

RECEIVED

Oct 09 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
G.D. Morgan, Circuit Court Judge

Appellate Case No. 2024-001391

John Sloan, individually, and on behalf of all others similarly situated, and NOLAS Trading Co., Inc., Plaintiffs,

of which John Sloan, individually, and on behalf of all others similarly situated is the Appellant,

v.

Clemson University, and its Life Trustees E. Smyth McKissick III, David E. Dukes, Cheri M. Phyfer, Mark S. Richardson, William “Bill” C. Smith, Jr., Kim Wilkerson, and David H. Wilkins, Respondents.

REPLY BRIEF OF APPELLANT

James G. Carpenter, S.C. Bar No. 1136
Jennifer J. Miller S.C. Bar No. 11316
THE CARPENTER LAW FIRM, PC
819 E. North Street
Greenville, South Carolina 29601
(864) 235-1269
Attorneys for Appellant

Table of Contents

Table of Authorities..... ii

Statement of the Case.....1

Argument2

I. CLEMSON LIFE TRUSTEES UNLIMITED TERMS VIOLATE THE S.C. CONSTITUTION2

II. CLEMSON ABANDONED ITS ARGUMENT THAT THE LIFE TRUSTEES ARE PUBLIC OFFICERS UNDER THE S.C. COMMON LAW.....3

 A. Clemson Failed to Respond to Sloan’s Additional Authority Governing the Definition of “Public Officer” in South Carolina3

 B. Respondents’ representation that this is a new issue on appeal is factually incorrect.6

 C. Clemson Fails to Distinguish Among Critical Structural Elements of Legal Analysis.....7

 D. S.C. Code Ann. § 8-1-10 defines the life trustees as “public officers.”.....8

III. THE CLEMSON WILL AND TRUST ACHIEVE THEIR PURPOSES OF ESTABLISHING CLEMSON UNIVERSITY, WHILE ALLOWING LIMITED TERMS OF SUCCESSOR TRUSTEES TO COMPLY WITH S.C. CONSTITUTION OF 1895.8

 A. The purpose of the will and trust was to establish Clemson as an institution8

 B. A novel issue of Constitutional law should not be decided on a 12(b)(6). Motion.....9

 C. Equitable deviation was raised at the Circuit Court.....10

IV. REQUIRING THE SUCCESSOR TRUSTEES TO COMPLY WITH THE S.C. CONSTITUTION DOES NOT IMPAIR A CONTRACT BETWEEN MR. CLEMSON AND THE STATE.....11

V. THE COURTS BELOW PROPERLY RULED THAT DEFINING AND UPHOLDING CONSTITUTIONAL REQUIREMENTS IS AN ISSUE OF GREAT PUBLIC IMPORTANCE12

Conclusion15

Table of Authorities

Cases

<i>Allied Structural Steel Co. v. Spannaus</i> , 438 U.S. 234, 244, 98 S.Ct. 2716, 2722, 57 L.Ed.2d 727, 736 (1978).....	11
<i>Baltimore Teachers Union v. Mayor of Baltimore</i> , 6 F.3d 1012, 1018 (4th Cir.1993), <i>cert. denied</i> , 510 U.S. 1141, 114 S.Ct. 1127, 127 L.Ed.2d 435 (1994).....	10-11
<i>Bochette v. Bochette</i> , 300 S.C. 109, 386 S.E.2d 475 (Ct.App.1989)	3
<i>Citizens for Lee County v. Lee County</i> , 308 S.C. 23, 30, 416 S.E.2d 641, 646 (1992)	11-12
<i>Caughman v. Columbia YMCA</i> , 212 S.C. 337, 344, 47 S.E.2d 788, 791 (1948).....	4
<i>Coakley v. Tidewater Constr. Corp.</i> , 194 S.C. 284, 288, 9 S.E.2d 724, 726 (1940).....	4
<i>Doe v. Bishop of Charleston</i> , 407 S.C. 128, 134, 754 S.E.2d 494, 497-98 (2014).....	15
<i>Epworth Children’s Home v. Beasley</i> , 365 S.C. 157, 616 S.E.2d 710 (2005).....	10-11
<i>Fields v. Melrose Ltd. Partnership</i> , 312 S.C. 102, 439 S.E.2d 283 (S.C. App. 1993).....	3
<i>G–H Ins. Agency v. Continental Ins. Co.</i> , 278 S.C. 241, 246, 294 S.E.2d 336, 339 (1982)	11
<i>Ken Moorhead Oil Co., Inc. v. Federated Mut. Ins. Co.</i> 323 S.C. 532, 539-540, 476 S.E.2d 481 (1996).....	11-12
<i>Lindsay v. Nat’l Line Ins. Co.</i> , 262 S.C. 621, 629, 207 S.E.2d 75, 78 (1974)	13
<i>Madison v. American Home Products Corp.</i> , 358 S.C. 449, 451, 595 S.E.2d 493, 494 (2004).	9
<i>Matthews v. City of Greenwood</i> , 305 S.C. 267, 407 S.E.2d 668 (Ct.App.1991)	3
<i>Sanders v. Belue</i> , 78 S.C. 171, 174, 58 S.E. 762, 763 (1907).....	5-6, 10, 15
<i>South Carolina Dept. of Mental Health v. McMaster</i> , 372 S.C. 175, 182, 642 S.E.2d 552, 555 (2007).	10
<i>Sloan v. Hardee</i> , 640 S.E.2d 457, 371 S.C. 495 (S.C. 2007).....	13-14
<i>Sloan v. Sanford</i> , 357 S.C. 431, 593 S.E.2d 470 (S.C. 2004)	14

