FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGM T IN A CIVIL CASE

CASE NUMBER: 2012CP4007790

South Carolina Public Interest Foundation
William B DePass Jr
PLAINTIFF(S)

John E Courson
Darrell Jackson
DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☒ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

RICHLAND COUNTY FILED 2013 AUG 27 PM 12:38 JEANETTE W. WALKER CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ **day of** _____, **20** _____ and a copy mailed first class or placed in the appropriate attorney's box on this 27 August 2013 to attorneys of record or to parties (when appearing pro se) as follows:

James G. Carpenter — Michael Robert Hitchcock — J. Emory Smith Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. Walker

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND South Carolina Public Interest Foundation, and William B. DePass, Jr., individually, and on behalf of all others similarly situated, Plaintiffs, v. Senator John E. Courson, Senator Darrell Jackson, Senator Joel Lourie, Senator John L. Scott, Jr., and The State of South Carolina, Defendants.	IN THE CIRCUIT COURT CASE NO: 2012-CP-40-7790 **Order Granting Summary Judgment to Plaintiffs**

Act 17 of 2011 ("Act 17" or "the Act") merged the Richland County Election Commission and the Richland County Board of Registration into one body known as the Board of Elections and Voter Registration for Richland County. Plaintiffs contend that the Act violates South Carolina Constitution Article III, § 34 (prohibiting special acts), and Article VIII, § 7 (prohibiting single county acts).

This action came before the Court on August 9, 2013, on Cross-Motions for Summary Judgment. James G. Carpenter represented the Plaintiffs. Michael Hitchcock represented the Defendant Senators. Emery Smith of the Attorney General's Office represented the State of South Carolina.

On July 31, 2013, Mr. Smith notified the Richland County Attorney's office and the Executive Director of the Board of Elections and Voter Registration for Richland County of this action both by telephone and in writing, and he provided them with copies of the pleadings. Neither the Richland County Attorney's office nor the Board of Elections and Voter Registration for Richland County has made an appearance or contacted the Court to seek to participate in this action.

The Attorney General admitted in his Answer that Act 17 of 2011 may violate both Article III, § 34 and Article VIII, § 7. The State filed no memorandum in opposition to the Plaintiffs' Motion for Summary Judgment, and took no position on the Plaintiffs' standing. However, the Attorney General has issued three a written opinion on this issue.

In 2007, the Attorney General issued an opinion to Senator Glenn McConnell that the General Assembly's very similar action with regard to Charleston County in 2003 was unconstitutional (2007 WL 3244888, attached) ("McConnell Letter").

Second, in his McConnell Letter, the Attorney General referenced an earlier opinion from 1977 arriving at the same conclusion:

> In an opinion of this Office issued in 1977, we considered generally whether the General Assembly can introduce legislation merging county boards of voter registration and county election commissions on a county-by-county basis. Op. S.C. Atty. Gen., January 5, 1977. We concluded "such legislation would most probably be violative of that portion of Article VIII, section 7 of the South Carolina Constitution of 1985, as amended, which proscribes laws for a specific county." Id.

Id. at *4.

Third, in an opinion issued to Senator Tim Scott in 2012 concerning Act 17 of 2011, the very act at issue in this case, the Attorney General reiterated his opinion regarding the Charleston act, and opined that he would reach the same conclusion regarding relating to Richland County (2012 WL 6061812, attached) ("Scott Letter").

> We do not address herein the constitutionality of Act 17 of 2011 under Art. VIII, § 7 of the South Carolina Constitution, which prohibits ""laws for a specific county ...." However, we note that in an Opinion, dated August 14, 2007, we concluded that ***a similar local law***, Act 127 of 2003, a statute which abolished the Charleston County Board of Voter Registration and the Charleston County Election Commission and created instead the Board of Elections and Voter Registration for Charleston County ***was likely unconstitutional*** as being in violation of Art. VIII, § 7. See *Op. S.C. Atty. Gen.*, August 14, 2007 (2007 WL 3244888).

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(2012 WL 6061812, n. 2) (emphasis added). Thus, the Attorney General has issued three opinions dated from 1977 to 2012 that the General Assembly's action is unconstitutional.

The Defendant Senators contend that the Plaintiffs lack standing to raise these issues, and that the Act is Constitutional.

