

THE STATE OF SOUTH CAROLINA
IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Tom Davis, individually, and as a Citizen, Resident,
Taxpayer and Registered Elector of South Carolina Petitioner,

v.

James H. Lucas, in his official capacity as Speaker
of the South Carolina House of Representatives;
Henry D. McMaster, in his official capacity as
Lt. Governor and President of the South Carolina Senate;
Hugh K. Leatherman, Sr., in his capacity as President
Pro Tempore of the South Carolina Senate;
Nikki R. Haley, in her official capacity as Governor of
South Carolina; Alan M. Wilson, in his official capacity
as Attorney General of the State of South Carolina; and
the State of South Carolina Respondents.

PETITION FOR ORIGINAL JURISDICTION

The Petitioner respectfully requests that the Supreme Court of South Carolina authorize the bringing of the attached suit within its original jurisdiction pursuant to Rule 229 of the South Carolina Appellate Court Rules, S.C. Code Ann. § 14-3-310 and S.C. Const. art. V, § 5. A proposed Complaint is attached as Exhibit A. In accordance with Rule 229(a), this Petition is further supplemented by the Affidavit of Petitioner attached as Exhibit B. Due to the time-sensitive nature of this petition, the Petitioner respectfully requests the Court conduct an expedited review of the matters contained herein.

Under Rule 229 of the South Carolina Appellate Court Rules, this Court may assume jurisdiction when "...the public interest is involved, or if special grounds of emergency or other good reasons exist why the original jurisdiction of the Supreme Court should be exercised...." See also S.C. Const. art. V, § 5; *Key v. Currie*, 305 S.C. 115, 406 S.E.2d 356 (1991). This Court has exercised its authority in the original jurisdiction in a number of recent cases that involved the public interest. See, e.g., *South Carolina State Ports Authority v. Jasper County*, 368 S.C.

388, 629 S.E.2d 624 (2006) (deciding whether the Ports Authority condemnation power is superior to that of Jasper County); Charleston County Public Schools. Moseley, 343 S.C. 509, 541 S.E.2d 533 (2001) (deciding a school tax issue); Westside Quik Shop v. Steward, 341 S.C. 297, 534 S.E.2d 270 (2000) (deciding a challenge to video gaming law); Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 270 (2000) (determining the Governor's authority to remove Public Service Authority members); Doe v. Condon, 341 S.C. 22, 532 S.E.2d 879 (2000) (determining whether certain activities constitute the unauthorized practice of law); City of Hardeeville v. Jasper County, 340 S.C. 39, 530 S.E.2d 374 (2000) (determining the authority of a county to enact accommodations and hospitality taxes).

The Petitioner seeks a determination by this Court as to whether the South Carolina General Assembly has the power, through a bill to ratify an amendment to the South Carolina Constitution, to materially alter the text, substance and meaning of that amendment as such was approved by the qualified electors in South Carolina at the General Election of 2012 and as such was authorized by a joint resolution. The public interest is plainly involved in this action, and the circumstances constitute grounds of emergency or other good reason for the exercise of this Court's original jurisdiction. The public interest of all of South Carolina would be best served and protected by proceeding in this Court's original jurisdiction, in that a final determination of the significant issues raised by this case can be expeditiously reached. The Petitioner's request for declaratory judgment may be resolved by rulings on legal issues without the need for this Court to make specific findings of fact. Because the Supreme Court is likely to ultimately decide the merits of this case, the exigencies of time, judicial economy, and fairness warrant the Court's taking original jurisdiction of this case.