<i>State v. Bridgers</i> , 329 S.C. 11, 14, 495 S.E.2d 196, 197-98 (1997).....	4
<i>United States Trust Co. v. New Jersey</i> , 431 U.S. 1, 17, 97 S.Ct. 1505, 1515, 52 L.Ed.2d 92, 106 (1977).....	11

Constitution, Statutes, and Rules

S.C. Constitution, Art. I, § 4	11
S.C. Constitution, Art. VI, § 1.....	3, 8, 15
S.C. Constitution, Art. XVII, §1.B.....	3, 4, 8, 14, 15
S.C. Code Ann. § 8-1-10.....	8, 12, 15
S.C. Code Ann. § 57-1-320(B)	14
S.C. Code Ann. § 59-119-40.....	5
S.C. Code Ann. § 59-119-60.....	5, 6, 15
Statutes of South Carolina, Vol. XX, p. 277	5
SCRCP 12(b)(6).....	1, 9, 12, 15

Treatises

Black’s Law Dictionary (12th ed. 2024) Bryan A. Garner, Editor in Chief	7, 8
Cicero, <i>De Inventione; De Optimo Genere Oratorum; Topica</i> 387 (H.M. Hubbell trans., 1949; repr. 2006	7
Graham, Cole Blease Jr., <i>The South Carolina State Constitution: a Reference Guide, Reference Guides to the State Constitutions of the Unites States</i> , 43, G. Alan Tarr, Series Editor, Praeger Publishing, 2007, p. 205	13
<i>The Constitution of South Carolina, Vol. II: The Journey Toward Local Self-Government</i> , University of South Carolina Press, 1989.....	13

STATEMENT OF THE CASE

Mr. Edward D. Sloan, Jr., a champion of South Carolina citizens and taxpayers, sought to ensure that South Carolina's public officials serve within their constitutional limits. In this matter, he challenged the unlimited terms of the Clemson University life trustees. Upon his death, his son, John Sloan, intervened as a Plaintiff (Motion to Intervene; R. pp 120-121).

This case addresses whether Clemson's life trustees are public officers. The South Carolina Constitution prohibits both the appointment and the service of public officers to unlimited terms. Their historic and ongoing duties, and the statutory and common law, all demonstrate that Respondents are public officers, and that their unlimited service violates the Constitution.

The Probate Court decided this matter on Respondents' 12(b)(6) motion, without any discovery of the evidence of the facts of their service to demonstrate whether they meet the common law definition of "public officer" (R. pp. 20-32; pp. 48-50). Nor was there any factual presentation related to the statutory description of the duties of the life trustees. Further, the Probate Court's dismissal was with prejudice. (R. pp. 20-32). Likewise, the Circuit Court affirmed (R. pp. 1-19). Accordingly, these decisions were premature and must be reversed.

Clemson attempted to confine this matter to issues of probate and contract law, but the General Assembly's actions and Clemson's history and current status demonstrate that Clemson's governance and operations flow from the State of South Carolina, and not solely from Mr. Clemson's bequest.

Third, limiting the terms of the life trustees does not violate or frustrate Mr. Clemson's noble intentions to establish an institution of higher learning.

