

**RECEIVED**

**Sep 04 2020**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

---

APPEAL FROM RICHLAND COUNTY  
In the Court of Common Pleas

L. Casey Manning, Circuit Court Judge

---

Appellate Case No. 2020-000050

---

South Carolina Lottery Commission .....Respondent,

v.

George S. Glassmeyer.....Petitioner.

---

**BRIEF OF RESPONDENT**

---

Karl S. Bowers, Jr.  
SC Bar No. 16141  
BOWERS LAW OFFICE, LLC  
Post Office Box 50549  
Columbia, South Carolina 29250  
(803) 753-1099  
butch@butchbowers.com

Vordman Carlisle Traywick, III  
SC Bar No. 102123  
ROBINSON GRAY STEPP & LAFFITTE, LLC  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, South Carolina 29211  
(803) 929-1400  
ltraywick@robinsongray.com

*Counsel for Respondent South Carolina  
Lottery Commission*

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
QUESTIONS PRESENTED ON CERTIORARI .....	1
STATEMENT OF THE CASE .....	2
STANDARD OF REVIEW .....	5
ARGUMENT .....	6
I.    The circuit court and court of appeals applied the proper standard.....	6
II.   The Lottery Commission had standing to bring this action, and FOIA did not restrict that right .....	11
III.  The court of appeals correctly affirmed the circuit court’s order issuing a declaratory judgment that lottery winners’ personal information was exempt from disclosure under FOIA and enjoining Glassmeyer from submitting further requests for that information .....	18
IV.  The court of appeals properly gave short shrift to Glassmeyer’s arguments on his motion to dismiss and FOIA counterclaim because they are without merit .....	26
CONCLUSION.....	28

## TABLE OF AUTHORITIES

### Cases

<u>Anchor Point, Inc. v. Shoals Sewer Co.</u> , 308 S.C. 422, 418 S.E.2d 546 (1992) .....	14
<u>ATC S., Inc. v. Charleston Cty.</u> , 380 S.C. 191, 669 S.E.2d 337 (2008).....	14, 17
<u>Baughman v. Am. Tel. &amp; Tel. Co.</u> , 306 S.C. 101, 410 S.E.2d 537 (1991).....	10
<u>Bellamy v. Brown</u> , 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991).....	19
<u>Bodman v. State</u> , 403 S.C. 60, 742 S.E.2d 363 (2013).....	14, 15
<u>Brock v. Bennett</u> , 313 S.C. 513, 443 S.E.2d 409 (Ct. App. 1994) .....	17
<u>Burns v. Gardner</u> , 328 S.C. 608, 493 S.E.2d 356 (Ct. App. 1997).....	7
<u>Burton v. York Cty. Sheriff’s Dep’t</u> , 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004) .....	20
<u>Campbell v. Marion Cty. Hosp. Dist.</u> , 354 S.C. 274, 580 S.E.2d 163 (Ct. App. 2003) .....	5
<u>Capco of Summerville, Inc. v. J.H. Gayle Constr. Co.</u> , 368 S.C. 137, 628 S.E.2d 38 (2006) .....	13
<u>Catawba Indian Tribe of S.C. v. State</u> , 372 S.C. 519, 642 S.E.2d 751 (2007) .....	5
<u>Charleston Cty. Sch. Dist. v. Charleston Cty. Election Comm’n</u> , 336 S.C. 174, 519 S.E.2d 567 (1999) .....	14
<u>Charleston Cty. Sch. Dist. v. State Budget &amp; Control Bd.</u> , 313 S.C. 1, 437 S.E.2d 6 (1993) .....	18
<u>City of Columbia v. Am. Civil Liberties Union of S.C., Inc.</u> , 323 S.C. 384, 475 S.E.2d 747 (1996) .....	17
<u>City of Columbia v. Sanders</u> , 231 S.C. 61, 97 S.E.2d 210 (1957).....	16
<u>Dawkins v. Fields</u> , 354 S.C. 58, 580 S.E.2d 433 (2003) .....	10
<u>Dixon v. Dixon</u> , 362 S.C. 388, 608 S.E.2d 849 (2005) .....	9
<u>Doe v. Bishop of Charleston</u> , 407 S.C. 128, 754 S.E.2d 494 (2014).....	7, 8
<u>DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce</u> , 423 S.C. 295, 814 S.E.2d 513 (2018) .....	13

<u>Evening Post Publ’g Co. v. Berkeley Cty. Sch. Dist.</u> , 392 S.C. 76, 708 S.E.2d 745 (2011) .....	18, 19
<u>Evening Post Publ’g Co. v. City of N. Charleston</u> , 363 S.C. 452, 611 S.E.2d 496 (2005) .....	24
<u>Falk v. Sadler</u> , 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000) .....	7
<u>Farnsworth v. Davis Heating &amp; Air Conditioning, Inc.</u> , 367 S.C. 634, 627 S.E.2d 724 (2006) .....	7
<u>Felts v. Richland Cty.</u> , 303 S.C. 354, 400 S.E.2d 781 (1991) .....	5, 14
<u>Fields v. Melrose Ltd. P’ship</u> , 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993) .....	26
<u>Florence Cty. Democratic Party v. Florence Cty. Republican Party</u> , 398 S.C. 124, 727 S.E.2d 418 (2012) (per curiam) .....	13
<u>Freemantle v. Preston</u> , 398 S.C. 186, 728 S.E.2d 40 (2012) .....	12, 13
<u>Futch v. McAllister Towing of Georgetown, Inc.</u> , 335 S.C. 598, 518 S.E.2d 591 (1999) .....	27
<u>George v. Fabri</u> , 345 S.C. 440, 548 S.E.2d 868 (2001) .....	10
<u>Gibson v. Epting</u> , 426 S.C. 346, 827 S.E.2d 178 (Ct. App. 2019) .....	9
<u>Glasscock, Inc. v. U.S. Fid. &amp; Guar. Co.</u> , 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001) .....	26
<u>Glassmeyer v. City of Columbia</u> , 414 S.C. 213, 777 S.E.2d 838 (Ct. App. 2015) .....	20, 21, 23
<u>Graham v. State Farm Mut. Auto. Ins. Co.</u> , 319 S.C. 69, 459 S.E.2d 844 (1995) .....	11
<u>Hodge v. UniHealth Post-Acute Care of Bamberg, LLC</u> , 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018) .....	28
<u>Hodges v. Rainey</u> , 341 S.C. 79, 533 S.E.2d 578 (2000) .....	18
<u>Holloman v. Life Ins. Co. of Va.</u> , 192 S.C. 454, 7 S.E.2d 169 (1940) .....	20
<u>I’On, L.L.C. v. Town of Mt. Pleasant</u> , 338 S.C. 406, 526 S.E.2d 716 (2000) .....	16
<u>John Doe v. S.C. Lottery Comm’n</u> , No. 2014-CP-40-2446 (S.C. Ct. Comm. Pl. filed Apr. 4, 2014) .....	2
<u>Johnson v. Sonoco Prods. Co.</u> , 381 S.C. 172, 672 S.E.2d 567 (2009) .....	9

