birds on the easement property.[128] Twenty-six out of the sixty-one species of birds were listed by conservation organizations as a priority.[129] The IRS argued that the habitat is not relatively natural due to the presence of the fairways and greens, stating they contain non-native grasses like bermuda.[130] The court of appeals countered by providing the relevant inquiry: we ask whether the habitat is natural, not whether all of the property is natural.[131] The regulation provides, as long as "the fish, wildlife, or plants continue to exist there in a relatively natural state" the property may be altered to an extent.[132] In fact, the IRS's expert found the habitat of the easement property relatively appropriate for the birds.[133] The court narrowed the issue by focusing on whether the existence of these birds indicates that the easement property constitutes a significant habitat for "rare, endangered, or threatened species."[134] The court held that the property did.[135]

Next, the court focused on the presence of the southern fox squirrel.[136] The species is not classified as threatened, yet the population has declined significantly. The IRS took issue with the fact that the state of Georgia has a six-month hunting season in which hunters can kill up to twelve squirrels per day. The court of appeals

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[123] *Id*. (quoting Treas. Reg. § 1.170A–14(d)(3)(i) (1986)).

[124] *Id*. (quoting Treas. Reg. § 1.170A–14(d)(3)(i) (1986)).

[125] *Id*.

[126] *Id*.

[127] *Id*.

[128] *Id*.

[129] *Id*.

[130] *Id*. at 1038.

[131] *Id*.

[132] *Id*. (quoting Treas. Reg. § 1.170A–14(d)(3)(i) (1986)).

[133] *Id*.

[134] *Id*. at 1037.

[135] *Id*.

[136] *Id*. at 1038.

noted that this was not a valid reason for the IRS to downplay the importance of preserving the species, despite Georgia's hunting practices, because southern fox squirrels have protection under federal law.[137] Ultimately, the court concluded that protecting the southern fox squirrel would not, by itself, form a conservation purpose, but the evidence weighed in favor of Champions.[138]

Lastly, the court drew its attention to the presence of the rare plant species—the denseflower knotweed.[139] The denseflower knotweed only encumbered roughly seven percent of the easement property, with the ability to inhabit up to seventeen percent. However, the court downplayed the plant's limited coverage on the property and said it was still "worthy of protection"[140] The IRS primarily attacked the protection of the denseflower knotweed from the position that segments of the golf course naturally drain toward the property where the knotweed is located. Because the golf course sprays chemicals regularly, the IRS argued that the knotweed might actually diminish when the chemicals run off. The court quickly dismissed this line of argument.[141] The issue, the court said, is whether the easement itself increases the likelihood that the flower will be preserved, not whether the chemicals will destroy the knotweed.[142] The court highlights the fact that the easement requires Champions to adhere to the suitable environmental practices prevalent in the golf industry.[143] The easement increases the likelihood that the denseflower knotweed will be protected for two reasons provided by the court.[144] First, without the easement, there would be no duty to adhere to the environmental practices of the golf industry.[145] Second, because "unrestrained development" would create a greater threat to the property where the plant is located than the golf course.[146]

The court quickly and lastly concluded that although the easement property abuts the Savannah River and contributes to the ecological

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[137] *Id.*

[138] *Id.* at 1038–39.

[139] *Id.* at 1039.

[140] *Id.*

[141] *Id.*

[142] *Id.*

[143] *Id.*

[144] *Id.*

[145] *Id.*

[146] *Id.*

viability of the neighboring national forest, this, independently, does not form a conservation purpose.[147]

b. Scenic Enjoyment

The Tax Code allows a charitable deduction for a conservation easement if the purpose is for "the preservation of open space where such preservation is for the scenic enjoyment of the general public."[148] The regulations provide that in order for an easement to preserve open space for the scenic enjoyment of the public, the donation must "yield a significant public benefit."[149] The easement can also be for the scenic enjoyment of the public if it "can be enjoyed from a park, nature preserve, road, *waterbody* . . . [if] such area or transportation way is open to, or utilized by, the public."[150] Further, only visual access to the property is required, not physical.[151] Moreover, while the whole property doesn't need to be visible to the public, if only a minute fraction of the property is visible to the general public, then the contribution may not comply with the requirements.[152]

