THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-10-04969

South Carolina Public Interest Foundation and Waring S. Howe, Jr., individually, and on behalf of all others similarly situated, ... Appellants,

v.

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

APPELLANTS' REPLY BRIEF

January 13, 2014

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ARGUMENT

Appellants South Carolina Public Interest Foundation ("Foundation") and Waring S. Howe, Jr., submit this Appellants' Initial Reply Brief to respond to arguments raised by the Respondents and to highlight several of Appellants' arguments that the Respondents failed to address.

I. RESPONDENTS FAIL TO RESPOND TO SEVERAL OF APPELLANTS' POINTS.

A. Respondents Fail to Address the South Carolina Supreme Court's Most Recent and Most Important Ruling on Public Importance Standing.

Respondents fail to address South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank, the most recent authoritative statement from the Supreme Court on discretionary public importance standing, which the Appellants addressed at length in their brief (Revised Appellants Initial Brief, pp. 6-23). Id. at 403 S.C. 640, 744 S.E.2d 521 (2013). In SCPIF v. Transportation Infrastructure Bank, the Supreme Court explained that public importance standing is an exception to the requirement of a particularized injury.

> As a threshold matter, **Respondents argue Sloan** does not have standing to assert his claims because he does not allege a particularized injury and **has not shown that this matter falls within the public importance exception. We disagree**.
>
> A party seeking to establish standing bears the burden of proving it. See Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001). As a general rule, a private individual may not use the judicial process to scrutinize the validity of a legislative act without showing that the act in question caused or threatens to cause a direct injury to the individual. Sloan v. Dep't of Transp., 379 S.C. 160, 169, 666 S.E.2d 236, 241 (2008). However, the rule of standing is not inflexible and standing may be conferred where the issue is one of public importance. Sloan v. Wilkins, 362 S.C. 430, 436,

608 S.E.2d 579, 583 (2005). **The public importance exception grants standing to a party who has not suffered a particularized injury where the issue involved is of such public importance that its resolution is required for future guidance.** ATC S., Inc. v. Charleston Cnty., 380 S.C. 191, 198, 669 S.E.2d 337, 341 (2008). "It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance." Id. at 199, 669 S.E.2d at 341.

Sloan has not asserted he has suffered a particularized harm or injury as a result of section 11-43-140, but we find this case fits within the public importance exception. While we are mindful that we must be cautious with this exception, lest it swallow the rule, **this is the precise instance where the public importance exception should apply. Sloan presents a colorable claim that the Board is unconstitutionally comprised, casting a cloud of illegitimacy which could marginalize the important decisions of the Board**. We find resolution of this question is certainly of importance and concern to the public and therefore hold Sloan has standing to bring this challenge.

Id. at 403 S.C. 640, 645-46, 744 S.E.2d 521, 523-24 (2013) (emphasis added). The Supreme Court ruled that even if a petitioner or plaintiff lacks standing as a matter of right, the court may still extend standing to him as a matter of discretion, if the issues he raises are of sufficient public importance. In this case, the issues are of great public importance.

B. Respondents Fail to Argue That the Five Alleged Constitutional Violations Are *Not* Issues of Great Public Importance.

In their introduction, the Respondents make an unsupported assertion: "Nor can Appellants have standing simply because they raised constitutional claims" (Respondents' Brief, page 2). This assertion contradicts the holding of Transportation Infrastructure Bank. If the constitutional claims are of sufficient public importance, a court can extend discretionary public importance standing to a plaintiff. The issue is whether the constitutional claims are matters of great public importance.

Appellants alleged that Act 130 of 2007 was unconstitutional on five grounds:

(1) The vote to override the veto of Act 130 lacked two-thirds of a quorum in the House as required by the South Carolina Constitution, Art. IV, § 21.

(2) Act 130 was unconstitutional special legislation because it applies only to the CCAA.

(3) Act 130 was unconstitutional single county legislation because it applies only to Charleston County.

(4) Act 130 violates the constitutional dual office holding prohibitions because it allows legislators to serve in a second "office."

(5) Act 130 violates the constitutional separation of powers requirement because it allows legislators to serve in an executive agency.