The case of Sloan v. Wilkins, 362 S.C. 430, 608 S.E.2d 579, is instructive. That was an action commenced by a private individual, Edward D. Sloan, Jr., before the South Carolina Supreme Court in its original jurisdiction to determine whether a legislative act violated the one subject requirement of Article III, section 17, of the South Carolina Constitution, the court rendered the following decision pertaining to Sloan's standing to sue:

"As a general principle, a private individual may not invoke the judicial power to determine the validity of an executive or legislative act unless the private individual can show that, as a result of that action, a direct injury has been sustained, or that there is immediate danger a direct injury will be sustained. Joytime Distribs. & Amusement Co., Inc. v. State, 338 S.C. 634, 639, 528 S.E.2d 647, 649-650 (1999). However, "the rule [of standing] is not an inflexible one." Thompson v. South Carolina Comm'n on Alcohol & Drug Abuse, 267 S.C. 463, 467, 229 S.E.2d 718, 719 (1976). Standing may be conferred upon a party "when an issue is of such public importance as to require its resolution for future guidance." Baird v. Charleston County, 333 S.C. 519, 531, 511 S.E.2d 69, 75

(1999). Recently, both this Court and the Court of Appeals have granted standing in cases of important public interest. See *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004) (standing to challenge governor's commission as an officer in the Air Force reserve); *Sloan v. Greenville County*, 356 S.C. 531, 548, 590 S.E.2d 338, 347 (Ct.App.2003) (standing to bring declaratory judgment action alleging county failed to comply with ordinances governing procurement of construction services on design-build public works projects).

“In light of the great public importance of this matter, we find Sloan has standing to maintain this action.”

Similarly, in light to the great importance of the within matter, the Petitioner contends that he has standing to maintain this action, that the within action is justiciable, and that the matter should be considered by the Supreme Court of South Carolina in its original jurisdiction.

For these reasons, the Petitioner respectfully requests that this Court accept this case into its original jurisdiction and grant a declaratory judgment declaring that the South Carolina General Assembly did not have the power, through a ratification, to materially alter the text, substance and meaning of that amendment as such as approved by the qualified electors in South Carolina at the General Election of 2012 and as such was authorized by the Joint Resolution passed by the General Assembly.

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December ____, 2016

EXHIBIT A

THE STATE OF SOUTH CAROLINA
IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Tom Davis, individually, and as a Citizen, Resident,
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of the South Carolina House of Representatives;
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Pro Tempore of the South Carolina Senate;
Nikki R. Haley, in her official capacity as Governor of
South Carolina; Alan M. Wilson, in his official capacity
as Attorney General of the State of South Carolina; and
the State of South Carolina Respondents.

COMPLAINT

The Petitioner, complaining of the Respondents and before the Supreme Court of South Carolina in its original jurisdiction, alleges as follows:

PARTIES

1. The Plaintiff is a citizen, resident, taxpayer and registered elector of South Carolina.
2. The Respondent James H. Lucas is the Speaker of the South Carolina House of Representatives.
3. The Respondent Henry D. McMaster is the Lieutenant Governor of South Carolina and the President of the South Carolina Senate.

4. The Respondent Hugh K. Leatherman, Sr., is President Pro Tempore of the South Carolina Senate.
5. The Respondent Nikki R. Haley is the Governor of South Carolina.
6. The Respondent Alan M. Wilson is the Attorney General of South Carolina.
7. The Respondent State of South Carolina is one of the sovereign states in the United States of America.

NATURE OF THE CASE

8. The Petitioner has commenced this action to seek a determination by the Supreme Court of South Carolina as to whether the South Carolina General Assembly has the power, through a bill to ratify an amendment to the South Carolina Constitution, to materially alter the text, substance and meaning of that amendment as such was approved by the qualified electors in South Carolina at the General Election of 2012 as such was authorized by a joint resolution passed by at least two-thirds of the members present and voting in the South Carolina Senate and the South Carolina House of Representatives.
9. Section 15-53-30 of the Code of Laws of South Carolina, a portion of the chapter commonly referred to as the Uniform Declaratory Judgments Act, provides as follows:

Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

STANDING AND JUSTICIABILITY

10. In the case of *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579, an action commenced by a private individual, Edward D. Sloan, Jr., before the South Carolina Supreme Court in its original jurisdiction to determine whether a legislative act violated the one subject requirement of Article III, section 17, of the South Carolina Constitution, the court rendered the following decision pertaining to Sloan's standing to sue:

