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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2011-CP-40-7854

Appellate Case No. 2012-21-2125

John S. Rainey .....Appellant,

v.

Nimrata "Nikki" R. Haley .....Respondent.

BRIEF OF APPELLANT

Richard A. Harpootlian  
Graham L. Newman  
M. David Scott  
Christopher P. Kenney  
RICHARD A. HARPOOTLIAN, P.A.  
1410 Laurel Street  
Post Office Box 1090  
Columbia, South Carolina 29202  
Telephone (803) 252-4848  
Facsimile (803) 252-4810

ATTORNEYS FOR JOHN S. RAINEY, APPELLANT

Columbia, South Carolina  
November 28, 2012

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## STATEMENT OF ISSUES ON APPEAL

- I. Whether courts have subject matter jurisdiction to render declaratory judgments about whether regulated conduct by a member of the General Assembly violates the Ethics Act?
  
- II. Whether a citizen has standing to seek declaratory relief as to whether conduct by a public official violates the Ethics Act where an answer to that question will provide future guidance in a matter of great public importance?

## STATEMENT OF THE CASE

This is an appeal from the circuit court's March 21, 2012, order granting Respondent's motion to dismiss for failure to state a claim. On November 17, 2011, Appellant filed suit in the circuit court asking the court to decide a matter of great public importance pursuant to that court's jurisdiction under the Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10 et seq. Appellant sought a declaration whether Respondent Nimrata "Nikki" R. Haley ("Respondent" or "Haley") violated the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 (hereinafter "Ethics Act") while serving as a member of the South Carolina House of Representatives ("House").

Specifically, the complaint asked for a declaration whether Respondent violated the law by (1) lobbying a state agency in violation of S.C. Code Ann. § 2-17-15(A) (Supp. 2011); (2) failing to disclose that her reason for recusing herself from voting on legislation was because the legislation's beneficiary was secretly paying her, in violation of S.C. Code Ann. § 8-13-700(B) (Supp. 2010);<sup>1</sup> (3) failing to abstain from a vote authorizing payment of public money to a corporation paying her, in violation of S.C. Code Ann. § 8-13-700(A) (Supp. 2010); (4) soliciting money from registered lobbyists and lobbyists' principals for the benefit of her employer, in violation of the same code section; and (5) concealing all of this activity by making false and incomplete public disclosures required by the Ethics Act, in violation of S.C. Code Ann. § 16-9-10(A)(2) (Supp. 2011).

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<sup>1</sup> The 2011 amendment to this section does not apply to the allegations in this case.

On December 19, 2011, Respondent contemporaneously filed a motion to dismiss in the circuit court and a petition for a writ of prohibition in the South Carolina Supreme Court. On January 25, 2012, the Supreme Court denied Respondent's petition.

On March 12, 2012, Circuit Court Judge Casey L. Manning held a hearing on Respondent's motion to dismiss challenging the circuit court's subject matter jurisdiction and Appellant's standing. On March 21, 2012, Judge Manning issued an Order holding the circuit court lacked subject matter jurisdiction and Appellant lacked standing. The same day, Appellant filed a motion to reconsider pursuant to Rule 59(e), SCRPC. That motion was denied. Appellant filed a timely notice of intent to appeal with this Court and served the notice on April 10, 2012.



## FACTS OF THE CASE

Appellant's complaint alleges that while serving as a member of the state House, Respondent was paid by two corporations with special interests pending before South Carolina government. After these corporations paid Respondent, their matters of pecuniary interest received favorable resolution. Respondent concealed the full extent of her business association with these companies by making incomplete and inaccurate public disclosures that, if done properly, would have provided the public notice of the full extent of the relationship between Respondent and these special interests.

Respondent was elected to the House in 2004. She was reelected twice and served as a member of the House until 2010, when she was elected Governor. From approximately 2007 until 2009, Respondent was employed by Wilbur Smith and Associates ("WSA"). (R. p. 39, ¶ 6). WSA is an engineering firm with contracts with the state of South Carolina and her agencies that pay WSA significant public monies. (R. p. 39, ¶ 7). Between 2005 and 2007, one of these contracts, the contract to relocate the State Farmers Market, was subject to serious debate due to delays, cost overruns, and a legislative dispute over the project's location. (R. pp. 39-40, ¶ 8). While Respondent was secretly being paid by WSA to do work that has never been fully explained, two votes authorizing the payment of public money related to the State Farmers Market project came before the House. On the first vote, Respondent abstained from voting, but failed to "prepare a written statement describing the matter requiring action or decisions and the nature of [her] potential conflict of interest with respect to the action or decision." (R. pp. 46-47, ¶¶ 41-44 (quoting S.C. Code Ann. § 8-13-700(B)(1))). Instead, Respondent filed a

statement that gave no indication of her conflict. Her relationship with WSA was unknown to the public at that time and remained unknown for two more years.

