Hearing Those Who Pay the Bills: A Comparison of the Federal and South Carolina Taxpayer Standing Models in Light of Sloan v. Sanford

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HEARING THOSE WHO PAY THE BILLS: A COMPARISON OF THE FEDERAL AND SOUTH CAROLINA TAXPAYER STANDING MODELS IN LIGHT OF SLOAN V. SANFORD

I. INTRODUCTION

On January 30, 2002, Mark Sanford received a commission as a first lieutenant in the United States Air Force Reserve's 315th Aeromedical Evacuation Squadron.1 Lieutenant Sanford probably did not envision the political and constitutional consequences that would result from his new role as a forty-one-year-old junior officer. Sanford, a Republican gubernatorial candidate when he accepted the commission, was the focus of immediate criticism questioning the motives behind his seeking military service.2 Sanford was able to overcome the criticism, however, winning his party's nomination from a crowded Republican field.3 Sanford then went on to defeat incumbent Democratic Governor Jim Hodges.4 On January 15, 2003, just shy of his one-year anniversary in the Air Force Reserve, Sanford became the 115th Governor of South Carolina.5 At that moment, Sanford began serving as both an officer in the United States Air Force Reserve and as Governor of South Carolina.

Sanford's dual positions soon attracted the attention of retired Greenville businessman, Edward Sloan Jr., a contributor to Sanford's campaign.6 Viewing himself as a government watchdog, Sloan brought suit before the South Carolina Supreme Court seeking a declaratory judgment that Sanford could not serve simultaneously as Governor and as an Air Force Reservist.7

Two important issues were decided in Sloan v. Sanford: first, whether South Carolina's constitution allows its governor to serve in the Air Force Reserve; and second, whether Sanford had standing to bring the suit.8 Although the first issue was the one that caught headlines across the state, it is the standing issue that is more important to South Carolina jurisprudence. An analysis of the supreme court's

1. Schuyler Kropf, Former Congressman Sanford Joins Reserves, POST & COURIER (Charleston, S.C.), Mar. 8, 2002, at 1B.
2. See, e.g., Schuyler Kropf, Democrats Slam Sanford for Joining Reserve During Campaign for Governor, POST & COURIER (Charleston, S.C.), Mar. 9, 2002, at 1B (reporting State Democratic Party Chairman Dick Harpootlian's characterization that Sanford's acceptance of a reserve commission was an effort to "sneak[] into the uniform of his country to inoculate himself from criticism that he is anti-military"; Harpootlian also criticized Sanford's congressional voting record as weak on defense.).
3. See Dan Hoover, Sanford Coasts to Win, GREENVILLE NEWS (S.C.), June 26, 2002, at 1A.
4. See Dan Hoover, Sanford Defeats Hodges; Graham Going to Senate, GREENVILLE NEWS (S.C.), Nov. 6, 2002, at 1A.
8. Id. at 433, 593 S.E.2d at 472.
reasoning in Sanford reveals that South Carolina’s standing jurisprudence sits in stark contrast to that of the federal system. The federal standing model sets a high bar for those citizens bringing suits challenging governmental action. The South Carolina model is less prohibitive, allowing courts to adjudicate more suits on the merits. Though South Carolina’s standing issues are not completely resolved in all respects, particularly the precise definition of “standing” and whether constitutional standing exists, the state’s approach is, on the whole, appropriate for South Carolina.

Part II of this Note analyzes the two issues addressed in Sanford: the constitutionality of dual-office holding and taxpayer standing. Part III is a detailed exposition of the South Carolina standing model in comparison to the federal model. Part IV analyzes the court’s reasoning in Sanford in light of South Carolina’s standing model. Part V explores possible reasons for the differences in the federal and South Carolina standing requirements and explains why South Carolina’s system is better suited for this state.

II. SLOAN v. SANFORD

A. Constitutionality of Dual-Office Holding

The Sanford court devoted most of its attention to the same issue that the media perceived as most important: whether Sanford could simultaneously hold a commission in the Air Force Reserve and serve as Governor. The constitutionality of a Governor serving in the Reserve of a branch of the United States military was one of first impression in South Carolina. Sloan’s challenge to Sanford’s service focused on article IV, section 2 of the South Carolina Constitution, which provides, “No person while Governor shall hold any office or other Commission (except in the militia) under the authority of this State, or of any other power.” The court chronicled the historical meaning of “militia,” from the time of King Alfred the Great through South Carolina’s Antebellum era and continuing up to the present day. The court determined that, despite the federal control over the Air Force Reserve, it falls within the definition of militia because the Reserve consists of citizen soldiers. Some may argue, however, the term militia applies only to the National Guard because the state controls the Guard with the Governor as commander-in-chief. Nevertheless, the court held Sanford’s service was not a separation of powers violation because Sanford was “not serving in two of the three branches of government by holding a commission in the Air

9. See infra Part II.
10. See infra Part III.
11. See infra Part III.
12. Sanford, 357 S.C. at 431, 593 S.E.2d at 470.
13. Id. at 435, 593 S.E.2d at 472 (citing S.C. CONST. art. IV, § 2).
14. Id. at 435–36, 593 S.E.2d at 472–73.
15. Id. at 431, 593 S.E.2d at 473.
Force Reserve." The court cited eight cases from other jurisdictions, asserting that these decisions from other states supported the ability of state officers to serve in the Reserves. The court concluded that the Governor’s Reserve service does not compromise his allegiance to the state and that the policies of both South Carolina and the federal government support military service.