The facts establish that the public can canoe and kayak either on the Savannah River, located beside the easement property, or on the Little River, which trickles through the easement.[153] From the river, the golf course and the easement's natural areas are readily observable. There was a video in the record that demonstrated the apparent contrast between the views of the easement property and the views located further down the Savannah River. Particularly, the views down river included significant development—condominiums and private homes, while the views of the easement property incorporated the robust trees resting on the property. The court affirmed that preserving the undeveloped and natural views of the easement property, coupled with the national forest on the other side of the river (which was also undeveloped), served a public interest.[154] More precisely, the court compared the developed views to the natural views of the easement property and determined that the easement property constitutes an open space providing scenic enjoyment.[155]

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[147] *Id*. at 1039–40.

[148] *Id*. at 1040 (quoting I.R.C. § 170(h)(4)(A)(iii)).

[149] *Id*. (quoting Treas. Reg. § 1.170A–14(d)(4)(i)(B) (1986)).

[150] *Id*. (quoting Treas. Reg. § 1.170A–14(d)(4)(ii)(A) (1986) (emphasis added)).

[151] *Id*.

[152] *Id*. (*See* Treas. Reg. § 1.170A–14(d)(4)(ii)(B) (1986)).

[153] *Id*.

[154] *Id*.

[155] *Id*.

The IRS maintained that the banks of both rivers range anywhere from three to ten feet tall.[156] The IRS argued that this destroys the prospect for scenic enjoyment by the public.[157] Interestingly, the United States Tax Court adopted the same reasoning below.[158] Nonetheless, the Eleventh Circuit reasoned that trees, and even buildings, can be seen from the water despite tall embankments.[159] Further, the court of appeals argued that if the banks preclude scenic enjoyment, the only objects that are blocked from the public's view are the golf course's "non-natural features."[160] From the water level, the relatively flat areas on the course look like open land.[161] The court of appeals held that Champions was permitted to claim a deduction because the charitable contribution satisfied the conservation purposes.[162]

IV. ANALYSIS

A. The Correct Framework

When individuals or private businesses decide to make a charitable donation for conservation purposes, the courts should adopt the view of the *Atkinson* court. The *Champions* case was wrongly decided as the court was trying to make the facts fit into the parameters of the Code and Treasury Regulations. Specifically, the way in which the *Atkinson* and *Champions* courts view public access, scenic enjoyment, and relatively natural habitats are distinguishable.

1. Scenic Enjoyment: How Much Visual Access is Required?

Under the Code, one of the conservation purposes is preserving open space for the scenic enjoyment of the general public. Further, the contribution has to yield a significant public benefit. The *Atkinson* decision focused on the public's access to the golf course, while the *Champions* decision dedicated most of the analysis toward the public's visual access while on the rivers. The way in which the courts viewed public visual access differed substantially.

In *Atkinson*, the only way the public could enter the St. James Plantation, and ultimately the easement property, was if they were members of the community or were guests of the members that

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[156] *Id.*

[157] *Id.* at 1040–41.

[158] *Id.* at 1041.

[159] *Id.*

[160] *Id.*

[161] *Id.*

[162] *Id.*

belonged to the community.[163] Further, the community was gated and monitored by guards at three gatehouses.[164] The taxpayers argued that the public had visual access once they are admitted into the property.[165] Nevertheless, the court noted that the easement properties are "ringed by houses," indicating that the scenic enjoyment from the road would be limited by these "barriers."[166]

On the other hand, the court in *Champions* expressed that the scenic views from the river served a public interest, when compared to the more developed, urban areas further downstream.[167] Moreover, the court concluded that the tall riverbanks obscure, if anything, the non-natural landscape of the golf course, not the trees themselves.[168]

The distinguishable issue here is that rather than the public using a road located inside a community to view the property, the public is using a river to "drive by" the property for scenic enjoyment. However, I would argue that the court in *Atkinson* was correct in that the houses were "barriers" that limited the public's scenic enjoyment. I don't see the difference between viewing the easement property in between houses and only being able to see the treetops of the easement property. In my opinion, there aren't just barriers in the *Champions* case—there are actually embankments that preclude the public from viewing the easement property. In *Atkinson*, at least the public could actually see the property.