<u>Kosciusko v. Parham</u> , 428 S.C. 481, 836 S.E.2d 362 (Ct. App. 2019).....	15, 16
<u>Kozel v. Kozel</u> , 299 F. Supp. 3d 737 (D.S.C. 2018) .....	6, 7
<u>Lee v. Bondex, Inc.</u> , 406 S.C. 97, 749 S.E.2d 155 (Ct. App. 2013).....	28
<u>Lennon v. S.C. Coastal Council</u> , 330 S.C. 414, 498 S.E.2d 906 (Ct. App. 1998).....	17, 18
<u>Levi v. N. Anderson Cty. EMS</u> , 409 S.C. 374, 762 S.E.2d 44 (Ct. App. 2014).....	28
<u>Lide v. Mears</u> , 56 S.E.2d 404 (N.C. 1949) .....	16
<u>Lujan v. Defs. of Wildlife</u> , 504 U.S. 555 (1992) .....	15, 17
<u>Maxwell v. Genez</u> , 356 S.C. 617, 591 S.E.2d 26 (2003).....	7
<u>Maybank v. BB&amp;T Corp.</u> , 416 S.C. 541, 787 S.E.2d 498 (2016) .....	7
<u>McCall v. Finley</u> , 294 S.C. 1, 362 S.E.2d 26 (Ct. App. 1987) .....	28
<u>McLendon v. S.C. Dep’t of Hwys. &amp; Pub. Transp.</u> , 313 S.C. 525, 443 S.E.2d 539 (1994) .....	28
<u>Perry v. Bullock</u> , 409 S.C. 137, 761 S.E.2d 251 (2014).....	19
<u>Pond Place Partners, Inc. v. Poole</u> , 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002) .....	11
<u>Pope v. Wilson</u> , 427 S.C. 377, 831 S.E.2d 442 (Ct. App. 2019).....	6
<u>Power v. McNair</u> , 255 S.C. 150, 177 S.E.2d 551 (1970).....	12
<u>Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.</u> , 387 S.C. 583, 694 S.E.2d 15 (2010) .....	24
<u>Pres. Soc’y of Charleston v. S.C. Dep’t of Health &amp; Env’tl. Control</u> , 430 S.C. 200, 845 S.E.2d 481 (2020) .....	15
<u>Quality Towing, Inc. v. City of Myrtle Beach</u> , 345 S.C. 156, 547 S.E.2d 862 (2001).....	18
<u>Rosenthal v. Unarco Indus., Inc.</u> , 278 S.C. 420, 297 S.E.2d 638 (1982).....	6
<u>Russell v. City of Columbia</u> , 305 S.C. 86, 406 S.E.2d 338 (1991).....	7
<u>Russell v. Wachovia Bank, N.A.</u> , 353 S.C. 208, 578 S.E.2d 329 (2003).....	10

<u>Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.</u> , 361 S.C. 117, 603 S.E.2d 905 (2004) .....	24
<u>Sea Pines Ass’n for the Prot. of Wildlife, Inc. v. S.C. Dep’t of Nat. Res.</u> , 345 S.C. 594, 550 S.E.2d 287 (2001) .....	14
<u>Sloan v. Friends of Hunley, Inc.</u> , 369 S.C. 20, 630 S.E.2d 474 (2006) .....	17
<u>Sloan v. Greenville Cty.</u> , 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003) .....	14
<u>Sloan v. S.C. Dep’t of Pub. Safety</u> , 355 S.C. 321, 586 S.E.2d 108 (2003) .....	20
<u>Soc’y of Professional Journalists v. Sexton</u> , 283 S.C. 563, 324 S.E.2d 313 (1984) .....	23
<u>S.C. Lottery Comm’n v. Glassmeyer</u> , 428 S.C. 423, 835 S.E.2d 524 (Ct. App. 2019) .....	<u>passim</u>
<u>S.C. Tax Comm’n v. Gaston Copper Recycling Corp.</u> , 316 S.C. 163, 447 S.E.2d 843 (1994) .....	17
<u>State v. Brannon</u> , 388 S.C. 498, 697 S.E.2d 593 (2010) .....	15, 16
<u>State ex rel. McCleary v. Roberts</u> , 725 N.E.2d 1144 (Ohio 2000) .....	24
<u>State ex rel. Nixon v. Hoester</u> , 930 S.W.2d 52 (Mo. Ct. App. 1996) .....	27
<u>State v. Vick</u> , 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009) .....	27
<u>Sunset Cay, LLC v. City of Folly Beach</u> , 357 S.C. 414, 593 S.E.2d 462 (2004) .....	11, 12
<u>Thompson v. S.C. Comm’n on Alcohol &amp; Drug Abuse</u> , 267 S.C. 463, 229 S.E.2d 718 (1976) .....	14, 15, 16
<u>Town of Summerville v. City of N. Charleston</u> , 378 S.C. 107, 662 S.E.2d 40 (2008) .....	5
<u>Town of Tryon v. Duke Power Co.</u> , 22 S.E.2d 450 (N.C. 1942) .....	16
<u>Wooten v. Standard Life &amp; Cas. Ins. Co.</u> , 239 S.C. 243, 122 S.E.2d 637 (1961) .....	6, 7
<u>Youngblood v. S.C. Dep’t of Soc. Servs.</u> , 402 S.C. 311, 741 S.E.2d 515 (2013) .....	14, 16
<u>Ziegler v. Dorchester Cty.</u> , 426 S.C. 615, 828 S.E.2d 218 (2019) .....	5, 6
<u>Order, In re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings</u> , App. No. 2013-002681, Am. Order No. 2014-04-15-02 (S.C. Sup. Ct. filed Apr. 15, 2014) .....	25

**Constitutions, Statutes, and Rules**

S.C. CONST. art. I, § 10 ..... 20

S.C. Code Ann. § 14-3-330(1)–(4) ..... 28

S.C. Code Ann. §§ 15-53-10 through -140 ..... 11

S.C. Code Ann. § 15-53-20 ..... 11

S.C. Code Ann. § 15-53-30 ..... 11, 13

S.C. Code Ann. § 15-53-120 ..... 11, 13, 24, 25

S.C. Code Ann. § 30-2-310(A)(1)(e) ..... 3

S.C. Code Ann. §§ 30-40-10 through -165 ..... 2

S.C. Code Ann. § 30-4-15 ..... 18, 19

S.C. Code Ann. § 30-4-30(a) ..... 19

S.C. Code Ann. § 30-4-40(a)(2) ..... 19, 20

S.C. Code Ann. § 30-4-40(a)(4) ..... 3

S.C. Code Ann. § 30-4-100(A) ..... 11, 12, 13

S.C. Code Ann. § 30-4-100(a)–(b) ..... 15

S.C. Code Ann. § 30-4-110 ..... 12

S.C. Code Ann. § 59-150-60 ..... 22

Act No. 67, 2017 S.C. Acts 3352 ..... 12

Rule 215, SCACR ..... 4

Rule 10(c), SCRCPP ..... 7, 8

Rule 12(b)(6), SCRCPP ..... 8, 26

Rule 12(c), SCRCPP ..... 6, 8, 9

Rule 12(f), SCRCPP ..... 8

Rule 56, SCRCP.....	9
Rule 57, SCRCP.....	13
Rule 59, SCRCP.....	9
Rule 60(b), SCRCP.....	26
Rule 201(b), SCRE .....	8
Rule 201(f), SCRE .....	8

## QUESTIONS PRESENTED ON CERTIORARI

- I. Did the court of appeals err in granting the Lottery Commission's motion for judgment on the pleadings and entry of a declaratory judgment?
- II. Did the court of appeals err in granting the Lottery Commission's motion for judgment on the pleadings as to its claim for an injunction?
- III. Did the court of appeals err in failing to reverse the denial of Glassmeyer's motion to dismiss the Lottery Commission's claim for a declaratory judgment?
- IV. Did the court of appeals err in failing to reverse the denial of Glassmeyer's motion to dismiss the Lottery Commission's claim for an injunction?
- V. Did the court of appeals err in failing to reverse and remand as to Glassmeyer's claim seeking relief under FOIA?

## STATEMENT OF THE CASE

Six years ago, Respondent South Carolina Lottery Commission filed a complaint in the Court of Common Pleas for Richland County requesting declaratory and injunctive relief to prevent the disclosure of lottery winners' personal identifying information. (App'x pp. 196–323).

In the weeks preceding the lawsuit, Petitioner George S. Glassmeyer had submitted a barrage of Freedom of Information Act<sup>1</sup> (FOIA) requests to the Lottery Commission. (App'x pp. 197, 200 & 216–17). Specifically, Glassmeyer demanded the following information on individuals who won over \$1 million in prize money from the South Carolina Education Lottery: (1) the claimants' full names, (2) the claimants' complete address, (3) the claimants' telephone numbers, (4) the gross dollar amount of the claims, (5) the dates of the claims, and (6) a copy of any form of identification the Lottery Commission obtained from the claimants. (App'x p. 197).