Each of these grounds, independent of the others, is sufficient to grant public importance standing to the Appellants. See South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank, 403 S.C. 640, 744 S.E.2d 521 (2013) (Petitioner's various allegations of unconstitutionality supported the granting of public importance standing). In granting Mr. Sloan and the Foundation public importance standing, the Court reasoned as follows:

> Sloan presents a colorable claim that the Board is **unconstitutionally comprised, casting a cloud of illegitimacy which could marginalize the important decisions of the Board**. We find resolution of this question is certainly of importance and concern to the public and therefore hold **Sloan has standing to bring this challenge**.

Id. 744 S.E.2d at 524 (emphasis added). So, too, in the case at bar, the Appellants have alleged **five** legal issues or "colorable claim[s] that the [Charleston County Aviation Authority] Board is unconstitutionally comprised, casting a cloud of illegitimacy which could marginalize the important decisions of the Board."

Respondents **failed** to argue that Appellants' five constitutional claims are **not** of sufficient public importance to support the granting of discretionary public importance standing. They were simply silent on this point. Accordingly, this Court should rule, like the Supreme Court, that "resolution of [these questions] is certainly of importance and concern to the public and therefore hold [Appellants possess] standing to bring this challenge." Id.

C. Respondents Fail to Address the Concessions by the Attorney General, Senate Pro Tem McConnell, and Senator Campsen that Act 130 is Unconstitutional, and How Those Concessions Demonstrate the Public Importance Standing of These to Issues.

Respondents fail to address the Attorney General's **concession** that Act 130 is unconstitutional **single county legislation** and **special legislation**, and whether that concession affects the question of this constitutional issue.[1] On these issues, the Attorney General disagrees with the Speaker of the House. This concession and the resulting disagreement among the Respondents demonstrates that these constitutional questions are matters of great public importance that requires judicial guidance. Respondents fail to address this point, argued at the Revised Appellants' Initial Brief, pages 5 and 8-11.

Second, Respondents fail to address the **concession** by Respondents McConnell and Campsen that Act 130 violates the Constitutional provisions relating to the **separation of powers** and **dual office holding**. Similarly, these are issues on which the leaders of the Senate disagree with the leaders of the House of Representatives. The concession and this disagreement among the Respondents further demonstrates that these

[1] Respondents merely state that these arguments related to the constitutional violations are "arguing the merits" and "subjective beliefs." (Respondent's brief, pp. 22-24 and 28). However, the Respondents' concessions of constitutional violations are evidence of the importance of these issues to the public and they demonstrate a need for guidance from the Court.

constitutional questions are a matters of great public importance that require judicial guidance. Respondents fail to address this concession and the disagreement among the Respondents.

D. Respondents Fail to Address the Speaker's Public Request for Supreme Court Guidance on the Question of Veto Overrides.

The Speaker of the House made a public request in the House of Representatives for guidance on the meaning of Board of Trustees of School District of Fairfield County v. State, 395 S.C. 276, 718 S.E.2d 210 (2011), and the rules governing **veto overrides**. (Journal of the House of Representatives of the State of South Carolina, Regular Session Beginning Tuesday, January 10, 2012 (Statewide Session)). Respondents fail to address the Speaker's public request, and whether the Speaker's public request for clarification creates an issue of great public importance.

II. RESPONDENTS' COLLATERAL ESTOPPEL ARGUMENT MISSTATES THE PRIOR RULING AND MISAPPLIES THE DOCTRINE.

Respondents make two arguments: first, they argue that collateral estoppel forecloses any opportunity for the Foundation to assert standing to challenge the constitutionality of Act 130. Second, they argue that the Foundation and Howe failed to establish a basis for standing. Both arguments are erroneous.

In their Introduction to the Respondents' Brief, Respondents refer to South Carolina Public Interest Foundation v. Harrell, 378 S.C. 441, 445, 663 S.E.2d 52, 54 (2008), and assert, "First, the Supreme Court previously ruled that the Foundation lacks standing to bring constitutional challenges to Act 13 of 2007. Therefore, collateral estoppel barred the Foundation from establishing **any type of standing** in this action" (Respondents' Brief, P. 2) (emphasis added). This assertion is an erroneous

overstatement and oversimplification of the Supreme Court's ruling in Harrell.

