

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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IN THE ORIGINAL JURISDICTION

S.C. SUPREME COURT

Appellate Case No. 2025-000685

Curtis M. Loftis, Jr., State TreasurerPetitioner,

v.

Thomas C. Alexander, President
of the South Carolina Senate.....Respondent.

**Return to Petition for Original Jurisdiction and
Motion to Dismiss**

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Pursuant to Rules 240 and 245(c), SCACR, Respondent Thomas C. Alexander, in his official capacity as President of the South Carolina Senate, hereby submits this Return to the Petition for Original Jurisdiction and for Expedited Consideration filed by Petitioner Curtis M. Loftis, Jr., in his official capacity as Treasurer of the State of South Carolina. Respondent agrees that this Court should exercise its original jurisdiction over Petitioner's claims in view of the issues raised, but respectfully contends that the matter should be dismissed for the reasons explained below.

Original Jurisdiction

Respondent agrees that this matter should be taken by the Court in its Original Jurisdiction. This Court should exercise its original jurisdiction when a matter involves the public interest, Rule 245(a), SCACR, and a challenge to the General Assembly's ability to exercise its constitutional authority to remove public officials accused of neglecting their duty necessarily involves the public interest.

Motion to Dismiss

While agreeing that this Court should exercise its Original Jurisdiction, Respondent respectfully moves to dismiss this matter. Petitioner has raised a claim that is a nonjusticiable political question, that does not as a matter of law state facts sufficient to constitute a cause of action, and that is not ripe. Each of these deficiencies warrants dismissal of Petitioner's claim.

First, Petitioner is manufacturing a constitutional crisis to avoid the Senate's planned proceedings pursuant to Article XV, § 3. He does so by taking the extraordinary step of asking this Court to step in and block the Senate from exercising a constitutionally vested authority designed to address situations in which executive officers have committed a transgression that—while quite serious—does not rise to the level of conduct meriting impeachment. If the Court decides to take that step, it would necessarily violate the separation of powers because the dispute between the

Petitioner and the Respondent is the very essence of a nonjusticiable political question. As a Constitutional officer, the Treasurer is required to comply with the Constitutional processes.

Second, Petitioner has failed to state a claim upon which relief can be granted. Contrary to Petitioner's arguments, the Constitution absolutely permits the action contemplated in the Sense of the Senate Resolution. Despite Petitioner's assertions to the contrary, it has been understood for at least 150 years that a constitutional officer like the Treasurer is subject to removal from office on an address for removal pursuant to Article XV, § 3.

Third, the claim is not ripe. Because no vote has been taken by either the Senate or the House, there is no "real and substantial controversy" at present; Petitioner's claims are merely abstract challenges to the Constitution that may never rise to the level of an actual dispute concerning his removal from office. In fact, historical precedent supports the conclusion that the required two-thirds votes of both legislative bodies on a question arising under Article XV, § 3 cannot be presumed.

Background and Statement of the Facts

The Senate Finance Committee's Constitution Subcommittee conducted a thorough multi-year inquiry into a \$1.8 billion of unaccounted funds in the State Treasury.¹ Following the close of its inquiry, including multiple public hearings, and with the assistance of a well-regarded forensic accounting firm, AlixPartners, LLP, the subcommittee produced a meticulous report supported by hundreds of pages of exhibits. The report states with specificity the Respondent's acts and omissions leading in relation to the discrepancy in his books. After its exhaustive review, the

¹ Contrary to what the Petitioner would have this Court believe, the effort to understand the nature of the unaccounted for \$1.8 billion was not confined to only the subcommittee. The Governor, Comptroller General, State Auditor, the Department of Administration, and a well-respected forensic accounting firm also sought to understand the nature of the unaccounted funds. The forensic accounting firm's report is included as an exhibit to the subcommittee's report.

subcommittee released its report and supporting exhibits publicly and provided a link to it on the General Assembly's website.

In response to the serious allegations contained in the subcommittee's report, the Senate initiated the Article XV, § 3 process. First, a Concurrent Resolution was introduced which, if adopted by two-thirds of both the Senate and the House of Representatives, would signify the required vote for sending an address to the Governor to remove Petitioner from office. Pursuant to Article III, § 12 of the South Carolina Constitution, the Senate then unanimously adopted its Sense of the Senate outlining the rules of procedure that the Senate will follow while exercising its constitutional duty to examine whether the Treasurer should be removed from office.