“As a general principle, a private individual may not invoke the judicial power to determine the validity of an executive or legislative act unless the private individual can show that, as a result of that action, a direct injury has been sustained, or that there is immediate danger a direct injury will be sustained. Joytime Distribs. & Amusement Co., Inc. v. State, 338 S.C. 634, 639, 528 S.E.2d 647, 649–650 (1999). However, “the rule [of standing] is not an inflexible one.” Thompson v. South Carolina Comm’n on Alcohol & Drug Abuse, 267 S.C. 463, 467, 229 S.E.2d 718, 719 (1976). Standing may be conferred upon a party “when an issue is of such public importance as to require its resolution for future guidance.” Baird v. Charleston County, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999). Recently, both this Court and the Court of Appeals have granted standing in cases of important public interest. See Sloan v. Sanford, 357 S.C. 431, 593 S.E.2d 470 (2004) (standing to challenge governor’s commission as an officer in the Air Force reserve); Sloan v. Greenville County, 356 S.C. 531, 548, 590 S.E.2d 338, 347 (Ct.App.2003) (standing to bring declaratory judgment action alleging county failed to 437 comply with ordinances governing procurement of construction services on design-build public works projects).

“In light of the great public importance of this matter, we find Sloan has standing to maintain this action.”

11. The Petitioner is advised and verily believes that, in light to the great importance of the within matter, that he has standing to maintain this action, that the within action is justiciable, and that the matter should be considered by the Supreme Court of South Carolina in its original jurisdiction.

FACTS

12. On April 26, 2012, the South Carolina Senate, by a roll-call vote of 34 to 1, gave second reading to an amended version of H. 3152, a Joint Resolution that, according to its title, proposed an amendment to Section 8, Article IV of the Constitution of South Carolina, 1895, relating to the election, qualifications, and term of the Lieutenant Governor, and on May 2, 2012, gave a third reading to said amended resolution and returned it, as amended, to the South Carolina House of Representatives, the amended resolution (hereinafter referred to as the “Joint Resolution”) reading as follows:

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO SECTION 8, ARTICLE IV OF THE CONSTITUTION OF SOUTH CAROLINA, 1895, RELATING TO THE ELECTION, QUALIFICATIONS, AND TERM OF THE LIEUTENANT GOVERNOR, SO AS TO PROVIDE THAT THE LIEUTENANT GOVERNOR MUST BE ELECTED JOINTLY WITH THE GOVERNOR IN A MANNER PRESCRIBED BY LAW; TO ADD SECTION 37 TO ARTICLE III OF THE CONSTITUTION OF THIS STATE, SO AS TO PROVIDE THAT THE SENATE SHALL ELECT FROM AMONG ITS MEMBERS A PRESIDENT TO PRESIDE OVER THE SENATE AND TO PERFORM OTHER DUTIES AS PROVIDED BY LAW; TO DELETE SECTIONS 9 AND 10 OF ARTICLE IV OF THE CONSTITUTION OF THIS STATE, RELATING TO THE LIEUTENANT GOVERNOR BEING PRESIDENT OF THE SENATE AND, WHILE PRESIDING IN THE SENATE, HAVING NO VOTE, UNLESS THE SENATE IS EQUALLY DIVIDED, SO AS TO REMOVE INCONSISTENT PROVISIONS; AND TO AMEND SECTION 12 OF ARTICLE IV OF THE CONSTITUTION OF THIS STATE, RELATING TO THE DISABILITY OF THE GOVERNOR, SO AS TO CONFORM APPROPRIATE REFERENCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. (A) It is proposed that Section 8, Article IV of the Constitution of this State be amended to read:

"Section 8. (A) A Lieutenant Governor ~~shall~~ must be chosen at the same time, in the same manner, continue in office for the same period, and be possessed of the same qualifications as the Governor.

(B) Beginning with the general election of 2018, a person seeking the office of Governor in any manner that a person's name may appear on the ballot as a candidate for that office, and before that person's name is certified to appear on the ballot for the general election, shall select a qualified elector to serve as Lieutenant Governor.

(C) All candidates for the offices of Governor and Lieutenant Governor must be elected jointly in a manner prescribed by law so that each voter casts a single vote to elect a candidate for the office of Governor and Lieutenant Governor.

(D) The General Assembly shall provide by law the manner in which a candidate for Lieutenant Governor is selected."