The second vote authorized the Department of Agriculture to settle the WSA dispute and pay any money owed. (R. pp. 48-49, ¶¶ 50-52). Respondent voted to authorize this public expenditure without making any disclosure of her secret business relationship with WSA. (R. pp. 48-49, ¶¶ 50-52). Pursuant to this legislative authorization, the Department of Agriculture entered into a settlement agreement with WSA resolving the dispute over excessive fees and allowing WSA to keep millions of dollars in public monies already paid to the company with little to show for the project. (R. pp. 48-49, ¶¶ 50-52). A public official is prohibited from using her office to obtain an economic benefit for a business with which she is associated. S.C. Code Ann. § 8-13-700(A).

Respondent's secret WSA work was only disclosed to the public in 2010 pursuant to public news reports about Respondent's income tax filings. (R. p. 40, ¶ 9). The public never received any explanation of the services Respondent, a bookkeeper by training, provided to the engineering firm. WSA's Director of Southeast Development offered the only explanation of this business relationship, saying Respondent was hired because she had "good contacts" and was "a very connected woman." (R. p. 40, ¶ 9; pp. 59-60).

The second corporation also had special interests before South Carolina government when it put Respondent on its payroll. The Lexington Medical Center ("LMC") is a public hospital that was struggling to obtain a Certificate of Need ("CON") from the Department of Health and Environmental Control ("DHEC") that would allow it to build a new open-heart surgery center. (R. p. 41, ¶ 13). LMC was already refused a

CON once and was pursuing administrative, legislative, and judicial strategies to obtain approval when LMC hired Respondent in 2008. Under the pretense of working for LMC's charitable foundation, Respondent lobbied for the CON. Respondent's conduct is best described in her own words. LMC's CEO emailed Respondent to ask about a DHEC heart center meeting. She wrote in reply:

*It went fine. We have some work to do not only to switch votes but to hold the ones we have. We are as close as we are going to get and can't afford to leave one stone unturned. We were all given assignments and are working on them. Fingers crossed!*

(R. p. 55, ¶ 77; p. 195 (emphasis added)). Respondent also conducted regular meetings with LMC's lobbyists, lawyers, and executives charged with obtaining CON approval. (R. pp. 55-56, ¶¶ 78, 80). A lobbyist is "[a]ny person who is employed by another person to influence by direct communication with public officials or public employees ... the vote of any public official on any state agency, board, or commission concerning any covered agency actions...." S.C. Code Ann. § 2-17-10(13) (Supp. 2011). Members of the General Assembly are prohibited from being lobbyists. S.C. Code Ann. § 2-17-15(A).

As the employee of a lobbyist-principal, Respondent was also required to disclose her business association with LMC's registered lobbyists. S.C. Code Ann. § 8-13-1120(A)(7)(b) (Supp. 2011). This required disclosure informs the public of which lobbyists and legislators have shared interests by virtue of their common employer. Instead of disclosing this business association, Respondent concealed it by inaccurately claiming she was employed by LMC's Foundation. (R. pp. 42-45, ¶¶ 19-38).

While Respondent did raise money for LMC's charitable foundation, she was raising it at the Statehouse, during the legislative session, from registered lobbyists with interests before the House. (R. pp. 49-53, ¶¶ 56-69). Legislators may not solicit or receive

anything of value in return for being influenced in the discharge of official duties, S.C. Code Ann. § 8-13-705(B) (Supp. 2011), nor can a legislator use her office for the financial benefit of herself or an associated business. S.C. Code Ann. § 8-13-700(A). Respondent did both, using the influence of her office to solicit and obtain money used to pay for patient treatment at LMC, an associated business.

Upon learning of some of the facts alleged here through public news reports, Appellant, a private citizen, made an investigation and obtained a substantial number of documents pursuant to the South Carolina Freedom of Information Act. He subsequently filed this suit seeking a declaration as to whether this alleged conduct violates the Ethics Act.

## ARGUMENT

**I. The Circuit Court erred by holding it lacked subject matter jurisdiction to issue a declaratory judgment addressing whether a House member's conduct violated the Ethics Act.**

The circuit court's dismissal of Appellant's case is predicated on a misconstruction of the Ethics Act and is contradicted by the code sections cited in support of its holding. In holding that it lacked subject matter jurisdiction, the circuit court held that "[a]lleged violations of the Ethics Code ... are *exclusively* within the subject matter jurisdiction of the State Ethics Commission or the Legislative Ethics Committees, not the circuit court." (R. p. 25 (emphasis added)). In support of this conclusion, the court cites S.C. Code Sections 8-13-320 and -530, which explicitly provide for judicial review of Ethics Act complaints during the 50-day pre-election period. This contradiction demonstrates the erroneous application of the Ethics Act by the circuit court and requires reversal.