FINDINGS OF FACT

Plaintiff South Carolina Public Interest Foundation is a not for profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including the proper application and enforcement of the South Carolina Constitution. Plaintiff William B. DePass, Jr. is a citizen, resident, taxpayer, and registered elector of Richland County.. He served as a member of the State Election Commission during the years 1988 through 1997, and he served as its Chairman during the years 1990 through 1997. He regularly serves as a volunteer poll worker on election days. Plaintiffs bring this action individually and on behalf of all others similarly situated.

Defendants John E. Courson, Darrell Jackson, Joel Lourie, and John Scott, Jr. are South Carolina Senators from Richland County; and they are named in their official capacities. These Senators informed the Court that prior to the enactment of Act 312 of 2008, the General Assembly had enacted many local acts combining the boards of registration and election in individual counties.

Similarly, in his Scott Letter, the Attorney General referenced the history of a series of special and single county acts related to these boards.

> In 2008, pursuant to Act No. 312, the General Assembly ***enacted legislation codifying the various local laws which had combined county election commissions and board of voter registration.*** Such provisions are found at § 7-27-10 *et seq.* Section 7-27-120 states that the purpose of Act No. 312 is that "[b]y codifying the provisions for county boards of registration and election commissions, the General Assembly intends to pro-

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> vide greater public access to the statutory provisions for registering voters and coordinating elections in this State." Section 7-27-110 provides that "[t]hose counties that do not have combined boards of registration and election commissions must have their members appointed and powers of their boards and commissions as provided by Sections 7-5-10 and 7-13-70."
>
> ***Richland County was, as of 2008, one of those counties.*** The Board of Voter Registration and the Election Commission remained separate entities. Thus, § 7-25-405 provided in 2008 that "the Richland County Election Commission and the Richland Board of Registration must have their members appointed and powers of their board and commission as provided by Sections 7-5-10 and 7-13-70." See also, *Op. S.C. Atty. Gen.*, July 1, 2010 (2010 WL 3048334). . . .
>
> However, in 2011, by Act No. 17, ***the General Assembly rewrote § 7-27-405 completely***, altering Richland County's election oversight structure. The purpose of Act No. 17 of 2011, as stated in the Act's Title, was "to combine the Richland County Election Commission and the Richland County Board of Registration into a single entity." ***Such legislation required one combined election body, a consolidation similar to that legislated by local law in many other counties.***

(2012 WL 6061812, *2-3) (emphasis added).

Prior to enacting Act 312 of 2008, the General Assembly was aware of its history of enacting a series of special, single-county acts relating to county election commissions and county boards of registration. The General Assembly was also aware of the Attorney General's opinion in the McConnell Letter issued August 14, 2007. Accordingly, early in the next term of the General Assembly, on February 14, 2008, Senators McConnell and Campsen introduced the bill that became Act 312 of 2008. Act 312 addressed all forty-six counties in the state. Act 312 did not change the substance of the previous local and special acts for individual counties, but rather seems to have been the General Assembly's attempt to use one state-wide act to correct the Constitutional defects in all the special and single county acts related to county election commissions and county boards of registration election commissions.

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By Act 312, the General Assembly enacted general legislation governing county boards of voter registration and county election commissions. Section 7–27–110 states: "Those counties that do not have combined boards of registration and election commissions must have their members appointed and powers of their boards and commissions as provided by Sections 7–5–10 and 7–13–70." Likewise, as initially enacted, Section 7–27–405 stated: "The Richland County Election Commission and the Richland County Board of Registration must have their members appointed and powers of their board and commission as provided by Sections 7–5–10 and 7–13–70." South Carolina Code Annotated § 7-5-10 authorizes the Governor to appoint members of county boards of registration, with the advice and consent of the Senate. South Carolina Code Annotated § 7-13-70 authorizes the Governor to appoint county commissioners of election, "upon the recommendation of the senatorial delegation and at least half of the members of the House of Representatives from the respective counties." *Id.* Act 312 of 2008 constituted the general law of the State of South Carolina governing these appointments.

Three years later, the General Assembly enacted Act 17 of 2011, which merged the Richland County Election Commission and the Richland County Board of Registration into one body known as the Board of Elections and Voter Registration for Richland County. Act 17 also changed the way the Chairman of the Board is appointed and reappointed, provided for a minimum budget for the newly formed Board, changed the way that persons are appointed to this body, and established other criteria for the subsequent appointments and retention of the members of this Board. Finally, Act 17 of 2011 abolished the Richland County Board of Voter Registration and the Richland County Election Commission.