(B) It is proposed that Article III of the Constitution of this State be amended by adding:

"Section 37. The Senate shall, as soon as practicable after the convening of the General Assembly in 2019 and every four years thereafter, elect from among the members thereof a President to preside over the Senate and to perform other duties as provided by law."

(C) It is proposed that Article IV of the Constitution of this State be amended by deleting Section 9 which reads:

"Section 9. The Senate shall as soon as practicable after the convening of the General Assembly choose a President Pro Tempore to act in the absence of the Lieutenant Governor. A member of the Senate acting as Lieutenant Governor shall thereupon vacate his seat and another person shall be elected in his stead."

(D) It is proposed that Article IV of the Constitution of this State be amended by deleting Section 10, which reads:

"Section 10. The Lieutenant Governor shall be President of the Senate, ex officio, and while presiding in the Senate, shall have no vote, unless the Senate be equally divided."

(E) It is proposed that Section 11, Article IV of the Constitution of this State be amended to read:

"Section 11. In the case of the removal of the Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Lieutenant Governor shall be Governor. In case the Governor be impeached, the Lieutenant Governor shall act in his stead and have his powers until judgment in the case shall have been pronounced. In the case of the temporary disability of the Governor and in the event of the temporary absence of the Governor from the State, the Lieutenant Governor shall have full authority to act in an emergency. In the case of the removal of the Lieutenant Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Governor shall appoint, with the advice and consent of the Senate, a successor to fulfill the unexpired term."

(F) It is proposed that Section 12, Article IV of the Constitution of this State be amended to read:

"Section 12. (1) Whenever the Governor transmits to the President ~~Pro Tempore~~ of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Lieutenant Governor as acting Governor.

(2) Whenever a majority of the Attorney General, the Secretary of State, the Comptroller General, and the State Treasurer, or of such other body as the General Assembly may provide, transmits to the President ~~Pro Tempore~~ of the Senate and the Speaker of the House of Representatives a written declaration that the Governor is unable to discharge the powers and duties of his office, the Lieutenant Governor shall forthwith assume the powers and duties of the office as acting Governor.

Thereafter, if the Governor transmits to the President ~~Pro Tempore~~ of the Senate and the Speaker of the House of Representatives his written declaration that no such inability exists, he shall forthwith resume the powers and duties of his office unless a majority of the above members or of such other body, whichever the case may be, transmits within four days to the President ~~Pro Tempore~~ of the Senate and the Speaker of the House of Representatives their written declaration that the Governor is unable to discharge the powers and duties of his office. Thereupon, the General Assembly shall forthwith consider and decide the issue, and if not in session, it shall assemble within forty-eight hours for the sole purpose of deciding such issue. If the General Assembly, within twenty-one days, excluding Sundays, after the first day it meets to decide the issue, determines by two-thirds vote of each House that the Governor is unable to discharge the powers and duties of his office, the Lieutenant Governor shall continue to discharge the same as acting Governor; otherwise, the Governor shall resume the powers and duties of his office."

(G) It is proposed that the amendments proposed to Article IV of the Constitution of this State become effective for the general election of 2018 and the organization of the Senate to take place following the general election of 2018."

SECTION 2. The proposed amendment in SECTION 1 must be submitted to the qualified electors at the next general election for representatives. Ballots must be provided at the various voting precincts with the following words printed or written on the ballot:

"Beginning with the general election of 2018, must Section 8 of Article IV of the Constitution of this State be amended to provide that the Lieutenant Governor must be elected jointly with the Governor in a manner prescribed by law; and upon the joint election to add Section 37 to Article III of the Constitution of this State to provide that the Senate shall elect from among the members thereof a President to preside over the Senate and to perform other duties as provided by law; to delete Sections 9 and 10 of Article IV of the Constitution of this State containing inconsistent provisions providing that the Lieutenant Governor is President of the Senate, ex officio, and while presiding in the Senate, has no vote, unless the Senate is equally divided; to amend Section 11 to provide that the Governor shall fill a vacancy in the Office of Lieutenant Governor by appointing

a successor with the advice and consent of the Senate; and to amend Section 12 of Article IV of the Constitution of this State to conform appropriate references?"

