

THE STATE OF SOUTH CAROLINA
In The Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Amisub of South Carolina, Inc., AnMed Enterprises, Petitioners,
Inc./HealthSouth, LLC, Georgetown Memorial Hospital,
Hilton Head Health System, L.P., Medical University
Hospital Authority, Piedmont HealthSouth
Rehabilitation, LLC, The Regional Medical Center of
Orangeburg and Calhoun Counties, Trident
NeuroSciences Center, LLC, Waccamaw Community
Hospital, Abbeville Nursing Home, Inc., South Carolina
Hospital Association, and South Carolina Health Care
Association,.....

v.

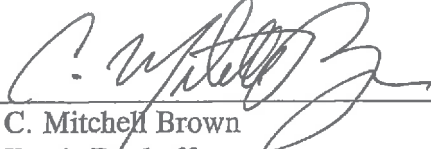
South Carolina Department of Health and Environmental Respondent.
Control,.....

PETITION TO FILE ACTION IN ORIGINAL JURISDICTION

Petitioners, by and through their undersigned counsel, hereby Petition this Court to exercise original jurisdiction over their proposed complaint. Respondent's actions have created great uncertainty for the health care industry in South Carolina and have had negative impact on the public. For the reasons stated therein, the issues raised by Petitioners' proposed complaint are of great importance to the public and should be adjudicated by this Court for the sake of finality and expediency. The questions raised by this matter should not be adjudicated in the first instance by a circuit court because any continued delay will result in unnecessary, material prejudice to Petitioners.

[SIGNATURE PAGES ATTACHED]


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Abbeville Nursing Home, Inc., and the
South Carolina Health Care Association

Columbia, South Carolina
July 18, 2013

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South Carolina Hospital Association

Greenville, South Carolina
July 18, 2013

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Hospital Association, and South Carolina Health Care
Association,.....

v.

South Carolina Department of Health and Environmental Respondent.
Control,.....

VERIFIED COMPLAINT

Petitioners, by and through their undersigned counsel, complaining of
Respondent say:

PARTIES AND JURISDICTION

1. Petitioner Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center ("Piedmont Medical Center") is a corporation organized and existing under the laws of South Carolina located in Rock Hill, South Carolina that provides acute care hospital services.

2. Petitioner AnMed Enterprises, Inc./HealthSouth, LLC ("AnMed/HealthSouth") is a limited liability company organized and existing under the

laws of South Carolina located in Anderson, South Carolina that provides rehabilitation services.

3. Petitioner Georgetown Memorial Hospital ("Georgetown") is a nonprofit corporation affiliated with the Georgetown Hospital System that is organized and existing under the laws of South Carolina located in Georgetown, South Carolina that provides acute care hospital services and outpatient radiation oncology services.

4. Petitioner Hilton Head Health System, L.P. d/b/a Hilton Head Hospital ("Hilton Head Hospital") is a limited partnership organized and existing under the laws of South Carolina located in Hilton Head Island, South Carolina that provides acute care hospital services.

5. Petitioner the Medical University Hospital Authority d/b/a MUSC Medical Center ("MUSC") is a public entity affiliated with the Medical University of South Carolina organized and existing under the laws of South Carolina located in Charleston, South Carolina that provides acute care hospital services.

6. Petitioner Piedmont HealthSouth Rehabilitation, LLC ("Piedmont HealthSouth") is a limited liability company organized and existing under the laws of South Carolina located in Rock Hill, South Carolina that provides rehabilitation services.

7. Petitioner The Regional Medical Center of Orangeburg and Calhoun Counties ("TRMC") is a governmental agency formed pursuant to a joint ordinance enacted by Orangeburg and Calhoun Counties located in Orangeburg, South Carolina that provides acute care hospital services.

8. Petitioner Trident NeuroSciences Center, LLC ("Trident NeuroSciences") is a limited liability company organized and existing under the laws of South Carolina located in Charleston, South Carolina that provides rehabilitation services.

9. Petitioner Waccamaw Community Hospital ("Waccamaw") is a nonprofit corporation affiliated with the Georgetown Hospital System that is organized and existing under the laws of South Carolina located in Murrells Inlet, South Carolina that provides acute care hospital services and inpatient rehabilitation hospital services.

10. Petitioner Abbeville Nursing Home, Inc. ("Abbeville Nursing Home") is a corporation organized and existing under the laws of South Carolina that provides long-term care services in Abbeville, South Carolina.