A. Respondents Misstate the Ruling of Harrell.

The Respondents misrepresent the actions of the South Carolina Supreme Court in Harrell, the case in which the Appellant Foundation previously attempted to challenge the constitutionality of Act 130 of 2007. Id. at 378 S.C. 441, 445, 663 S.E.2d 52, 54 (2008).

Respondents assert that in Harrell, the Supreme Court

> "**accepted** this matter in [its] original jurisdiction to address Petitioners' claim that numerous acts passed by the General Assembly in 2011 violate . . ." the Constitution. Id. at 445, 660 3S.E2d at 54 (emphasis added). All parties briefed the substance of the Foundation's challenge to Act 130 of 2007.

Respondents' Brief, p, 11 (emphasis in original).

Respondents restate this argument later in their brief, while criticizing the argument of the Appellants:

> In the brief to this Court, the Foundation now claims that the circuit court erred in applying collateral estoppel because Supreme Court [sic] did not determine this standing [sic] in the 2008 action. Rather, the Foundation claims that the Supreme Court merely did not accept original jurisdiction over the challenge to Act 130 of 2007 in the 2008 action. . . . This argument is manifestly without merit. The **opinion definitively states** that the Supreme Court "accepted this matter in our original jurisdiction to address Petitioners' claim **that numerous acts . . ." violated the Constitution**. . . . **One of those claims was a challenge to Act 130 of 2007**. . . . All parties briefed the substance of the Foundation's challenge to Act 130 of 2007. **The Supreme Court then ruled on each of the eight acts challenged by the Foundation**. As to Act 130, 136, 142, 143, and 151, the Supreme Court held that the Foundation "lacked standing to challenge those acts." Id. The opinion then ruled on the challenges to Acts 49, 83, 110, and 116. Id. at 446-51, 663 S.E.2d at 55-57. As the opinion unquestionably established, **the Supreme Court did not deny original jurisdiction** to the Foundation's challenge to Act 130 of 2007. Rather, the **court exercised original jurisdiction as to that act** and ruled that the Foundation lacked standing to challenge that issue.

Respondents' Brief, pp. 13-14 (emphasis added). Thus, the Respondents contend, in no uncertain terms, that the Supreme Court in Harrell accepted the petitioners' challenges to the single county acts in its original jurisdiction, and ruled on them.

However, a plain reading of the Supreme Court's opinion (without the conveniently placed ellipsis) demonstrates that the Supreme Court did **not** accept the Foundation's challenge to the five single county acts in its original jurisdiction. The Court "accepted this matter . . . to address" one set of claims, and "declined to address" Petitioners' other "contention." The Harrell Court ruled:

> **We accepted this matter** in our original jurisdiction **to address** Petitioners' claim that numerous acts passed by the General Assembly in 2007 violate **the one subject rule** of the South Carolina Constitution, Article III, § 17. We agree.

Harrell, 378 S.C. 441, 445, 663 S.E.2d 52, 54 (2008). The Supreme Court agreed to consider Acts 49, 83, 110 and 116, all related to the one subject rule.

Although the parties briefed both the one subject rule and the single county and special legislation issues, the Supreme Court ultimately accepted only one set of issues in its original jurisdiction: the one subject rule. It did **not** accept the single county or special legislation acts in its original jurisdiction. Instead, it "declined to address" them.

> We **decline to address Petitioners' contention that 2007 Act Nos. 130**, 136, 142, 143 and 151 **constitute special laws** in violation of South Carolina Constitution, Article VIII, § 7, and Article III, § 34.

Id. at n. 1 (emphasis added). The **only** issue that the Supreme Court "addressed" in Harrell was the violation of "the one subject rule of the South Carolina Constitution." By careful and selective use of ellipses, the Respondents would lead this Court to believe that the Supreme Court did something other than what it actually did, and thereby Respondents misstate the legal history of this matter. Footnote 1 states in its entirety:

> We decline to address Petitioners' contention that 2007 Act Nos. 130, 136, 142, 143 and 151 constitute special laws in violation of South Carolina Constitution, Article VIII, § 7, and Article III, § 34. 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).