B. Taxpayer Standing

Despite the importance of the dual-office holding issue, resolution of the standing issue is more likely to have a greater impact on South Carolina’s legal structure. Standing cases are much more common than those questioning the proper role of constitutional officers, particularly cases challenging the ability of an officer to hold dual offices. In a mere four paragraphs, the court held Sloan had standing to bring suit. The brief treatment the court gave this issue belies its importance. The court justified Sloan’s standing based on its holding in Baird v. Charleston County. In Baird, the court held that the issuance of tax-exempt bonds to the Medical University of South Carolina “impact[ed] a profound public interest—the public health and welfare.” The Sanford court analogized this case to Baird when it held the ability of South Carolina’s Governor to hold his office was at least as important as the issuance of tax-exempt bonds.

The court dealt with the standing issue in Sanford so quickly because its jurisprudence is quite developed in this area. The following discussion provides a detailed look at South Carolina’s standing jurisprudence and demonstrates the similarities and differences between the state’s model and the federal model.

III. SOUTH CAROLINA VERSUS FEDERAL STANDING

A. Constitutional Versus Prudential

1. Federal Model

The relevance of the terms constitutional and prudential have no import in South Carolina’s standing jurisprudence absent an understanding of their definition and importance to the federal system. Thus, a historical review of the terms as they relate to federal jurisprudence is important.

Simply stated, standing in the federal model is “whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.” This entitlement is limited by certain requirements, which the court has recognized as

17. Id. at 437 n.4, 593 S.E.2d at 473–74 n.4.
18. Id. at 433–34, 593 S.E.2d at 472.
20. Id. at 531, 511 S.E.2d at 75.
constitutional and prudential.\textsuperscript{23} The constitutional requirement arises out of the interpretation of “case or controversy” in Article III.\textsuperscript{24} The prudential requirement arises when “countervailing considerations may outweigh the concerns underlying the usual reluctance to exert judicial power when the plaintiff’s claim to relief rests on the legal rights of third parties.”\textsuperscript{25} Whereas constitutional requirements of standing must always be met, Congress may override prudential requirements.\textsuperscript{26}

\textbf{a. Constitutional Requirements}

The United States Supreme Court held the Constitution limits federal courts to hear cases and controversies as set forth in Article III of the Constitution.\textsuperscript{27} The case or controversy limitation is based on the requirement of a limited federal judicial power and the constitutional mandate of coequality of the Executive, Legislative, and Judicial branches of the federal government.\textsuperscript{28}

In developing its standing jurisprudence, the Court utilized practical terms to ease application of the constitutional case or controversy requirement. The Court enumerated three broad categories of constitutional standing requirements:

First, the plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) concrete and particularized, . . . and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical’” . . . . Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.” Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.”\textsuperscript{29}

Thus, a cause of action in federal court must allege the defendant caused an injury for which the court can provide the plaintiff a remedy. If any of these requirements is missing, the plaintiff will not be entitled to have the court hear the merits of the claim.\textsuperscript{30} The constitutional requirements, however, are only part of the standard that a litigant must satisfy for standing.

\textsuperscript{23} \textit{Id.}
\textsuperscript{24} \textit{Id.} (citing U.S. CONST. art. III).
\textsuperscript{25} \textit{Id.} at 500–01.
\textsuperscript{26} \textit{See} Bennett v. Spear, 520 U.S. 154, 162 (1997).
\textsuperscript{28} \textit{See id.}
\textsuperscript{30} \textit{Id.} at 561 (discussing the “indispensable” nature of the standing elements to a plaintiff’s case).
b. Prudential Requirements

Two additional standing requirements are independent of the constitutional requirements set forth above. These prudential requirements are subject to congressional abrogation.\(^{31}\) The first requirement, known as the prohibition against third party standing, is that a party is capable of asserting only his own rights and is unable to bring the claims of third parties before a federal court.\(^{32}\) The second requirement is that status as a taxpayer does not confer the ability to raise, before a federal court, grievances shared with all other taxpayers.\(^{33}\) But a narrow exception to the prohibition against generalized grievances exists—taxpayer standing.\(^{34}\)

The Court held that even if a party alleges a sufficient injury to meet the constitutional requirements, the party still may not have met the requirement for standing.\(^{35}\) This occurs when the injury alleged is not personal to the party, but is instead sustained by third parties.\(^{36}\) In this scenario, the claim lacks standing.\(^{37}\) Exceptions exist to the prohibition against third party standing.\(^{38}\) Though third party standing is an important concept and an issue often before the Court, taxpayer standing and the ban on generalized grievances are more relevant to the comparison between the federal and South Carolina models.