11. Petitioner South Carolina Hospital Association (the "Hospital Association") is an association organized and existing as a not-for-profit organization under the laws of South Carolina and is located at 1000 Center Point Road in Columbia, South Carolina; its membership includes approximately one hundred (100) hospitals and health systems that operate in South Carolina.

12. Petitioner South Carolina Health Care Association (the "Health Care Association") is an association organized and existing as a nonprofit corporation under the laws of South Carolina and is located at 176 Laurelhurst Avenue in Columbia, South Carolina; its membership includes approximately one hundred fifty (150) long-term care facilities that operate in South Carolina.

13. Respondent South Carolina Department of Health and Environmental Control ("DHEC") is an administrative agency of the State of South Carolina created

and existing under the authority of the government of the State of South Carolina that, *inter alia*, administers the State Certification of Need and Health Facility Licensure Act §§ 44-7-110 *et seq.* ("CON Act").

14. Petitioner Piedmont Medical Center: (a) has received Certificates of Need ("CON") and related regulatory approvals from DHEC for healthcare facilities, expenditures, services, and equipment and has constructed and established facilities, services, and equipment pursuant to, and in reliance upon, the CONs and related regulatory approvals received from DHEC; (b) has filed an application with DHEC seeking a CON for a robotic surgery system; (c) has a case pending before the Administrative Law Court seeking a CON to establish an acute care hospital in Fort Mill, South Carolina; and (d) will seek CONs and related regulatory approvals from DHEC in the future for other healthcare facilities, expenditures, services, and equipment.

15. Petitioner AnMed/HealthSouth: (a) has received CONs and related regulatory approvals from DHEC for healthcare facilities, expenditures, services, and equipment and has constructed and established facilities, services, and equipment pursuant to, and in reliance upon, the CONs and related regulatory approvals received from DHEC; (b) has filed an application with DHEC seeking a CON to expand its rehabilitation hospital in Anderson, South Carolina; and (c) will seek CONs and related regulatory approvals from DHEC in the future for other healthcare facilities, expenditures, services, and equipment.

16. Petitioner Georgetown: (a) has received CONs and related regulatory approvals from DHEC for healthcare facilities, expenditures, services, and equipment

and has constructed and established facilities, services, and equipment pursuant to, and in reliance upon, the CONs and related regulatory approvals received from DHEC; (b) has a pending application filed with DHEC seeking to establish an elective Percutaneous Coronary Intervention ("PCI") program, and the statutory deadline for DHEC's decision regarding same will pass in the immediate future; (c) has a case pending before the Administrative Law Court seeking a CON to relocate a linear accelerator; and (d) will seek CONs and related regulatory approvals from DHEC in the future for other healthcare facilities, expenditures, services, and equipment.

17. Petitioner Hilton Head Hospital: (a) has received CONs and related regulatory approvals from DHEC for healthcare facilities, expenditures, services, and equipment and has constructed and established facilities, services, and equipment pursuant to, and in reliance upon, the CONs and related regulatory approvals received from DHEC including, but not limited to, a CON for an open heart surgery program; (b) has filed an application with DHEC seeking a CON non-applicability determination to establish a mobile MRI unit in Bluffton, South Carolina; and (c) will seek CONs and related regulatory approvals from DHEC in the future for other healthcare facilities, expenditures, services, and equipment.

18. Petitioner MUSC: (a) has received CONs and related regulatory approvals from DHEC for healthcare facilities, expenditures, services, and equipment and has constructed and established facilities, services, and equipment pursuant to, and in reliance upon, the CONs and related regulatory approvals received from DHEC including, but not limited to, CONs for a Regional Perinatal Center that includes a neonatal intensive care unit and an open heart surgery program; (b) will seek a CON to

renovate and expand its facility in the immediate future; and (c) will seek CONs and related regulatory approvals from DHEC in the future for other healthcare facilities, expenditures, services, and equipment.

19. Petitioner Piedmont HealthSouth: (a) has received CONs and related regulatory approvals from DHEC for healthcare facilities, expenditures, services, and equipment and has constructed and established facilities, services, and equipment pursuant to, and in reliance upon, the CONs and related regulatory approvals received from DHEC; (b) has filed an application with DHEC seeking a CON to expand its rehabilitation hospital in Rock Hill, South Carolina; and (c) will seek CONs and related regulatory approvals from DHEC in the future for other healthcare facilities, expenditures, services, and equipment.

