

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT

South Carolina Public Interest ) Civil Action No. 2012-CP-10-04969  
Foundation and Waring S. Howe, Jr., )  
individually, and on behalf of all others )  
similarly situated, )

Plaintiffs, )

vs. )

Robert W. Harrell, Jr., in his official )  
capacity as Speaker of the South )  
Carolina House of Representatives, Ken )  
Ard, in his official capacity as President )  
of the South Carolina Senate, )  
Representative Harry B. "Chip" )  
Limehouse III, Senator Glenn )  
McConnell, and the State of South )  
Carolina, )

Defendants. )

**Order Granting Speaker Harrell's  
Motion for Summary Judgment  
and Dismissing Plaintiffs' Action  
in its Entirety**

FILED  
2013 MAY 13 PM 12:41  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY *[Signature]*

**BEFORE THE COURT** is the Motion for Summary Judgment of Defendant Robert W. Harrell, Jr., in his official capacity as Speaker of the South Carolina House of Representatives ("Speaker Harrell"), asserting that Plaintiffs lack the standing to maintain this action against all Defendants. This Court held a hearing on this matter on February 14, 2013, at which Michael J. Anzelmo, Esquire, appeared on behalf of Speaker Harrell; Rob Tyson, Esquire, appeared on behalf of Representative Harry B. "Chip" Limehouse III; Emory Smith, Esquire, appeared on behalf of the State of South Carolina; and Michael Hitchcock, Esquire, appeared on behalf of Defendants Glen McConnell, in his official capacity as President of the South Carolina Senate, and

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Senator George E. Campsen, III.<sup>1</sup> Jim Carpenter, Esquire, appeared on behalf of the Plaintiffs. At the hearing, counsel for Defendant Limehouse and counsel for Defendants Glen McConnell and Senator George E. Campsen, III, supported and joined in Speaker Harrell's Motion for Summary Judgment. Counsel for the State concurred in the Motion.

After consideration of the pleadings, the parties' written submissions, and oral argument of counsel, the Court finds no issues of material fact exist and Defendants are entitled to judgment as a matter of law. Therefore, this Court grants the Motion for Summary Judgment and dismisses this action in its entirety as more fully set forth below.

#### Factual Background

The issues in this case relate to the General Assembly's passage of Act 130 in 2007 ("the Act" or "Act 130"). In 2008, the Foundation launched an initial action challenging the constitutionality of Act 130. *See S.C. Pub. Interest Found. v. Harrell*, 378 S.C. 441, 445, 663 S.E.2d 52, 54 (2008) (overruled on other grounds, *Am. Petroleum Inst. v. SC Dept. of Rev.*, 382 S.C. 572, 677 S.E.2d 16 (2009)).<sup>2</sup> In that action, Speaker Harrell defended the constitutional challenge to Act 130 on the ground

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<sup>1</sup> Plaintiffs originally sued former Lieutenant Governor Ken Ard, in his official capacity as President of the South Carolina Senate, and then Senator Glen McConnell due to his position as vice-chairman of the Charleston County Delegation, and by virtue of that office, as a member of the Charleston County Aviation Authority. Since that time, Senator McConnell became Lieutenant Governor of South Carolina and President of the South Carolina Senate. As a result of that action, Senator Campsen replaced Lieutenant Governor McConnell as vice-chairman of the Charleston County Delegation, and by virtue of that office, as a member of the Charleston County Aviation Authority. This Court granted the substitutions via order dated October 30, 2012.

<sup>2</sup> The Supreme Court's holding in *American Petroleum* does not affect the 2008 holding that the Foundation lacked standing to challenge the constitutionality of the Act.

that the Foundation lacked the standing to challenge Act 130. *Harrell*, 378 S.C. at 445, 663 S.E.2d at 54. The Supreme Court fully weighed that defense, analyzed the Foundation's contrary position, and ultimately ruled on that exact issue. *Id.* Specifically, the court held that:

We decline to address Petitioners' contention that 2007 Act Nos. 130 . . . violat[es] the South Carolina Constitution . . . . Petitioners lack standing to challenge those acts. *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004) (as a general rule, a litigant must have a personal stake in the subject matter of the litigation to have standing); *Blandon v. Coleman*, 285 S.C. 472, 330 S.E.2d 298 (1985) (private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger, of sustaining prejudice therefrom).

