

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Edward D. Sloan, Jr., individually, and on)
behalf of all others similarly situated, and)
NOLAS Trading Co., Inc.,)
Plaintiffs,)
)
v.)
)
Clemson University, and its Life Trustees)
E. Smyth McKissick III, David E. Dukes,)
Cheri M. Phyfer, Mark S. Richardson,)
William "Bill" C. Smith, Jr., Kim)
Wilkerson, and David H. Wilkins,)
Defendants.)
_____)

IN THE CIRCUIT COURT
CASE NO: 2020-CP-23-00_____

SUMMONS

To the Defendants:

You are hereby summoned and required to serve upon the attorney at the address below an Answer to the attached Complaint within 30 days of the date of service hereof. If you fail to do so, judgment by default will be entered against you for the relief demanded in the Complaint.

Respectfully submitted,
THE CARPENTER LAW FIRM, PC

/s/ James G. Carpenter
S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
(864) 235-1269
Attorney for the Plaintiffs

July 1, 2020

STATE OF SOUTH CAROLINA)
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 COUNTY OF GREENVILLE)
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 Edward D. Sloan, Jr., individually, and on)
 behalf of all others similarly situated, and)
 NOLAS Trading Co., Inc.,)
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**COMPLAINT FOR
 DECLARATORY JUDGMENT
 AND INJUNCTIVE RELIEF**

NOW COME the Plaintiffs, by their undersigned attorney, and as a Complaint against the Defendants, would show unto the Court:

1. Plaintiff Edward D. Sloan, Jr., is a citizen, resident, taxpayer, and registered elector of the State of South Carolina. He brings this action individually and on behalf of all others similarly situated.
2. Plaintiff NOLAS Trading Co., Inc., ("NOLAS") is a corporation organized and existing under the laws of the State of South Carolina and a South Carolina taxpayer.
3. Defendant Clemson University is a South Carolina public university funded with more than \$123 million in State public funds in fiscal year 2018, and more than \$136 million in fiscal year 2019.
4. The individual defendants are "Life Trustees" of Clemson University. They are named as Defendants in their official capacities.
5. Plaintiffs and one or more Defendants reside in Greenville County; accordingly, venue in appropriately placed in Greenville County.

6. This Court possesses jurisdiction under S.C. Constitution, Art. VI, § 1 and Art. XVII, under S.C. Code Ann. § 15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act, and under the following decisions, which address public interest and taxpayer standing: *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017); *South Carolina Public Interest Foundation v. Lucas* , 416 S.C. 269, 786 S.E.2d 124 (2016); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), *Sloan v Friends of the Hunley*, 393 S.C. 152, 711 S.E.2d 895 (2011), *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. Richland 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).
7. This action raises Constitutional issues of great public importance, and Plaintiffs ask the Court to grant them standing based upon the great public importance of the issues this action raises.

8. The will of Thomas G. Clemson established Clemson University and provided for seven Life Trustees, who constitute a majority of Clemson University's 13-member Board of Trustees. The will provides that each Life Trustee will serve for his lifetime, and that the Life Trustees are a self-perpetuating group. When one Life Trustee dies or resigns, the remaining Life Trustees nominate and elect a replacement.
9. The Act of Acceptance dated November 27, 1889, accepted the terms of Mr. Clemson's will. It is recorded at Statutes of South Carolina, Vol. XX, p. 277.
10. The tenures and terms of Life Trustees violate the South Carolina Constitution. "No person may be elected or appointed to office in this State for life or during good behavior, but the terms of all officers must be for some specified period except officers in the militia." S.C. Constitution, Art. VI, § 1.
11. "No person shall be elected or appointed to office in this State for life or during good behavior, but the terms of all officers shall be for some specified period, except Notaries Public and officers in the Militia." S.C. Constitution, Art. XVII, §1B.
12. Clemson's Life Trustees are "officers." "Public officers" include "trustees of the various colleges of the State." S.C. Code Ann § 8-1-10.
13. Since 1895, the Life Trustees have held office in violation of the South Carolina Constitution. In recent years, the Board has overseen the expenditure of more than \$100 million a year of taxpayer funds.
14. South Carolina appellate courts have not ruled on the constitutionality of the Clemson University Life Trustees serving for a term that is not "some specified period."

WHEREFORE, Plaintiffs pray the Court to:

1. Declare that the parts of the Acceptance Act accepting and authorizing the Life Trustees are incompatible with S.C. Constitution, Art. VI, § 1, and Art. XVII, §1B, are invalid, null and void;
2. Declare that each individual defendant is holding office as a Clemson University Life Trustee in violation of S.C. Constitution, Art. VI, § 1 and Art. XVII, §1B;
3. Enjoin or terminate the service of each individual Defendant as a Clemson University Life Trustee;
4. Enjoin any election or appointment of any Clemson University Life Trustees, in violation of S.C. Constitution, Art. VI, § 1 and Art. XVII, § 1B;
5. Grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff.; and
6. Grant Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, PC

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