Id. at n. 1 (emphasis added).

In ruling that the "Petitioners lacked standing to challenge those acts," the Supreme Court was merely articulating and applying the general rule, to which public importance standing is the exception. Taken in its context, the import of footnote 1 is that the Supreme Court in Harrell declined to grant original jurisdiction (and declined to apply the public importance exception) to address five single county and special acts, when neither petitioner was a citizen, resident, or taxpayer of the counties affected by the challenged legislation. The current action is easily distinguishable in that the Appellant, Mr. Howe, is a citizen, resident, taxpayer, and registered elector of Charleston County and is a frequent user of the airport and a fee payer to the Airport Authority.

B. A Discretionary Grant or Denial of Public Importance Standing Does Not Necessarily Control Another Matter.

Respondents assert that "collateral estoppel barred the Foundation from establishing **any type of standing** in this action" (Respondents' Brief, p. 2) (emphasis added). This argument misapprehends the nature of public importance standing. Public importance standing is not a matter of right; public importance standing is a discretionary grant from the Court to address one or more issues of great public importance. "[T]he very nature of **the public importance exception** to general standing requirements **resists**

a formulaic approach, as each case must turn on "the competing policy concerns" as we expressed in Sloan v. Sanford, [357 S.C. 431, 593 S.E.2d 470 (2004)]." ATC South, Inc. v. Charleston Cnty., 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008) (footnotes omitted, emphasis added). Accordingly, neither the denial of original jurisdiction nor the denial of the public importance standing in a previous case controls or determines its suitability for application in a subsequent, but distinguishable matter.

The courts of this state have adopted the Restatement (Second) of *Judgments* § 27 (1982). South Carolina Prop. & Cas. Ins. Guar. Ass'n v. Wal–Mart Stores, Inc., 304 S.C. 210, 403 S.E.2d 625 (1991). Section 27 states: "When **an issue of fact or law** is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim." See also State v. Bacote, 331 S.C. 328, 330–31, 503 S.E.2d 161, 162–63 (1998). Kunst v. Loree, 404 S.C. 649, 654 746 S.E.2d 360, 362 (2013). Discretionary granting or denial of original jurisdiction or public importance standing is **not** "an issue of fact or law" previously decided, but a discretionary action.

C. Respondents Assert Inconsistent Positions on the Persuasive Authority or Collateral Estoppel Effect of Prior Cases' Public Importance Standing Rulings, and Both Positions Are Wrong.

Respondents state inconsistent positions concerning the effect of prior cases on Appellants' public importance standing. First, Respondents argue that the Supreme Court's **granting** public important standing in other cases does **not** mean that the Circuit Court and the Court of Appeals should grant standing in this one. "Appellants cannot merely rely on past matters in which other parties have standing" (Respondents' Initial

Brief, p. 2). Similarly, Respondents assert, "Finally, the fact that the Foundation and/or [sic] other plaintiffs have been granted standing under the public importance exception and other matters does not establish the [sic] standing exists in this matter." (Respondents' Initial Brief, p. 2) (emphasis deleted). Respondents' position conflicts with the entire common-law system of judicial opinion that is basic to our South Carolina jurisprudence. The decisions in many other cases granting public importance standing to Mr. Sloan, the Foundation, and others should illuminate the issue of whether this case raises issues of great public importance.

Second, and inconsistently, they argue that because the Court **declined** to grant original jurisdiction or public importance standing in 2008, the Circuit Court and the Court of Appeals **must** deny public importance standing to Appellants. Respondents argue, "[T]he Supreme Court previously ruled that the Foundation lacked standing to bring constitutional challenges to Act 130 of 2007." Respondents therefore argue that collateral estoppel bars the Foundation from establishing any type of standing in this action (Respondents' Brief, p. 2). This assertion is duplicitous, misrepresents the Supreme Court's previous action, and misstates the doctrine of collateral estoppel.

D. Even if This Court Were to Rule that Harrell Precludes a Discretionary Granting of Standing to Address Single County or Special Legislation, It Would Not Preclude the Granting of Standing to Address the Other Issues.