Out of concern, the Lottery Commission mailed letters to the claimants affected by the FOIA request to make them aware of the demand for their personal identifying information. (App'x pp. 221–22, 245). Many claimants obtained counsel and strenuously objected to the release of this information. (App'x pp. 224–26). One claimant, in particular, petitioned the circuit court for a permanent injunction to enjoin the Lottery Commission from disclosing the information Glassmeyer sought. See John Doe v. S.C. Lottery Comm'n, No. 2014-CP-40-2446 (S.C. Ct. Comm. Pl. filed Apr. 4, 2014); (App'x pp. 260–70, 274–96). Other claimants either filed or threatened to file lawsuits to prevent the disclosure of their personal identifying information. (App'x pp. 232–37, 241–44, 252–57).

The Lottery Commission responded to Glassmeyer's request and informed him that (1) the request for claimants' names, addresses, telephone numbers, and forms of identification were

---

<sup>1</sup> S.C. Code Ann. §§ 30-40-10 through -165. The General Assembly has since amended the law.

exempted from disclosure under subsections 30-2-310(A)(1)(e) and 30-4-40(a)(4) of the South Carolina Code; (2) the claimants' forms of identification, such as drivers' licenses, were not public records under FOIA; and (3) disclosure of claimants' personal identification would be an invasion of privacy. (App'x pp. 210–14). Nevertheless, in recognition of its obligations under FOIA, the Lottery Commission furnished the following information to Glassmeyer: the gross dollar amount of the claims, dates on which claims were made, the hometowns and states of the claimants, and the games associated with the prizes won. (App'x pp. 210–14). Glassmeyer was not satisfied. (App'x p. 217). He then submitted two additional FOIA requests, demanding the claimants' full names. (App'x pp. 216–17).

Meanwhile, Doe pressed forward with his action against the Lottery Commission in circuit court. The circuit court ultimately issued an order finding Doe was “entitled to a declaratory judgment that the release of [Doe’s] personal identifying information would constitute an unreasonable invasion of personal privacy within the meaning of [s]ection 30-4-40(a)(2).” (App'x p. 270). Accordingly, the circuit court entered a permanent injunction that barred the Lottery Commission “from releasing any and all information regarding [Doe] in response to the FOIA request of Mr. George Glassmeyer or any other FOIA request.” *Id.* But this ruling only assuaged the concerns of John Doe in the case filed in Richland County. The problem still persisted.

After responding to another request from Glassmeyer, the Lottery Commission—as noted above—filed the instant lawsuit in circuit court seeking declaratory and injunctive relief on May 7, 2014. (App'x pp. 196–323). Attached and incorporated into the complaint were several important exhibits that contained the correspondence between the Lottery Commission and Glassmeyer and demonstrated the seemingly never-ending litigation the Lottery Commission faced. (App'x pp. 205–323). Glassmeyer subsequently filed an answer, as well as counterclaims

for violation of FOIA and abuse of process (App’x pp. 324–37), to which the Lottery Commission replied (App’x pp. 339–40). He also filed a motion to dismiss and a motion to strike the Lottery Commission’s request for attorney’s fees. (App’x pp. 341–46). The Honorable Robert E. Hood denied Glassmeyer’s motions in a Form 4 Order dated July 24, 2014. (App’x p. 192).

The parties appeared for a bench trial before the Honorable L. Casey Manning on December 18, 2014. (App’x p. 386). Before trial, the Lottery Commission moved for judgment on the pleadings. (App’x pp. 388–94). Glassmeyer opposed and renewed his motion to dismiss. (App’x pp. 394–405). Following extensive arguments from both sides, (App’x pp. 388–411), the circuit court took the matter under advisement, indicating it wanted to consider whether it could just “make a decision on the legal issues.” (App’x p. 411). Accordingly, the case did not move forward for trial that day. See id.

On November 17, 2015, the circuit court issued an order finding the Lottery Commission “exercised its discretion appropriately in this matter and is entitled to a declaratory judgment that the release of claimants’ personal identifying information would constitute an unreasonable invasion of personal privacy within the meaning of [section] 30-4-40(a)(2).” (App’x p. 187). Finding the Lottery Commission made the requisite showing, the circuit court also permanently enjoined Glassmeyer “from seeking to obtain the (1) full names; (2) addresses; (3) telephone numbers; and (4) forms of identification of all lottery winners and claimants.” (App’x pp. 187–88). The circuit court indicated the order concluded the lawsuit. (App’x p. 188).

Glassmeyer appealed. After the case was fully briefed, (see App’x 69–173), the court of appeals dispensed with oral arguments, see Rule 215, SCACR, and affirmed in a published opinion. S.C. Lottery Comm’n v. Glassmeyer, 428 S.C. 423, 835 S.E.2d 524 (Ct. App. 2019). The court of appeals held that the Lottery Commission “had standing under the Declaratory

Judgments Act to bring this declaratory judgment and injunction action.” Id. at 439, 835 S.E.2d at 532. In addition, the court of appeals “affirm[ed] the circuit court’s grant of injunctive relief” as well as its “declaratory judgment that the information Glassmeyer requested was exempt from FOIA.” Id. But the court of appeals remanded for “the circuit court to address Glassmeyer’s counterclaim for willful abuse of process.” Id.

Shortly thereafter, Glassmeyer filed a petition for rehearing or rehearing en banc, (see App’x pp. 20–47), which the court of appeals denied on December 16, 2019, (see App’x p. 49). Glassmeyer then filed a petition for a writ of certiorari with this Court. The Lottery Commission filed a return in opposition, and Glassmeyer replied. On July 8, 2020, the Court granted Glassmeyer’s petition for a writ of certiorari and ordered the parties to address the five questions presented in their briefs.

This matter comes before the Court on writ of certiorari to determine whether the court of appeals properly affirmed the circuit court’s entry of declaratory and injunctive relief in favor of the Lottery Commission.

#### STANDARD OF REVIEW

“A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue.” Felts v. Richland Cty., 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). “A declaratory judgment action under the FOIA to determine whether certain information should be disclosed is an action at law.” Campbell v. Marion Cty. Hosp. Dist., 354 S.C. 274, 280, 580 S.E.2d 163, 165 (Ct. App. 2003). Indeed, “[t]he issue of interpretation of a statute is a question of law for the court.” Catawba Indian Tribe of S.C. v. State, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). “[T]his Court reviews questions of law de novo.” Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). “Whether reviewing a grant of

summary judgment or a judgment on the pleadings,” the Court will “apply the same legal standards as the [circuit] court.” Ziegler v. Dorchester Cty., 426 S.C. 615, 619, 828 S.E.2d 218, 220 (2019).

#### ARGUMENT

This case is appealing at first blush. Glassmeyer throws several penalty flags at the circuit court and the court of appeals. He invokes charged arguments on state agency overreach, incorrect standards, burden shifting, factual disputes, improper relief, fundamental fairness, and the like. Indeed, he has sought to tie this case in procedural knots from its inception. But no matter how many times one twists the Rubik’s cube, the result is the same—it always lands on solid. The Lottery Commission was and is entitled to judgment as a matter of law. The Court should affirm.

*I. The circuit court and court of appeals applied the proper standard.*

At the outset, the Lottery Commission must clarify the lens through which the circuit court was required to consider—and did consider—its motion for judgment on the pleadings.

“Any party may move for a judgment on the pleadings under Rule 12(c), SCRCF.” Pope v. Wilson, 427 S.C. 377, 384, 831 S.E.2d 442, 445 (Ct. App. 2019). “Judgment upon the pleadings is a drastic procedure but it will be granted in proper cases.” Wooten v. Standard Life & Cas. Ins. Co., 239 S.C. 243, 248, 122 S.E.2d 637, 639 (1961). When “the pleadings disclose all facts necessary or where the pleadings present no issue of fact,” a court “may exercise its discretion.” Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982). In other words, the motion “is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or present merely an immaterial issue.” Id.