Pursuant to the Sense of the Senate process, Senators Grooms and Goldfinch are allotted one and a half hours to present their argument in favor of removing Treasurer Loftis from office. The Treasurer will then be afforded three hours to present his argument against removal. Senators Grooms and Goldfinch will then be allowed up to thirty minutes for a rebuttal to the Treasurer's presentation. Following the rebuttal, Senators will have an opportunity to pose questions to the Treasurer or the Senate presenters. The Senate will then proceed to consideration of the question as to whether the Treasurer should be removed from office based on the two presentations and, ultimately, a vote on the matter.

The Senate has limited the scope of the Senators presentation to only those things contained in the subcommittee report and any additional materials submitted to the Treasurer no later than one week prior to the hearing. Any materials the Treasurer plans to use in his presentation that are not contained in the report, or its exhibits, must be presented to the Senate one week prior to the hearing. By limiting the scope of the presentation to the report, Treasurer Loftis cannot be surprised

by the allegations leveled against him because those matters have been exhaustively discussed by the subcommittee and the Treasurer for two years.

As the hearing will show, the process outlined in the Sense of the Senate is fair and transparent, and provides him with ample opportunity to rebut the allegations leveled against him. In his brief, the Petitioner suggests—based on a meeting his attorneys were invited to attend—that the Senate intends to employ a process that is both overtly political and fundamentally unfair. That characterization is unfounded and unfair. The purpose of the meeting was to ensure transparency by apprising counsel of the unanimously adopted procedures, to familiarize counsel with the layout of the Senate Chamber, and to accommodate any logistical needs they might have. Rather than receive this offer in good faith, Petitioner’s attorneys weaponized the meeting into a pretext for a politically charged narrative designed to support their filing with this Court and their public narrative. After that meeting, Petitioner filed this matter in an attempt to stop or at least delay the hearing.

Argument

1. Petitioner raises a nonjusticiable political question about a matter committed to an equal branch of government that this Court should not adjudicate.

The South Carolina Constitution establishes three branches of government and expressly requires that they be “forever separate and distinct from each other and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.” S.C. Const. art. I, § 8. Embedded within this mandated separation of powers is the political question doctrine:

The nonjusticiability of a political question is primarily a function of the separation of powers. Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution.

The fundamental characteristic of a nonjusticiable political question is that its adjudication would place a court in conflict with a coequal branch of government. Thus, the courts will not rule upon questions which are exclusively or predominately political in nature rather than judicial.

S.C. Pub. Int. Found. v. Judicial Merit Selection Comm’n, 369 S.C. 139, 142-43, 632 S.E.2d 277, 278 (2006) (internal citations and quotation marks omitted). Accordingly, “this court has declined to opine on issues where the Constitution delegates authority to the General Assembly. *Id.*, 369 S.C. at 143, 632 S.E.2d at 278-79; *see also Stone v. Leatherman*, 343 S.C. 484, 484–85, 541 S.E.2d 241, 241, 2001 WL 38752 (2001) (declining to rule on an election protest challenge because “Article III, § 11 of the South Carolina Constitution provides that the Senate has the authority to judge the election returns and qualifications of its own members”).

Article XV, § 3 exclusively vests the question of removing an executive officer for “any willful neglect of duty, or other reasonable cause” in the General Assembly. The Constitutional requirement for a hearing in Article XV, § 3 is designed to ensure that the members of General Assembly—the Senate in this matter—are fully informed about the allegations against the Petitioner and the Petitioner’s arguments against those allegations. Just like with a bill moving through the General Assembly, the hearing is intended to inform² the members’ vote on the matter before the body. *See* S.C. Const. art. III, § 1 (vesting the legislative power solely in the General Assembly). The Article XV, § 3 process is as much of a legislative process subject to political deference as enacting legislation.

² The Senate recognizes that often members of a committee are more well versed in the nuances of legislation passing through that committee than members who do not sit on the committee. That is why the Sense of the Senate provides that the Senate will conduct the hearing before the Committee of the Whole. A Committee of the Whole is a parliamentary device where a legislative body acts a committee for a specific purpose. By meeting as a Committee of the Whole the Senate is ensuring that every member of the Senate is privy to the same arguments for and against removal and can take that information into account when deciding how to vote.

Thus, it is inescapable that Petitioner is asking the Judiciary to interfere with a process vested in a coequal branch of government on a matter “that is exclusively . . . political in nature.” For the Court to halt the Senate’s proceedings before the Senate has the opportunity to begin the Article XV, § 3 hearing—much less take a vote on the proposed resolution—would be akin to the Court shutting down the legislative process during the Senate’s consideration of a bill that one of the stakeholders believes to be unconstitutional. That is even more problematic here given that the resolution has not even been sent to or voted on by the House.