20. Petitioner TRMC: (a) has received CONs and related regulatory approvals from DHEC for healthcare facilities, expenditures, services, and equipment and has constructed and established facilities, services, and equipment pursuant to, and in reliance upon, the CONs and related regulatory approvals received from DHEC; (b) will seek a CON to establish an elective PCI program in the immediate future; and (c) will seek CONs and related regulatory approvals from DHEC in the future for other healthcare facilities, expenditures, services, and equipment.

21. Petitioner Trident NeuroSciences: (a) has received CONs and related regulatory approvals from DHEC for healthcare facilities, expenditures, services, and equipment and has constructed and established facilities, services, and equipment pursuant to, and in reliance upon, the CONs and related regulatory approvals received from DHEC; (b) has filed an application with DHEC seeking a CON to expand its

rehabilitation hospital in Charleston, South Carolina; and (c) will seek CONs and related regulatory approvals from DHEC in the future for other healthcare facilities, expenditures, services, and equipment.

22. Petitioner Waccamaw: (a) has received CONs and related regulatory approvals from DHEC for healthcare facilities, expenditures, services, and equipment and has constructed and established facilities, services, and equipment pursuant to, and in reliance upon, the CONs and related regulatory approvals received from DHEC; (b) has a pending application filed with DHEC seeking a CON to add rehabilitation beds; and (c) will seek CONs and related regulatory approvals from DHEC in the future for other healthcare facilities, expenditures, services, and equipment.

23. Petitioner Abbeville Nursing Home: (a) has received CONs from DHEC for nursing home facilities; (b) has constructed and established nursing home facilities pursuant to, and in reliance upon, the CONs received from DHEC; and (c) will seek CONs from DHEC in the future.

24. Members of the Hospital Association and the Health Care Association: (a) have received CONs and related regulatory approvals from DHEC for healthcare facilities, expenditures, services, and equipment and have constructed and established facilities, services, and equipment pursuant to, and in reliance upon, the CONs and related regulatory approvals received from DHEC; (b) have received CONs and related regulatory approvals for healthcare facilities, expenditures, services, and equipment, and have or will seek extensions for the implementation of same; (c) have pending applications filed with DHEC seeking CONs and pending requests for related regulatory approvals for healthcare facilities, expenditures, services, and equipment; (d)

have cases pending before the Administrative Law Court seeking CONs and other regulatory approvals from DHEC; and (e) will seek CONs and related regulatory approvals from DHEC in the immediate future for healthcare facilities, expenditures, services, and equipment. Further, the Hospital Association and the Health Care Association actively participate in the development of the State Health Plan. 2012-2013 State Health Plan at Ch. 1, § D.

25. The Court has jurisdiction over the parties and causes of action in this matter pursuant to the Court's original jurisdiction under Rule 245, South Carolina Appellate Court Rules, S.C. Code Ann. § 14-3-310, and S.C. Const. Art. V, § 5.

26. This Court also has jurisdiction pursuant to the Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.* and the Court's equitable power.

FACTS

27. According to the General Assembly, the purpose of the CON Act is to "promote cost containment, prevent unnecessary duplication of healthcare facilities and services, guide the establishment of health facilities and services which will best serve public needs, and ensure that high quality services are provided in health facilities in this State." S.C. Code Ann. § 44-7-120.

28. To accomplish this statutory purpose, a "person or health care facility . . . is required to obtain a Certificate of Need" from DHEC before certain healthcare facilities and services can be constructed or established, before certain capital expenditures can be made on healthcare projects, and before certain types of healthcare equipment can be acquired. S.C. Code Ann. § 44-7-160.

29. To determine whether a CON will be issued, DHEC reviews CON applications to determine whether the proposed project is consistent with the State Health Plan and otherwise complies with "project review criteria" set forth in DHEC regulations. S.C. Code Ann. § 44-7-190; 24A S.C. Code Ann. Regs. 61-15 § 802.