Finally, enforcing the S.C. Constitution's prohibitions against unlimited terms for public officers is a matter of great public importance and an issue of first impression, requiring guidance from the Court. Allowing John Sloan to challenge these Constitutional violations of term limits rather than relying on public officials to police themselves supports the purpose of the S.C. Constitution's provisions. Indeed, very few citizens have availed themselves of public importance standing, which requires time, effort and expense to challenge the violations of public officials. Edward D. Sloan, Jr., and now his son, have dedicated themselves to assuring legal governance when they can, and the lower courts properly granted them public importance standing.

ARGUMENT

I. CLEMSON LIFE TRUSTEES' UNLIMITED TERMS VIOLATE THE S.C. CONSTITUTION.

Clemson's life trustees are **appointed** for life in violation of the S.C. Constitution. "No person may be elected or appointed to office in this State **for life**. *Id.* at I, art.VI,§ 1; art. XVII, §1B (emphasis added). In addition, the governing life trustees are **servng** unlimited terms of service in violation of the S.C. Constitution (R. p. 60). "[T]he terms of all officers **must** be for some specified period." S.C. Constitution, Art.VI,§ 1 and art. XVII, §1B (emphasis added).

II. CLEMSON ABANDONED ITS ARGUMENT THAT THE LIFE TRUSTEES ARE NOT "PUBLIC OFFICERS" UNDER THE S.C. COMMON LAW.

Clemson abandoned its argument that the Clemson lifetime trustees are not public officers.

[...] an issue is deemed abandoned on appeal and, therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority. *Bochette v. Bochette*, 300 S.C. 109, 386 S.E.2d 475 (Ct.App.1989); *Matthews v. City of Greenwood*, 305 S.C. 267, 407 S.E.2d 668 (Ct.App.1991).

Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 439 S.E.2d 283 (S.C. App. 1993). Instead of addressing Sloan's common law authority cited in Appellant's Brief, Clemson asserted, without discussion or authority, that the "issue" of whether the life trustees are "public officers" under the S.C. common law definition was new on appeal (Respondents' Brief, p. 13). However, as demonstrated below, Clemson confuses the meanings of new "issue," "argument," and "authority."

A. Clemson Failed to Respond to Sloan's Additional Authority Governing the Definition of "Public Officer" in South Carolina.

Appellant contended in the Complaint and trial memoranda that the life trustees meet the definition of "public officers," and in his Brief, Appellant cited additional common law supporting

this contention (Complaint, R. pp. 60-61; R. pp, 111, 114, 116). In the Respondents' Brief, Respondents failed to discuss this common law definition, defining Clemson University life trustees as "public officers," and instead dismissed it as an unpreserved argument (Respondents' Brief, p. 16). Respondents entire and cursory response (with no supporting authority) to the governing common law definition of "public officer" was as follows: "As an initial matter, Appellant's brief raises many new **arguments** in support of his position that the Successor Trustees are 'public officers.' All the **arguments** raised in Section I.A. and in the initial portion of I.B. of his brief were not raised below" (Respondents' Brief p. 16). Accordingly, Respondents have conceded Appellant's argument and authority that the life trustees are public officers under the governing S.C. Constitution provisions.¹

However, the common law authority defining public officials is foundational to the issues now before the Court, and Respondents failed to address any of it. It establishes that although S.C. Constitution, art. XVII, §1.B and art. VI, §1 do not define the term "officers" or "office," the S.C. Supreme Court has ruled that when an enacted law does not define a term within its provisions, the General Assembly is presumed to have intend the common law definition. *Coakley v. Tidewater Constr. Corp.*, 194 S.C. 284, 288, 9 S.E.2d 724, 726 (1940). Likewise, the General Assembly is presumed to be aware of the common law. *Caughman v. Columbia YMCA*, 212 S.C. 337, 344, 47 S.E.2d 788, 791 (1948) (cited for guidance in *State v. Bridgers*, 329 S.C. 11, 14, 495 S.E.2d 196, 197-98 (1997) (Highway Patrol officers "are charged with the discretionary exercise of the sovereign power," and are therefore public officials).

¹ As a fallback position, Respondents then argued that even if the Clemson lifetime trustees are "public officers," the S.C. Constitutional provisions are unconstitutional as applied to the Will and Act of Acceptance which supersede the S.C. Constitution's preeminence to limit terms for future public officials (Respondents' Brief, pp. 16-20).