Further, the court in *Champions* did not address the exclusivity of the private golf course. I'm not sure if this was intentional or not, but it certainly should have been addressed. Similar to the golf course in *Atkinson*, the public could only access the golf course in *Champions* if a member of the community invited them. In light of the legislative history of § 170(h), shouldn't we only allow deductions for conservation purposes only if the public can access the easement property? In both cases, no member can access the property unless they are either invited or a member of the community. It is distinguishable from a park or greenway in which anyone can access and enjoy the easement property.

I also take issue with *Champions* decision in that the court investigated facts that did not involve the easement property and then proceeded to make assumptions based on those facts. The court in *Champions* noted that there was developed property further

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[163] T.C. Memo 2015–236 at 53–54.

[164] *Id*.

[165] *Id*. at 54.

[166] *Id*.

[167] 959 F.3d 1033 at 1040.

[168] *Id*. at 1040–41.

downstream, and that "few canoers or kayakers would find [this] scenic."[169] It is unclear how far downstream this developed property is, but I don't see how it is relevant. Moreover, I enjoy viewing developed property from the water or in big cities. The court characterizes this property as an eyesore as if it makes the treetops of the golf course seem more scenic. However, neither the Code nor the Treasury Regulations authorize investigation to this extent.

2. Are We Actually Preserving a "Relatively Natural Habitat?"

The two decisions also differed in their approaches regarding whether the contribution of the easement property protects a relatively natural habitat. To satisfy the protecting natural habitat purpose requirements pursuant to § 170(h)(4)(A)(ii), the regulations require that the donation "protect a significant relatively natural habitat in which a fish, wildlife, or plant community or similar ecosystem normally lives."[170]

In *Atkinson*, the court emphasized that there were no management plans in place under the easement to protect the longleaf pine trees on the property.[171] Under the terms, any trees within thirty feet of the golf course fairways could be cut down and removed from the property.[172] Further, the court noted that nonnative grasses, such as 419 Bermuda and Tidwarf, were planted or sodded on the golf course areas.[173] These nonnative grasses did not provide a relatively natural habitat for some of the plants that the taxpayers were trying to preserve—the Venus Flytrap and Pitcher Plants.[174]

Moreover, the court in *Atkinson* underscored the golf course's pesticide practices. The court concluded that the chemicals the course was using, and the manner in which it was being used, "promote[d] the maintenance of nonnative flora without regard for any conservation purpose."[175]

In *Champions*, the IRS raised the same issues regarding the installation of nonnative grasses on the easement property as well as the pesticides that were injuring the endangered denseflower knotweed.[176] As to the former issue, the court said what matters under

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[169] *Id*. at 1040.

[170] Treas. Reg. § 1.170A–14(d)(3)(i) (1986).

[171] T.C. Memo 2015–326 at 26–29.

[172] *Id*. at 27.

[173] *Id*. at 34.

[174] *Id*. at 34–35.

[175] *Id*. at 37.

[176] 959 F.3d 1033 at 1038–39.

the regulation is whether the habitat is natural, not whether all the land is natural.[177] Regarding the pesticides, the court stated that the easement only requires Champions to "follow the best environmental practices prevailing in the golf industry."[178] Moreover, the court stated that the relevant question is not whether "chemicals from the course may harm the knotweed, but whether the easement improves the chance that the knotweed will be preserved."[179]

Under the Treasury Regulations, the preservation of land would not satisfy the conservation purpose of preserving open space if an ecosystem "could be injured or destroyed by the use of pesticides . . . ."[180] Here, I do not see how actively injuring an endangered species, via spreading chemicals to enhance the nonnative grasses, serves a conservation purpose. The court in *Champions* emphasizes that the golf course's duty is to follow the best environmental practices within the golf industry. But, if the best environmental practice is negating the preservation and protection of an endangered species or a relatively natural habitat, then there needs to be some restrictions. We can't allow private businesses to continue to take deductions for conservation purposes if they aren't actually conserving the habitat or wildlife.