*Harrell*, 378 S.C. at 445 n.1, 663 S.E.2d at 54 n.1 (emphasis added).<sup>3</sup>

Thereafter, on November 1, 2011, the Plaintiffs, the South Carolina Public Interest Foundation ("the Foundation") and Waring S. Howe, Jr. ("Plaintiff Howe"), filed a petition for original jurisdiction of the Supreme Court again alleging that Act 130 and the manner in which it was passed violated several constitutional provisions. The Supreme Court denied that request. Plaintiffs thereafter filed this action in the circuit court.<sup>4</sup> In the Complaint, Plaintiffs rely on Plaintiff Howe's status as a taxpayer of Charleston County as the basis for standing. Plaintiffs did not plead any proper basis for statutory standing or standing under the public importance exception.

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<sup>3</sup> The Foundation was a petitioner in that action along with Edward D. Sloan, Jr. As petitioners, the Foundation challenged the constitutionality of Act 130 of 2007 along with other acts from that legislative year. Speaker Harrell also challenged the standing of Petitioner Sloan. The Supreme Court found Petitioner Sloan also lacked standing to challenge Act 130. Petitioner Sloan is not a party to the present action.

<sup>4</sup> This matter was transferred from Richland County to Charleston County Court of Common Pleas by order dated July 16, 2012.

Rm 477/3

### Summary Judgment Standard

A motion for summary judgment should be granted where the Court is satisfied that “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. A party opposing a motion for summary judgment must “do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*.” *Hedgepath v. AT&T Co.*, 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001) (quoting *Baughman v. AT&T Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991)) (internal quotes omitted and emphasis in original). Reliance on the allegations in a pleading is insufficient to overcome a motion for summary judgment. Rule 56(e), SCRPC. “Instead [the] response to the motion must set forth specific facts, admissible in evidence . . . .” *Moody v. McLellan*, 295 S.C. 157, 367 S.E.2d 449 (Ct. App. 1988) (citing Rule 56(e), SCRPC). “Plaintiff’s own self-serving statements, without more, are insufficient to create a genuine dispute of fact.” *Rogers v. Cotton*, No. 4:09-cv-1290-RBH-TER, 2012 U.S. Dist. LEXIS 14371, at \*22-23 (D.S.C. Jan. 18, 2012) (collecting cases). “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Hedgepath*, 348 S.C. at 355, 559 S.E.2d at 336. (citing *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997)).

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### Conclusions of Law

Both Plaintiffs lack the standing necessary to challenge the constitutionality of Act 130 of 2007 ("the Act" or "Act 130"). First, this Court holds that the Foundation is collaterally estopped from asserting it has standing to maintain this current challenge Act 130. Second, this Court holds that Plaintiff Howe also fails to establish the necessary standing to maintain this action. Thus, summary judgment is proper and this action should be dismissed in its entirety.

#### **I. The Foundation lacks standing to challenge the constitutionality of Act 130.**

Collateral estoppel bars the Foundation from maintaining any challenge to the constitutionality of Act 130. This Court holds that our Supreme Court adjudicated this very standing issue in 2008 and unequivocally held that the Foundation lacked the standing to challenge Act 130. As a result, this Court concludes that the Foundation is estopped from relitigating the issue of its standing to challenge the Act in this case. Therefore, summary judgment is proper as a matter of law.

Collateral estoppel prevents a party from relitigating an issue that was decided in a previous action. *Aaron v. Mahl*, 381 S.C. 585, 592, 674 S.E.2d 482, 486 (2009); *S.C. Prop. & Cas. Ins. Guar. Assoc. v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991). Collateral estoppel applies regardless of whether the claims in the first action and subsequent action are the same. *Carolina Renewal, Inc. v. S.C. Dept. of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009) (cert. denied January 6, 2011). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.*

Rmd/T/5

This Court concludes that all three elements are satisfied and that the Foundation is collaterally estopped from maintaining a challenge to Act 130 in this action.

First, the issue of whether the Foundation had standing to challenge the constitutionality of Act 130 was actually litigated in the 2008 *SCPIF v. Harrell* action. The Foundation brought the action challenging the constitutionality of Act 130. Speaker Harrell specifically defended on the grounds that the Foundation lacked standing. Thus, the standing issue was litigated in 2008. Accordingly, this Court holds that the first element of collateral estoppel is satisfied.