Subject matter jurisdiction is the power of the court to hear the type of case in which the proceeding in question belongs. Dove v. Gold Kist, Inc., 314 S.C. 235, 237–38, 442 S.E.2d 598, 600 (1994). Absent a limitation imposed by the General Assembly, circuit courts have subject matter jurisdiction over all civil and criminal actions. Id. at 238, 442 S.E.2d at 600; see also S.C. Const. art. V, § 1. The circuit court's holding requires reversal because it is directly at odds with binding, established precedents recognizing subject matter jurisdiction over the Ethics Act. The circuit court's holding also assumes that the General Assembly intended to intrude on the judiciary's mandate to declare what the law is even though the plain language of the Ethics Act and any reasonable construction of the Act require the opposite conclusion. Finally, in accepting

Respondent's characterization of this case as a "criminal prosecution," the circuit court's order is at odds with itself since, under this mischaracterization of the case, even the state Ethics Commission and legislative Ethics Committees would be unable to hear this case. These forums provide civil enforcement of the Ethics Act, no different from the judicial declaration sought here. For the reasons set forth herein, this Court should hold that the judiciary has subject matter jurisdiction over declaratory actions brought pursuant to the Ethics Act and reverse the circuit court's dismissal.

**A. The circuit court overlooked precedent providing it subject matter jurisdiction over the Ethics Act.**

In concluding that the Ethics Act is "exclusively within the subject matter jurisdiction of the State Ethics Commission or the Legislative Ethics Committees, not the circuit court," the circuit court overlooked precedent recognizing the judiciary's subject matter jurisdiction in disputes applying the Ethics Act to the conduct of persons regulated by the Act. Overlooking this binding precedent led the circuit court to erroneously conclude it lacked subject matter jurisdiction over an Act that our courts have regularly enforced. This error requires reversal.

Baird v. Charleston County is directly on point. 333 S.C. 519, 511 S.E.2d 69 (1999). In Baird, a group of citizens opposed Charleston County's issuance of public bonds to fund an MUSC expansion. 333 S.C. at 524-25, 511 S.E.2d at 72. After the county council passed the bond ordinance, plaintiffs sued seeking declaratory relief that the bond ordinance was an *ultra vires* act by the county. Id. Plaintiffs claimed that the bond issue was an illegal act because one of the members of county council violated the Ethics Act by casting a self-interested vote because he was an MUSC employee. Id. at 533-34, 511 S.E.2d at 77. Prior to the vote, the state Ethics Commission issued an

informal opinion that S.C. Code Section 8-13-700(B) prohibited the conflicted official from casting a vote on the bond issue. Id. This same code section is at issue in this case. The county official ignored the opinion and cast the tie-breaking vote in favor of the bond. Id. The circuit court in Baird granted summary judgment for the county, concluding, in relevant part, that “the court does not have jurisdiction to review the conflict of interest claim.” Id. at 534-35, 511 S.E.2d at 77. The Supreme Court disagreed and held that our courts have power to declare whether a violation of the Ethics Act has occurred. Id. The Court remanded the case to the circuit court to decide whether the county official had violated the Act. Id.

Not only did the Baird Court reverse the circuit court’s conclusion that it lacked subject matter jurisdiction, but the Supreme Court held that a court applying the Ethics Act was not limited to the remedies enumerated in the Act. Baird, 333 S.C. at 535, 511 S.E.2d at 77. This meant the circuit court could invalidate the bond ordinance vote if it found that the public official violated the Ethics Act by casting a conflicted tie-breaking vote. Id. (“There is no direct authority which prevents this Court from invalidating a bond ordinance based upon a violation of the State Ethics Act.”). The Court explained that the remedies prescribed by the Ethics Act are “*in addition* to all other civil and administrative remedies against public officials, public members, or public employees which are provided by law,” and thus, “*are not exclusive.*” Id. at 535, n.12, 511 S.E.2d at 77, n.12 (quoting S.C. Code Ann. § 8-13-780(A)) (quotations omitted and emphasis added). Despite this direction by the Supreme Court in Baird, the circuit court here concluded that the state Ethics Commission and legislative Ethics Committees are the only entities capable of exercising jurisdiction over the Ethics Act. (R. p. 25).

The Supreme Court also exercised subject matter jurisdiction over an action involving the Ethics Act in Sanford v. S.C. State Ethics Comm'n, 385 S.C. 483, 497, 685 S.E.2d 600, 607 (2009), opinion clarified, 386 S.C. 274, 688 S.E.2d 120 (2009). In Sanford, a governor subject to a state Ethics Commission investigation sought to enforce the confidentiality of the ethics proceeding after making a full and knowing waiver, in writing, of his right to confidentiality. Id. at 496-97, 685 S.E.2d at 607. The governor asked the Supreme Court to issue a writ of mandamus to enforce the provisions of S.C. Code Section 8-13-320(g). While the Supreme Court's subject matter jurisdiction over the Ethics Act was never challenged, the Court presumably found it had subject matter jurisdiction since subject matter jurisdiction cannot be waived by consent of the parties. In re November 4, 2008 Bluffton Town Council Election, 385 S.C. 632, 637, 686 S.E.2d 683, 685-86 (2009). Furthermore, as a threshold matter, the Court was required to raise the lack of subject matter jurisdiction *sua sponte* if it believed it lacked power to decide questions under the Ethics Act. Id.; Town of Hilton Head Island v. Godwin, 370 S.C. 221, 223, 634 S.E.2d 59, 60-61 (Ct. App. 2006) ("appellate court must always take notice of the lack of subject matter jurisdiction.").