30. The State Health Plan is a document developed with the assistance of the DHEC CON staff by the State Health Planning Committee and approved by the DHEC Board that contains: (a) an inventory of healthcare facilities, services, and equipment; (b) projections of need for healthcare facilities, services, and equipment; and (c) statements regarding the "most important" criteria for various types of facilities and services. S.C. Code Ann. § 44-7-180; 24A S.C. Code Ann. Regs. 61-15 § 802. The Hospital Association and the Health Care Association actively participate in the development of the State Health Plan. 2012-2013 State Health Plan at Ch. 1, § D. Further, DHEC is charged with the responsibility of updating and publishing the State Health Plan every two years, after seeking public comment. S.C. Code Ann. § 44-7-180.

31. As authorized by the General Assembly, DHEC has, until recently, charged and collected fees to cover the cost of operating the CON program in an amount set forth in DHEC regulations. S.C. Code Ann. § 44-7-150; 24A S.C. Code Ann. Regs. 61-15 § 302.

32. During the 2013 Legislative Session, the General Assembly did not repeal or amend the CON Act.

33. On June 19, 2013, the General Assembly passed R120, H3710 the General Appropriations Act for fiscal year 2013-2014 ("Appropriations Act").

34. By letter dated June 25, 2013, Governor Haley announced vetoes of certain line items in the Appropriations Act.

35. Governor Haley's Veto Message included, in pertinent part, the following:

Closing Programs that Don't Work

Veto 20	Part 1A, Page 100; Section 34, Department of Health and Environmental Control; II. Programs and Services, F. Health Care Standards, 2. Facility/Service Development - Total Facility & Service Development: \$1,759,915 Total Funds; \$1,442,572.
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Governor Haley further stated that:

The Certificate of Need Program is an intensely political one through which bureaucratic policy makers deny healthcare providers from offering treatment. We should allow the market to work rather than politics.

(Veto 20, incorporated herein and attached as Exhibit A).

36. Although the Governor's Veto Message stated that it applied only to the CON program, her veto in fact struck down funding for a number of other vital programs administered by DHEC. Veto 20 also strikes funding for the following DHEC responsibilities:

- a. strikes funding that is used to protect the state's Medicaid budget by not allowing long term care facilities to provide more care to Medicaid beneficiaries than authorized by the Medicaid agency;
- b. strikes funding for the Certificates of Public Advantage ("COPA") program that oversees the merger of health care entities and operations of merged entities to ensure the public's best interests are served;
- c. strikes funding that provides for the review of architectural plans prior to the establishment of a health care facility to ensure that after construction the facility will meet all applicable state, federal, and local codes and regulations;

- d. strikes funding for periodic inspections during construction of health care facilities to ensure that applicable building codes are being followed during construction and that any code violations are discovered and corrected early to prevent significant and costly alterations at a later date; and
- e. strikes funding for periodic inspections at licensed health care facilities to ensure all applicable fire and life safety requirements are met.

(Appropriations Change Request submitted by DHEC on August 24, 2012, incorporated herein and attached as Exhibit B).

37. On June 26, 2013, the House of Representatives took up consideration of Governor Haley's line-item vetoes, including Veto 20.

38. During the debate on Veto 20, the Chairman of the House Ways and Means Committee, Brian White, asked the House of Representatives to sustain Veto 20. According to Chairman White, he asked the members to do so because DHEC has "other funds in that agency they can use and move other people over for that purpose." (Adam Beam, *S.C. health care providers say 'certificate of need' veto leaves them in limbo*, THE STATE, June 26, 2013, incorporated herein and attached as Exhibit C).

39. On June 28, 2013, DHEC's Director, Catherine Templeton, issued a letter to "Members of the Regulated Community" that includes, in pertinent part, the following:

As you may know, the House of Representatives sustained Governor Haley's veto of the Certificate of Need program in the state budget. The sustained veto shows the intention of both the Executive and Legislative branches to suspend the operation of the Certificate of Need program for the fiscal year beginning July 1, 2013.

DHEC has no independent authority to expend state funds for Certificate of Need, and therefore, the veto completely suspends the program for the upcoming fiscal year. Accordingly, the Department cannot review new

or existing applications for Certificate of Need as of July 1. Moreover, the Department cannot take any Certificate of Need enforcement action. Should the General Assembly restore the program in the future, the Department will not be inclined to take enforcement actions under Certificate of Need for activity that occurs during the program's suspension, unless instructed otherwise by the General Assembly. Suspending the program has the practical effect of allowing new and expanding health care facilities to move forward without the Certificate of Need process.

(Director Templeton Letter, incorporated herein and attached as Exhibit D).