2. South Carolina Model

Until 2001, no South Carolina case discussed constitutional or prudential standing. In Sea Pines Ass’n for the Protection of Wildlife v. South Carolina Department of Natural Resources, the South Carolina Supreme Court adopted the Lujan test and quoted the United States Supreme Court’s characterization of the test as the “irreducible constitutional minimum of standing.”\(^{39}\) The court applied the Lujan test to similar issues in Sea Pines and denied standing.\(^{40}\) The court of appeals later adopted the same test in Sloan v. Greenville County.\(^{41}\) In that case, however,

\(^{31}\) Bennett, 520 U.S. at 162.


\(^{33}\) See Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208, 217 (1974) (stating that the Court does not allow “generalized grievances about the conduct of Government as a basis for taxpayer standing”).

\(^{34}\) See ERWIN CHEREMINSKY, CONSTITUTIONAL LAW § 2.5.5, at 89–94 (2d ed. 2002) (explaining the history of taxpayer standing).

\(^{35}\) See Warth, 422 U.S. at 499.

\(^{36}\) Id.

\(^{37}\) Id.

\(^{38}\) These exceptions usually center on a close relationship between the parties when the third parties cannot assert their own rights, in addition to cases or controversies involving First Amendment issues. See CHEREMINSKY, supra note 34, § 2.5.4, at 82–89.


\(^{40}\) Id. at 600–03, 550 S.E.2d at 291–92.

the court of appeals flatly stated, "A party seeking to establish standing must prove the 'irreducible constitutional minimum of standing...." 42

Currently, constitutional standing issues in South Carolina present many more questions than answers. The South Carolina Supreme Court in Sea Pines may have adopted the Lujan test intending the test to serve only as an extension of its standing jurisprudence and not as a constitutional requirement. The language of the court of appeals in Sloan v. Greenville County is even more perplexing. An unresolved issue after this case, then, is whether the court intended a fundamental change to South Carolina's standing jurisprudence to incorporate constitutional requirements. Furthermore, whether these constitutional requirements are a part of the United States Constitution or a part of the South Carolina Constitution is unclear. Another unresolved issue is whether Sea Pines' constitutional language applies only to environmental concerns. The court of appeals apparently did not think the language applied to environmental concerns in Sloan v. Greenville County.

Irrespective of Sea Pines and Sloan v. Greenville County, questions remain as to whether the legislature can abrogate any of the standing requirements set forth by the South Carolina Supreme Court. If the requirements are constitutional, the legislature would not have the right to abrogate them. The murkiness cast upon the issue by Sea Pines and especially Sloan v. Greenville County leaves open for speculation how a South Carolina court would decide whether its standing requirements are constitutionally required. The primary distinction between the federal and South Carolina standing models is the definition and use of the terms constitutional and prudential.

B. The Definition of Standing in South Carolina Cases: A Real Party in Interest

For a claim to be heard by a South Carolina court, "a justiciable controversy must be present."43 The court defined a justiciable controversy as one that is "real and substantial," instead of hypothetical or abstract.44 The term justiciability incorporates "the doctrines of ripeness, mootness, and standing,"45 all of which are terms shared in common with the federal system.

In addition to the justiciability requirement, the court set forth a test it refers to as "a real party in interest."46 The court defined "[a] real party in interest [as] one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action."47 The

42. Id. at 549, 590 S.E.2d at 348.
43. Id. at 546, 590 S.E.2d at 346.
44. Id.
45. See id. at 547, 590 S.E.2d at 346.
46. Id. at 547, 590 S.E.2d at 347 (quoting Charleston County Sch. Dist. v. Charleston County Election Comm'n, 336 S.C. 174, 181, 519 S.E.2d 567, 571 (1999)).
real party in interest language and its subsequent definitions are derived from the South Carolina Rules of Civil Procedure.48

As a primary matter, standing as defined in South Carolina is different from its definition in federal courts. As enumerated above, federal standing requires a party to allege an injury caused by the defendant for which the court can provide the plaintiff with a remedy.49 South Carolina’s definition has no such requirement.

To have standing in South Carolina, the plaintiff must have a “real, material or substantial interest” in the lawsuit’s subject.50 Unlike the federal model, South Carolina requires no injury, causation, or redressability. Thus, from the beginning, a plaintiff in a South Carolina court has a lower hurdle for adjudication of his or her claim.

Distinguishing between a “real, material, or substantial interest” and one that is merely “nominal or technical” is problematic.51 South Carolina courts have not defined the terms nor the differences between them. The “real party in interest” language is drawn from the South Carolina Rules of Civil Procedure Rule 17(a).52 The rule provides that “[e]very action shall be prosecuted in the name of the real party in interest.”53 Analyzing Rule 17(a), the South Carolina Court of Appeals held in Town of Sullivan’s Island v. Felger as follows:

SCRPC 17(a) provides that in order to have standing to sue, a plaintiff must be a real party in interest. “A real party in interest is one who has a real, material, or substantial interest in the subject matter of the litigation, as opposed to one who has only a nominal or technical interest in the action.”54

Seven reported cases in South Carolina have reflected similar reasoning, though only Felger makes reference to Rule 17(a) itself.55 The only guidance South Carolina courts have given is the manner in which the courts citing that language have granted standing. Sea Pines is the only case to use the “real, material or substantial” language and deny standing. This case is important not only for its

49. See supra Part III.A.1.a.
50. Greenville County, 356 S.C. at 547, 590 S.E.2d at 347 (quoting Charleston County Sch. Dist., 336 S.C. at 181, 519 S.E.2d at 571).
51. Id.
52. S.C. R. Civ. P. 17(a).
53. Id. (the South Carolina rule largely mirrors the federal rule’s language).
denial of standing, but also because it uses the constitutional language discussed above.