CONCLUSIONS OF LAW

I. Plaintiffs Have Satisfied the Standard for Public Importance Standing.

On many occasions, South Carolina courts have granted public importance standing to the South Carolina Public Interest Foundation or its founder Mr. Sloan to bring declaratory judgment actions, and to contest illegal or unconstitutional actions of the General Assembly or State officers. *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), (General Assembly's unconstitutional bobtailing); *Sloan v. Wilkins,* 362 S.C. 430, 608 S.E.2d 579 (2005), (General Assembly's unconstitutional bobtailing); *Sloan v. Sanford,* 357 S.C. 431, 593 S.E.2d 470 (2004), (Governor held a commission from the Reserve of the United States Air Force); *Sloan v. Friends of Hunley, Inc.*, 393 S.C. 152, 711 S.E.2d 895 (2011) (Freedom of Information Act violation by Defendants who were affiliated with the General Assembly). In *Sloan v. Department of Transportation* (*Ladson Road*), the Supreme Court reversed the Circuit Court, and ruled, "Sloan has standing because he has alleged a misuse of the statutory emergency procurement provision and therefore an unlawful expenditure by public officials." *Id.* 379 S.C. 160, 170-71, 666 S.E.2d 236, 241 (2008).

On several occasions, the South Carolina Supreme Court has extended public importance standing to the South Carolina Public Interest Foundation in cases when SCPIF was a co-plaintiff with a citizen, resident, taxpayer, and registered elector from the county where the claim arose. *McSherry v. Spartanburg County*, 371 S.C. 586, 641 S.E.2d 431 (2007) (Spartanburg County); *South Carolina Public Interest Foundation v. Judicial Merit Selection Com'n.,* 369 S.C. 139, 632 S.E.2d 277 (2006) (Beaufort County); *Colle-*

ton County Taxpayers Ass'n. v. School Dist. of Colleton County, 371 S.C. 224, 638 S.E.2d 685 (2006) (Colleton County).

The Supreme Court's most recent statement of the standard for public importance standing is slightly differently from the previous statements of the rule.

> 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***.

South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank, 2013 WL 2631079 (S.C. 2013) (emphasis added). Plaintiffs satisfy the Supreme Court's standard. Plaintiffs have "present[ed] a colorable claim that the Board is unconstitutionally comprised," because the Act establishing the Board is unconstitutional.

The Plaintiffs are not the only ones who hold this opinion. As noted above, three opinion letters from the Attorney General support Plaintiffs' contentions. Plaintiffs have "present[ed] a colorable claim that the Board is unconstitutionally comprised," and have met the standard for public importance standing. *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 2013 WL 2631079 (S.C. 2013). Accordingly, this Court grants public importance standing to the Plaintiffs to address the issues of great public importance that they raise.

This Court also possesses jurisdiction under South Carolina Constitution Article III, § 34 and Article VIII, § 7, and S.C. Code Ann. §15-53-10 *et seq.*, the Uniform Declaratory Judgment Act.

> ***Courts*** of record within their respective jurisdictions ***shall have power to declare rights***, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The

declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

S.C. Code Ann. § 15-53-20 (emphasis added).

II. Act 17 of 2011 Violates Article VIII, § 7.

The General Assembly has returned to its unconstitutional practice of enacting special and single county legislation. Act 17 of 2011 violates Article VII, § 7 of the Constitution: "No laws for a specific county shall be enacted." The Supreme Court has repeatedly found such actions of the General Assembly unconstitutional. *See, Knight v. Salisbury*, 262 S.C. 565, 206 S.E.2d 875 (1974); *Pickens County v. Pickens County Water and Sewer Authority*, 312 S.C. 218, 439 S.E.2d 840, 842 (1994); *Torgerson v. Craver*, 267 S.C. 558, 562-63, 230 S.E.2d 228, 229-30 (1976) (Charleston County Airport District); *Cooper River Park and Playground Commission v. City of North Charleston*, 273 S.C. 639, 259 S.E.2d 107 (1979) (statute purporting to diminish commission's territorial jurisdiction and transfer assets to city was unconstitutional single county legislation); *Richardson v. McCutchen*, 278 S.C. 117, 292 S.E.2d 787 (1982) (two acts of the General Assembly changing the membership of the Williamsburg County Recreation Commission were unconstitutional single county legislation); *Hamm v. Cromer*, 305 S.C. 305, 408 S.E.2d 227 (1991) (act that changed method of appointment for members of governing body of Newberry County Water and Sewer Authority was unconstitutional special legislation and single county legislation); *Davis v. Richland County Council*, 372 S.C. 497, 642 S.E.2d 740 (2007) (an act that devolved the authority to appoint members of the Richland County Recreation Commission from county's legislative delegation to the county council was unconstitutional special legislation and single county legislation). Accordingly, this Court finds Act 17 of 2011 is unconstitutional single county legislation.