Even if this Court should rule that Harrell bars a decision on the single county and special legislation issues (which it should not), the remaining Constitutional issues survive: dual office holding (Art. III, § 24, Art. VI, § 3, and Art. XVII, § 1A), separation of powers (Art. I, § 8), and the veto override (Art. IV, § 21). Harrell did not challenge an improper veto override, or violations of the separation of powers, or dual office holding

provisions of the South Carolina Constitution. Therefore, the Supreme Court's decision in Harrell not to extend original jurisdiction to the petitioners in that case would have no preclusive effect on this Court's decision to grant public importance standing to the Appellants in this case to address other constitutional issues of great public importance.

III. APPELLANTS PLED PUBLIC IMPORTANCE STANDING AND PRESENTED EVIDENCE TO ESTABLISH IT.

Respondents contend that the Appellants failed to plead public importance standing and failed to present "evidence" to support public importance standing. "Howe failed to introduce any evidence of standing. . . . The circuit court correctly found that the Foundation and Howe failed to put forth any evidence of standing in this action" (Respondents' Brief, p. 2) (emphasis deleted). "Howe failed to plead or prove standing under the public importance exception" (Respondents' Brief, p. 8). "Howe introduced no evidence to establish any basis for standing or to allow application of the public importance exception to standing" (Respondents' Brief, p. 10) (emphasis deleted). "Howe also failed to plead or present any evidence to establish application of the public importance exception" (Respondents' Brief, p. 22). "The complaint failed to properly plead facts to support a claim for the application of the public importance exception to standing in this action" (Respondents' Brief, p. 29) (emphasis deleted). "Again, the complaint was factually silent as to how the public importance exception applied to this case" (Respondents' Brief, p. 31). "Respondents' position throughout this litigation is that the Foundation and Howe failed to present any evidence to allow application of the public importance exception" (Respondents' Brief, p. 31). "The Foundation and Howe offered no evidence to the Circuit Court to support application of the public importance exception" (Respondents' Brief, p. 32). Respondents' repetition of this unsupported

assertion on this theme does not increase its validity.

Respondents also assert that the Appellants must prove standing without any consideration of the nature of the claims. Respondents assert that "the merits of the constitutional claims" are "not the test for standing" (Respondents' Brief, p. 10). Again, they assert, "Our Supreme Court has definitively rejected using the merits of the underlying claims as a basis to prove standing" (Respondents' Brief, p. 22). Respondents assert, "the merits of the constitutional claims did not obviate the need for the Foundation and Howe to present evidence that this matter is of sufficient public importance" (Respondents' Brief, p. 31). Again, repetition of the error does not increase its validity.

A. Appellants Pled Public Importance and Taxpayer Standing.

The Complaint cites as a basis for jurisdiction, several constitutional provisions (all of which the Respondents violated in enacting Act 130 of 2007) and a long list of cases recognizing public importance standing to address a variety of issues of great public importance.

> "The purpose of a pleading is fair notice to the opponent and the court." In this state, Rule 8, SCRCP, mandates that a pleading contain "ultimate facts" rather than "evidentiary facts" to state a cause of action. "Ultimate facts fall somewhere between the verbosity of 'evidentiary facts' and the sparsity of 'legal conclusions.'"

Watts v. Metro Security Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001), (quoting Jeffords v. Lesesne, 343 S.C. 656, 541 S.E.2d 847 (Ct.App. 2000) and James F. Flanagan, South Carolina Civil Procedure 59 (2d ed.1996).

The complaint alleges that this Court possesses jurisdiction as established in many cases that recognized public importance standing and taxpayer standing.

> This Court possesses jurisdiction under the following provisions of the South Carolina Constitution: Art. I, § 8, Art. III, § 24, Art. III § 34, Art. IV, § 21, Art. VI, § 3, Art. VIII § 7; and Art. XVII, § 1A; and the