While the standards for a motion to dismiss and one for judgment on the pleadings may seem similar, as the U.S. District Court for the District of South Carolina has recognized, the key difference between the two is that “the court is to consider the answer as well as the complaint” in

ruling on the latter. Kozel v. Kozel, 299 F. Supp. 3d 737, 746 (D.S.C. 2018); see also Maybank v. BB&T Corp., 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016) (“In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules.”). A plain reading of the rule’s text confirms as much. Farnsworth v. Davis Heating & Air Conditioning, Inc., 367 S.C. 634, 638, 627 S.E.2d 724, 726 (2006) (“In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.” (quoting Maxwell v. Genez, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003))). After all, both the rule and our jurisprudence discuss “pleadings” in the plural form. Thus, contrary to Glassmeyer’s assertions, the circuit court was not confined to his answer in ruling on the motion for judgment on the pleadings.

In any event, “a motion for judgment on the pleadings raises an issue of law only.” Wooten, 239 S.C. at 248, 122 S.E.2d at 639. Generally, “the [circuit] court may not consider matters outside the pleadings.” Falk v. Sadler, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000). But “[a] copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading.” Rule 10(c), SCRCP. In ruling on a dispositive motion confined to the pleadings, our appellate courts have held that, when documents are “attached to and incorporated” into the complaint, the court “may consider them when ruling” upon the motion. Burns v. Gardner, 328 S.C. 608, 614 n.2, 493 S.E.2d 356, 359 n.2 (Ct. App. 1997); see also Russell v. City of Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) (“Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties.”).

Likewise, considering facts capable of judicial notice does not convert a motion confined to the pleadings into a motion for summary judgment. See Doe v. Bishop of Charleston, 407 S.C.

128, 134 n.2, 754 S.E.2d 494, 497 n.2 (2014) (recognizing a circuit court may take judicial notice of previously entered, related court orders and consider them when ruling on a Rule 12(b)(6), SCRCF, motion to dismiss); Rule 201(b), SCRE (“A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”). And it is well-settled that “[j]udicial notice may be taken at any stage of the proceeding.” Rule 201(f), SCRE.

Here, Glassmeyer makes much ado about nothing. As the court of appeals properly held, “[t]he question of whether the information Glassmeyer requested was exempt under FOIA is a question of law and does not require looking at any facts other than Glassmeyer’s request.” S.C. Lottery Comm’n, 428 S.C. at 438, 835 S.E.2d at 531. The circuit court had everything it needed to make that determination. As for the exhibits, the circuit court was well within its rights to consider them for three reasons.

First, the exhibits were incorporated into—and therefore a part of—the complaint. See Rule 10(c), SCRCF. Glassmeyer did not challenge their inclusion in his answer and counterclaim. (See App’x pp. 324–37). In fact, he attached his own exhibit to his pleadings and has consistently relied upon it throughout the case. (App’x pp. 336–37). On that note, Glassmeyer wants to have his cake and eat it too. Despite never objecting to the Lottery Commission’s exhibits to the complaint, he contends the Court should not consider them. At the same time, his entire argument regarding disclosure under FOIA centers on a waiver form that was attached to his answer and counterclaim. He cannot have it both ways.

Second, the documents were “not excluded” by the circuit court. Rule 12(c), SCRCF. Glassmeyer never filed a motion to strike the exhibits. Cf. Rule 12(f), SCRCF. And he certainly

knew how. Indeed, Glassmeyer moved to dismiss the complaint and moved to strike the SCLC's request for attorney's fees. (App'x pp. 341–46). He also filed an eighteen-page memorandum in support of his motion to dismiss. (App'x pp. 412–29). Nowhere did he mention an objection to the exhibits to the complaint. See id. Nor did he file a motion in limine seeking to exclude introduction of the exhibits at the bench trial that the circuit court jettisoned on the date in question after making the determination that this was a question of law.

Third, and most importantly, Glassmeyer never argued during the hearing that the circuit court could not consider the exhibits to the complaint in ruling upon the pending motions before it. (App'x pp. 388–411). Instead, he waited until his motion to reconsider to argue this issue for the first time. See Johnson v. Sonoco Prods. Co., 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (“An issue may not be raised for the first time in a motion to reconsider.”). This is fatal to his claim. Because Glassmeyer failed to timely object to the circuit court's consideration of exhibits to the complaint, the issue is not preserved for appellate review. Dixon v. Dixon, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005) (holding an “issue [raised] for the first time in a Rule 59, SCRCPP, motion” was “not preserved for review”).

But even if that weren't enough, as the court of appeals recognized, Rule 12(c) also contains a catchall. “If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.” Rule 12(c), SCRCPP. This Court “review[s] grants of summary judgment using the same yardstick as the [circuit] court.” Gibson v. Epting, 426 S.C. 346, 350, 827 S.E.2d 178, 180 (Ct. App. 2019).

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). “When opposing a summary judgment motion, the nonmoving party must do more than ‘simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.’” Russell v. Wachovia Bank, N.A., 353 S.C. 208, 220, 578 S.E.2d 329, 335 (2003) (quoting Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991)).

Glassmeyer never argued he “did not have a full and fair opportunity for discovery.” Dawkins v. Fields, 354 S.C. 58, 71, 580 S.E.2d 433, 439 (2003). To the contrary, the parties showed up on the date of the hearing ready for a bench trial. Nor did he “present any ‘specific facts’ establishing a genuine issue for trial.” Id. at 70, 580 S.E.2d at 439. He merely made a passing reference to putting up evidence that the Lottery Commission admitted it was not a citizen for purposes of FOIA if the case moved forward. (App’x p. 411). But that would not have made any difference on this pure question of law. Glassmeyer has yet to come forward with any evidence he was unable to introduce that would have changed the result. None exists. Instead, he simply contests the manner in which the circuit court issued a ruling on that dispositive legal question.

These hypertechnical arguments invoke a distinction without a difference and elevate form over substance. Irrespective of whether the circuit court treated it as a motion for judgment on the pleadings or a motion for summary judgment, the Lottery Commission was entitled to judgment as a matter of law. The waiver form and the FOIA requests were properly before the Court. So were the other exhibits attached to the Lottery Commission’s complaint that went unchallenged. No new evidence would have changed the result, and Glassmeyer does not even attempt to make that argument. That the parties arrived at the courthouse ready to proceed with a bench trial on

the date in question proves the point. Instead, Glassmeyer just claims he was entitled to a bench trial and the circuit court should have declined to consider evidence to which he never lodged any objection. Respectfully, that is no one's fault but his own.

Simply put, this case did not require the services of a factfinder. The circuit court properly decided this question of law on the pleadings, and the court of appeals correctly upheld that ruling. This Court should follow suit and affirm.

*II. The Lottery Commission had standing to bring this action, and FOIA did not restrict that right.*

Next, Glassmeyer argues the Lottery Commission could not bring suit at all because it did not qualify as a citizen under FOIA. See S.C. Code Ann. § 30-4-100(A) (Supp. 2018). Not so.

The Uniform Declaratory Judgments Act<sup>2</sup> (the Act) gives “[c]ourts of record” the “power to declare rights, status and other legal relations.” S.C. Code Ann. § 15-53-20. Indeed, “[a]ny person . . . whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status or other legal relations.” S.C. Code Ann. § 15-53-30 (2005). Under the Act, the Court likewise has the power to grant “[f]urther relief based on a declaratory judgment or decree . . . whenever necessary or proper.” S.C. Code Ann. § 15-53-120.

“To state a cause of action under the . . . Act, a party must demonstrate a justiciable controversy.” Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004). “A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights[,] and a positive legal duty which is denied by the adverse party.” Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 16, 567 S.E.2d 881, 889 (Ct. App. 2002) (quoting Graham v. State Farm Mut. Auto. Ins. Co., 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995)).