Petitioner’s claim therefore should be dismissed because consideration of the actual question he raises would place the Court “in conflict with a coequal branch of government.” In *Culbertson v. Blatt*, 194 S.C. 105, 9 S.E.2d 218 (1940), this Court dismissed a complaint seeking a declaration that certain members of the General Assembly were serving in violation of the dual office holding provision of the Constitution. The Court declined to do so because the Constitution vested the General Assembly with the sole authority to judge the qualifications of its members. In reaching its decision, the Court held as follows:

Just as it is not within the power of the General Assembly to reverse a judicial decision by retroactive legislation, or to otherwise interfere with or nullify the judicial process, so it is not within the power of this court to impinge upon the exercise by the Legislature of a power vested in that body, merely because in the exercise of or failure to exercise that power, some constitutional provision has been violated.

Id., 194 S.C. at 105, 9 S.E.2d at 220. The same principle applies here and requires dismissal of the Petition because it presents a nonjusticiable political question.

This Court again applied the political question doctrine in *S.C. Public Interest Foundation v. Judicial Merit Selection Comm’n*, 369 S.C. 139, 632 S.E.2d 277 (2006), by holding that a challenge to a judicial candidate’s residency was nonjusticiable. Recognizing that “the State Constitution, in unequivocal terms, vests the power to determine the qualifications for judicial

candidates in the General Assembly,” this Court properly declined to “put the judiciary in a position that would interfere with the selection of its very own members.” *Id.* 369 S.C. at 143, 632 S.E.2d 279.

Culbertson and *S.C. Public Interest* dictate dismissal of Petitioners’ claims. As with the power to legislate, the Constitution vests the General Assembly with the sole authority to vote on whether to remove an executive or judicial officer—including Petitioner—from office upon address to the Governor. S.C. Const. art. XV, § 3. Moreover, the Constitution recognizes that impeachment or removal of an executive or judicial officer is a legislative matter and commits those decisions exclusively to the legislature. *See* S.C. Const. art. XI, §§ 1-3.

This analysis of Petitioner’s claim is entirely consistent with the United States Supreme Court’s ruling in *Nixon v. United States*, 506 U.S. 224 (1993). There, an impeached district judge challenged the procedures for removing him in which the Senate used a committee to take testimony and gather evidence. *Id.*, at 227-28. However, the Court held that Nixon had presented a nonjusticiable political question because there was “‘a textually demonstrable constitutional commitment of the issue to a coordinate political department.’” *Id.* at 228-29 (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1969)). The Court held that judicial involvement in impeachment proceedings would “eviscerate the ‘important constitutional check’ placed on the Judiciary by the Framers.” *Id.* at 235 (quoting THE FEDERALIST No. 81). Though *Nixon* involved the federal impeachment process, its logic is consistent with *Culbertson* and *S.C. Public Interest*. The State Constitution’s framers similarly structured impeachment and removal on address to exclude judicial review, while including safeguards against abuse: the division of power between both chambers, and the two-thirds supermajority vote requirement. *Cf. Nixon*, 506 U.S. at 739 (noting

the safeguards of requiring two bodies to agree and imposing a supermajority vote requirement). Consequently, the Court should dismiss the Petitioner's petition.

2. Petitioner's claim should be dismissed because the Senate's interpretation of the scope and applicability of Article XV, § 3 of the South Carolina Constitution is in accord with historical application and understanding of that provision.

The Senate's interpretation of Article XV, § 3 is entirely consistent with historical and judicial precedent as well as the plain constitutional language. Despite Petitioner's assertions to the contrary, it has been understood for at least 150 years that a constitutional officer like the Treasurer is subject to removal from office on an address for removal. The Senate's decision to proceed with an Article XV, § 3 hearing was informed by the prior removal proceedings initiated against a State Treasurer and legal analysis by both this Court and Attorney General Daniel R. McLeod, as well as the language of the constitutional provision itself.