The South Carolina common law defines “**public officer**.”

We have held that a **public officer** is “[o]ne who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent.”

Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907) (emphasis added). In applying this definition to the trustees serving indefinite terms on Clemson’s governing board, four factual questions arise: Are the Clemson lifetime trustees:

1. **charged by law**
2. with duties involving an exercise of some part of the sovereign power (either small or great)
3. in the performance of which the **public is concerned** and
4. which are **continuing**, and not occasional or intermittent?

Because the Clemson life trustees are statutorily charged with such duties, they fall within the S.C. common law definition of “public officer” as defined in *Belue*. *Id.* S.C. statutes, particularly the Act of Acceptance, assign sovereign powers and duties to the life trustees to govern Clemson, a state university. S.C. Code Ann. § 59-119-60; S.C. Code Ann. § 8-1-10.

First, as the *Belue* Court ruled, the first element of the definition of “public officer,” that the officer be “**charged by law**,” applies to the life trustees serving on Clemson’s governing board. *Sanders v. Belue*, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907) (emphasis added). **The Act of Acceptance states**, “That said college shall be under the **management and control** of a board of thirteen trustees.” *Id.* Section 3 (emphasis added). S.C. Code Ann. § 59-119-40. Statutes of South Carolina, Vol. XX, p. 277.

Provisions of the South Carolina Code such as the following provision, charge the life trustees by law as public officers:

The board of trustees is hereby declared to be a body politic and corporate, under the name and style of Clemson University. It shall have a corporate seal, which it may change at its discretion, and in its corporate name it may contract for, **purchase and hold property**, for the purposes of Sections 59-119-10 to 59-119-70

and may **take any property or money** given or conveyed by deed, devise or bequest to said university and **hold the same for its use and benefit**; provided, however, that the conditions of such gifts or conveyances shall in no case be inconsistent **with the purposes of** Sections 59-119-10 to 59-119-70 and that the board **shall not by the acceptance thereof incur any obligation on the part of the State**. It shall **securely invest all funds** and keep all property which may come into its possession and may **sell any of the personal property** not subject to the trust and reinvest the same in such way **as it deems best** for the interest of said university. **It may sue and be sued and plead and be impleaded in its corporate name** and may do **all things necessary** to carry out the provisions of Sections 59-119-10 to 59-119-70 and **may make bylaws** for this purpose if it deems it necessary.

S.C. Code Ann. § 59-119-60 (emphasis added). This statute declares that the Board of Trustees, **as a whole**, consisting of all 13 trustees, is a body politic, including not only those trustees elected by the General Assembly, but also the life trustees. As supported more fully in Appellant’s Brief, the life trustees meet all four elements of the common law definition of “public officer” (Appellant’s Brief, pp. 10-14).

Finally, Respondents themselves admit that the life trustees are agents of the state in their brief. The “state [...] has founded and is maintaining the Clemson Agricultural College of South Carolina by and through the board of trustees as its agents [...]” (R. Brief, p.17). As Respondents have conceded that the life trustees are public officers and state agents, the trustees are governed by and violating the S.C. Constitution of 1895. *Sanders v. Belue*, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). Accordingly, as both the Act of Acceptance and the common law recognize and as Respondents concede, as agents of the state, the trustees were public officers

B. Respondents’ Representation That This Is a New Issue on Appeal Is Factually Incorrect.

Respondents’ Brief itself repeatedly cites Sloan’s Complaint to reference Appellant’s contention that the life trustees are public officers (Respondents Brief, pp. 16-20) (Complaint, R. p. 60 pars. 10-13, R. p. 61, par. 2). Appellant’s memoranda and briefs repeat this contention that the life trustees are public officers (Memo in Opposition to Summary Judgment, R. pp. 111-112,

p. 118). Appellant repeats this contention in both hearings below (R. p. 175, ll. 4-5, p. 192, ll. 12-17): “This case involves the conduct of a governmental body and public officers.” (Transcript, Circuit Court, R. pp. 202-205, 238).

C. **Clemson Fails to Distinguish Among Critical Structural Elements of Legal Analysis.**

1. **Black’s Law Dictionary defines legal “issue.”**

issue n. (16c) 1. A point in dispute between two or more parties.