Like Baird and Sanford, the instant case asked the circuit court to exercise subject matter jurisdiction over whether the conduct of a public official violated the Ethics Act. Appellant is unaware of *any* court that has held it lacked subject matter jurisdiction over the Ethics Act. See e.g., Gaffney Ledger v. S.C. Ethics Comm'n, 360 S.C. 107, 110, 600 S.E.2d 540, 541 (2004) (deciding whether the newspaper violated the confidentiality requirement of the Ethics Act); S.C. Coastal Council v. S.C. State Ethics Comm'n, 306 S.C. 41, 410 S.E.2d 245 (1991) (deciding whether Ethics Act prohibited individuals from



serving on council that regulated environmental activity); see also Shah v. Richland Memorial Hosp., 350 S.C. 139, 564 S.E.2d 681 (Ct. App. 2002) (failing to reach Ethics Act issue as moot, but not for lack of subject matter jurisdiction). In light of the established precedents controlling subject matter jurisdiction over the Ethics Act, this Court should reverse the circuit court's order.

**B. The circuit court unnecessarily construed the Ethics Act and adopted a construction contrary to the express text, any reasonable reading of the statute, and established precedent of higher courts.**

The circuit court's conclusion that Ethics Act violations "are exclusively within the subject matter jurisdiction of the State Ethics Commission or the Legislative Ethics Committees, not the circuit court," (R. p. 25), relies on inapplicable portions of the statute in order to reach a conclusion contrary to a plain reading of the Act and the interpretation of all other courts considering similar issues. The circuit court's errors are three fold.

First, the circuit court's order relies on an inapplicable portion of the Ethics Act in support of its holding. The Ethics Act establishes three bodies to provide oversight of public officials and other persons subject to the Act. Most public officials, including municipal, county and constitutional officials, are subject to the jurisdiction of the State Ethics Commission. S.C. Code Ann. § 8-13-320(9). Members of the General Assembly are not subject to the jurisdiction of the State Ethics Commission. Id. ("except members or staff, including staff elected to serve as officers or candidates for the General Assembly unless otherwise provided for under House and Senate rules."). Members of the House and Senate are subject to oversight by the Ethics Committees in their respective chambers. S.C. Code Ann. § 8-13-530. The Supreme Court has applied the express language of these sections to deny the state Ethics Commission subject matter

jurisdiction over members of the legislature. Ford v. State Ethics Comm'n, 344 S.C. 642, 644, 545 S.E.2d 821, 822 (2001) (commission lacked jurisdiction over state Senator's conduct).

In spite of the unambiguous language of the Ethics Act, the circuit court mistakenly relied on a section of the Act that solely concerns the state Ethics Commission and the public officials regulated by that agency to conclude that those sections strip circuit courts of subject matter jurisdiction. (R. pp. 25-26 (citing S.C. Code Ann. § 8-13-320(9))). While the circuit court concluded that this section creates "an administrative process" that is "comprehensive and leaves no role for the circuit court," (R. p. 26), this so-called comprehensive administrative procedure is inapplicable in this case. In this case, the House Ethics Committee shares concurrent jurisdiction with South Carolina courts over the Ethics Act. See S.C. Code Ann. §§ 8-13-530, et seq.

Second, the circuit court's order is predicated on the notion that in giving the House Ethics Committee jurisdiction to receive complaints, the General Assembly also removed jurisdiction from South Carolina courts to hear any matter arising from the Ethics Act. While the General Assembly has chosen to confer exclusive subject matter jurisdiction to some administrative tribunals, the House Ethics Committee is not one of them.

"In determining whether the Legislature has given another entity exclusive jurisdiction over a case, a court must look to the relevant statute." Dema v. Tenet Physician Services-Hilton Head, Inc., 383 S.C. 115, 121, 678 S.E.2d 430, 433 (2009). The explicit language of the Ethics Act fails to divest jurisdiction from any court. In attempting to give a statute the meaning intended by the legislature our courts begin with

the plain meaning of the statute. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where the meaning of the statute is clear on its face, a court need not go any further to ascertain the legislature's intent. Id. In the present case, the code sections establishing the power of the House Ethics Committee contain no express jurisdiction-stripping provisions preventing the circuit court from exercising concurrent jurisdiction. See S.C. Code Ann. §§ 8-13-530 to -540.

Had the General Assembly intended to deny courts subject matter jurisdiction over the Ethics Act, it knew how to effectuate its intent. See Hodges, 341 S.C. at 87, 533 S.E.2d at 582. In other instances where the General Assembly has stripped jurisdiction from this state's courts, it has done so expressly and with clear statutory direction. E.g., S.C. Code Ann. § 42-1-540 (1976) ("rights and remedies granted by [Workers' Compensation Act] ... shall exclude all other rights and remedies of such employee"); S.C. Code Ann. § 44-7-140 (Supp. 2008) ("[DHEC] is designated the sole state agency for control and administration of the granting of Certificates of Need and licensure of health facilities and other activities necessary to be carried out under this article."). Despite these rules of statutory construction, the circuit court's order confuses the mere existence of a grievance procedure in the House as the intent of the General Assembly to preempt all judicial review of the Ethics Act. See (R. pp. 25-26). No court has ever reached this conclusion.