The proposed amendment must be submitted to the qualified electors at the next general election for representatives. Ballots must be provided at the various voting precincts with the following words printed or written on the ballot:

Yes ☐
No ☐

Those voting in favor of the question shall deposit a ballot with a check or cross mark in the square after the word 'Yes', and those voting against the question shall deposit a ballot with a check or cross mark in the square after the word 'No'."

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13. On May 16, 2012, the South Carolina House of Representatives, by a roll-call vote of 97 to 16, concurred with the South Carolina Senate's amendment to H. 3152.

14. By virtue of the votes referenced in paragraphs 6 and 7, supra, the Joint Resolution received the necessary two-thirds approval from each of the two legislative bodies that is a necessary condition precedent for the proposed amendment to the South Carolina Constitution set forth therein to be submitted for consideration by South Carolina's qualified electors at a regularly scheduled general election.

15. On May 23, 2012, the Joint Resolution was ratified by the Speaker of the South Carolina House of Representatives and the Lieutenant Governor of South Carolina as Ratification 204.

16. On September 5, 2012, the South Carolina Legislative Council codified and published Ratification 204 as Act No. 289, with the effective date of said codification and publication being May 23, 2012, i.e., the date the Joint Resolution was ratified.

17. For the general election that occurred on November 6, 2012, and pursuant to and as required by the Joint Resolution, the following measure appeared on the ballots cast by qualified electors in South Carolina (hereinafter referred to as the "Ballot Text"):

Amendment 1

Beginning with the general election of 2018, must Section 8 of Article IV of the Constitution of this State be amended to provide that the Lieutenant Governor must be elected jointly with the Governor in a manner prescribed by law; and

upon the joint election to add Section 37 to Article III of the Constitution of this State to provide that the Senate shall elect from among the members thereof a President to preside over the Senate and to perform other duties as provided by law; to delete Sections 9 and 10 of Article IV of the Constitution of this State containing inconsistent provisions providing that the Lieutenant Governor is President of the Senate, ex officio, and while presiding in the Senate, has no vote, unless the Senate is equally divided; to amend Section 11 to provide that the Governor shall fill a vacancy in the Office of Lieutenant Governor by appointing a successor with the advice and consent of the Senate; and to amend Section 12 of Article IV of the Constitution of this State to conform appropriate references?

Explanation

A 'Yes' vote will require, from 2018 onward, the Governor and Lieutenant Governor to run on the same ticket and be elected to office jointly. As a result, the Lieutenant Governor will no longer preside over the Senate and the Senate will elect their presiding officer from within the Senate body.

A 'No' vote maintains the current method of electing the Governor and Lieutenant Governor separately. The Lieutenant Governor shall continue to serve as President of the Senate.

18. For the general election on November 6, 2012, the number of qualified electors in South Carolina voting "Yes" on the proposed amendments to Article IV of the state constitution totaled 1,009,367 as opposed to 809,063 voting "No."

19. On March 7, 2013, a majority of the qualified electors having voted "Yes" on the proposed amendments to Article IV of the state constitution, the South Carolina Senate, by a roll-call vote of 39 to 1, gave second reading to S. 446, an bill to ratify an amendment to Section 8, Article IV of the Constitution of South Carolina, 1895, relating to the election, qualifications, and term of the Lieutenant Governor, and on March 12, 2013, gave a third reading to S. 446 and sent it to the South Carolina House of Representatives; S. 446, as approved by the South Carolina Senate and sent to the South Carolina House of Representatives (hereinafter referred to as the "Constitutional Amendment Ratification") provides as follows:

A BILL

TO RATIFY AN AMENDMENT TO SECTION 8, ARTICLE IV OF THE
CONSTITUTION OF SOUTH CAROLINA, 1895, RELATING TO THE
ELECTION, QUALIFICATIONS, AND TERM OF THE LIEUTENANT