• In an appeal, an issue may take the form of a **separate and discrete question of law or fact, or a combination of both**. “In federal civil procedure, an issue is a single, certain, and material point arising out of the allegations and contentions of the parties; it is matter affirmed on one side and denied on the other, **and when a fact is alleged in the complaint and denied in the answer, the matter is then put in issue between the parties**.”

Issue, BLACK’S LAW DICTIONARY (12th ed. 2024) (emphasis added). The additional authority above defining “public official” supported the fact (and issue) alleged in the Complaint that the life trustees are public officials. The authority is not the issue itself.

2. **Black’s Law Dictionary defines legal “argument:”**

argument (14c) 1. A situation in which two or more persons expressly disagree and dispute one another’s positions, often vehemently. 2. **A statement that attempts to persuade by setting forth reasons why something is true or untrue, right or wrong, better or worse, etc.; esp., the remarks of counsel in analyzing and pointing out or repudiating a desired inference, made for the assistance of a decision-maker**. 3. The act or process of attempting to persuade. See oral argument; opening statement; closing argument. “[W]e may define ... an argument as a course of reasoning which firmly establishes a matter about which there is some doubt.” Cicero, *De Inventione*; *De Optimo Genere Oratorum*; *Topica* 387 (H.M. Hubbell trans., 1949; repr. 2006).

Argument, BLACK’S LAW DICTIONARY (12th ed. 2024) (emphasis added). Throughout the proceedings below, Appellant had consistently argued and “set forth reasons” that the Clemson life trustees are public officers, including that the law defines them as such. This additional authority and reason support the continuing argument that the law defines the life trustees as public officers.

3. Black's Law Dictionary defines legal "authority:"

"5. A source, such as a statute, case, or treatise, cited in support of a legal argument (the brief's table of authorities)." *Authority*, BLACK'S LAW DICTIONARY (12th ed. 2024) (emphasis added). The cases defining "public officer" in the common law cited above and establishing the governance of those common law definitions are "authority" supporting the legal argument that the law (both statutory and common law) defines the Clemson life trustees and public officers and thus answer the ultimate issue of whether they are public officers governed by the S.C. Constitution's prohibition against unlimited terms.

D. S.C. Code Ann. § 8-1-10 defines the life trustees as "public officers."

The Probate Court erred when it determined that the life trustees are not "public officers" under S.C. Code Ann. § 8-1-10: "**Public officers**" defined. "The term 'public officers' shall be construed to mean all . . . trustees of the various colleges of the State." S.C. Code Ann. § 8-1-10 (emphasis added). Accordingly, Clemson's governing trustees, including the life trustees, are "public officers," governed by S.C. Constitution, art. VI, § 1 and S.C. Constitution, art. XVII, §1.B of the S.C. Constitution.

III. THE CLEMSON WILL AND TRUST ACHIEVE THEIR PURPOSES OF ESTABLISHING CLEMSON UNIVERSITY, WHILE ALLOWING LIMITED TERMS OF SUCCESSOR TRUSTEES TO COMPLY WITH THE S.C. CONSTITUTION OF 1895.

A. The purpose of the will and trust was to establish Clemson as an institution.

The Thomas G. Clemson will does not explicitly require the trustees' appointment to be lifetime terms, nor does it explicitly require their service to be of unlimited terms. Under the will, vacancies may occur "by death, resignation, refusal to act or otherwise." (Thomas Clemson Will, R. pp. 141, Item 2). Accordingly, Mr. Clemson's will would allow for terms of service of "some

specified period” with or without the direct Constitutional prohibition. Consequently, the life trustees can govern under **both** the Clemson will **and** the Constitution by serving terms of “some specified period” (Thomas Clemson Will, R. p. 140).

B. A novel issue of Constitutional law should not be decided on a 12(b)(6) motion.

The Probate Court granted the Defendants’ Motion to Dismiss under Rule 12(b)(6) (R. pp. 20-32). “As a general rule, important questions of novel impression should not be decided on a motion to dismiss.” *Madison v. American Home Products Corp.*, 358 S.C. 449, 451, 595 S.E.2d 493, 494 (2004). Even more, a novel issue of Constitutional law, particularly provisions governing public officers, should not be decided under Rule 12(b)(6) and particularly when the nonmoving party (Sloan) has had no opportunity to engage in discovery. The rulings of the Circuit Court and Probate Court prevented Sloan from getting answers to his discovery and developing the facts of this case related to the duties and actions of the life trustees (R. pp. 1-30, 48-50).