Third, a careful construction of the statutes support the opposite conclusion reached by the circuit court: that instead of limiting the jurisdiction of courts, the Ethics Act actually limits the jurisdiction of the House Ethics Committee to decide grievances. The circuit court concluded that:

The only exemption to the circuit court's lack of jurisdiction occurs when a complaint is filed within fifty days of an election in which the defendant is a candidate. Only then can circuit courts address these types of allegations, and they must do so on an expedited basis.

(R. p. 26, n.1 (citing S.C. Code Ann. §§ 8-13-320(9)(b)(1) and -530(4))).<sup>2</sup> An accurate reading of these code sections should lead this Court to the opposite conclusion. S.C. Code Section 8-13-530(4) states:

No complaint may be accepted by the [House or Senate] ethics committee concerning a member of or candidate for the appropriate house during the fifty-day period before an election in which the member or candidate is a candidate. During this fifty-day period, any person may petition the court of common pleas alleging the violations complained of and praying for appropriate relief by way of mandamus or injunction, or both. Within ten days, a rule to show cause hearing must be held, and the court must either dismiss the petition or direct that a mandamus order or injunction, or both, be issued.

(emphasis added); see also S.C. Code Ann. § 8-13-320(9)(b)(1) (similar provision applying to state Ethics Commission).

The plain language of this statute has the opposite effect that the circuit court concludes it has: this section removes jurisdiction from the legislative Ethics Committees (and state Ethics Commission) immediately before an election. Courts remain an available forum to resolve Ethics Act violations and are *the exclusive forum* for such actions during the 50 days before an election. The statute's text further supports this inference because it instructs courts that, "[a] violation of this chapter by a candidate during this fifty-day period must be considered to be an irreparable injury for which no adequate remedy at law exists." Id.

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<sup>2</sup> The circuit court's order is at odds with itself since it definitively claims that Ethics Act violations are "exclusively" within the jurisdiction of the state Ethics Commission and legislative Ethics Committees while also acknowledging that this jurisdiction is not actually "exclusive."

**II. The circuit court erred in concluding that Appellant lacked standing in a civil action raising a matter of great public importance where its resolution will provide necessary future guidance.**

Citizens have standing to seek declaratory relief in matters of great public importance where a judicial decision will provide necessary future guidance. ATC South, Inc. v. Charleston County, 380 S.C. 191, 669 S.E.2d 337 (2008). In spite of this well-established rule the circuit court misunderstood Appellant's claim and ignored a substantial body of South Carolina standing jurisprudence that provides citizens "access to the judicial process to address alleged injustices." Sloan v. Sanford, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004). The circuit court's failure to recognize the public importance exception in this case is reversible error.

**A. Public corruption is a matter of great public importance that justifies relaxed standing to allow citizens access to our courts.**

While a litigant is usually required to have a personal stake in the subject matter of the litigation, South Carolina's standing doctrine is not inflexible. Id.; Sloan v. Greenville County, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003). Consequently, our courts have recognized a "public importance" exception where there is an issue of "great public importance" that requires resolution in order to provide future guidance. ATC South, 380 S.C. at 195-200, 669 S.E.2d at 339-42. In public importance cases, no personal stake in the litigation is necessary because all members of the public share an interest in the resolution of the case. Id. at 199-200, 669 S.E.2d at 341-42 (there was nothing "public" to justify relaxed standing where plaintiff challenged zoning decision solely to disadvantage a competitor). Appellant asserts standing squarely within this well-

established exception. As explained below, this case meets both prongs of the public importance analysis.

This case meets the great public importance prong because Appellant seeks a declaration whether a public official violated the Ethics Act by trading on the influence of her office for her personal benefit and the benefit of corporations with pecuniary interests before South Carolina government. The express purpose of the Ethics Act, as explained by the preamble, includes “fostering of public trust and confidence in government, and the promotion of the integrity of government through openness.” State v. Thrift, 312 S.C. 282, 305-06, 440 S.E.2d 341, 354 (1994). The Act recognizes the need to make public officials “more accountable [...] [s]ince many public officials serve on a part-time basis, [and] it is inevitable that conflicts of interest and appearances of impropriety will occur.” Ethics Act, Act 248, 1991 S.C. Acts 1578. In light of this potential for abuse of the public trust, the Ethics Act establishes limits on a public official’s conduct and mandatory public disclosures to ensure that “those who represent the people of this State [are] certain that it is the interests of the people, and not their own, that are being served.” Id. By any definition, ensuring that public officials do not violate the Ethics Act by using their office for personal gain is a matter of great public importance. As such, this Court need look no further than the express purpose of the General Assembly in adopting the Ethics Act when concluding that this case meets the public importance prong.