From a business standpoint, wouldn't you want to make sure that you are not killing your prize asset? Saving millions of dollars in taxes far outweighs spending a couple thousand dollars to make sure that the habitat or endangered species is surviving in its natural habitat. Both golf courses could have at least made it look like they were trying to preserve the wildlife.

B. How do Atkinson, PBBM, and Champions Affect the Public and Tax Lawyers?

One of the goals of this comment is to provide a more practical approach in tackling the concerns these three cases raise. There is no doubt that the approaches these three courts adopt will likely confuse the public and practicing estate planners. One of the primary predicaments is how the law will be applied in different areas of the country. Further, the lack of uniformity could result in a chilling effect on the public, causing less property to be contributed for conservation purposes.

The IRS has recently made serious attacks on conservation easement transactions. This section will highlight some of the IRS's

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[177] *Id*. at 1038.

[178] *Id*. at 1039.

[179] *Id*.

[180] Treas. Reg. § 1.170A–14(e)(2) (1986).

recent developments and posture regarding the enforcement of contributions for conservation easements. One of the practical points raised in this section is how the IRS will respond to the Champions decision.

Lastly, the 2020 Presidential Election and COVID-19 have instigated a dramatic economic situation in which many Americans are struggling; yet others are doing relatively well. Taxes, as with every election, are at the forefront of the upcoming election. As a result of these decisions, it will be interesting to see whether private businesses that have struggled over the last year choose to engage in strategic tax planning.

1. The Posture of the IRS

The IRS recognizes that in order to preserve our land and wildlife, Congress has granted owners an income tax deduction if the individual(s) surrender their ownership rights for the purpose of preservation.[181] In direct conflict with the primary policy of § 170, the IRS has seen abusive tactics by taxpayers trying to take advantage of the deduction.[182] One of the tactics taxpayers engage in involves a transaction that includes overvalued appraisals on the property.[183] Another avenue taxpayers will try is using the property or having the property developed in a manner that in inconsistent with the Code. Others simply involve the taxpayers failing to comply with the Code and Treasury Regulations.[184]

Just a few months ago, the United States Tax Court rejected four conservation easement transactions.[185] In November 2019, the IRS announced that it was going to be turning up the heat on its enforcement of conservation easements.[186] The Commissioner of the IRS, Chuck Rettig, said, "We will not stop in our pursuit of everyone involved in the creation, marketing, promotion and wrongful acquisition

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[181] *Background-Abusive Transactions Involving Charitable Contributions of Easements*, INTERNAL REVENUE SERVICE, https://www.irs.gov/charities-non-profits/conservation-easements (last visited Oct. 27, 2020).

[182] *Id.*

[183] *Id.*

[184] *Id.*

[185] *Tax Court strikes down four more abusive syndicated conservation easement transactions; IRS calls on taxpayers to accept settlement offers in syndicated conservation easement cases*, INTERNAL REVENUE SERVICE, https://www.irs.gov/newsroom/tax-court-strikes-down-four-more-abusive-syndicated-conservation-easement-transactions-irs-calls-on-taxpayers-to-accept-settlement-offers-in-syndicated-conservation-easement-cases (last visited Oct. 27, 2020).

[186] IRS increases enforcement action on Syndicated Conservation Easements, Internal Revenue Service, https://www.irs.gov/newsroom/irs-increases-enforcement-action-on-syndicated-conservation-easements (last visited Oct. 27, 2020).

of artificial, highly inflated deductions based on these aggressive transactions. Every available enforcement option will be considered including civil penalties and, where appropriate, criminal investigations that could lead to a criminal prosecution."[187] Rettig continued, "Abusive . . . conservation easement transactions undermine the public's trust in private land conservation and defraud the government of revenue[.]"[188]

The IRS understands the importance of preservation and charitable deductions that further conservation purposes as provided by Congress. However, the IRS is starting to catch up to the ways in which taxpayers creatively contribute property "for conservation purposes." As a result, the IRS has buckled down on enforcing compliance with § 170. As a result of the *Champions* decision, my guess is that the IRS will continue to investigate into the particular details of contributions for conservation purposes.