Plaintiffs filed suit against Clemson University and its life trustees on July 1, 2020. (Complaint, R. pp. 58-61). Respondents accepted service on July 27, 2020. (Acceptance of Service, R. p. 62). On August 26, 2020, Respondents moved to dismiss (Motions to Dismiss, R. pp. 64-69). On October 23, 2020, Respondents filed their memoranda in support of the motions to dismiss (Memoranda in Support of Motion to Dismiss, R. pp. 70-109).

On October 30, 2020, on the agreement of the parties, and based on the death of Mr. Edward D. Sloan Jr., the case was continued (R. pp. 54-56). On January 16, 2021, Appellant moved to substitute John Sloan as a Plaintiff in his father’s place (Motion to Substitute, R. pp. 120-121).

On June 3, 2021, Sloan served interrogatories and requests for production of documents on the Respondents (Interrogatories; Requests for Production, R. pp. 150-153). On June 22, 2021, the life trustees objected to the interrogatories and request for production and moved for a protective order (Protective Order, R. pp. 122-139). On June 30, 2021, Clemson moved again for

a protective order asking the Court to rule that they not be required to respond to interrogatories and requests for production of document (Protective Order, R. pp. 122-139). July 4, 2021, Clemson served responses to requests for production of documents and answers to interrogatories, which were nothing but objections, based on the pending motions to dismiss, and Clemson produced no substantive responses. On September 1, 2021, the Circuit Court for Greenville County granted the Motion for Protective Order (R. pp. 48-50).

On July 27, 2021, the Circuit Court for Greenville County entered Form 4 Orders that granted the Motion for Protective Order and to stay discovery and ordered the case to be transferred to the Probate Court for Pickens County (Order for Granting Motion for Protective Order; Order for Change of Venue, R. pp. 45-50). On September 28, 2021, the Court issued a formal order transferring the case to the Pickens County Probate Court (R. pp. 33-40). On April 3, 2023, the Pickens County Probate Court entered an Order granting the Motions to Dismiss. (R. pp. 20-32). On July 31, 2024, the Circuit Court for Pickens County entered an Order affirming the judgment of the Probate Court (R. pp. 1-19). Throughout the litigation in the Circuit Court and in the Probate Court, Appellant was never allowed to develop the case factually with discovery. Instead, the case was dismissed, **with prejudice**, based on the original Complaint, without amended pleadings.

C. Equitable deviation was raised at the Circuit Court.

Respondents contend that equitable deviation is newly raised on appeal. This is not the case. Respondents themselves raised the issue. Respondents cited *S.C. Dep't of Mental Health v. McMaster*, 372 S.C. 175, 183, 642 S.E.2d 552, 556 (2007) and argued in relation to charitable trusts, any **changes must be approved by a court of equity** since supervision of a charitable trust is an 'an inherent judicial function and is not a matter for the legislature' (Joint Brief of Respondents in the Circuit Court). *Id.* "Changes . . . approved by a court of equity" refers to the doctrine of equitable deviation. Likewise, Clemson cited *Epworth Children's Home v. Beasley*,

which explains the doctrine of equitable deviation, and how it applies to charitable trusts (Joint Brief of the Respondents in the Circuit Court, pp. 17, 22). *Id.* at 365 S.C. 157, 616 S.E.2d 710 (2005). Accordingly, the doctrine of equitable deviation has been addressed in the case in the court below. Requiring that life trustees to serve a definite term, in compliance with the Constitution, supports the purpose of Mr. Clemson’s will and trust.

IV. REQUIRING THE SUCCESSOR TRUSTEES TO COMPLY WITH THE S.C. CONSTITUTION DOES NOT IMPAIR A CONTRACT BETWEEN MR. CLEMSON AND THE STATE.

Respondents have argued that the S.C. Constitution’s requirement that public officers serve a definite term is an “improper, substantial impairment of a material provision between Mr. Clemson and the State” Respondents have compared requiring service for a definite term to an attempt “to enlarge Clemson’s board” or changing the “method of selecting successor trustees” (Respondents’ Brief, p. 18) (Thomas Clemson will and trust, R. pp. 140-146). However, Respondents’ argument fails the governing common law test for determining impairment of contracts at multiple points of the test.