A review of other public importance exception cases should also support the conclusion that Appellant has standing in this case. First, illegal acts by a public official are indisputably a matter of great public importance. Baird, 333 S.C. at 531, 511 S.E.2d at 75. Beyond this general rule, courts have resisted a formulaic approach to discerning

what constitutes a matter of “great public importance,” and have either looked to the underlying law at issue in the case or adopted a comparative approach. For example, in Baird, the Court looked to the magnitude of the public’s interest as articulated by the statute authorizing the issuance of hospital bonds. Id. “[T]he express purpose of the [public bond act] is to promote the public health and welfare.” Id. The Court reasoned that, “it is hard to conceive of any greater societal interest than this one,” and therefore the case was of great public importance. Id. (citation omitted).

The Court has also employed a comparative approach to discern what constitutes a matter of great public importance. For example, in Sloan v. Sanford, a private citizen sought a declaratory judgment that the governor was ineligible to serve under the South Carolina Constitution because he held an officer’s commission in the United States Air Force Reserves. The Court agreed that the case was of great public importance but did not apply a bright-line rule, opting instead to compare it to Baird. The Court reasoned that the governor’s eligibility to serve was “at least as important as the proper funding for a clinical hospital for MUSC.” Sloan v. Sanford, 357 S.C. at 434, 593 S.E.2d at 472.

The exception has also been applied where a citizen challenged legislative action. In Sloan v. Wilkins, the Supreme Court held a citizen had standing to seek a declaration that the General Assembly had unconstitutionally violated the one-subject rule in passing an act. 362 S.C. 430, 608 S.E.2d 579 (2005), abrogated by, American Petroleum Institute v. S.C. Dep’t. of Revenue, 382 S.C. 572, 677 S.E.2d 16 (2009). In Wilkins, the Court justified standing by merely citing its recent precedent. Wilkins, 362 S.C. at 436-37, 608 S.E.2d at 583. A private citizen also had standing to sue to enforce laws designed to protect the expenditure of public funds. See Greenville County, 356 S.C. at 550, 590

S.E.2d at 348 (“The expenditure of public funds pursuant to a competitive bidding statute is of immense public importance.”); see also Sloan v. Sch. Dist. of Greenville County, 342 S.C. 515, 521, 537 S.E.2d 299, 302 (2000) (plaintiff had taxpayer standing because “municipal competitive bidding laws are enacted to guard against such evils as favoritism, fraud or corruption....”).

This case is arguably more important than *any* of the previously cited cases for the purpose of applying the public importance exception to allow relaxed standing. Appellant’s complaint is a detailed 25-page narrative setting forth very specific allegations of how one public official violated the Ethics Act by illegally lobbying; failing to abstain from conflicted votes; trading on the influence of her office to raise money to benefit the corporation paying her; and failing to disclose a conflict of interest and associations with lobbyists. This narrative is supported by 120 pages of evidence, including direct evidence written in Respondent’s own words, describing the work she was doing, unbeknownst to the public. This conduct reaches the core of the public’s ability to rely on their public officials to provide honest service. Appellant contends there is no greater matter of public importance.

**B. Resolution of this case is necessary to provide future guidance.**

This case also meets the second prong of the public importance exception because a judicial declaration as to whether the alleged conduct violates the Ethics Act will provide critical future guidance to the public and public officials. The key to public importance analysis is whether resolution of the case is necessary to provide this future guidance. ATC South, 380 S.C. at 198, 669 S.E.2d at 341. Courts have also resisted a “formulaic approach” to this prong of the analysis as well. Id. at 199, 669 S.E.2d at 341.



Instead courts have balanced the public's need for access to the judiciary to redress injustices with the need to protect public officials and the judicial department from being overwhelmed by frivolous lawsuits. Sloan v. Sanford, 357 S.C. at 434, 593 S.E.2d at 472. Here there is nothing frivolous where the alleged misconduct—influencing a state agency by holding and switching votes—is described in Respondent's own words.

However, the need for future guidance by the courts is the essential element that elevates an otherwise private grievance to the level of public importance. ATC South, 380 S.C. at 199, 669 S.E.2d at 341; see also, Baird, 333 S.C. at 531, 511 S.E.2d at 75. Appellant is unaware of any case involving a member of the legislature lobbying an administrative agency on behalf of her employer; or deciding whether a member who fails to fully disclose a self-interested vote has violated the Ethics Act disclosure requirement; or whether a member being paid by a corporation can vote on legislation that authorizes public funds to be paid to that corporation; or whether a member can solicit registered lobbyists for contributions to her employer. Since there are no prior adjudications on similar facts, a “[r]esolution of this issue will likely have an impact on government practices beyond the confines of [this] case itself.” Greenville County, 356 S.C. at 551, 590 S.E.2d at 349.

Future guidance also is urgently needed according to Respondent's now-leading argument in defense of these allegations. Following the circuit court's dismissal, Appellant filed a complaint with the House Ethics Committee. Appellant's complaint with the Committee was identical to the circuit court complaint in this case. Appellant

asks this Court to take judicial notice of Respondent's response filed with the Committee.<sup>3</sup> Respondent argues:

Despite the rhetoric, the complaint does not identify a single wrong committed by Governor Haley. *Indeed, Governor Haley's business activities and conduct are commonplace in the Legislature* and were always consistent with the law. To find otherwise would not only impugn the integrity of many other members of the General Assembly, but also that of many of South Carolina's best corporate partners: BlueCross BlueShield of South Carolina, Michelin, AT&T, Time Warner Cable, and several others.