Second, the Supreme Court directly and finally determined this standing issue in the prior 2008 action. After considering the merits of the Foundation's numerous other constitutional challenges, the court specifically ruled that "[the Foundation] lack[ed] standing to challenge [Act 130]." *Harrell*, 378 S.C. at 445 n.1, 663 S.E.2d at 54 n.1. Therefore, the Supreme Court directly determined in the 2008 action that the Foundation lacked standing to challenge Act 130 on constitutional grounds. Accordingly, this Court concludes the second element of collateral estoppel is satisfied.

Third, the Supreme Court's standing ruling was necessary to support the prior judgment and dispose of all the issues raised in the 2008 action. The Foundation raised challenges to several acts of 2007, including Act 130. The court ruled on all challenges brought by the Foundation in that action. The standing ruling on Act 130 was necessary to support the Supreme Court's ruling and dispose of all the issues raised by the Foundation. Accordingly, this Court concludes Speaker Harrell established the third element of collateral estoppel as a matter of law.

RMPT/10

Lastly, this Court rejects the Foundation's claim that collateral estoppel does not apply because the constitutional challenges to Act 130 are rooted in different claims than were asserted in the 2008 action. *Carolina Renewal*, 385 S.C. at 556, 684 S.E.2d at 783 (holding "[c]ollateral estoppel applies to specific *issues*, regardless of whether the claims in the first and subsequent suits are the same"). (citations omitted, emphasis added). The issue in the 2008 action is the same as in this action—whether the Foundation had standing to challenge the constitutionality of Act 130. The basis asserted to challenge the constitutionality of Act 130 is immaterial. Because the Supreme Court decided this standing issue in the 2008 action, the Foundation is collaterally estopped from relitigating this issue in this case.

Based on the above, this Court holds collateral estoppel bars the Foundation from asserting it possesses the standing necessary to maintain this action. Because the Foundation lacks standing to maintain a constitutional challenge to Act 130, this Court grants Speaker Harrell's motion for summary judgment and dismisses the Foundation's claims against all defendants with prejudice.

**II. Plaintiff Howe also lacks standing to challenge Act 130.**

This Court finds that no genuine issues of material fact exist and concludes that Plaintiff Howe lacks standing as matter of law under any of the recognized tenets of standing. "[S]tanding cannot be granted to every individual who is disgruntled by a governmental decision or policy; otherwise, the government would be forced to defend a constant barrage of lawsuits questioning its every move." *Newman v. Richland Cnty. Historic Preservation Com'n*, 325 S.C. 79, 480 S.E.2d 72 (1997). Accordingly, standing may only be acquired in three ways. *Freemantle v. Preston*, 398 S.C. 186,

Rm 07/17

192, 728 S.E.2d 40, 43 (2012). First, a plaintiff may assert standing via a statute. *Preston*, 398 S.C. at 192, 728 S.E.2d at 43 (internal quotations omitted). Second, a party may acquire standing “through the rubric of constitutional standing.” *Id.* Third, a plaintiff may acquire standing “under the public importance exception.” *Id.* This Court holds that Plaintiff Howe cannot establish standing under any of the three tenets of standing.

- a. **Plaintiff Howe did not plead any proper basis for standing under the tenets of statutory standing or standing under the public importance exception.**

Here, the Complaint relies solely on Plaintiff Howe’s status as a taxpayer as the basis for standing. As discussed below, however, Plaintiff Howe’s taxpayer status does not establish standing in this case. It is well-settled that a plaintiff must *plead in the complaint* and prove his grounds for standing in order to maintain his action. *Preston*, 398 S.C. at 192, 728 S.E.2d at 43; *see also Beaufort Cnty. v. Trask*, 349 S.C. 522, 529 n.14, 563 S.E.2d 660, 663 (Ct. App. 2002) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). Because Plaintiff Howe did not plead any proper basis for statutory standing or standing under the public importance exception, his claim is barred as a matter of law.<sup>5</sup>

- b. **Plaintiff Howe cannot establish statutory standing.**

This Court holds that Plaintiff Howe cannot establish any statutory basis for standing. First, Plaintiff Howe failed to plead this basis for standing, and therefore, South Carolina law precludes him from establishing standing on this basis. *Preston*,

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<sup>5</sup> The Foundation failed to plead any basis for standing. Therefore, even if the Foundation was not barred to argue standing by collateral estoppel, this Court holds that summary judgment would be proper as to the Foundation on this basis as well. *See Preston*, 398 S.C. at 192, 728 S.E.2d at 43.

RM 4/11/18

398 S.C. at 192, 728 S.E.2d at 43; *Trask*, 349 S.C. at 529 n.1, 563 S.E.2d at 663 (holding that a plaintiff must *plead in the complaint* one of these grounds for standing in order to maintain his action).