40. On June 28, 2013, Chairman White and a member of the House Ways and Means Committee, Murrell Smith, issued a statement regarding Veto 20 that includes, in pertinent part, the following:

On Wednesday, June 26, 2013, the South Carolina House of Representatives sustained Governor Haley's budget veto number twenty by a vote of 56-65. The effect of this veto reduced general fund support for the Department of Health and Environmental Control's Certificate of Need (CON) Program by over \$1.4 million.

The House of Representatives did not intend to eliminate the CON Program or its statutory requirements. In fact, the House believes there are a number of ways for the CON Program to retain its function and purpose. The Governor has the sole power to appoint DHEC's governing board and is ultimately charged with enforcing the CON law. If the Governor and the agency director wish to unilaterally discontinue the program, as they have indicated, then that is a decision that lies exclusively within the executive branch and one which may be contrary to law but is certainly contrary to the will and intent of the House of Representatives.

(Members White and Smith Statement, incorporated herein and attached as Exhibit E).

41. The Appropriations Act contains the following general provision:

117.9. (GP: Transfers of Appropriations) Agencies and institutions shall be authorized to transfer appropriations within programs and within the agency with notification to the Division of Budget and Analyses and Comptroller General. No such transfer may exceed twenty percent of the program budget. Upon request, details of such transfers may be provided

to members of the General Assembly on an agency by agency basis. Transfers of appropriations from personal service accounts to other operating accounts or from other operating accounts to personal service accounts may be restricted to any established standard level set by the Budget and Control Board upon formal approval by a majority of the members of the Budget and Control Board.

42. S.C. Code Ann. § 1-11-495(B) provides in pertinent part:

...

(B) As far as practicable, all agencies, departments, and institutions of the State are directed to budget and allocate appropriations as a quarterly allocation, so as to provide for operation on uniform standards throughout the fiscal year and in order to avoid an operating deficit for the fiscal year.

...

It is the responsibility of the agency, department, or institution to develop a plan, in consultation with the board, which eliminates or reduces a deficit. If the board makes a finding that the cause of, or likelihood of, a deficit is unavoidable due to factors which are outside the control of the agency, department, or institution, then the board may determine that the recognition of the agency, department, or institution is appropriate and shall notify the General Assembly of this action or the presiding officer of the House and Senate if the General Assembly is not in session. The board only may recognize a deficit by a vote of at least four members of the board.

43. S.C. Code Ann. § 1-11-495(C) provides in pertinent part:

(C) Upon receipt of the notification from the board, the General Assembly may authorize supplemental appropriations from any surplus revenues that existed at the close of the previous fiscal year. If the General Assembly fails to take action, then the finding of the board shall stand, and the actual deficit at the close of the fiscal year must be reduced as necessary from surplus revenues or surplus funds available at the close of the fiscal year in which the deficit occurs and from funds available in the Capital Reserve Fund and General Reserve Fund, as required by the Constitution of this State.

...

44. As of July 1, 2013, emails sent to the Director of DHEC's Bureau of Health Facilities and Services Development, that administers the CON Act, receive an automated response that includes, in pertinent part, the following:

The Certificate of Need program has been suspended through the state budget for the fiscal year beginning July 1, 2013. Accordingly, DHEC cannot review new or existing applications for Certificate of Need as of July 1. Moreover, the Department cannot take any Certificate of Need enforcement action. Should the General Assembly restore the program in the future, the Department will not be inclined to take enforcement actions under Certificate of Need for activity that occurs during the program's suspension, unless instructed otherwise by the General Assembly. Suspending the program has the practical effect of allowing new and expanding health care facilities to move forward without the Certificate of Need process.

45. As of July 1, 2013, DHEC has made it clear it will not process new or previously filed, applications for CONs and requests for related regulatory approvals for healthcare facilities, expenditures, services, and equipment.

46. As detailed above, Veto 20 specifically excluded funds for "periodic inspections at licensed healthcare facilities to ensure all applicable fire and life safety requirements are met." (Veto 20). Nevertheless, the Automated Email Response states that, "The Department will continue to license and inspect health care facilities." (Automated Email Response).

47. Based upon the Automated Email Response it is evident that DHEC continues to administer, and has not suspended, other DHEC programs and functions, that are included in item "II.F.2" of the Appropriations Act that is the subject of Veto 20.

48. S.C. Code Ann. § 44-7-150 authorizes DHEC to charge and collect fees, a portion of which are "to cover the cost of operating the Certificate of Need program."