2. "Chilling Effect" on Conservation?

One issue that could arise from the IRS hunting down conservation easements is that private individuals and businesses could be less likely to contribute property. Preserving natural wildlife and land was one of the principal reasons § 170 was put into law. The strict enforcement from the IRS could cause businesses and private individuals to be more hesitant before they decide to contribute property for a conservation purpose. The reality is that some people actually have property they could contribute for a conservation purpose. These recent decisions, however, and the general attitude of the public towards the IRS may result in most people being reluctant to contribute property because of the risk associated with failing to comply with the IRS—especially the penalties.

On the flipside, cases like *Champions* could promote private businesses and individuals to continue to make charitable contributions. In 2020, there has been a lot of economic uncertainty and political unrest. With the 2020 Presidential Election around the corner, private businesses like golf courses, or even neighborhoods and communities, might be inclined to engage in some tax planning before the calendar year comes to a close. Tax planners and businesses should be encouraged by the court of appeals' analysis of the facts presented in *Champions*. Surely, if a business or individual owns property that is similarly situated as the property in *Champions*, the decision, which

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[187] *Id.*

[188] *Id.*

was decided during the COVID-19 pandemic, will likely bolster additional charitable contributions for conservation purposes.

3. A Practical Matter

There is no doubt that tax practitioners and estate planners across the county will be watching for upcoming decisions, if any, from the United States Tax Court and from their United States Courts of Appeals. However, as of right now, the ways in which a lawyer might advise a client in Texas versus Georgia could potentially be different. Certainly, there is a difference between a married couple that owns 100 acres of pure wetlands and a private community that maintains three golf courses, but there needs to be uniformity as to how the courts will apply the Code and Treasury Regulations.

The three cases in this Comment are placed on the opposite ends of a spectrum. On one end, the court in *PBBM* looked exclusively to the terms of the easement. The *Atkinson* and *Champions* courts, on the other end of the spectrum, analyzed the facts concerning the easement property. Although the *Atkinson* and *Champions* opinion resulted in different outcomes, the analysis was the same.

For example, suppose a client, Ms. Smith, walks in and says that she would like to make a charitable contribution consisting of fifty acres of her property. Her property mainly includes open fields with some wooded areas scattered throughout. However, no one can access the property unless Ms. Smith invites them over to her house. Further, no one can see the property from the road because a private, dirt road entrance is the only way to access the property. Let's assume that she has seen one animal on the property that is classified as endangered. How would lawyers advise Ms. Smith? Would they instruct Ms. Smith that the terms of the easement would control or would they tell Ms. Smith that she is at the mercy of the court's analysis of the facts?

My concern is that in some areas of the county, savvy lawyers will take advantage of the *PBBM* approach and advise clients that the court will only look at the easement terms, while attorneys in other states will have to advise their clients that the court will analyze the facts gathered by an expert witness. Hopefully, this dilemma will result in a case that allows a court to carefully and specifically outline a uniform application of the law.

V. CONCLUSION

In conclusion, the Eleventh Circuit wrongly decided *Champions*. This opinion makes it easier for private businesses and individuals to take tax deductions without making sure the property or wildlife is actually being preserved. This decision also frustrates the purpose of

ensuring that the public has meaningful access, whether physical or visual, to the easement property. The *Champions* decision also creates a new wrinkle for tax practitioners and estate planners as it takes a different approach from previously decided cases from other circuits and the United States Tax Court. Although taxpayers might view this case as a win, it is hard to rule out the possibility that other courts, including the Tax Court, will have a different view going forward. Lastly, the IRS will not stop investigating conservation easements after *Champions*. If anything, this will only motivate the government to ensure that taxpayers are adhering strictly to the Code. For that reason, this case creates uncertainty and confusion for the public.

Davis D. Lackey