---

<sup>2</sup> S.C. Code Ann. §§ 15-53-10 through -140 (2005).

As this Court has recognized, the “Act is a proper vehicle in which to bring a controversy before the court when there is an existing controversy or at least the ripening seeds of a controversy.” Sunset Cay, LLC, 357 S.C. at 423, 593 S.E.2d at 466. To that end, courts have long held the Act “should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships without awaiting a violation of the rights or a disturbance of the relationships.” Power v. McNair, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970).

Here, the Lottery Commission clarified at the pre-trial hearing it was proceeding under the Declaratory Judgements Act, not under FOIA. (App’x p. 389). Indeed, under the prior version of the law, FOIA did not provide an exclusive remedy for state agencies akin to that which was provided for citizens. Glassmeyer correctly notes that the General Assembly amended section 30-4-110 of FOIA in 2017. See Act No. 67, 2017 S.C. Acts 3352 (amending the law to “remove criminal penalties, and to provide rights and remedies of public bodies from whom requests are made and persons with specific interests in exempt information for which disclosure is sought”). But his takeaway from this legislative action is wrong. The new law, which was passed three years after this lawsuit was filed, does not mean the Lottery Commission could not bring a lawsuit seeking to ascertain its legal rights and relationships in 2014.

To the contrary, the newly enacted version of section 30-4-110 merely gives the Lottery Commission—as well as other public bodies—statutory standing under FOIA. The Court, of course, has recognized “[t]he traditional concepts of constitutional standing are inapplicable when standing is conferred by statute. FOIA contains a specific standing provision allowing any citizen of South Carolina to seek a declaratory judgment or injunctive relief to enforce the Act’s requirements.” Freemantle v. Preston, 398 S.C. 186, 194, 728 S.E.2d 40, 44 (2012) (emphasis

added) (citing S.C. Code Ann. § 30-4-100(a) (Supp. 2011)). Here, the Lottery Commission was not trying to “enforce the Act’s requirements.” Id. Instead, it was trying to seek guidance regarding its responsibilities under the Act. See S.C. Code Ann. § 15-53-30.

FOIA gave a private right of action—statutory standing—to citizens to use a specific process to give meaning to the public’s right to access public records. But FOIA was not enacted to restrict the rights of a state agency or prohibit it from taking action. And the Court should decline the invitation to adopt this myopic view because it would lead to an absurd result. See Florence Cty. Democratic Party v. Florence Cty. Republican Party, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) (per curiam) (stating courts must “not construe a statute in a way which leads to an absurd result or renders it meaningless”).

Under the new law, an agency-initiated action—something Glassmeyer found appalling in both circuit court and in the court of appeals—must be brought solely within the confines of FOIA. That was not the case before. A declaratory judgment was therefore appropriate. And under the Act, the Lottery Commission was also entitled to concomitant injunctive relief because that was “necessary” and “proper” to give teeth to the declaratory judgment. S.C. Code Ann. § 15-53-120. Accordingly, Glassmeyer’s arguments regarding a specific statute prevailing over a general statute are unavailing. Cf. DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce, 423 S.C. 295, 304, 814 S.E.2d 513, 518 (2018) (quoting Capco of Summerville, Inc. v. J.H. Gayle Constr. Co., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006)). The specific statute to which he directs the Court’s attention did not limit a state agency’s ability to bring a declaratory judgment action. See S.C. Code Ann. § 30-4-100(A). Nor would that make sense. See Rule 57, SCRCF (“The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.”).

In any event, the Lottery Commission has standing to maintain this action. See ATC S., Inc. v. Charleston Cty., 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) (stating a party may acquire standing (1) via statute, (2) “through the rubric of ‘constitutional standing,’” or (3) under “the ‘public importance’ exception”); Sloan v. Greenville Cty., 356 S.C. 531, 548, 590 S.E.2d 338, 347 (Ct. App. 2003) (recognizing that “the rule [of standing] is not an inflexible one” (alteration in original) (quoting Thompson v. S.C. Comm’n on Alcohol & Drug Abuse, 267 S.C. 463, 467, 229 S.E.2d 718, 719 (1976))).

“To have standing, one must have a personal stake in the subject matter of the lawsuit. In other words, one must be a real party in interest.” Sea Pines Ass’n for the Prot. of Wildlife, Inc. v. S.C. Dep’t of Nat. Res., 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001). “A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action.” Charleston Cty. Sch. Dist. v. Charleston Cty. Election Comm’n, 336 S.C. 174, 181, 519 S.E.2d 567, 571 (1999) (quoting Anchor Point, Inc. v. Shoals Sewer Co., 308 S.C. 422, 428, 418 S.E.2d 546, 549 (1992)).

The court of appeals held that the Lottery Commission “had standing under the Declaratory Judgments Act to bring this declaratory judgment and injunction action.” S.C. Lottery Comm’n, 428 S.C. at 439, 835 S.E.2d at 532. Admittedly, a finding of statutory standing seems at odds with this Court’s jurisprudence. See Youngblood v. S.C. Dep’t of Soc. Servs., 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013) (“Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation.”); Felts, 299 S.C. at 216, 383 S.E.2d at 262–63 (stating the Act “is remedial and procedural in nature and does not create substantive rights or duties”); Bodman v. State, 403 S.C. 60, 67 n.1, 742 S.E.2d 363, 366 n.1 (2013) (“reject[ing] any averment that the fact Bodman is

proceeding under the Declaratory Judgment Act has any impact on our standing analysis”). Yet this Court has not explicitly held to the contrary. If it chooses to do so here, the good news is the Lottery Commission still has constitutional standing to maintain this action.

After all, the substance of the court of appeals’ underlying ruling is correct—the Lottery Commission “had standing to file for a declaratory judgment.” S.C. Lottery Comm’n, 428 S.C. at 435, 835 S.E.2d at 530. And that is so because the Lottery Commission had an injury-in-fact traceable to Glassmeyer’s actions that could be—and, in fact, was—redressed by a favorable decision from the circuit court. See Pres. Soc’y of Charleston v. S.C. Dep’t of Health & Envtl. Control, 430 S.C. 200, 210, 845 S.E.2d 481, 486 (2020) (asserting to establish constitutional standing, “(1) the plaintiff must have suffered an ‘injury in fact,’ i.e., an invasion of a legally protected interest that is concrete and particularized, and actual or imminent; (2) there must be a causal connection between the injury and the conduct complained of; and (3) it must be likely that the injury will be redressed by a favorable decision” (quoting Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992))). That issue was squarely before the circuit court and the court of appeals.

Glassmeyer expressly challenged constitutional standing in the circuit court. (App’x pp. 421–23). He lost. And for good reason. The Lottery Commission was sued and was facing lawsuits filed by prize winners who were rightfully concerned about the disclosure of their personal identifying information. Arguably, each of these claimants—as citizens—could have sought attorneys’ fees under FOIA. See S.C. Code Ann. § 30-4-100(a)–(b). That certainly amounts to an injury-in-fact for the Lottery Commission.<sup>3</sup> Cf. Thompson, 267 S.C. at 467, 229

---

<sup>3</sup> While this was couched as irreparable harm below, the analyses often overlap. The Lottery Commission had an injury-in-fact because it was involved in litigation at the time and was trying to stop the bleeding and avoid having to defend even more litigation. Had the Lottery Commission not filed suit, Glassmeyer would have continued pursuing private information to the detriment of both the South Carolina Education Lottery and its prize winners. The harm and injury were one and the same. See Kosciusko v. Parham, 428 S.C. 481, 506, 836 S.E.2d 362, 375 (Ct. App. 2019) (“Error preservation rules do not require a party to use

S.E.2d at 719 (acknowledging the rule “that public officials may not contest the validity of a statute,” but finding “the rule is not an inflexible one and we are of the opinion that the questions involved are of such wide concern, both to law enforcement personnel and to the public, that the court should determine the issues in this declaratory judgment action”).