49. Pursuant to that authority, DHEC promulgated 24A S.C. Code Ann. Regs. 61-15 §§ 303, 309; those regulations specifically provide for the payment of fees associated with applying for CON and the issuance of CON, respectively.

50. Upon information and belief, in fiscal year 2012-13 DHEC collected fees from CON applicants that exceeded the cost of the staff employed by DHEC to administer the CON program.

51. The fees DHEC has collected, and could continue to collect, from the providers seeking CONs and/or an intra-agency transfer of other funds appropriated for DHEC by the Appropriations Act would provide adequate funding to allow DHEC to administer the CON Act.

52. Upon information and belief, since 2010 DHEC has exercised the authority it has to transfer funds among programs it administers.

53. Upon information and belief, since 2010 DHEC has transferred funds from other programs to the Division of Health Facilities and Services.

54. Upon information and belief, DHEC will not use the fees it has collected, and could continue to collect, from providers seeking CONs, thus eliminating fee revenue.

55. Upon information and belief, DHEC will also not make an intra-agency transfer of other funds appropriated for DHEC by the Appropriations Act to adequately fund and administer the CON Act.

56. Upon information and belief, at the time DHEC ceased administering the CON Act, DHEC had thirty-two (32) CON applications and requests for related regulatory approvals pending for healthcare facilities, expenditures, services, and

equipment in fifteen (15) counties worth approximately Eighty-six Million Four Hundred Thousand and 00/100 dollars (\$86,400,000.00).

57. DHEC's stated unwillingness to process new or previously filed applications for CONs and requests for related regulatory approvals required by the CON Act prevents Petitioners and the members of the Hospital Association and the Health Care Association from moving forward with planned healthcare facilities, expenditures, and services, and thereby harms and/or threatens imminent harm to the Petitioners, members of the Hospital Association and the Health Care Association, and most importantly, the general public.

58. As of July 1, 2013, DHEC is no longer enforcing the CON Act's requirement that certain healthcare facilities, expenditures, services, and equipment require CONs or related regulatory approvals.

59. On July 9, 2013, DHEC informed Providence Hospital that its request for an extension of CON SC-09-36 would not be addressed by the DHEC Board and that its extension request was removed as an agenda item for its July 11, 2013 Board meeting. (Compare Original Board Meeting Agenda and Revised Board Meeting Agenda, incorporated herein and attached as Exhibit F).

60. DHEC's stated unwillingness to enforce the CON Act's requirement that certain facilities, expenditures, services, and equipment require CONs or related regulatory approvals jeopardizes the continued existence of healthcare facilities and services previously established by Petitioners and by members of the Hospital Association and the Health Care Association, and thereby harms and/or threatens

imminent harm to Petitioners, the members of the Hospital Association and the Health Care Association, and the general public.

FIRST CAUSE OF ACTION FOR DECLARATORY JUDGMENT
Regarding Continued Existence and Effectiveness of CON Act

61. The allegations in paragraphs 1 through 60 of the Complaint are incorporated by reference as if alleged herein.

62. The CON Act is codified in the permanent statutes of the State of South Carolina at S.C. Code Ann. §§ 44-7-110 *et seq.*

63. Appropriations bills are funding mechanisms for programs and services provided for by the General Assembly in permanent statutes.

64. Appropriations bills are not mechanisms to enact changes to permanent statutes because doing so would violate the one subject rule. S.C. Const. Art. III, § 17; *Am. Petroleum Institute v. S.C. Dept. of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009).

65. Governor Haley's Veto 20 is a veto of an item in the Appropriations Act relating to DHEC funding.

66. The CON Act was not before Governor Haley when she issued Veto 20, nor was the CON Act before the House of Representatives when the House failed to override Veto 20.

67. Implied repeal or implied suspension of a permanent statute through the passage of an appropriations bill, much less the failure to override a line-item veto, is highly disfavored and is only imposed when it is abundantly clear that repeal or suspension of the permanent statute was intended by the General Assembly. Further,

even if such was intended, such would be unconstitutional as violative of the one subject rule in the South Carolina Constitution.

68. That the CON Act has not been repealed demonstrates the General Assembly's intent that it should remain the law of this State.

69. Statements from members of the House of Representatives during the debate regarding Veto 20 and after the issuance of Director Templeton's letter demonstrate the General Assembly's intent that the House's failure to override Veto 20 was not intended to repeal or suspend the CON Act.