In *Sea Pines*, the court adopted the standing test discussed in *Lujan*.

*Sea Pines* involved wildlife organizations' attempt to stop the Department of Natural Resources from issuing permits to hunt deer in a wildlife sanctuary. The court ultimately held that like the plaintiffs in *Lujan*, the wildlife organizations did not have standing to bring suit because they failed *Lujan*’s three-part test.

The South Carolina Supreme Court may not have adopted *Lujan* to determine standing in any suit. Since *Sea Pines*, the supreme court has not applied the *Lujan* test in any case involving standing. The court of appeals, however, viewed the supreme court’s adoption of *Lujan* as extending beyond the environmental realm. The court of appeals applied *Lujan* in a case involving a conservation advocacy group’s attempt to block decisions of a zoning board and a case in which a taxpayer sued over annexation of property by a city. Whether the supreme court will extend *Sea Pines* to cases not involving an environmental concern is unclear.

The court in *Sea Pines* only mentioned the “real, material or substantial” language as an initial matter. The court failed to address whether the plaintiff’s interest was “real, material or substantial.” The fact that the court denied standing indicates that it must have concluded that the plaintiff’s interest was not “real, material or substantial.” Attempting to glean a definition of “real, material, or substantial” as opposed to “nominal or technical” in South Carolina’s courts may be impossible. The particularized facts of the cases using the language seem to show only that when the language is used, standing is likely to be granted. *Sea Pines* remains the only exception. Thus, the interest of environmental groups seeking to prevent governmental action when they cannot establish a direct link between themselves and the injunction sought may fall within the nominal or technical exception.

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57. Id. at 597–98, 550 S.E.2d at 289–90.
58. Id. at 603, 550 S.E.2d at 292.
63. Id. at 600–03, 550 S.E.2d at 291–92.
C. Generalized Grievances Versus Taxpayer Standing

1. Federal Model

The terms “generalized grievance” and “taxpayer standing” are important aspects of both the federal and South Carolina standing models. Because of the multi-faceted nature of the terms and the parallels between the federal and South Carolina models’ use of them, a rather detailed synopsis of the terms’ significance in the federal model precedes the discussion of the terms’ meaning and use in the South Carolina model.

The difference between a “generalized grievance” and “taxpayer standing” in the federal standing model is a narrow one. A generalized grievance is a harm that is relatively equally spread and shared in common by a large group or all citizens." The term taxpayer standing seems to be used as a substitute for, or in conjunction with, the term generalized grievance when the Taxing and Spending Clause of Article I, Section 8 of the Constitution is invoked.5 The terms are distinct, though, because taxpayer standing seems to be an exception to the prohibition against generalized grievances.6 In Flast v. Cohen, the United States Supreme Court set forth a two-part test to determine whether a taxpayer’s claim merits standing.7 The Flast test requires that a plaintiff who seeks standing as a taxpayer to establish a nexus between one’s status as a taxpayer and the nature of the challenged legislation and a nexus between that plaintiff’s status as a taxpayer “and the precise nature of the constitutional infringement alleged.”8 The test further requires a

66. See Chemerinsky, supra note 34, § 2.5.5, at 94 (discussing the Court’s narrow exception allowing taxpayer standing claims challenging governmental expenditures that allegedly violate the Establishment Clause); see also Bowen, 487 U.S. at 619 (“[W]e have not questioned the standing of taxpayer plaintiffs to raise Establishment Clause challenges. . . .”)
67. The test provides the following:
First, the taxpayer must establish a logical link between that status and the type of legislative enactment attacked. Thus, a taxpayer will be a proper party to allege the unconstitutionality only of exercises of congressional power under the taxing and spending clause of Art. I, § 8, of the Constitution. It will not be sufficient to allege an incidental expenditure of tax funds in the administration of an essentially regulatory statute. . . . Secondly, the taxpayer must establish a nexus between that status and the precise nature of the constitutional infringement alleged. Under this requirement, the taxpayer must show that the challenged enactment exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power and not simply that the enactment is generally beyond the power delegated to Congress by Art. I, § 8. When both nexuses are established, the litigant will have shown a taxpayer’s stake in the outcome of the controversy and will be a proper and appropriate party to invoke a federal court’s jurisdiction.
Flast, 392 U.S. at 102–03.
68. Id. at 102.
taxpayer challenge under the Taxing and Spending Clause of Article 1, Section 8.69 The Flast test’s net effect has been to limit standing in taxpayer claims to the Establishment Clause.70 Though Flast is still good law, it has not been extended.71 Even under the Establishment Clause, the Court has not recognized taxpayer claims unless they challenge expenditures specifically.72

Thus, the Court has “limited taxpayer standing to challenges directed ‘only [at] exercises of congressional power’”73 and prohibited cases in which the alleged wrong was not executed under the Taxing and Spending Clause of Article 1, Section 8, but rather “under the Property Clause, Art. IV, §3, cl. 2.”74 Additionally, the Court has required a direct challenge of congressional action, refusing to grant standing if Congress channels its authority through a regulatory agency.75 This requirement is incongruous, given Congress’s authority not only to vest power in regulatory agencies, but also to overturn regulatory action or decisions.