GOVERNOR, TO PROVIDE THAT THE LIEUTENANT GOVERNOR MUST BE ELECTED JOINTLY WITH THE GOVERNOR IN A MANNER PRESCRIBED BY LAW; TO ADD SECTION 37 TO ARTICLE III OF THE CONSTITUTION OF THIS STATE, TO PROVIDE THAT THE SENATE SHALL ELECT FROM AMONG ITS MEMBERS A PRESIDENT TO PRESIDE OVER THE SENATE AND TO PERFORM OTHER DUTIES AS PROVIDED BY LAW; TO DELETE SECTIONS 9 AND 10 OF ARTICLE IV OF THE CONSTITUTION OF THIS STATE, RELATING TO THE LIEUTENANT GOVERNOR BEING PRESIDENT OF THE SENATE AND, WHILE PRESIDING IN THE SENATE, HAVING NO VOTE, UNLESS THE SENATE IS EQUALLY DIVIDED, TO REMOVE INCONSISTENT PROVISIONS; TO AMEND SECTION 11 OF ARTICLE IV OF THE CONSTITUTION OF THIS STATE, RELATING TO THE REMOVAL OF THE LIEUTENANT GOVERNOR FROM OFFICE BY IMPEACHMENT, DEATH, RESIGNATION, DISQUALIFICATION, DISABILITY, OR REMOVAL FROM THE STATE, TO PROVIDE THAT THE GOVERNOR SHALL APPOINT, WITH THE ADVICE AND CONSENT OF THE SENATE, A SUCCESSOR TO FULFILL THE UNEXPIRED TERM; AND TO AMEND SECTION 12 OF ARTICLE IV OF THE CONSTITUTION OF THIS STATE, RELATING TO THE DISABILITY OF THE GOVERNOR, TO CONFORM APPROPRIATE REFERENCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. A. The amendment to Article IV of the Constitution of South Carolina, 1895, prepared under the terms of Joint Resolution 289 of 2012, having been submitted to the qualified electors at the General Election of 2012 as prescribed in Section 1, Article XVI of the Constitution of South Carolina, 1895, and a favorable vote having been received on the amendment, is ratified and declared to be a part of the Constitution so that Section 8 of Article IV is amended to read:

"Section 8. (A) A Lieutenant Governor must be chosen at the same time, in the same manner, continue in office for the same period, and be possessed of the same qualifications as the Governor.

(B) Beginning with the General Election of 2018, a person seeking the office of Governor in any manner that a person's name may appear on the ballot as a candidate for that office, and before that person's name is certified to appear on the ballot for the general election, shall select a qualified elector to serve as Lieutenant Governor.

(C) All candidates for the offices of Governor and Lieutenant Governor must be elected jointly in a manner prescribed by law so that each voter casts a single vote to elect a candidate for the office of Governor and Lieutenant Governor.

(D) The General Assembly shall provide by law the manner in which a candidate for Lieutenant Governor is selected."

B. The amendment to Article III of the Constitution of South Carolina, 1895, prepared under the terms of Joint Resolution 289 of 2012, having been submitted to the qualified electors at the General Election of 2012 as prescribed in Section 1, Article XVI of the Constitution of South Carolina, 1895, and a favorable vote having been received on the amendment, is ratified and declared to be a part of the Constitution so that Section 37 as added to Article III reads:

"Section 37. The Senate shall, as soon as practicable after the convening of the General Assembly in 2019 and every four years thereafter, elect from among the members thereof a President to preside over the Senate and to perform other duties as provided by law."

C. The amendment to Article IV of the Constitution of South Carolina, 1895, prepared under the terms of Joint Resolution 289 of 2012, having been submitted to the qualified electors at the General Election of 2012 as prescribed in Section 1, Article XVI of the Constitution of South Carolina, 1895, and a favorable vote having been received on the amendment, is ratified and declared to be a part of the Constitution so that Section 9, Article IV is amended to read:

"Section 9. (Reserved)."

D. The amendment to Article IV of the Constitution of South Carolina, 1895, prepared under the terms of Joint Resolution 289 of 2012, having been submitted to the qualified electors at the General Election of 2012 as prescribed in Section 1, Article XVI of the Constitution of South Carolina, 1895, and a favorable vote having been received on the amendment, is ratified and declared to be a part of the Constitution so that Section 10, Article IV is amended to read:

"Section 10. (Reserved)."