> following decisions: American Petroleum Institute v. S.C. Dep't of Revenue, 382 S.C. 572, 677 S.E.2d 16 (2009), South Carolina Public Interest Foundation v. Harrell, 378 S.C. 441, 663 S.E.2d 52 (2008), Sloan v. Department of Transportation, 379 S.C. 160, 666 S.E.2d 236 (2008), Sloan v. Hardee, 357 S.C. 495, 640 S.E.2d 457 (2007); Cornelius v Oconee County, 369 S.C. 531, 633 S.E.2d 492 (2006); Sloan v. Department of Transportation, 365 S.C. 299, 618 S.E.2d 876 (2005), Sloan v. Wilkins, 362 S.C. 430, 608 S.E.2d 579 (2005); Sloan v. Sanford, 357 S.C. 431, 593 S.E.2d 470 (2004); Sloan v. Greenville County, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), Sloan v. School District of Greenville County, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999), Newman v. Richland County Historic Preservation Commission, 325 S.C. 79, 480 S.E.2d 72 (1997). and S.C. Code Ann. §15-53-10 et seq., known as the Uniform Declaratory Judgment Act.

(Complaint, par. 6). The cases that Appellants cited in Complaint paragraph 6 gave "fair notice" of Appellants' assertion of public importance and taxpayer standing. Appellants will demonstrate this validity by briefly discussing each listed case.

The Supreme Court accepted American Petroleum Institute v. S.C. Dep't of Revenue, in its original jurisdiction to address an **issue of great public importance**, the constitutional violation known as bobtailing, combining diverse subjects into one bill and passing it as a hodgepodge. Id. at 382 S.C. 572, 677 S.E.2d 16 (2009).

As noted earlier at some length, the Supreme Court accepted South Carolina Public Interest Foundation v. Harrell, in its original jurisdiction to addressed the one subject rule, a **matter of great public importance**. Id. at 378 S.C. 441, 663 S.E.2d 52 (2008).

Sloan v. Department of Transportation, (Ladson Road) was a direct appeal from the Circuit Court under SCACR 204(b) in which Mr. Sloan challenged an unlawful emergency procurement by the Department of Transportation for road construction on Ladson Road in Charleston. Id. at 379 S.C. 160, 666 S.E.2d 236 (2008). Rule 204 allows a discretionary direct appeal to the Supreme Court "where the case involves an

issue of significant public interest or a legal principle of major importance." SCACR 204(b) (emphasis added).

Sloan v. Hardee, was a case in the original jurisdiction of the Supreme Court, in which Mr. Sloan and the Foundation challenged the service of three commissioners of the Department of Transportation because they were serving more than "one consecutive term" in violation of the state statute governing their service. Id. at 357 S.C. 495, 640 S.E.2d 457 (2007). In that case, the Court ruled, "We find this matter of **sufficient public interest as to confer standing** on Petitioners." Id. 357 S.C. 495, 497, 640 S.E.2d 457, 458 (emphasis added).

In Cornelius v Oconee County, a taxpayer sued to enforce the effect of a public referendum, when the County authorities sought to violate the decision established by the referendum. Id. at 369 S.C. 531, 633 S.E.2d 492 (2006). The Supreme Court affirmed a ruling for the County taxpayer and an award of attorneys' fees.

In Sloan v. Department of Transportation (Cooper River Bridge), Mr. Sloan sued the Department of Transportation for unlawful procurement of major construction projects using proposals instead of competitive sealed bids. Id. at 365 S.C. 299, 618 S.E.2d 876 (2005). The circuit court ruled that Mr. Sloan possessed public importance standing, but the Court of Appeals reversed. Supreme Court granted a petition for writ of certiorari and reversed the judgment of the Court of Appeals. The Supreme Court granted Mr. Sloan public important standing.

> Under the **public importance exception**, standing may be conferred upon a party "when an issue is of such public importance as to require its resolution for future guidance." Baird v. Charleston Cty., 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999). This Court has never held that there must be no other potential plaintiffs with a greater interest in the case or some other nexus, as the respondents now argue.

Id. 365 S.C. 299, 304, 618 S.E.2d 876, 878 (emphasis added).

In Sloan v. Wilkins, the Supreme Court accepted Mr. Sloan's petition for original jurisdiction to challenge the Life Sciences Act as being in violation of the constitutional one subject rule for all acts of the General Assembly. Id. at 362 S.C. 430, 608 S.E.2d 579 (2005). The Court ruled, "In light of the **great public importance of this matter**, we find Sloan has standing to maintain this action." Id. at 362 S.C. 430, 437, 608 S.E.2d 579, 583 (2005) (emphasis added).