Haley Mot. Dismiss House Ethics Compl., 2, March 30, 2010 (on file with House Ethics Committee) (emphasis added). In light of the climate in which the Ethics Act was adopted,<sup>4</sup> the General Assembly sought to ensure the "honest and fair" deliberation of public policy "free from all threats, favoritism, undue influence, and all forms of impropriety so that the confidence of the public is not eroded." Ethics Act, Act 248, 1991 S.C. Acts 1578. At a minimum, Respondent's everyone-is-doing-it defense demonstrates the need for a judicial declaration as to the limits on member conduct imposed by the Ethics Act. Alternatively, if Respondent is correct and her business activities are commonplace in the legislature, then there is urgent need of future guidance from our courts.

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<sup>3</sup> While Appellant acknowledges that this filing was not before Judge Manning and therefore is not part of the record in this case, Appellant asks the Court to take judicial notice of this filing pursuant to Rule 201, SCRE. This document is publically available and on record with the House Ethics Committee. Furthermore, its contents are not in dispute making judicial notice appropriate.

<sup>4</sup> See *Thrift*, 312 at 306, n.17, 440 S.E.2d at 354, n.17 (describing "Operation Lost Trust" and the passage of the Ethics Act).

**C. The circuit court's characterization of this case as a criminal proceeding is contrary to the relief requested and the civil enforcement provisions of the Ethics Act.**

The circuit court also erroneously relied on In re Richland County Magistrate's Court and the mischaracterization of this case by Respondent's lawyer in concluding that this case was a criminal prosecution for which Appellant lacked standing. (R. pp. 26-27; p.635, lines 3-22; p. 648, lines 5-9). In re Richland County Magistrate's Court, considered whether a victim of check fraud could prosecute a defendant on behalf of the State. 389 S.C. 408, 412, 699 S.E.2d 161, 163 (2010). That case is inapplicable here where Appellant seeks a civil, declaratory judgment about whether a public official violated the Ethics Act. The circuit court's reliance on In re Richland County Magistrate's Court is in direct conflict with the overwhelming precedent allowing citizens to seek judicial review of public official's conduct pursuant to the Ethics Act. See e.g., Baird, supra. In attempting to distinguish Baird, Respondent's counsel inadvertently helped make the case for Appellant's standing to bring this case. Respondent's lawyer explained to the circuit court that, "the argument [in Baird] was, look, this was a one vote margin that passed this bond bill. *This guy shouldn't have participated because he was conflicted* and [the Baird plaintiffs] challenged on that basis." (R. p. 648, lines 1-4 (emphasis added)). Like Baird, Appellant seeks a declaration as to whether Respondent violated the Ethics Act because of, among other things, her numerous conflicts of interest.

In accepting Respondent's characterization of this case as a "criminal prosecution" the circuit court's order is further at odds with its own reasoning. Accepting, for the sake of argument, the circuit court's conclusion that the state Ethics Commission

or the legislative Ethics Committees have exclusive jurisdiction over Ethics Act complaints and assuming further that this case is properly characterized as a criminal prosecution, then the Respondent's preferred forums to resolve all ethics disputes are themselves constitutionally infirm since they lack fundamental due process protections in criminal cases, not least of all a trial by jury. Consequently, to the extent the circuit court's order held that Appellant lacked standing based on a misapprehension of this case as a criminal prosecution, the order should be reversed.

**D. No other prudential limitations prohibit relaxed standing.**

Future guidance by a court is also appropriate here because the type of public corruption alleged is capable of repetition, yet evades review. This also reaches the question of whether the issues here are moot because Respondent is no longer a member of the House. They are not. Mootness is a prudential limitation on the power of a court that ensures a real case or controversy is before the court and not merely a "hypothetical or abstract dispute." Greenville County, 356 S.C. at 552, 590 S.E.2d at 349 (quotations and citations omitted); see also, Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). Generally, where a court is unable to grant relief, the issue is moot and should be dismissed. Id. However, two of the three exceptions to the mootness doctrine apply here. First, a case is not moot if the injury is capable of repetition yet evading review. Curtis, 345 S.C. at 568, 549 S.E.2d at 596; see also e.g., Sloan v. Dep't of Transp., 365 S.C. 299, 303, 618 S.E.2d 876, 878 (2005). Second, a controversy is not moot if the question is "of imperative and manifest urgency to establish a rule for future conduct in a matter of important public interest." Sloan v. Dep't of Transp., 379 S.C. 160, 168, 666 S.E.2d 236, 240 (2008) ("DOT II"). South Carolina courts applying the public importance standing

exception have rejected mootness challenges under both of these circumstances.<sup>5</sup> In this case, even though Respondent is no longer a member of the General Assembly, the controversy is not moot because the injury is capable of repetition by current or future members. Additionally, a public official could always attempt to thwart judicial review by resigning her office or resigning her employment whenever a similar controversy arose, thus effectively evading review.