As the court of appeals cogently recognized, “given the gravity of the interests at stake,” including “the potential invasion of personal privacy for the claimants” and “the risk of unlimited legal exposure[,] . . . prudence dictated the agency’s decision to have the circuit court declare its obligations and to remove any doubt it may have had.” S.C. Lottery Comm’n, 428 S.C. at 434–35, 835 S.E.2d at 529. Further, this injury was specifically traceable to Glassmeyer’s actions. See Youngblood, 402 S.C. at 317–18, 741 S.E.2d at 518 (requiring the plaintiff to show a causal connection “between the injury and the challenged conduct”). Without a doubt, the Lottery Commission would not have faced these issues but for Glassmeyer’s unyielding FOIA requests.

What is more, this was far from some abstract dispute incapable of judicial resolution. Cf. City of Columbia v. Sanders, 231 S.C. 61, 68, 97 S.E.2d 210, 213 (1957) (observing the Declaratory Judgments Act “‘does not require the court to give a purely advisory opinion which the parties might, so to speak, put on ice to be used if and when the occasion might arise,’ or ‘license litigants to fish in judicial ponds for legal advice’” (quoting Town of Tryon v. Duke Power Co., 22 S.E.2d 450, 453 (N.C. 1942); Lide v. Mears, 56 S.E.2d 404, 409 (N.C. 1949))). The Lottery Commission was adverse to Glassmeyer, was facing a rising tide of litigation, and wanted

---

the exact name of a legal doctrine . . . to preserve an issue for appellate review.” (quoting State v. Brannon, 388 S.C. 498, 502, 697 S.E.2d 593, 595 (2010)); I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 420–21, 526 S.E.2d 716, 723 (2000) (“[I]t is not always necessary for a respondent—as the winning party in the lower court—to present his issues and arguments to the lower court and obtain a ruling on them . . . to preserve an issue for appellate review. . . . [A]n appellate court may affirm the lower court’s judgment for any reason appearing in the record on appeal. An affirmance promotes judicial economy and finality in private and public affairs, which are important public policies.”).

to determine its obligations under the law. This was unquestionably a justiciable controversy over which the circuit court could take jurisdiction to remedy the Lottery Commission's injury via declaratory judgment and concomitant injunctive relief. See ATC S., Inc., 380 S.C. at 195, 669 S.E.2d at 339 (holding "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision'" (quoting Lujan, 504 U.S. at 561)).

To be sure, this Court's precedent confirms the ability of the Lottery Commission to maintain this action. See City of Columbia v. Am. Civil Liberties Union of S.C., Inc., 323 S.C. 384, 386, 475 S.E.2d 747, 748 (1996) (noting the City "refused [Appellants'] request and filed this action seeking a declaratory judgment that the report is exempt from the disclosure requirements of the FOIA"); S.C. Tax Comm'n v. Gaston Copper Recycling Corp., 316 S.C. 163, 165, 447 S.E.2d 843, 844 (1994) (noting "[t]he South Carolina Tax Commission commenced this declaratory judgment action to determine whether under" FOIA "it should release certain information to the Lexington County Administrator"). Glassmeyer feigns outrage that a governmental entity would dare bring an action seeking guidance on its obligations under FOIA. But the above cases demonstrate the Lottery Commission was hardly plowing a new field here.

And although standing was not specifically raised in City of Columbia v. ACLU or Gaston Copper Recycling, this Court must always satisfy itself that a justiciable controversy is before it. See Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006) ("Generally, this Court only considers cases presenting a justiciable controversy."); Lennon v. S.C. Coastal Council, 330 S.C. 414, 415–16, 498 S.E.2d 906, 906 (Ct. App. 1998) ("A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy. 'No justiciable controversy is presented unless the plaintiff has standing to maintain the action.'" (quoting Brock v. Bennett, 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct. App. 1994)));

id. at 417–18, 498 S.E.2d at 908 (“South Carolina courts, like the federal courts, require a justiciable case or controversy before any decision on the merits can be reached.”). If the parties or the Court had any concerns about justiciability in those cases, the Lottery Commission is confident the issue would have come up. It did not. The silence is deafening.

Thus, even if the court of appeals’ statutory standing holding gives the Court heartburn, the Court can still quickly find the Lottery Commission had constitutional standing to bring a declaratory judgment action. At the end of the day, Glassmeyer’s considerable efforts to avoid a decision on the merits are unavailing. This is a red herring. The Lottery Commission had standing to bring a declaratory judgment action to determine its rights and responsibilities under FOIA.

*III. The court of appeals correctly affirmed the circuit court’s order issuing a declaratory judgment that lottery winners’ personal information was exempt from disclosure under FOIA and enjoining Glassmeyer from submitting further requests for that information.*

Turning to the merits of this dispute, the court of appeals’ analysis is sound. Because lottery winners’ personal identifying information is exempt from disclosure under FOIA, the Court should affirm.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [General Assembly].” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (quoting Charleston Cty. Sch. Dist. v. State Budget & Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993)). “FOIA is remedial in nature and should be liberally construed to carry out its purpose.” Evening Post Publ’g Co. v. Berkeley Cty. Sch. Dist., 392 S.C. 76, 82, 708 S.E.2d 745, 748 (2011) (quoting Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 161, 547 S.E.2d 862, 864–65 (2001)).

In the legislative findings accompanying the enactment of FOIA, the General Assembly recognized “it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the

decisions that are reached in public activity and in the formation of public policy.” S.C. Code Ann. § 30-4-15 (2007). To that end, the General Assembly has advised courts to construe FOIA “so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.” Id.

At its core, “FOIA’s basic premise is ‘any person has a right to inspect or copy any public record of a public body.’” Evening Post Publ’g Co., 392 S.C. at 82, 708 S.E.2d at 748 (quoting S.C. Code Ann. § 30-4-30(a)). As the court of appeals noted, however, “this right is not absolute.” S.C. Lottery Comm’n, 428 S.C. at 436, 835 S.E.2d at 530. After all, the fundamental purpose of FOIA “is to protect the public from secret government activity.” Perry v. Bullock, 409 S.C. 137, 141, 761 S.E.2d 251, 253 (2014) (quoting Bellamy v. Brown, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991)). But that principle has no application when a member of the public is seeking purely private information about private individuals. Disclosure of such information would do nothing to further the purposes of FOIA.

For that reason, under FOIA, “[i]nformation of a personal nature where the public disclosure thereof would constitute [an] unreasonable invasion of privacy” is exempt from disclosure. S.C. Code Ann. § 30-4-40(a)(2). “The exemption provision gives the public body the discretion to disclose such information, stating the public body ‘may but is not required to’ disclose the information.” S.C. Lottery Comm’n, 428 S.C. at 436, 835 S.E.2d at 530. A court must determine “whether documents or portions thereof are exempt from FOIA . . . on a case-by-case basis.” Evening Post Publ’g Co., 392 S.C. at 82, 708 S.E.2d at 748.

Notwithstanding the lofty rhetoric, the court of appeals’ FOIA jurisprudence fits neatly within the FOIA framework established by the General Assembly and this Court. Indeed, this

Court already declined to review the very case—bearing his name—that Glassmeyer seeks to overturn here. See Glassmeyer v. City of Columbia, 414 S.C. 213, 777 S.E.2d 838 (Ct. App. 2015), cert. denied (June 16, 2016). That, of course, is no coincidence. But neither the court of appeals nor the circuit court engaged in burden shifting. Nor has the court of appeals skirted the requirement of analyzing FOIA disputes on a case-by-case basis. In fact, at the very beginning of its analysis, the court of appeals acknowledged this fundamental tenet of FOIA law. And it did not merely pay lip service to that principle. The court of appeals then faithfully undertook a careful legal analysis of the applicability of the exemption.