In Lujan, the Court further limited taxpayer standing by indicating that the prohibition against generalized grievances and perhaps taxpayer standing were, in fact, constitutional bars to citizen suit.76 Prior to deciding Lujan, the Court adhered to its holding in Warth that the prohibition against generalized grievances was a prudential requirement.77 Not surprisingly, Lujan’s holding left undisturbed the principle, as set forth above, that a court will not grant taxpayer standing to litigants who do not sue under the Taxing and Spending Clause.78

The federal taxpayer standing model paints a picture of an increasingly restrictive standard for plaintiffs seeking relief from the courts. In glaring contrast to this restrictive model is South Carolina’s taxpayer standing model, which is increasingly more liberal.

2. South Carolina Model

Much like the federal model, courts in South Carolina hold that a generalized grievance is insufficient for a court to hear a citizen’s claim. Unlike the federal model, however, South Carolina recognizes an exception known as taxpayer

69. Id.
70. See CHEMERINSKY, supra note 34, § 2.5.5, at 94 (discussing the Court’s narrow exception allowing taxpayer standing claims challenging governmental expenditures that allegedly violate the Establishment Clause).
71. See id. at 92–94.
72. See id. at 93 (explaining that the Court’s jurisprudence indicates taxpayer standing is only allowed if a party “challenges a government expenditure as violating the establishment clause”).
74. Id. at 480.
75. Id. at 479.
76. See CHEMERINSKY, supra note 34, § 2.5.5, at 94–95 (explaining the possible constitutional impact of Lujan).
78. Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992) (neglecting to specifically mention the Taxing and Spending Clause in its opinion denying standing, possibly indicating that the jurisprudential principle requiring the Taxing and Spending Clause be used to invoke taxpayer standing still exists).
standing. South Carolina’s requirements to grant standing are far less restrictive than the federal requirements.

Case law reflects South Carolina’s less exacting standard. South Carolina courts use the term “general interest,” which appears to be analogous to the term “generalized grievance.” The South Carolina Supreme Court has held that a private citizen will not have standing to challenge the legality of governmental action unless he or she has, or likely will sustain, an injury from the governmental action. Nonetheless, South Carolina has long recognized taxpayers as a separate class from normal citizens.

In Sloan v. School District of Greenville County, yet another case seeking a declaratory judgment, Edward Sloan Jr., brought suit against the School District of Greenville County and members of the school board “as a citizen, resident, taxpayer, and registered elector of Greenville County, and on behalf of all others similarly situated.” Sloan petitioned the court to have “certain contracts entered into by the District [declared] ultra vires to the District’s [power].” The court held that “[a] taxpayer’s standing to challenge unauthorized or illegal governmental acts has been repeatedly recognized in South Carolina.” The court concluded that Sloan had standing to bring the suit over the alleged violation of a statute requiring that government contracts be awarded on a competitive bidding basis. Thus, South Carolina’s standing jurisprudence finds the claims of those taxpayers seeking to invoke the judicial power meritorious, because of the unique relationship between capital-contributing taxpayers and their government. Unlike the federal model, which only allows taxpayers’ claims when they originate under the Taxing and Spending Clause, the South Carolina courts seem to allow any claims that challenge governmental action. Ultimately, South Carolina courts allow a far wider range of claims through the courthouse door than their federal counterparts allow. As the United States Supreme Court has readily admitted, claims exist that elude adjudication because the Court requires that taxpayer actions be brought under the Taxing and Spending Clause. Because South Carolina courts do not

79. See Mauldin v. City Council of Greenville, 33 S.C. 1, 16, 11 S.E. 434, 435 (1890) (stating taxpayer standing can be established by a showing that an illegal act will inflict a “special and peculiar” injury to the complaining taxpayer).
81. See Mauldin, 33 S.C. at 16, 11 S.E. at 435.
83. Id. at 517, 537 S.E.2d at 300.
84. Id. at 520, 537 S.E.2d at 301.
85. Id. at 522, 537 S.E.2d at 303.
86. See supra Part III.C.1. In each of the following cases challenging governmental action, standing was granted: Sloan v. Sanford, 357 S.C. 431, 593 S.E.2d 470 (2004) (challenging Governor’s ability to hold dual offices); Sloan v. Greenville County, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003) (challenging Greenville County’s procurement procedures of construction services for three design-build public works projects); Sloan v. Sch. Dist. of Greenville County, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000) (challenging contracts entered into by the Greenville County School District).
bind themselves to a constitutional requirement for taxpayer standing, they are much more hospitable to taxpayer claims.

