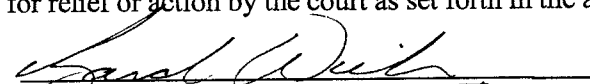


STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ABBEVILLE )  
 )  
 Dr. Richard Taylor, Dr. Parker Young, J. David )  
 Chesnut, and the Erskine Alumni Association )  
 Plaintiff )  
 )  
 v. )  
 )  
 General Synod Of The Associate Reformed )  
 Presbyterian Church, Inc. )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 CASE NO.  
 2010-CP-01-080  
 MOTION AND ORDER INFORMATION  
 FORM AND COVER SHEET

Plaintiff's Attorney: J. Theodore Gentry, Bar No. 64038 Address: P.O. Box 728, Greenville, SC 29602 phone: (864) 242-8200 fax: (864) 235-8900 e-mail: tgentry@wyche.com other:	Defendant's Attorney: Sandi R. Wilson, Bar No. 16896 Address: P.O. Box 10208, Greenville, SC 29603 phone: (864) 255-5416 fax: (864) 239-5870 e-mail: swilson@wcsr.com other:
<input checked="" type="checkbox"/> <b>MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)</b> <input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)</b> <input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)</b>	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Motion to Dismiss Complaint Estimated Time Needed: 30 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	4/16/10 Date submitted
<b>SECTION III: Motion Fee</b>	
<input checked="" type="checkbox"/> <b>PAID - AMOUNT:</b> <input type="checkbox"/> <b>EXEMPT:</b> <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	_____ JUDGE CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____	

MOTION FEE COLLECTED: \_\_\_\_\_  
 CONTESTED – AMOUNT DUE: \_\_\_\_\_

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

Dr. Richard Taylor, Dr. Parker Young,  
J. David Chesnut, and the Erskine Alumni  
Association,

Plaintiffs,

vs.

General Synod of the Associate Reformed  
Presbyterian Church, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS  
Civil Action No. 2010-CP-01-080

**MOTION TO DISMISS  
PLAINTIFFS' COMPLAINT**

Defendant General Synod of the Associate Reformed Presbyterian Church, Inc. (hereinafter "the General Synod"), by and through its undersigned counsel and pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure, moves the Court to dismiss Plaintiffs' claims against it for failure to state a claim. The General Synod's grounds for this motion are as follows:

Plaintiffs lack standing to pursue the claims set forth in the Complaint. "Standing is comprised of three elements: (1) the plaintiff must have suffered an injury-in-fact that is concrete and particularized, and actual and imminent as opposed to hypothetical; (2) the injury and the conduct complained of the defendant must be causally connected; and (3) it must be likely that the injury will be redressed by a favorable decision." Michael P. v. Greenville County Dep't of Social Serv., 385 S.C. 407, 415-16, 684 S.E.2d 211, 215 (Ct. App. 2009). "The party seeking to establish standing carries the burden of demonstrating each of the three elements." Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. South Carolina Dep't of Natural Res., 345 S.C. 594, 601,

550 S.E.2d 287, 291 (2001). In this instance, Plaintiffs have filed claims for injunctive relief, declaratory judgment, and wrongful termination.

Plaintiffs' claim for permanent injunction to enjoin the General Synod from any activity that purports to control Erskine College fails to allege a viable cause of action as a matter of law. See, e.g., Bruce v. Wallis, 274 Ga. 529, 531, 556 S.E.2d 124, 126 (Ga. 2001) (a trial judge "manifestly abuses his discretion when he grants an injunction adverse to a party without any evidence to support such judgment and contrary to the law and equity; such judgment 'is so clearly wrong as to amount to an abuse of discretion.' ... [Cit.]" Teachers' Retirement System v. Forehand, 234 Ga. App. 437, 438-439, 506 S.E.2d 913 (1998)). In the Complaint, Plaintiff expressly reference the 1850 Legislative Charter, which is an Act of the General Assembly. That Act (as continued in force by the Act of 1872), expressly grants to the Church the complete power to control the affairs and governance of the College. Because the Plaintiffs incorporate the Legislative Charter by reference, and because the Court can take judicial notice of the law, Plaintiffs have failed to allege a valid claim for permanent injunction.

Plaintiffs also fail to properly establish standing with respect to the claims alleged in the Complaint in that the purported "harms" alleged in the Complaint and Motion are nothing more than mere conjecture and speculation, and fail to constitute a direct injury. One must suffer an actual injury in fact, not a mere concern of future harm. Beaufort Realty Co., Inc. v. Beaufort County, 346 S.C. 298, 303, 551 S.E.2d 588, 590 (Ct. App. 2001); see also Sea Pines Ass'n, 345 S.C. at 602-03, 550 S.E.2d at 292 (plaintiffs lacked standing where they could show only a conjectural concern of future harm, despite having a judicially cognizable injury in fact). Plaintiffs' fears that certain events may or may not happen – even if taken at face value – simply

do not rise to the level of an actual and imminent injury necessary to establish standing. Further, these purported fears are unsubstantiated and lack any basis.

Additionally, the purported “harms” alleged in the Complaint do not constitute a direct, personal injury to the named Plaintiffs; rather, they are of a mere generalized nature. “Constitutional standing requires, at a minimum, that the party bringing the action sustain a direct injury or the immediate danger a direct injury will be sustained. The injury must be of a personal nature to the party bringing the action, not merely of a general nature that is common to all members of the public.” Commander Health Care Facilities, Inc. v. South Carolina Dep’t of Health and Envtl. Control, 370 S.C. 296, 301-02, 634 S.E.2d 664, 666-67 (Ct. App. 2006). Generalized allegations of harm such as these, which are not specific to a named Plaintiff, are insufficient to maintain standing.