Both the United States Constitution and the South Carolina Constitution bar the state from passing laws that impair the obligations of contracts. *See* U.S. Const. art. I, § 10; S.C. Const. art. I, § 4. In interpreting the Contract Clause of the South Carolina Constitution, this Court has followed federal precedent construing the federal Contract Clause. *G–H Ins. Agency v. Continental Ins. Co.*, 278 S.C. 241, 246, 294 S.E.2d 336, 339 (1982) (“The mandate of the state and federal constitutions relating to impairment of contracts is basically the same.”).

The United States Supreme Court has formulated a three-step inquiry for determining whether a law violates the federal Contract Clause. As a threshold matter, the law being challenged **must [first] actually impair the contract at issue.** *540 *United States Trust Co. v. New Jersey*, 431 U.S. 1, 17, 97 S.Ct. 1505, 1515, 52 L.Ed.2d 92, 106 (1977). **Second, the impairment must be substantial.** *Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244, 98 S.Ct. 2716, 2722, 57 L.Ed.2d 727, 736 (1978). **Finally, unless a law that substantially impairs a contractual obligation is “reasonable and necessary to carry out a legitimate governmental purpose,”** the law violates the Contract Clause. *Citizens*

for Lee County v. Lee County, 308 S.C. 23, 30, 416 S.E.2d 641, 646 (1992); *accord Baltimore Teachers Union v. Mayor of Baltimore*, 6 F.3d 1012, 1018 (4th Cir.1993), *cert. denied*, 510 U.S. 1141, 114 S.Ct. 1127, 127 L.Ed.2d 435 (1994).

Ken Moorhead Oil Co., Inc. v. Federated Mut. Ins. Co. 323 S.C. 532 476 S.E.2d 481 (1996) (emphasis added). First, Respondents have not explained how requiring a definite term for life trustees “actually impair[s] the contract at issue.” The purpose of Mr. Clemson’s will, to establish and maintain Clemson University, will not be impaired by these term limits. Indeed, the other trustees who serve definite terms have continued their service throughout Clemson’s history. Furthermore, as this is a point of factual contention, disposal under 12(b)(6) was inappropriate. Second, even if Respondents could identify an impairment to the purpose of Mr. Clemson’s will, it is not substantial. And finally, and most importantly, the purpose of these Constitutional provisions “is reasonable and necessary to carry out a legitimate governmental purpose;” limiting the consolidated power of public officers.

In addition, the contractual obligations of the State to Mr. Clemson’s will and trust were fulfilled when the “founding” and “maintenance” of the state educational institution shifted to the State, and the trustees became state agents. S.C. Code Ann. § 8-1-10.

V. THE COURTS BELOW PROPERLY RULED THAT DEFINING AND UPHOLDING CONSTITUTIONAL REQUIREMENTS IS AN ISSUE OF GREAT PUBLIC IMPORTANCE.

This case raises issues of great public importance. The lower courts properly ruled on this issue. First, the continued and indefinite service of public officers in violation of the Constitutional limits and on their terms of state office present a justiciable matter of public importance. These Constitutional limits are purposed to protect the citizens and taxpayers from improper and abusive consolidation of power in state government. (“[...W]hen the [1895 constitutional] convention

met, the discussions of local government issues focused on the broad areas emphasized by Tillman in his speeches: the size of the government unit and means for curbing the abuse of the taxing and spending powers]. James Lowell Underwood, The Constitution of South Carolina, Vol. II: The Journey Toward Local Self-Government 71 (University of South Carolina Press, 1989).

Alleged violations of these term limits as Constitutional guard rails of public office, are inherently a concrete and immediate matter of public importance requiring declaratory judicial guidance. The universal application of these Constitutional guard rails for public office is well-recognized in South Carolina. “Although many officers may be reelected and others reappointed, no offices have lifetime tenure or an indefinite term ‘for good behavior.’” Blease Graham, Jr., The South Carolina State Constitution: a Reference Guide 205 (Cole Reference Guides to the State Constitutions of the Unites States, 43, G. Alan Tarr, Series Editor, Praeger Publishing, 2007). As such, the governing life trustees appointed or serving after 1895 have been appointed and have been serving in violation of the 1895 Constitution. From 1895 forward, they can no longer be appointed for life or during good behavior, and their service must be for “some specified period.” Not only is this an issue of first impression requiring guidance, its Constitutional nature related to limiting public office is inherently an issue of great public importance.

Second, issuing a declaratory judgment on constitutional and statutory violations of public office falls within the prerogative of the Court under the Declaratory Judgment Act.