E. The amendment to Article IV of the Constitution of South Carolina, 1895, prepared under the terms of Joint Resolution 289 of 2012, having been submitted to the qualified electors at the General Election of 2012 as prescribed in Section 1, Article XVI of the Constitution of South Carolina, 1895, and a favorable vote having been received on the amendment, is ratified and declared to be a part of the Constitution so that Section 11, Article IV is amended to read:

"Section 11. In the case of the removal of the Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Lieutenant Governor shall be Governor. In case the Governor be impeached, the Lieutenant Governor shall act in his stead and have his powers until judgment in the case shall have been pronounced. In the case of the

temporary disability of the Governor and in the event of the temporary absence of the Governor from the State, the Lieutenant Governor shall have full authority to act in an emergency. In the case of the removal of the Lieutenant Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Governor shall appoint, with the advice and consent of the Senate, a successor to fulfill the unexpired term."

F. The amendment to Article IV of the Constitution of South Carolina, 1895, prepared under the terms of Joint Resolution 289 of 2012, having been submitted to the qualified electors at the General Election of 2012 as prescribed in Section 1, Article XVI of the Constitution of South Carolina, 1895, and a favorable vote having been received on the amendment, is ratified and declared to be a part of the Constitution so that Section 12, Article IV is amended to read:

"Section 12. (1) Whenever the Governor transmits to the President of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Lieutenant Governor as acting Governor.

(2) Whenever a majority of the Attorney General, the Secretary of State, the Comptroller General, and the State Treasurer, or of such other body as the General Assembly may provide, transmits to the President of the Senate and the Speaker of the House of Representatives a written declaration that the Governor is unable to discharge the powers and duties of his office, the Lieutenant Governor shall forthwith assume the powers and duties of the office as acting Governor.

Thereafter, if the Governor transmits to the President of the Senate and the Speaker of the House of Representatives his written declaration that no such inability exists, he shall forthwith resume the powers and duties of his office unless a majority of the above members or of such other body, whichever the case may be, transmits within four days to the President of the Senate and the Speaker of the House of Representatives their written declaration that the Governor is unable to discharge the powers and duties of his office. Thereupon, the General Assembly shall forthwith consider and decide the issue, and if not in session, it shall assemble within forty-eight hours for the sole purpose of deciding such issue. If the General Assembly, within twenty-one days, excluding Sundays, after the first day it meets to decide the issue, determines by two-thirds vote of each House that the Governor is unable to discharge the powers and duties of his office, the Lieutenant Governor shall continue to discharge the same as acting Governor; otherwise, the Governor shall resume the powers and duties of his office."

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20. On May 20, 2014, the South Carolina House of Representatives, by a roll-call vote of 97 to 2, gave second reading to the Constitutional Amendment Ratification, and on May 21, 2014, gave it a third and final reading.

21. On May 29, 2014, the Constitutional Amendment Ratification was ratified by the Speaker of the South Carolina House of Representatives and the Lieutenant Governor of South Carolina as Ratification 210.

22. On June 12, 2014, the Legislative Council codified and published by Ratification 204 as Act No. 289, with the effective date of said codification and publication being May 29, 2014, i.e., the date the Constitutional Amendment Ratification was ratified.

23. Section 1, Paragraph (G) of the Joint Resolution provides as follows: “It is proposed that the amendments proposed to Article IV of the Constitution of this State become effective for the general election of 2018 and the organization of the Senate to take place following the general election of 2018.”

24. Section 2 of the Joint Resolution sets forth the text of the proposed constitutional amendment to be the qualified electors at the next general election for representatives; as required by Section 1, Paragraph (G) of the Joint Resolution, all of the proposed amendments to Article IV of the state constitution, which are presented as a single question, are qualified and conditioned by the following phrase: “Beginning with the general election of 2018.”

25. As required by the Section 1, Paragraph (G) and Section 2 of the Joint Resolution, the Ballot Text considered and approved by the qualified electors in South Carolina on November 6, 2012, provided that all of the proposed amendments to Article IV of the state constitution would be effective “Beginning with the general election of 2018.”