Finally, any injury that would result from these purported “harms” would be to Erskine College, rather than the named Plaintiffs. “The shareholders of a corporation, as well as corporate officers and directors, generally do not have standing to sue individually for injuries to their corporation’s business or property.” 54 AM. JUR. 2D Monopolies and Restraints of Trade § 406; see also Mansel v. America's Second Harvest, 2008 WL 4200296, \*4 (D.S.C. 2008) (same); Strickland v. Flue-Cured Tobacco Co-op. Stabilization Corp., 643 F. Supp. 310, 316 (D.S.C. 1986) (same). Here, Plaintiffs have not alleged and do not have a personal property interest in serving as trustees on the Board of Trustees.<sup>1</sup> Nor do they have any ownership interest

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<sup>1</sup> To the extent Plaintiffs could demonstrate that they have a property interest in providing service as a trustee to Erskine College, any such right must be created by statute or other authority, and they are limited to the remedies set forth therein. Dockins v. Ingles Market, Inc., 306 S.C. 496, 413 S.E.2d 18 (1992) (“When, however, a statute creates a substantive right and provides a remedy for infringement of that right, the plaintiff is limited to that statutory remedy”) (emphasis in original). Here, Plaintiffs rely on the Bylaws to suggest a right against the termination of their continued service as trustees and attach a copy of the Bylaws to the Complaint. However, since the Bylaws set forth a specific remedy (i.e., Plaintiffs are purportedly entitled to a hearing before the Executive Committee), they are not entitled to bring this wrongful termination action.

in the assets of Erskine College, including its buildings and grounds, real property, accounts, endowment, or personal property.<sup>2</sup> Thus, any injuries flowing from these fears and purported “harms” – unsubstantiated and baseless as they may be – would be to the college, not Plaintiffs. See Hite v. Thomas & Howard Co. of Florence, Inc., 305 S.C. 358, 361, 409 S.E.2d 340, 342 (1991), overruled on other grounds, Huntley v. Young, 319 S.C. 559, 462 S.E.2d 860 (1995) (“Generally, an action seeking to remedy a loss to the corporation is a derivative one,” and cannot be maintained in an individual action.) Plaintiffs do not purport to bring a derivative action on behalf of Erskine College. Thus, as they have suffered no direct, individualized injuries separate from the college, by way of the purported “harms” discussed above, Plaintiffs each lack standing to proceed.

Nor have Plaintiffs alleged harm sufficient to constitute a cause of action under any claim alleged in the Complaint. Within the context of a motion to dismiss, a court must accept as true all factual allegations contained in a complaint. However, this tenet is inapplicable with respect to legal conclusions. A court is not bound to find, nor should it accept as true, a legal conclusion couched as a factual allegation. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In this instance, Plaintiffs’ conclusion, as a legal matter, that they were subject to

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<sup>2</sup> In the Complaint, Plaintiffs never claim that the General Synod has taken any action to create a justiciable controversy regarding the legal rights to Erskine’s property. There is a reference in the Report of the Commission attached to the Complaint that can be exaggerated into a claim for concern; however, the Commission is not the defendant in this case and the paragraphs of the Complaint make no such allegation against the Defendant. Without alleging a real controversy, Plaintiffs have not alleged a cause of action against the General Synod and this claim should be dismissed. See Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 16, 567 S.E.2d 881, 889 (Ct. App. 2002) (“To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy.” Graham, 319 S.C. at 71, 459 S.E.2d at 845 (citing Brown v. Wingard, 285 S.C. 478, 330 S.E.2d 301 (1985)).)

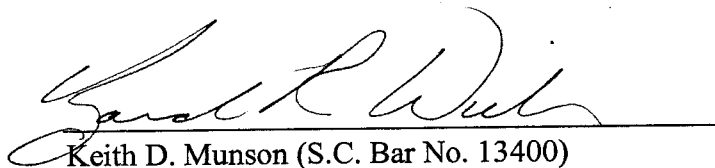
wrongful termination is without support.<sup>3</sup> No claim for wrongful termination exists in this context independent of a contractual right, a breach of that right, and resulting harm. Here, Plaintiffs' own pleading denies the efficacy of the alleged wrongful termination. Absent their actual termination or any harm resulting therefrom, Plaintiffs' claim for wrongful termination is deficient on its face. Likewise, absent the adjudication of a viable claim that purports to settle a legal right, Plaintiffs are not entitled to and this Court cannot render a declaratory judgment. See Power v. McNair, 255 S.C. 150, 177 S.E.2d 551 (1970) (finding that an adjudication that does not settle a legal right is advisory in nature and beyond the purpose and scope of a declaratory judgment). As a necessary corollary, Plaintiffs' claim for declaratory judgment is also deficient on its face.

WHEREFORE, the General Synod denies the allegations raised by Plaintiffs in the Complaint and prays that the Court dismiss Plaintiffs' Complaint with prejudice and that it award the General Synod such other and further relief as it deems just and proper.

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<sup>3</sup> Reliance on Plaintiffs' factual allegations is itself questionable. For example, in paragraph 16 of the Complaint, Plaintiffs appear to make a factual claim that Erskine College is a nonprofit religious corporation. However, as shown through the public records presented at the preliminary injunction hearing, this was an incorrect legal conclusion. Likewise, when the Complaint is viewed through the enlightenment of the correct statement of law with regard to the Erskine College's status, it is clear that Plaintiffs have not alleged a valid claim for declaratory judgment with regard to the composition of the board or the status of the General Synod's statutory and unconditional removal authority as set forth in law.

April 16, 2010



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Associate Reformed Presbyterian Church, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on the 16th day of April, 2010, she served a copy of the attached **MOTION TO DISMISS PLAINTIFFS' COMPLAINT** via hand delivery to:

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