70. The failure to override Veto 20 can be reconciled with permanent laws and does not operate to suspend any permanent laws.

71. Petitioners ask the Court to declare that: (a) the failure to override Governor Haley's Veto 20 of the Appropriations Act does not operate as an express or implied repeal or suspension of the CON Act; (b) the failure to override Governor Haley's Veto 20 of the Appropriations Act does not abrogate DHEC's statutory duty and obligation to administer the provisions of the CON Act including, but not limited to, taking all actions necessary to accomplish the processing of new and previously filed applications for CONs and requests for related regulatory approvals and developing a prospective State Health Plan; (c) the failure to override Governor Haley's Veto 20 of the Appropriations Act does not abrogate DHEC's statutory duty and obligation to enforce the provisions of the CON Act including, but not limited to, the requirement to obtain a CON or related regulatory approval for certain healthcare facilities, expenditures, services, and equipment; and (d) DHEC is required by law to administer and enforce the CON Act in the manner contemplated by law.

SECOND CAUSE OF ACTION FOR DECLARATORY JUDGMENT
Regarding Funding for Administration of the CON Act

72. The allegations in paragraphs 1 through 71 of the Complaint are incorporated by reference as if alleged herein.

73. As set forth above, the CON Act continues to be extant, and DHEC continues to have the statutory duty and obligation to administer and enforce the CON Act.

74. S.C. Code Ann. § 44-7-150 grants DHEC the authority to charge and collect fees from providers seeking CONs.

75. Pursuant to that authority, DHEC promulgated 24A S.C. Code Ann. Regs. 61-15 §§ 303, 309; those regulations provide for the payment of fees associated with applying for CON and the issuance of CON, respectively.

76. Until Director Templeton issued her June 28, 2013 letter, DHEC was charging and collecting fees from would-be providers seeking CONs.

77. Section 117.9 of the Appropriations Act is a general provision that authorizes agencies, including DHEC, to request and make intra-agency transfers of up to twenty (20%) percent of an approved program's funds to another approved program.

78. Pursuant to S.C. Code Ann. § 1-11-495(B) DHEC must budget and allocate appropriations on a quarterly basis, and if DHEC believes that the agency lacks funds to carry out all of its responsibilities, including with respect to the CON Act, DHEC must develop a plan in consultation with the Budget and Control Board to remedy this shortfall.

79. Pursuant to S.C. Code Ann. § 1-11-495(B) if the Budget and Control Board finds that a DHEC budget shortfall is due to factors outside the control of DHEC, the Budget and Control Board must notify the General Assembly.

80. Pursuant to S.C. Code Ann. § 1-11-495(C) and upon notification by the Budget and Control Board, the General Assembly may authorize supplemental appropriations for DHEC, and if the General Assembly fails to take this action, DHEC's shortfall will be resolved at the close of fiscal year, July 1, 2014.

81. DHEC has not followed the above statutory process, and has instead improperly announced that the CON program is suspended.

82. The funds that: (a) DHEC has received, and can continue to receive, from the fees charged and collected from those seeking CONs; and/or (b) are available to DHEC through intra-agency transfer, including, but not limited to, transfers pursuant to Section 117.9 of the Appropriations Act and transfers available through the Budget and Control Board process; and/or (c) are available to DHEC through supplemental appropriation and other deficit-resolving measures available through the Budget and Control Board process are sufficient to administer and enforce the CON Act and still allow DHEC to perform its other responsibilities, even in the absence of the funding eliminated by Veto 20.

83. Petitioners ask the Court to declare that DHEC has a statutory process to follow in the event of a shortfall, and that DHEC's failure to follow that process and announcement and communication of the suspension of the CON program is unlawful, and that DHEC is required by law to undertake every reasonable effort to fund the administration and enforcement of the CON Act by: (a) charging and collecting fees

from those seeking CONs; (b) making intra-agency transfers, including, but not limited to, transfers pursuant to Section 117.9 of the Appropriations Act and transfers available through the Budget and Control Board process; and (c) seeking supplemental appropriations and other deficit-resolving measures available through the Budget and Control Board process, if necessary.

WHEREFORE, Petitioners pray that the Court make the declarations requested above and for such other and further relief as may be just and appropriate.

[SIGNATURE PAGES ATTACHED]