South Carolina’s position is admirable because a wide range of governmental action may be peculiar to a small class of persons, who would not normally have the ability to elicit legislative action. Under the federal requirements, however, a discrete minority is barred from remedy because its small number cannot arouse the attention of a large enough group of legislators, and the courts will not adjudicate its claims based on what most non-legal educated persons would call a technicality. South Carolina’s jurisprudence militates against this fundamental unfairness. Though South Carolina does not recognize generalized grievances per se, taxpayer standing is the exception that nearly swallows the rule, allowing a much broader range of claims into court.

The possibility still exists that a person not paying South Carolina taxes, such as an out-of-state resident, may not have a remedy in South Carolina courts. That person may argue, however, that paying South Carolina sales tax would allow taxpayer standing. This scenario remains speculative because South Carolina courts have not faced such a question. Taxpayer standing alone serves as a low bar to citizen suits in this state. Furthermore, South Carolina’s unique recognition of a very significant caveat, public importance, allows the adjudication of even more citizen suits.

D. Public Importance

1. Baird v. Charleston County

The words public importance first appeared in a South Carolina case in 1999.88 In Baird, a group of doctors sought an injunction against Charleston County to prevent it from acting ultra vires in issuing tax-exempt bonds to the University Medical Associates of the Medical University of South Carolina.89 In its discussion granting standing to the doctors, the court held that “a court may confer standing upon a party when an issue is of such public importance as to require its resolution for future guidance.”90 Though this statement was novel, the court backed up its holding by citing to precedent in which standing was conferred based upon “wide concern, both to law enforcement personnel and to the public, . . . ” and when “questions of public interest originally encompassed in an action should be decided for future guidance . . . ”91

After setting forth this new principle, the court had to determine whether the doctors’ complaint was of public importance. Succinctly, the court held that “the issuance of the hospital bonds clearly impacts a profound public interest—the

89. Id. at 524–25, 511 S.E.2d at 72.
90. Id. at 531, 511 S.E.2d at 75.
91. Id. (citing Thompson v. S.C. Comm’n on Alcohol & Drug Abuse, 267 S.C. 463, 229 S.E.2d 718 (1976) (emphasis added); Berry v. Zahler, 220 S.C. 86, 66 S.E.2d 459 (1951)).
public health and welfare . . . . It is hard to conceive of any greater societal interest than this one."92 The public importance rule set forth in Baird is not isolated to the facts of that case. On the contrary, it has been applied in several cases, almost invariably used to support the existence of standing.93

2. The Wake of Baird

Baird's establishment of public importance standing did not take long to find its way into other South Carolina courts' opinions. Since Baird, seven reported cases have employed the public importance language as a means to grant standing.94 Discussion of each of these cases demonstrates how courts have followed and expanded upon the rule from Baird.

In Carolina Alliance for Fair Employment v. South Carolina Department of Labor, Licensing, & Regulation a former temporary employee and his employer brought a declaratory judgement action against a temporary employment agency and the South Carolina Department of Labor, Licensing, and Regulation alleging the temporary employment agency's minimum wage notification did not comply with certain statutory requirements.95

Neither of the parties raised the issue of public importance standing; the court of appeals raised it sua sponte.96 The court of appeals justified raising the issue because parties cannot consent to confer jurisdiction upon a court when a justiciable controversy does not exist.97 In addition, the court of appeals reasoned that the public importance rule was an exception to the standing requirement, rather than a type of standing unto itself.98 In support of the public importance rule, the court of appeals cited Baird and held the increasing use of temporary employees in today's workforce raised the issue to the level of public importance.99 The court of appeals viewed the public importance rule as an exception to South Carolina's standing doctrine. Whether public importance is an exception or merely another way of conferring standing seems to be a distinction without a difference, because the practical result under either theory likely would be the same.

92. Id.
93. See infra Part III.D.2.
95. Carolina Alliance, 337 S.C. at 480–82, 523 S.E.2d at 797–98.
96. Id. at 485, 523 S.E.2d at 800.
97. Id.
98. See id. at 488, 523 S.E.2d at 801.
99. Id. at 488–89, 523 S.E.2d at 801–02.
The South Carolina Supreme Court revisited Baird's public importance rule in Evins v. Richland County Historic Preservation Commission. In Evins, a citizen brought suit against the Historic Preservation Commission, the county, and the city over property conveyances. The appellant argued that the trial court erred in granting standing and asked the South Carolina Supreme Court to limit Baird to ultra vires acts of "immense public importance." Despite holding the actions of the Richland County Historic Preservation Commission were ultra vires, the court declined to draw the distinction the appellants sought, leaving the rule of Baird intact, and arguably stronger. The holding in Evins tacitly indicates any governmental action rising to the level of public importance is subject to judicial review through a taxpayer suit.