Second, Act 130 contains no provision that would provide a basis for Plaintiff Howe to acquire the standing needed to maintain this action. Therefore, no statutory basis for standing exists as a matter of law.

Moreover, Plaintiff Howe's decision to bring this action pursuant to the South Carolina Uniform Declaratory Judgments Act, section 15-53-10, *et seq.*, is insufficient to give him statutory standing in this action. In *Trask*, a plaintiff taxpayer brought an action challenging governmental activity by a city. *Beaufort Cnty. v. Trask*, 349 S.C. 522, 523, 563 S.E.2d 660, 661 (Ct. App. 2002). The trial court held plaintiff could not acquire standing. *Id.* at 525, 563 S.E.2d at 662. On appeal, the plaintiff taxpayer argued she had standing to pursue the action by virtue of bringing her action under the South Carolina Uniform Declaratory Judgments Act. *Id.* at 529, 563 S.E.2d at 664. The Court of Appeals disagreed and held that "the presence of a justiciable controversy, however, does not by itself give a litigant standing to sue." *Id.* Thus, the Court of Appeal rejected Plaintiff Howe's argument that the Declaratory Judgments Act confers statutory standing on a plaintiff. Accordingly, this Court holds that Plaintiff Howe cannot acquire standing by seeking relief pursuant the South Carolina Uniform Declaratory Judgments Act.

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**c. Plaintiff Howe cannot establish standing under the rubric of constitutional standing.**

This Court finds that Plaintiff Howe cannot establish any concrete or particularized injury in fact needed to establish constitutional standing. Instead, he claims that his status as a taxpayer gives him the standing to pursue this challenge to Act 130. Our Supreme Court has held, however, that such an allegation is insufficient to vest a plaintiff with constitutional standing.

To establish constitutional standing, the plaintiff must demonstrate two elements. First, the plaintiff must prove he suffered “an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *ATC South, Inc. v. Charleston Cnty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). Second, a plaintiff must also show a causal connection between the injury and the conduct complained of, and it must be likely, as opposed to speculative, that the injury will be redressed by a favorable decision. *ATC South*, 380 S.C. at 195, 669 S.E.2d at 339. This Court finds that Plaintiff Howe cannot establish this test. Plaintiff Howe has failed to articulate any legally protected interest that was injured by the passage of the Act.

Plaintiff Howe only claims his status as a taxpayer in Charleston County is sufficient to provide the constitutional standing needed to maintain this action. Plaintiff Howe’s status as a taxpayer, standing alone, is insufficient to establish constitutional standing. In *Preston*, the Supreme Court addressed whether status as a taxpayer could satisfy the elements of constitutional standing. 398 S.C. at 192, 728 S.E.2d at 43. In that matter, the plaintiff argued his status as a taxpayer was sufficient to confer standing

RMDT/16

to maintain the action. 398 S.C. at 192, 728 S.E.2d at 43. The Supreme Court rejected this contention. *Id.* The Court held:

In our judgment, the injury, if any, to Appellant as a taxpayer is common to all citizens and taxpayers of Anderson County. Thus, this feature of commonality defeats the constitutional requirement of a concrete and particularized injury. We therefore affirm the trial court in rejecting [plaintiff's] claim of taxpayer standing under constitutional standing principles.

*Id.* at 193, 728 S.E.2d at 44. Therefore, the Supreme Court unequivocally held that a plaintiff's status as a taxpayer cannot establish constitutional standing.

*Preston* reaffirmed the Supreme Court's previous holding in *ATC* on this issue. In that matter, the court rejected a plaintiff's contention that status as a taxpayer establishes constitutional standing. The court held:

[Plaintiff] further relies on its status as a taxpayer to acquire standing. The injury to [plaintiff], however, as a taxpayer is common to all property owners in Charleston County. This feature of commonality defeats the constitutional requirement of a concrete and particularized injury. As the United States Supreme Court observed, a taxpayer lacks standing when he 'suffers in some indefinite way in common with people generally.'

*ATC*, 380 S.C. at 198, 669 S.E.2d at 340-41 (citing *Frothingham v. Mellon*, 262 U.S. 447, 488 (1923)). Thus, Plaintiff Howe's claim that his status as a taxpayer is sufficient to provide a basis for standing fails.