In Sloan v. Sanford, the Supreme Court accepted Mr. Sloan's petition for original jurisdiction and stated, "[W]e have recognized, under certain circumstances, standing may be conferred upon a party when **an issue is of such public importance as to require its resolution for future guidance**." Id. at 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004) (emphasis added). Sloan argued that "because Governor Sanford holds a Commission under the Government of the United States as an officer in the Reserve of the Air Force, he does not meet the qualifications for Governor set forth in the South Carolina Constitution, Article IV, Section 2." Id. 357 S.C. 431, 433, 593 S.E.2d 470, 471.

In Sloan v. Greenville County, Mr. Sloan challenged three Greenville County construction projects, alleging they violated the county procurement code. Id. at 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003). The County argued that Mr. Sloan lacked standing, but the Circuit Court and the Court of Appeals disagreed. Both courts ruled that Mr. Sloan, a taxpayer, possessed standing because he had contributed to the funds jeopardized by the allegedly illegal procurements.

In Sloan v. School District of Greenville County, Mr. Sloan sued again as a taxpayer, alleging that three construction contracts were procured unlawfully under an emergency exception. Id. at 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000). The court found taxpayer standing was appropriate.

In Baird v. Charleston County, the Supreme Court ruled that a group of doctors possessed standing to challenge the actions of the County. Id. at 333 S.C. 519, 511 S.E.2d 69 (1999). "[A] court may confer standing upon a party **when an issue is of such public importance** as to require its resolution for future guidance." Id. 333 S.C. 519, 531, 511 S.E.2d 69, 75 (emphasis added).

In Newman v. Richland County Historic Preservation Commission, the Supreme Court ruled that the plaintiff lacked standing to challenge the actions of the commission, but Justice Toal wrote her now-famous dissent setting out the parameters of public importance standing. Id. at 325 S.C. 79, 480 S.E.2d 72, 75-76 (1997).

In the Complaint, Appellants cited all of these cases and the constitutional provisions. A reasonable reading of the Complaint demonstrates that the Plaintiffs pled public importance and taxpayer standing. Respondents had received "fair notice" that Appellants intended to rely on public importance and taxpayer standing. Watts v. Metro Security Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001).

B. Appellants Presented Evidence of Public Importance and Taxpayer Standing.

Appellants presented the affidavit of Waring S. Howe dated October 28, 2011 in support of their Motion for Summary Judgment. Howe testified,

> My name is Waring S. Howe Jr. I am a citizen, resident, taxpayer, and registered elector of Charleston County. On many occasions, I have used the Charleston County Airport, which is owned and operated by the

> Charleston County Airport District. I have paid fees and taxes to the Charleston County Airport District. I served as a member of the Charleston County Aviation Authority 1989-2001, and as Chairman 1996-1999.

Affidavit, par. 1.

In the body of his affidavit, Howe testified at length and in some detail to the Respondents' five Constitutional violations (paragraphs 2-20), and further stated:

> The taxpayers, citizens, and electors of Charleston County and South Carolina are entitled to have their government representatives abide by the South Carolina Constitution.

Affidavit, par. 21. Howe also testified, "I respectfully submit that this case involves strong public interest and presents special grounds of emergency."

C. South Carolina Courts Have Often Granted Public Importance Standing to the Foundation When an Individual Is a Co-Plaintiff.

On many occasions, the Supreme Court and the Court of Appeals have granted public importance standing to the Foundation when it was a co-plaintiff, or co-petitioner with a citizen, resident, taxpayer, and registered elector of the County affected by the challenged action. On many occasions, the citizen has been Mr. Sloan, but on several other occasions, another citizen has stepped forward to allege unconstitutional or illegal actions by government personnel, and the courts have granted public importance standing to the citizen and the Foundation. McSherry v. Spartanburg County, 371 S.C. 586, 641 S.E.2d 431 (2007); South Carolina Public Interest Foundation v. Judicial Merit Selection Com'n., 369 S.C. 139, 632 S.E.2d 277 (2006); Colleton County Taxpayers Ass'n. v. School Dist. of Colleton County, 371 S.C. 224, 638 S.E.2d 685 (2006). The Harrell Court's denial of original jurisdiction or public importance standing in 2008 was

discretionary, and collateral estoppel does not prevent this Court from granting public importance standing to the Appellants.