In Sloan v. School District of Greenville County, the court of appeals further justified the public importance jurisprudence. The court held, "Public policy demands a system of checks and balances whereby taxpayers can hold public officials accountable for their acts . . . . Taxpayers must have some mechanism of enforcing the law." The court of appeals' reasoning is sound and consistent with the principle that the electoral process is not entirely sufficient to ensure public officials will execute their duties faithfully. This is especially true for non-elected officials who are often insulated from the pressure and the accountability of elections. Further, by vesting in taxpayers the power to challenge actions of officials and agencies, the audit power is in the hands of those who are bankrolling the challenged action.

In Sloan v. Greenville County, the court of appeals indicated in dicta that the rule of public importance is not carte blanche for "per se . . . judicial determination of [an] issue." Instead, the court stated, "[T]he party must demonstrate some overriding public purpose or concern to confer standing to sue on behalf of her fellow taxpayers."

In Sanford, the South Carolina Supreme Court treated the issue of public importance with a brief analysis. The court cited to Baird holding that "[t]he eligibility of South Carolina's governor to serve in this State's highest elected office is at least as important as the proper funding for a clinical hospital for MUSC." The court exercised a considerable amount of judicial economy by simply stating what is obvious based on its precedent, rather than indulging in an unnecessary, in depth analysis.

101. See id. at 18, 532 S.E.2d at 877.
102. Id. at 21, 523 S.E.2d at 879.
103. See id.
105. Id. at 523, 537 S.E.2d at 303 (quoting E. Mo. Laborers Dist. Council v. St. Louis County, 781 S.W.2d 43, 47 (1984)).
109. Id. at 434, 593 S.E.2d at 472.
In a relatively short amount of time, the public importance rule of 
Baird has become an established rule of law. In Charleston County Parents for 
Public Schools, Inc. v. Moseley, a parent’s group brought a complaint seeking to have the 
county auditor impose a higher tax levy. In Moseley, “All parties conceded [petitioners 
had] standing because the issue [was] one of public importance that requir[ed] resolution for future guidance.”

The most recent case on the public importance issue is Sloan v. Wilkins. In 
Wilkins, Edward Sloan sued the General Assembly alleging the Life Sciences Act 
violated article III, section 17 of the South Carolina Constitution. To reach its 
decision, the court cited Baird’s public importance language, as well as Sanford, and Sloan v. Greenville County. The brief portion of the opinion that focused on 
standing consisted of little more than the citation of cases and concluded, “In light 
of the great public importance of this matter, we find Sloan has standing to maintain 
this action.” Thus, Wilkins is the most recent example of the established nature of 
the public importance exception in South Carolina’s standing jurisprudence.

The federal model does not recognize public importance standing as observed 
by its low tolerance for taxpayer standing. Though the rest of the terms used in the 
South Carolina standing model find some resonance in the federal model, public 
importance is a creation of South Carolina courts and represents a novel approach 
to allowing adjudication of claims. With public importance, the major distinctions 
between the federal and South Carolina standing models end.

IV. STANDING IN SLOAN V. SANFORD

The South Carolina Supreme Court’s treatment of the standing issue in Sanford 
was rather brief. The court apparently viewed Sanford as an easy case based on 
its established standing model. Under the federal model, however, a federal court 
would have denied standing and probably would have done so with even more 
brevity than the South Carolina Supreme Court used to grant standing. The court 
based standing primarily on the public importance holding of Baird.

Although the court granted standing based on public importance, the opinion 
begins with the general rule: “[t]o have standing, a litigant must have a personal 
stake in the subject matter of the litigation.” Under the general rule, conceiving 
a businessman from Greenville forcing a court’s hand to decide whether the

111. Id. at 514, 541 S.E.2d at 535.
113. Id. at *2.
114. Id. at *4.
115. Id.
116. See note 108 and accompanying text.
Governor of South Carolina can hold office is indeed difficult. By relying on the public importance rule, the court’s liberal treatment of standing in Sanford raises significant constitutional concerns that the South Carolina judiciary may be acting in excess of its authority to reach the merits of a case challenging the ability of the state’s chief executive officer to hold office. The court alluded to the constitutional problem in its opinion: “a private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger, of sustaining prejudice therefrom.” Arguably, those harmed by legislative or executive actions, instead of by court action, ought to seek redress from the political process. Nonetheless, the idealistic hope that elections protect citizens from their government does not hold true in all instances. As a practical matter, an isolated wrong committed by the state upon an insular minority likely will not elicit the passions of the electorate.

Interestingly, the court addressed the evolution of its standing jurisprudence, conceding that a claim very similar to Sloan’s did not survive that standing test. The court then discussed the necessity to strike “[a]n appropriate balance between the competing policy concerns underlying the issue of standing . . . .” The court stressed a need for balance, but then failed to apply this balancing standard to the facts of Sanford. The court never directly said the merits of Sloan’s claim outweighed the interests of judicial economy; rather, the court utilized its public importance rule to find Sloan’s claim rose to such a level of public import as to justify standing.