Moreover, Plaintiff Howe failed to provide any evidence that would create an issue of fact. His reliance on his subjective, personal beliefs to establish a basis for standing is insufficient. This Court finds that such a claim of a perceived difference in degree of interest claimed by Plaintiff Howe cannot be used to establish constitutional standing, regardless of his status as a taxpayer.

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Our appellate courts have rejected this argument, noting that:

[T]axpayers are not authorized to maintain a suit . . . simply because they are taxpayers . . . . It is not sufficient that they maintain the proceeding merely as a citizen to protect abstract rights. Nor does mere difference in degree of interest of one taxpayer from that of another in itself entitle the former to maintain a suit to test the validity of the ordinance.

*Trask*, 349 S.C. at 529 n.20, 563 S.E.2d at 664. It is undisputed that Plaintiff Howe's purported injury is common to all taxpayers in Charleston County. In his deposition, Plaintiff Howe testified as to his injury resulting from the passage of the Act. He testified that:

Q: How specifically were you injured or damaged by the passage of Act 130 of 2007?

A: It severely injures my sense of right and wrong, fairness, the concept of everybody going by the same rules, the proper reverence to something that would be denoted as a, quote, constitution. So yeah, in my life's desire to promote good government . . . .

He continued:

Q: How have you been harmed? Let me make sure.

A: The convictions I hold personally in terms of my views and ideals of right and wrong have been damaged.

It is undisputed that Plaintiff Howe's purported injury is common to all taxpayers in Charleston County:

Q: The individual harm to you, as I understand your answer, is you believe it's constitutionally suspect, and there are two members that are serving on there that shouldn't be. And that's your answer to how you've been harmed?

A: Yes, sir.

This Court finds these claimed injuries are nothing more than an attempt to use this action to protect abstract rights and are insufficient to confer standing on Plaintiff Howe. *See Trask*, 349 S.C. at 529 (“It is not sufficient that they maintain the proceeding merely as a citizen to protect abstract rights.”). These abstract claims of injuries are common to all taxpayers in Charleston County. Moreover, Plaintiff Howe’s subjective heightened injury cannot form the basis for standing. The Supreme Court’s established and well-reasoned precedent establishes that Plaintiff Howe cannot establish the rubric of constitutional standing on this basis.

Additionally, this Court finds that Plaintiff Howe is nothing more than a sham plaintiff named solely to remedy the fact that the Foundation lacked the standing needed to bring this action. Plaintiff Howe was aware the Supreme Court held in 2008 that the Foundation lacked standing to challenge the Act, testifying that:

Q: [D]id you also understand that the court reached a decision, denying – as part of their decision in that case, they denied standing to the Public Interest Foundation, that decision was in June – rendered in June of 2008?

A: I believe that was brought to my attention.

Notably, this Court finds that the Foundation sought an individual to rectify the “legal reasons” that the Foundation could not bring the action on its own. Plaintiff Howe admitted that he was brought into this action to alleviate this standing issue of the Foundation:

Q: How did you become involved in the lawsuit? How did you and Mr. Sloan get together on the same page, is what I am trying to ask.

A: It became known to me that his foundation was intending to bring this lawsuit, and it was desired that in addition to them as a plaintiff, that for certain legal

Rm 07/13

reasons it perhaps would be helpful for a citizen of Charleston County also be a plaintiff in this lawsuit to possibly satisfy certain legal considerations.

Moreover, it is undisputed that Plaintiffs have admitted that the Foundation, and the Foundation alone, is paying the legal fees incurred by Plaintiff Howe in this action.

Based on the above, this Court finds that Plaintiff Howe has not suffered an individual injury from the passage of the Act and is merely in this lawsuit to circumvent the Foundation's lack of standing. No issues of fact exist, and summary judgment is proper.

**d. Plaintiff Howe cannot establish standing under the public importance exception.**

This Court finds that Plaintiff Howe cannot acquire standing under the public importance exception. He failed to plead or allege any overriding public interest or an extricable connection to the need for future guidance as required by our Supreme Court.

"The general rule is that a taxpayer may not maintain a suit based on the action of state officers when he has no special interest, and his only standing is the exceedingly small interest of a general taxpayer." *Crews v. Beattie*, 197 S.C. 32, 14 S.E.2d 351 (1941). The mere fact that the issue is one of public importance does not confer upon any citizen or taxpayer the right to invoke a judicial determination of the issue. *Id.* Rather, the party must demonstrate some overriding public purpose or concern to confer standing to sue on behalf of his fellow taxpayers. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). Our Supreme Court mandates that the public importance exception to these standing rules should apply

RMPT/14

“only where a resolution is needed for future guidance.” *Preston*, 398 S.C. at 193, 728 S.E.2d at 44. “Thus, for a court to relax general standing rules, the matter of importance must, in the context of the case, be extricably connected to the public need for court resolution for future guidance.” *Id.*; *ATC South*, 380 S.C. at 199, 669 S.E.2d at 341 (internal quotations omitted). Plaintiff Howe cannot establish this rubric of standing in this action.