The applicable FOIA exemption is subsection 30-4-40(a)(2). As the court of appeals has previously recognized, that provision “does not specifically list or define the types of records, reports, or other information that should be classified as personal or private information exempt from disclosure.” Burton v. York Cty. Sheriff’s Dep’t, 358 S.C. 339, 352, 594 S.E.2d 888, 895 (Ct. App. 2004). The Court “must, therefore, resort to general privacy principles, which examination involves a balancing of conflicting interests—the interest of the individual in privacy on the one hand against the interest of the public’s need to know on the other.” Id. (quoting Sloan v. S.C. Dep’t of Pub. Safety, 355 S.C. 321, 325, 586 S.E.2d 108, 110 (2003)). Courts have “defined the ‘right to privacy’ as the right of an individual to be let alone and to live a life free from unwarranted publicity. Id. Stated differently, it is “the right to live without one’s name, picture or statue, or that of a relative, made public against his will.” Holloman v. Life Ins. Co. of Va., 192 S.C. 454, \_\_\_, 7 S.E.2d 169, 171 (1940). And the people of South Carolina, together with the General Assembly, have enshrined this right into the South Carolina Constitution. See S.C. CONST. art. I, § 10.

Against this backdrop, the court of appeals weighed the competing considerations to determine—as a matter of law—whether the information Glassmeyer requested was exempt from disclosure under FOIA. In doing so, the court of appeals compared the instant case to a similar one it had recently decided. As the court of appeals noted, in Glassmeyer v. City of Columbia, it “reversed the circuit court, holding disclosure of the applicants’ home addresses, telephone numbers, and personal email addresses would constitute an unreasonable invasion of personal privacy.” S.C. Lottery Comm’n, 428 S.C. at 437, 835 S.E.2d at 531 (citing Glassmeyer v. City of Columbia, 414 S.C. at 223, 777 S.E.2d at 840–41). Applying the balancing test, the panel in that case “fail[ed] to see how disclosure of the limited information . . . would serve to establish the veracity of the applicants more than the information [the city] already provided.” Id. (quoting Glassmeyer v. City of Columbia, 414 S.C. at 223, 777 S.E.2d at 841).

So too here. The Lottery Commission takes its obligations under FOIA seriously. With that in mind, the Lottery Commission “provided Glassmeyer with the amount of the lottery winnings, the lottery game, and the claimants’ home towns and states.” Id. When “balancing the individual’s privacy against the public’s need to know,” the court of appeals appropriately found no “reason that the public needs to know the information [Glassmeyer] requested or any reason as to why the information [the Lottery Commission] provided was not adequate.” Id. To the contrary, Glassmeyer only made fleeting reference to its “potential for exposing government corruption.” Id. Unpersuaded, the court of appeals held that, “without more,” the court was “unable to fathom how disclosure of the rest of the information would benefit the public more than what was already provided.” Id.

Disclosure, on the other hand, would work “an unreasonable invasion of privacy” for the lottery winners. Id. After all, “[t]he lottery claimants’ names are not public knowledge and the

release of such information could lead to the discovery of other personal information.” Id. Indeed, as noted above, this case arose shortly after the major data breach at the Department of Revenue that put thousands of South Carolinians’ personal information at risk of misuse. This is certainly not some unfounded concern. And the Lottery Commission has taken significant strides to protect the personal identifying information of lottery participants and winners.

On April 11, 2014, for example, the Lottery Commission’s executive committee unanimously voted to suspend a former policy regarding the release of lottery winners’ information in response to FOIA requests and, in turn, unanimously adopted a new policy authorizing the executive director to determine an appropriate response to pending and future FOIA requests. The executive committee also gave the chairman of the board authority to defend or initiate lawsuits related to FOIA. See (App’x pp. 198–99, 205–08); see also S.C. Code Ann. § 59-150-60 (giving the Lottery Commission “powers to . . . sue and be sued in contract and in tort and to complain and defend in all courts”). Five days later, the Lottery Commission received another FOIA request from Glassmeyer and acted accordingly to protect its winners from an unreasonable invasion of their privacy.

The court of appeals therefore correctly found “the balancing test weighs in favor of preventing the disclosure of the information . . . to safeguard the claimants’ personal privacy.” S.C. Lottery Comm’n, 428 S.C. at 437–38, 835 S.E.2d at 531. Glassmeyer nevertheless maintains the existence of a waiver form mandates reversal. It does not. As the court of appeals found, the lottery winners “did not waive their right to privacy just by executing the form.” Id. at 438, 835 S.E.2d at 531. To illustrate this point, the court of appeals explained as follows:

The form merely indicated that some of the information included in the form may be subject to disclosure under FOIA. However, this warning does not mean the claimants waived any right they had to the privacy of the information on the form, such as their social

security numbers. In fact, SCLC did disclose some of the information included on the form—the claimants' home towns and states. Just as Glassmeyer v. City of Columbia found “[a]n individual’s interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form,” we find this same interest does not dissolve just because the claimants were warned that some of the information may be subject to disclosure.

Id. (alteration in original) (quoting Glassmeyer v. City of Columbia, 414 S.C. at 222, 777 S.E.2d at 840).

Glassmeyer also contends this Court’s decision in Society of Professional Journalists v. Sexton compels a different result. 283 S.C. 563, 324 S.E.2d 313 (1984). Respectfully, his reliance is misplaced. In that case, the Court began with the unassailable proposition that, “[g]enerally, privacy rights are considered personal rights which do not survive.” Id. at 566, 324 S.E.2d at 315. Applying that to the facts at hand, the Court concluded that information on a “death certificate . . . of a murder victim in a case of great public interest” was not exempt from disclosure under FOIA. Id. Here, though, the lottery winners are very much still alive and trying to protect themselves from any unreasonable invasion of privacy. Many took legal action to protect that important right. Accordingly, Glassmeyer finds no refuge in Society of Professional Journalists.

In short, this case has nothing to do with protecting the public from secret government activity. The Lottery Commission is not hiding behind the curtain here. Rather, the Lottery Commission is trying to comply with its obligations under FOIA while protecting the rights of private citizens—none of whom are government officials—from the disclosure of their personal information that would constitute an unreasonable invasion of personal privacy. Both the circuit court and the court of appeals applied the proper balancing test in reaching the correct conclusion that these matters are exempt from disclosure under FOIA. And neither court improperly burdened shifted to get there as Glassmeyer suggests. Instead, the court of appeals properly moved forward

under the premise that the “government has the burden of proving that an exemption applies.” Evening Post Publ’g Co. v. City of N. Charleston, 363 S.C. 452, 457, 611 S.E.2d 496, 499 (2005). Here, the Lottery Commission carried its burden. The Court should therefore affirm the entry of a declaratory judgment.

Likewise, a permanent injunction was appropriate. Under the Declaratory Judgments Act, the Court can grant “[f]urther relief based on a declaratory judgment or decree . . . whenever necessary or proper.” S.C. Code Ann. § 15-53-120. Here, a permanent injunction was “necessary” and “proper.” Id.; see also Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004) (stating for the court to issue an injunction, a plaintiff must establish (1) it “would suffer irreparable harm if the injunction is not granted,” (2) it “will likely succeed on the merits of the litigation,” and (3) no adequate remedy at law exists).<sup>4</sup>

The irreparable harm here was twofold. First, the Lottery Commission was entangled in litigation—and faced the prospect of additional litigation—because of Glassmeyer’s FOIA requests. Having to waste time and resources on constant litigation at the hands of a citizen seeking information to which he was not entitled thwarts the Lottery Commission’s ability to carry out its mission. Second, the Lottery Commission was rightly concerned about protecting the personal identifying information of lottery winners for a number of reasons. Cf. State ex rel. McCleary v. Roberts, 725 N.E.2d 1144, 1149 (Ohio 2000) (noting “a release of the requested information by the Department in this matter places those who are the subject of the records request at risk of irreparable harm, albeit not necessarily by [the Department]”).

---

<sup>4</sup> This Court, of course, has clarified that balancing the equities is not a separate part of the injunction analysis. See Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 587, 694 S.E.2d 15, 17 (2010). Although the circuit court and court of appeals both mentioned balancing the equities, it had no effect on the outcome of their rulings. Thus, any error is harmless.