The sole issue in this case is whether the Commissioners are serving in violation of the statutory terms. Defining the meaning of the phrase “more than one consecutive term” is clearly within the prerogative of this Court.

Cf. Lindsay v. Nat’l Line Ins. Co., 262 S.C. 621, 629, 207 S.E.2d 75, 78 (1974) (judicial interpretation of a statute is determinative of its meaning and effect).” *Sloan v. Hardee*, 640 S.E.2d 457, 371 S.C. 495 (S.C. 2007). Likewise, defining the meaning of “public office[r]” as governing

the life trustees and applying these Constitutional term limitations accordingly is clearly within the jurisdiction of the Court in the case at bar.

Third, the S.C. Supreme Court in *Hardee* ruled that serving consecutive terms violated the statute under the Declaratory Judgement Act as a matter of public importance requiring guidance for current and future commissioners. “Accordingly, we hold section 57-1-320(B) prohibits a S.C. DOT Commissioner from serving a consecutive term of office.” *Id.*

Likewise, when guidance is needed, as in the case at bar, the Court continues to grant public importance standing to the few brave citizens like Ned Sloan and John Sloan and singular organizations like the S.C. Public Interest Foundation, who devote personal funds and effort to challenge Constitutional and statutory violations. In addition, the inherent purpose of Constitutional limits on office holding is of greatest public importance allowing citizen challenges requiring judicial guidance.

Finally, “[t]he framers of South Carolina’s early Constitutions minimized the governor’s potential corruption and disloyalty to the State by preventing dual office holding on the part of the Governor.” *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (S.C. 2004). Whether limiting the *time* in public office or the *number* of offices held at once, these Constitutional provisions require public officers to serve in a limited manner, without requiring proof of corruption or disloyalty, a core concern of citizens, and properly raised by Appellant. Even so, in practice, the courts in this state have seen relatively few Constitutional challenges to violations of service by public officers since public importance standing was first recognized by the Court. For these reasons, the courts below properly granted Appellant public importance standing to challenge Constitutional violations of public officials seeking declaratory judgment on behalf of citizens of this State.

CONCLUSION

In summary, “If the facts alleged and inferences reasonably deducible from the allegations set forth in the complaint, **viewed in the light most favorable to the plaintiff**, entitle him to **relief on any theory**, dismissal under Rule 12(b)(6) is improper.” *Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 497-98 (2014) (footnotes omitted) (emphasis added). Sloan respectfully suggests that dismissal of this case by the Probate Court was improper, and certainly, dismissal **with prejudice** was improper.

The Clemson life trustees are “public officers” under both the common law and statutory definitions. *Sanders v. Belue*, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). S.C. Code Ann. § 8-1-10. Furthermore, the Board of Trustees is a “body politic.” S.C. Code Ann. § 59-119-60. Accordingly, the governing life trustees are **appointed** for life in violation of the S.C. Constitution. “No person may be elected or appointed to office in this State **for life**. I, art.VI,§ 1; art. XVII, §1B (emphasis added).

In addition, the life trustees are **servng** unlimited terms of service in violation of the S.C. Constitution. “[T]he terms of all officers **must** be for some specified period.” S.C. Constitution, Art.VI,§ 1 and art. XVII, §1B (emphasis added). As such, the terms of the Clemson life trustee violate both Constitutional prohibitions.

In addition, Mr. Clemson’s will does not explicitly require unlimited or lifetime terms. Therefore, it is possible for the life trustees to comply both with Mr. Clemson’s will, and the S.C. Constitution’s prohibitions against unlimited terms. If it is possible to comply with both, then they may not violate these governing Constitutional term limitations, and Mr. Clemson’s intent, in his bequest, is not impaired under probate or contract law.

Accordingly, Sloan prays the Court to reverse the grant of the Clemson's Motion to Dismiss, to rule that Sloan has stated facts sufficient to constitute a cause of action under Rule 12 (b)(6), and to remand the action for further proceedings, including the discovery process, and to grant Sloan such other and further relief as the Court deems just and proper.

In the alternative, Sloan prays the Court to reverse the ruling of a dismissal **with prejudice**, to allow for amendment of the Complaint, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, PC

/S/ James G. Carpenter

S.C. Bar No. 1136

Jennifer J. Miller

S.C. Bar No. 13611

819 East North Street

Greenville, SC 29601

(864) 235-1269

Attorney for the Appellant

October 9, 2025