IV. APPELLANTS PRESEREVED ARGUMENTS FOR EXCPTIONS TO COLLATERAL ESTOPPEL.

Respondents argue that the Appellants did not preserve the arguments related to the exceptions to collateral estoppel for review by this Court. (Respondents' brief pp. 16-17). Analytically, this Court would reach the exceptions to collateral estoppel only if it first found that collateral estoppel was applicable. As demonstrated above, Respondents assert a factually incorrect basis for collateral estoppel and improperly applied collateral estoppel. Appellants did present these exceptions to the Circuit Court and supported them with legal authorities and arguments. (See Plaintiffs' Reply Memorandum of Law in Support of Motion for Summary Judgment, pp. 17-20.) Appellants also established and preserved claims of Constitutional standing and taxpayer standing. (See Plaintiffs' Reply Memorandum of Law in Support of Motion for Summary Judgment, pp. 20-25.) Appellants also presented arguments in to support the exceptions to collateral estoppel. Nevertheless, the Circuit Court accepted Respondents' collateral estoppel argument, and rejected the exceptions to collateral estoppel urged by Appellants.

Respondents also seem to imply that the Appellants failed to preserve the issue of constitutional standing and taxpayer standing. However, the Appellants likewise made these arguments in the Circuit Court, and the Circuit Court rejecrted these arguments. (Order Granting Speaker Harrell's Motion for Summary Judgment and Dismissing Plaintiffs' Complaint in its Entirety, pp. 10-14.)

When a party presents an issue to the Circuit Court in a summary judgment argument, and the Court rejects those arguments and rules for the other party on summary

judgment, those issues are properly preserved for appellate review, even without a Rule 59 motion. Herron v. Century BMW, 395 S.C. 461, 719 S.E.2d 64 (2012); Pryor v. Northwest Apartments, 321 S.C. 524, 469 S.E.2d 630 (Ct. App. 1996); Pye v. Estate of Fox, 369 S.C. 555, 633 S.E.2d 505 (2006); Spence v. Wingate, 381 S.C. 487, 674 S.E.2d 169 (2009); Walsh v. Woods, 371 S.C. 319, 638 S.E.2d 85 (Ct. App. 2007).

CONCLUSION

Appellants raise five legal claims in this action. Respondents fail to make any persuasive argument that the allegations of five constitutional violations failed to rise to the level of an issue of great public importance. Respondents contend that collateral estoppel prevents this Court from granting public importance standing. Respondents' argument misrepresents the nature of the prior ruling in 2008, and it misapprehends the nature of public importance standing as a discretionary action.

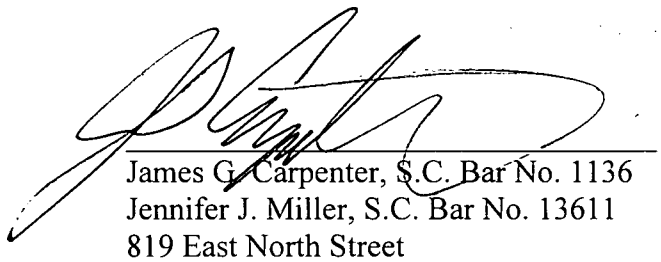
Respondents fail to respond to the Attorney General concession that Act 130 is unconstitutional single-county and special legislation, or to the Senate Respondents' concession that Act 130 violates the separation of powers and dual office holding provisions of the South Carolina Constitution. Respondents fail to respond to these fundamental disagreements among high-ranking State officials that demonstrate a need for guidance on issues of great public importance.

Respondents failed to address the most recent, authoritative statement from the Supreme Court addressing the issue of public importance standing: South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank. Id. at 403 S.C. 640, 744 S.E.2d 521 (2013).

Finally, both the Foundation and Mr. Howe demonstrated that they did plead and present evidence demonstrating the need for public importance standing.

Appellants pray the Court to reverse the judgment of the Circuit Court and remand for a ruling on the merits as to all five constitutional violations.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



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