III. Act 17 of 2011 Violates S.C. Constitution Article III, § 34.

Act 17 violates Article III, § 34's restriction on special legislation: "The General Assembly . . . shall not enact local or special laws. . . . IX. . . . Where a general law can be made applicable, no special law shall be enacted . . . ." S.C. Constitution, Article III, § 34. Act 17 fails to state any reason why a general law could not address those matters.

The Supreme Court explained the effect of Article III, § 34.

> Article III, § 34(IX) prohibits the enactment of a special law "where a general law can be made applicable." This provision ***not only*** limits special legislation where existing general law is ***already applicable***, but also ***where it is possible*** to create general law which would be applicable. *Duke Power Co. v. South Carolina Public Service Commission*, 284 S.C. 81, 326 S.E.2d 395 (1985); *Seaborne v. Hartsville Rescue Squad*, 269 S.C. 386, 237 S.E.2d 496 (1977).
>
> Article III, § 34 (IX), however, does not prohibit all special legislation.
>
> . . . There must, however, be a ***substantial distinction*** having reference to the subject matter of the proposed legislation, between the objects or places embraced in such legislation and the objects and places excluded. The ***marks of distinction*** upon which the classification is founded must be such, in the nature of things, as will in some reasonable degree, at least, ***account for or justify the restriction*** of the legislation.
>
> *Duke Power Co.*, 284 S.C. at 90, 326 S.E.2d at 400-401 (1985) [quoting *Shillito v. City of Spartanburg*, 214 S.C. 11, 20, 51 S.E.2d 95, 98 (1948)]. In other words, the General Assembly must have a "logical basis and sound reason" for resorting to special legislation. *Gillespie v. Pickens County*, 197 S.C. 217, 14 S.E.2d 900 (1941).

Horry County v. Horry County Higher Educ. Com 'n, 306 S.C. 416, 418-19, 412 S.E.2d 421, 423 (1991) (emphasis added). The Act suggests no "marks of distinction upon which the classification is founded . . . as will . . . account for or justify . . . the legislation" related to Richland County *Id.* Act 17 contains no indication of anything unique related to Richland County justifying this special and single county legislation. In Act 17, the General Assembly offered no "logical basis and sound reason" its creation and enactment. Act 17 constitutes an unconstitutional local or special law, where a general

law was ***already*** applicable. It creates a special exception for Richland County, and it thereby violates S.C. Constitution Article III, § 34.

South Carolina recognizes a limited exception to Article III, § 34 when the legislation furthers the purposes of Home Rule by devolving the power away from the legislature to a county. However, Act 17 of 2011 does not qualify for this exception. It imposes the General Assembly and its members into the governance of the County elections, contrary to the letter and spirit of Home Rule. Furthermore, when the power is to be devolved from the legislature to the county, it should be devolved statewide and not on a county-by-county, piecemeal basis. *Hamm v. Cromer*, 305 S.C. 305, 408 S.E.2d 227 (1991); *Davis v. Richland County Council*, 372 S.C. 497, 642 S.E.2d 740 (2007). Act 17 of 2011 contravenes Home Rule and is unconstitutional.

WHEREFORE, the Court:

1. Declares that Act 17 of 2011 violates S.C. Constitution Article VIII, § 7 and Article III, § 34, and is therefore invalid;
2. Withholds ruling on Plaintiffs' requests for costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff., until after Plaintiffs file an appropriate motion, supported by affidavit of counsel.

SO ORDERED, this 26 day of August, 2013.

G. Thomas Cooper
Circuit Judge Presiding