26. Despite the explicit language in both the Joint Resolution and the Ballot Text providing for *all* of the amendments to Article IV of the state constitution to be effective “beginning with the general election of 2018,” the Constitutional Amendment Ratification passed by the South Carolina Senate and the South Carolina House of Representatives does not *expressly* provide a “beginning with the general election of 2018” commencement date in regard to the following amendment (the “Ratified Succession Amendment”) to the state constitution which pertains to succession in the case of removal of the Governor or Lieutenant Governor from office:

E. The amendment to Article IV of the Constitution of South Carolina, 1895, prepared under the terms of Joint Resolution 289 of 2012, having been submitted to the qualified electors at the General Election of 2012 as prescribed in Section 1, Article XVI of the Constitution of South Carolina, 1895, and a favorable vote

having been received on the amendment, is ratified and declared to be a part of the Constitution so that Section 11, Article IV is amended to read:

"Section 11. In the case of the removal of the Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Lieutenant Governor shall be Governor. In case the Governor be impeached, the Lieutenant Governor shall act in his stead and have his powers until judgment in the case shall have been pronounced. In the case of the temporary disability of the Governor and in the event of the temporary absence of the Governor from the State, the Lieutenant Governor shall have full authority to act in an emergency. In the case of the removal of the Lieutenant Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Governor shall appoint, with the advice and consent of the Senate, a successor to fulfill the unexpired term."

PRAYER FOR RELIEF

27. The Petitioner is advised and verily believes that the South Carolina General Assembly did not have the power, through the Constitutional Amendment Ratification, to materially alter the text, substance and meaning of that amendment as such was approved by the qualified electors in South Carolina at the General Election of 2012 and as such was authorized by the Joint Resolution.

28. The Petitioner is advised and verily believes that the Ratified Succession Amendment, which fails to expressly include a "beginning with the general election of 2018" commencement date, is materially different from the text of amendment included in the Joint Resolution and the Ballot Text approved by the qualified electors in South Carolina at the General Election of 2012.

29. The Petitioner is advised and verily believes that he is entitled to an order from the Supreme Court of South Carolina declaring that the qualifying phrase "Beginning with the general election of 2018" must be added to the Ratified Succession Amendment by the South Carolina Legislative Council.

30. In the alternative, the Petitioner is advised and verily believes that he is entitled to an order from the Supreme Court of South Carolina declaring that the Constitutional Amendment Ratification is void and of no legal effect in that it failed to materially conform with the text of the amendment included in the Joint Resolution and in the Ballot Text approved by the qualified electors in South Carolina at the General Election of 2012.

WHEREFORE, having fully set forth his petitioner, the Petitioner requests that the Supreme Court of South Carolina consider the within matter in its original jurisdiction and granted the relief requested herein, and provide such further relief as may be just and equitable.

Tom Davis
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SC Bar #1603

December __, 2016

EXHIBIT B

THE STATE OF SOUTH CAROLINA
IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Tom Davis, individually, and as a Citizen, Resident,
Taxpayer and Registered Elector of South Carolina Petitioner,

v.

James H. Lucas, in his official capacity as Speaker
of the South Carolina House of Representatives;
Henry D. McMaster, in his official capacity as
Lt. Governor and President of the South Carolina Senate;
Hugh K. Leatherman, Sr., in his capacity as President
Pro Tempore of the South Carolina Senate;
Nikki R. Haley, in her official capacity as Governor of
South Carolina; Alan M. Wilson, in his official capacity
as Attorney General of the State of South Carolina; and
the State of South Carolina Respondents.

AFFIDAVIT OF PETITIONER

Personally appeared before me the undersigned who, being duly sworn, avers that he is over eighteen (18) years of age and of sound mind, and that he has reviewed the grounds set forth in the preceding Petition and Complaint and to the best of his knowledge the allegations are true and grounds exist for this Court to exercise its original jurisdiction.

WITNESS my Hand and Seal this ____ day of December, 2016.

Tom Davis

SWORN to before me on this
____ day of December, 2016

Notary Public of South Carolina
Commission Expires: _____