Despite the strength of arguments based on separation of powers and the proper judicial role, the standing issue in Sanford was rightly decided on whole. Though

119. See id.
120. Id. (emphasis added) (citing Blandon v. Coleman, 285 S.C. 472, 330 S.E.2d 298 (1985)).
121. See id. (describing Culbertson v. Blatt, 194 S.C. 105, 9 S.E.2d 218 (1940), decided sixty-four years earlier, which denied standing to plaintiffs seeking to bring suit “against several dual office-holding public officials”; the court then discussed the liberalization of the court’s standing requirements).
122. Id. The court described this balance as follows: Citizens must be afforded access to the judicial process to address alleged injustices. On the other hand, standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits.
123. The court described its holding as consistent with prior holdings: We conclude Petitioner has public interest standing because of the importance of the issue he raises. Our conclusion is consistent with prior case law. In Baird, supra, doctors sued Charleston County to enjoin the issuance of tax-exempt bonds to the Medical University of South Carolina (MUSC) for its purchase of St. Francis Hospital. We held the issuance of the hospital bonds clearly impacts a profound public interest, the public health and welfare. The eligibility of South Carolina’s governor to serve in this State’s highest elected office is at least as important as the proper funding for a clinical hospital for MUSC. Accordingly, we confer standing.

Id.
the holding lacked some doctrinal analysis, particularly in answering why Sloan’s interest outweighed the government’s interest, the holding was consistent with the South Carolina standing model. Consistency alone is not a sufficient reason for the court’s decision. The underlying rationale, however, is sufficient. Because it is difficult to imagine how, in light of South Carolina’s standing model, the court in Sanford could not have granted standing. The court’s standing jurisprudence favors the state’s taxpayers, and as will further be explored, South Carolina courts’ willingness to listen to South Carolina’s taxpayers is only proper in light of the government’s role as servant of the people.

IV. FEDERAL VERSUS SOUTH CAROLINA STANDING ANALYSIS

The South Carolina and federal standing models each are based on a completely separate constitution, statutory scheme, and case law. Thus, differences in the adjudication of cases involving standing issues is reasonable. While South Carolina courts do not strictly adhere to the federal standing model, they have cited federal case law in their standing decisions and have purported to adopt rules from those cases. South Carolina courts have cited to the federal standing model, when they have a reason to do so. For example, the South Carolina Supreme Court likely adopted Lujan in Sea Pines because the facts and issues before the court were similar to those in Lujan. Thus, the federal precedent spoke to the particular facts in Sea Pines, although the standard was not entirely consistent with South Carolina’s preexisting standing model.

Excluding the supreme court’s adoption of Lujan, South Carolina has set its own standard for deciding who should have access to the court. South Carolina courts can accommodate a more liberal standard than federal courts because of the parochial nature of state law. Both geographically and in population terms, South Carolina is a small state. As long as South Carolina’s residents do not suddenly bombard the court system with taxpayer claims, the courts of this state can continue reaching the merits of taxpayer claims with little hesitation.

Although appropriate in South Carolina courts, a liberal taxpayer standing model would be impracticable for federal courts’ use. Notwithstanding constitutional differences, the federal courts likely could not manage the volume of potential claims. As the size of the federal government has grown since its founding, so has the number of potential taxpayer claimants.

South Carolina state courts do not face the same concerns that lead the federal courts to restrict standing grants. Although most South Carolinians probably do not think about separation of powers with respect to state government, the issue often arises in debates over the actions of the federal government.

Particularly, conservatives decry what they see as a judiciary full of activist judges usurping executive and legislative power. Though Governor Sanford has often addressed separation of powers in South Carolina’s government and constitution, the issue does not elicit the electorate’s constant attention. The United

124. See supra Part II.A.2.
States Supreme Court’s strict standing requirements are based on the Court’s deference for separation of powers. On the other hand, South Carolina case law demonstrates less concern over such issues. The courts are not abdicating their duty or usurping power. Rather, South Carolina courts recognize injustice where the government treads upon the rights of certain South Carolina citizens and leaves them without recourse. The limited size and scope of the state government should quell many concerns about judicial overreaching. The states of modern America exist with the assurance that the United States Supreme Court can check the judicial decisions of their highest state courts involving a federal or United States constitutional issue. The federal government has no such oversight looming, thus concerns over separation of powers must be a key concern of the United States Supreme Court. Allowing suits by taxpayers against a state government serves the ideal that a government is by, for, and of the people and that logically those citizens should be able to hold that government accountable through the electoral process and through the courts.

On the whole, the South Carolina model is an approach well suited for our state. As enumerated above, South Carolina’s standing model allows for adjudication of claims that otherwise might not be heard. The model allows South Carolinians to hold the state accountable for its actions. Despite the apparent conflict between the federal and South Carolina models, each is suited to a legitimate and practical purpose within its realm.

VI. CONCLUSION

Sloan v. Sanford highlights the importance of the ability to be heard in state court. The case presented a unique opportunity to look beyond the headlines to substance, and from there to contrast the differences between a more receptive South Carolina taxpayer standing model with a more restrictive federal model. Though the federal and South Carolina models are based upon different systems, and each is logical in its own right, South Carolina affords a taxpayer claimant the respect due the people who pay the bills.

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125. See supra Part III.D.