This case is also ripe because Appellant is not required to exhaust any available administrative procedure prior to seeking relief from a court. While South Carolina law can require the exhaustion of administrative remedies when an administrative agency is vested with primary jurisdiction, Moore v. Sumter County Council, 300 S.C. 270, 387 S.E.2d 455 (1990), the grievance procedure in the House Ethics Committee is not an “administrative remedy” as defined by the Administrative Procedure Act, S.C. Code Ann. § 1-23-10(1), and therefore need not be exhausted prior to judicial review.<sup>6</sup>

The House Ethics Committee procedure is also incapable of being an “administrative remedy” because it does not comport with the requirements of due process. An administrative remedy must comport with the requirements of due process. Stinney v. Sumter Sch. Dist. 17, 391 S.C. 547, 551, 707 S.E.2d 397, 399 (2011) (statute affording notice, opportunity to be heard, right to counsel, and right to present evidence

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<sup>5</sup> E.g., DOT II, 379 S.C. at 168-69, 666 S.E.2d at 240 (challenge to procurement procedure not moot as *both* capable of repetition yet evading review and decision on issue provided future guidance to the agency).

<sup>6</sup> An “administrative agency” for the purpose of the Administrative Procedure Act, is a “state board, commission, department, executive department or officer, *other than the legislature or the courts*, authorized by law to make regulations or to determine contested cases.” S.C. Code Ann. § 1-23-10(1) (1986) (emphasis added); accord S.C. Code Ann. § 1-23-310(1) (Supp.1997) (agency “means ... other than the legislature or the courts”). Because a legislative committee is not an “administrative agency” it does not provide an administrative remedy subject to the exhaustion requirement.

and question witnesses provided due process). While the Ethics Act authorizes the Committee to conduct an investigation and hold hearings, S.C. Code Ann. § 8-13-540(1), they can be conducted in secret and may never be made public.<sup>7</sup> Id. § 8-13-540(2)-(3). Finally, unlike an administrative remedy which is subject to judicial review upon exhaustion, the House Ethics Committee procedure vests an appeal of the Committee's decision with the full House of Representatives, not the judiciary. Id. § 8-13-540(4). Since this procedure lacks fundamental due process requirements, it cannot be considered an administrative remedy and does not require exhaustion prior to seeking judicial redress.

### **CONCLUSION**

For the aforementioned reasons, the circuit court erred in concluding that it lacked subject matter jurisdiction and that Appellant lacked standing. The circuit court's order should be reversed and the case remanded for proceedings consistent with this Court's Order.

[Signature page follows]

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<sup>7</sup> Since filing this lawsuit, the House has changed its rules to require public disclosure of complaints upon a finding of "probable cause" by the Committee. H. Res. 3445, adopted May 1, 2012.

Respectfully submitted by,



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Richard A. Harpootlian  
Graham L. Newman  
M. David Scott  
Christopher P. Kenney  
RICHARD A. HARPOOTLIAN, P.A.  
1410 Laurel Street  
Post Office Box 1090  
Columbia, South Carolina 29202  
Telephone (803) 252-4848  
Facsimile (803) 252-4810

ATTORNEYS FOR JOHN S. RAINEY, APPELLANT

November 28, 2012  
Columbia, South Carolina

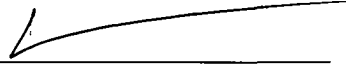
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CERTIFICATE OF COUNSEL

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The undersigned certify that this Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted by:



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Richard A. Harpootlian  
Graham L. Newman  
M. David Scott  
Christopher P. Kenney  
RICHARD A. HARPOOTLIAN, P.A.  
1410 Laurel Street  
Post Office Box 1090  
Columbia, South Carolina 29202  
Telephone (803) 252-4848  
Facsimile (803) 252-4810

ATTORNEYS FOR JOHN S. RAINEY, APPELLANT

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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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Case No. 2011-CP-40-7854

Appellate Case No. 2012-21-2125

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John S. Rainey .....Appellant,

v.

Nimrata "Nikki" R. Haley .....Respondent.

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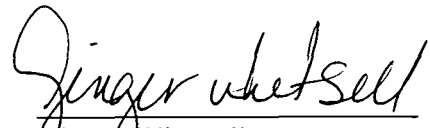
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I, Ginger Whetsell, assistant to the attorney for Appellant John S. Rainey, Richard A. Harpootlian, P.A., with offices at 1410 Laurel Street, Post Office Box 1090, Columbia, South Carolina 29202, certify that on November 28, 2012, served VIA HAND DELIVERY, the following document to the below mentioned person(s):

**Document:** Brief of Appellant.

**Served:** Kevin Hall, Esquire  
kevin.hall@wcsr.com  
Karl "Butch" Smith Bowers, Jr, Esquire  
butch.bowers@wcsr.com  
M. Todd Carroll, Esquire  
todd.carroll@wcsr.com  
Womble Carlyle Sandridge & Rice, LLP  
1727 Hampton Street  
Columbia, SC 29201

  
Ginger Whetsell