Safety, for example, comes to mind. (App’x p. 198). Several cases and newspaper articles were referenced and incorporated into the complaint, without any timely objection, that provided examples of lottery winners across the country being attacked and even killed after claiming their prizes. Id. Scams, extortion, and data breaches are hardly outside the realm of possibility. Indeed, on the heels of a major data breach at the South Carolina Department of Revenue, id., this Court recognized the need to protect personal identifying information in appellate filings. See Order, In re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, App. No. 2013-002681, Am. Order No. 2014-04-15-02 (S.C. Sup. Ct. filed Apr. 15, 2014). Thus, the presence and prospect of litigation—coupled with the palpable dangers attendant to releasing lottery winners’ personal identifying information—amount to a sufficient showing of irreparable harm. The circuit court so found, the court of appeals affirmed, and this Court should as well.

As demonstrated above, the Lottery Commission succeeded on the merits and received a declaratory judgment confirming its position was correct. Although a declaratory judgment was a legal remedy, the Act allowed for additional relief to give teeth to the judgment. See S.C. Code Ann. § 15-53-120. In this case, that was a permanent injunction. Based upon its finding that the Lottery Commission satisfied all the necessary elements, the circuit court properly entered an injunction to prevent Glassmeyer from seeking the same information in the future. Given the number of claimants affected, as well as the prospective number of claimants who could be affected down the road, the permanent injunction was not overly broad. It was narrowly tailored to the personal identifying information Glassmeyer sought for lottery winners. Glassmeyer, however, is not without future recourse. If circumstances change, he is well within his rights to

ask the circuit court to modify or vacate the permanent injunction if he meets any of the requirements under Rule 60(b), SCRPC.

Accordingly, the Court should join the court of appeals and affirm the circuit court's entry of declaratory and permanent injunctive relief in favor of the Lottery Commission.

*IV. The court of appeals properly gave short shrift to Glassmeyer's arguments on his motion to dismiss and FOIA counterclaim because they are without merit.*

According to Glassmeyer, the court of appeals also erred in (1) not addressing the merits of his counterclaim under FOIA and (2) the denial of his motion to dismiss. The Court should reject these contentions.

Initially, Glassmeyer faces an insurmountable hurdle to raising these issues—he made no effort at all to analyze them for the Court. Take his motion to dismiss argument. His brief offers no explanation as to how the Lottery Commission failed to state a claim for relief under any theory of the case. See Pet'r Br. at 23–24. He simply argues the court of appeals should have reversed the denial of his motion under the general standard for Rule 12(b)(6), SCRPC. Respectfully, that is insufficient. Consider next the counterclaim argument. It consists of one conclusory paragraph with zero citations. See Pet'r Br. at 24. These issues are thus abandoned. See Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) (“South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.”); Fields v. Melrose Ltd. P'ship, 312 S.C. 102, 106 n.3, 439 S.E.2d 283, 285 n.3 (Ct. App. 1993) (stating “an appellant may not use the reply brief to argue issues not argued in his brief in chief”).

He fares no better on the merits. Although the circuit court issued a declaratory judgment finding the matters Glassmeyer demanded from the Lottery Commission were exempt from disclosure, he nevertheless argues the circuit court was required to issue a separate ruling on his

counterclaim that the Lottery Commission violated FOIA. That much does not follow. The court of appeals correctly concluded that—by finding the personal identifying information was exempt from disclosure under FOIA—the circuit court “implicitly resolved” Glassmeyer’s counterclaim for declaratory judgment alleging a FOIA violation. S.C. Lottery Comm’n, 428 S.C. 423 at 439 n.7, 835 S.E.2d at 532 n.7; see also State ex rel. Nixon v. Hoester, 930 S.W.2d 52, 53 (Mo. Ct. App. 1996) (observing when “a judgment implicitly resolves the issues raised by the defendant’s counterclaim, it is a final judgment even though the judgment makes no explicit reference to the counterclaim”).

Further, a review of the order reveals the circuit court did resolve the issue. In the final paragraph, the circuit court stated “[t]his Order concludes the . . . lawsuit and judgment is entered for” the Lottery Commission. (App’x p. 188). Once again, Glassmeyer seeks to elevate form over substance. Respectfully, remanding for an exercise in throat-clearing would not be a wise use of judicial resources. Instead, the Court should find the circuit court properly dismissed his counterclaim arising under FOIA. See State v. Vick, 384 S.C. 189, 202, 682 S.E.2d 275, 282 (Ct. App. 2009) (observing that “our [appellate] courts have at times considered an issue in the interest of judicial economy”).<sup>5</sup>

Turning to the motion to dismiss, it is well settled that the Court will not unnecessarily reach issues when its ruling on prior issues is dispositive of the appeal. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999). Given that the

---

<sup>5</sup> The Lottery Commission did not cross-appeal the court of appeals’ remand of Glassmeyer’s abuse of process claim. After all, this claim was distinct from the FOIA issues and arguments regarding the available relief, all of which were encompassed in the order. While the circuit court did not rule on this question, Glassmeyer never sought to raise it during the hearing either. Opposing counsel, for good reason, did not want to go there when pressed by the judge. It goes without saying the Lottery Commission commenced this lawsuit in good faith to receive guidance on the law—as well as the rights and responsibilities of the parties—and to protect lottery winners’ privacy rights. To that end, the Lottery Commission categorically rejects any insinuation that this amounts to abuse of process and looks forward to arguments on remand.

Lottery Commission prevailed in the circuit court and on appeal, Glassmeyer was not entitled to dismissal of its claims for declaratory and injunctive relief. By ruling in favor of the Lottery Commission and ending the case, the circuit court implicitly denied the motion. In any event, the court of appeals properly held “the denial of a motion to dismiss is not directly appealable.” Levi v. N. Anderson Cty. EMS, 409 S.C. 374, 382, 762 S.E.2d 44, 48 (Ct. App. 2014) (quoting McLendon v. S.C. Dep’t of Hwys. & Pub. Transp., 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994)); see also S.C. Code Ann. § 14-3-330(1)–(4) (setting forth appellate jurisdiction).

A court “cannot review a decision that has not been made.” Lee v. Bondex, Inc., 406 S.C. 97, 103, 749 S.E.2d 155, 158 (Ct. App. 2013). “Like the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings.” McLendon, 313 S.C. at 526 n.2, 443 S.E.2d at 540 n.2. It is true that the Court “may accept appeals of interlocutory orders not ordinarily immediately appealable when appealed with a companion issue proper for review,” but that is not appropriate when “the issues appealed lack a sufficient nexus.” Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 575 n.9, 813 S.E.2d 292, 309 n.9 (Ct. App. 2018) (emphasis added). And the Court is not required to do so.

The court of appeals properly exercised its discretion in declining to reach the merits of these arguments and giving them short shrift. So should this Court.

#### CONCLUSION

In sum, former Chief Judge Alex Sanders said it best: “Appellate courts recognize—or at least they should recognize—an overriding rule of civil procedure which says: whatever doesn’t make any difference, doesn’t matter.” McCall v. Finley, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987). Personal identifying information of lottery winners is exempt from disclosure under

FOIA. And the Lottery Commission was entitled to get a dispositive ruling from the courts on that question. Glassmeyer's procedural detours do not change the result. The Court should affirm.

Respectfully submitted,

Karl S. Bowers, Jr.  
SC Bar No. 16141  
BOWERS LAW OFFICE, LLC  
Post Office Box 50549  
Columbia, South Carolina 29250  
(803) 753-1099  
butch@butchbowers.com

/s/Vordman Carlisle Traywick, III  
Vordman Carlisle Traywick, III  
SC Bar No. 102123  
ROBINSON GRAY STEPP & LAFFITTE, LLC  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, South Carolina 29211  
(803) 929-1400  
ltraywick@robinsongray.com

*Counsel for Respondent South Carolina  
Lottery Commission*

Columbia, South Carolina  
September 4, 2020