First, this Court finds that Plaintiff Howe failed to plead this basis for standing. The Complaint does not allege this is a matter of overriding public importance or that future guidance is needed from our courts. Therefore, this failure to plead the public importance exception precludes Plaintiff Howe from establishing standing on this basis. *See Preston*, 398 S.C. at 192, 728 S.E.2d at 43; *Trask*, 349 S.C. at 529 n.1, 563 S.E.2d at 663 (holding that a plaintiff must *plead in the complaint* one of these grounds for standing in order to maintain his action).

Second, this Court finds that Plaintiffs’ actions establish that this matter contains no overriding public importance. It is undisputed that Plaintiffs were aware of the passage of Act 130, as well as the fact that the members of the Charleston Legislative Delegation were placed on the Charleston Aviation Authority, very shortly after Act 130 became effective. Plaintiff Howe testified that:

Q. ...When did you first learn that Representative Limehouse, in his capacity as chairman of the Charleston delegation, had been placed on the Aviation Commission?

A. You know, that’s really hard. Probably very soon after the, what was it, ’08 legislation was passed. And then, of course, he would have to get on there as being chairman of the Charleston County legislative delegation. So it would have been –I pay attention, and it would have

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been not that long after he actually took that position that I would have been aware of it. Because again, I pay attention.

Q. So were you aware, given the fact that you pay attention that Act 130 of 2007, when it was passed?

A. When it was passed?

Q. Not specifically the date it was passed, but did you have awareness that they had passed Act 130 of 2007?

A. Yeah.

He continued:

Q: I think you answered that you became aware of the act . . . sometime after it was passed . . . .”

A: I don't know exactly.

Q: But soon thereafter?

A: I'm thinking it was probably soon thereafter just because my usual way of keeping abreast.

Moreover, the Foundation first challenged the constitutionality of Act 130 in 2008.

Despite this knowledge, Plaintiffs chose to not launch this second action contesting the constitutionality of Act 130 for nearly five years after the first challenge, noting that:

Q: So did you take any action from when the act was passed in 2007 before you became a good citizen of Charleston County and signed up in 2012?

A: Did I take any action?

Q: That's right.

A: No.

Q: Okay. Why not, if this issue bothered you?

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A: As I understood it these same issues were already being or just had been brought to the judicial system of South Carolina.

Also, Plaintiff Howe testified that:

Q. Okay. Is there any reason why you haven't challenged or brought a suit to challenge Act 130 of 2007 since that decision?

A. The opportunity didn't really present itself. I didn't receive the -- you know, the personal motivation until it was brought earlier this year. I'm a pretty busy guy, Mr. Hitchcock, and undertakings like this can only be done at certain times.

Q. Okay. But, I mean -- and that would be -- you were -- you were too busy to bring -- you're saying that you were too busy to bring the lawsuit for the past four years since that decision was rendered?

A. Among, I'm sure, other reason.

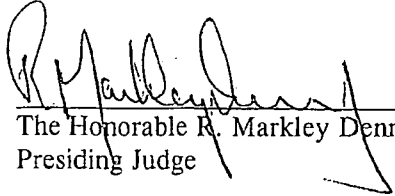
This Court finds that this rationale and delay in taking action establishes that Plaintiffs cannot reasonably assert that this matter presents a matter of overriding public importance or some immediate need for future guidance. Therefore, this Court finds that standing cannot be acquired on this basis, and summary judgment is proper.

#### Conclusion

Based on the forgoing, the Plaintiffs lack the standing necessary to maintain this action. This Court declines to rule on any other issues presented in this action. Now, therefore, the Court hereby **GRANTS** Speaker Harrell's Motion for Summary Judgment, and Plaintiffs' complaint is **DISMISSED** with prejudice **IN ITS ENTIRETY**.

Rm 211/17

AND IT IS SO ORDERED.

  
The Honorable R. Markley Dennis, Jr.  
Presiding Judge

Moncks Corner  
Charleston, South Carolina

April 29, 2013