A. *The process contained in Article XV, § 3 has been used before in South Carolina.*

What is now Article XV, § 3 has a long history in the constitutions of this State. Article VII, § 4 of the 1868 Constitution contained a nearly identical provision for the removal of officers upon address to the Governor:

For any willful neglect of duty, or for other reasonable cause which shall not be sufficient ground for impeachment, the Governor shall remove any executive or judicial officer on the address of two-thirds of each House of the General Assembly. *Provided*, that the cause or causes, for which said removal may be required, shall be stated at length in such address and entered on the journals of each House. *And provided further*, that the officer intended to be removed shall be notified of such cause or causes, and shall be admitted to a hearing in his own defense before any vote for such address; and in all cases, the vote shall be taken by yeas and nays, and be entered on the journals of each House respectively.

Article VII, § 4 (emphasis in original). In the 1895 Constitution, the same provision was retained but moved to Article XV, § 4. The revision of the 1895 Constitution in the early 1970s moved this provision into its present location as Article XV, § 3. Of note, the only change in the language between 1868 and today was the addition of "or by his counsel" after the word "defense."

It was the 1868 Constitution version of Article VII, § 4 that formed the basis for legislative proceedings initiated in 1875 to remove Treasurer Francis Lewis Cardozo³ from office. Senate President *Pro Tempore* Stephen A. Swails, a contemporary of those who adopted the 1868 Constitution, provided the Senate with an explanation of the need for Article VII, § 4 and why it was employed instead of impeachment. In his address to the Senate on March 11, 1875, President *Pro Tempore* Swails first addressed the proper use of impeachment:

When an Executive officer has been guilty of grave crimes and misdemeanors, where both the act and the motive of the act have been criminal, where a due regard to the safety and character of the State requires not only his conviction but his signal punishment, then the Constitution on the one hand arms the Legislature with the powerful weapon of impeachment, and on the other gives to the accused the protection of a legal trial, with all its dilatory and evasive forms, places him on trial on a precise and technical issue, and pronounces his acquittal, unless two-thirds of the who representation elect shall be convinced of his guilt, and shall so declare upon their oaths.

1874-1875 S.C. Senate J. 673-74. President *Pro Tempore* Swails then proceeded to explain the importance of Article VII, § 4:

But taught by all political experience that the interest of the State might be dangerously imperiled by offenses scarcely criminal, by incompetence, by loose and careless habits of business, by a feeble sense of responsibility on the part of Executive officers, the framers of the Constitution have provided that with two-thirds of both Houses of the General Assembly find in the official character of such an officer sufficient evidence of his incompetency, or his unfitness for the discharge of his duties, and where they believe that the interests or character of the State are endangered by his continuation in office, it shall be their duty to so declare, and require his removal.

Id.

President *Pro Tempore* Swails' explanation is as applicable today as it was 150 years ago. If there is a matter so grave as to rise to criminal conduct, impeachment is the proper method of

³ Importantly, Treasurer Cardozo was not removed from office. The Senate did not vote to remove him by the required two-thirds majority.

removal. But if an executive officer's discharge of his duties is so "incompetent or careless" that his continuing in office would threaten the interests of the State, though there may not be grounds for impeachment, then an address to the Governor is the proper mode of removal. Furthermore, this historical account further demonstrates that the State Treasurer—Cardozo⁴ then and Petitioner now—has always been subject to removal upon address to the Governor for conduct that does not support impeachment. That is so regardless of whether that removal is effected under the 1868 Constitution or under the nearly identical language of the current, revised 1895 Constitution.

B. *This Court has already determined that the language of Article XV, § 3 encompasses the removal of a statewide executive officer like Petitioner outside of the impeachment process.*

This Court previously has evaluated the application Article XV, § 3 in *McDowell v. Burnett*, 92 S.C. 469, 75 S.E. 873 (1912). Although *McDowell* did not involve a statewide elected constitutional official, the Court—as Petitioner recognizes—there set forth a thoughtful consideration and examination of the various scenarios for the removal or suspension of a public official as contemplated within the plain language of the Constitution—language that has not changed since 1895. The reason for the Court's analysis was determining the reach of the Governor's power to remove a magistrate. In evaluating whether a magistrate was included within what is now Article XV, § 3, the Court stated in pertinent part the following:

Search for the line of distinction which the framers of the Constitutions of 1868 and 1895 intended to draw in the light of the history of the subject in this state and of judicial authority in this country leads to this conclusion: *Every executive and judicial officer whose authority and jurisdiction extends over the entire state, in whose official conduct the entire state is concerned, and whose office was created by the Constitution, or created by statute and filled by election by the people at large, is removable by impeachment or by the Governor on the address of the*

⁴ It is important to note that the proceedings against Treasurer Cardozo were a mere seven years after the provision's adoption.

General Assembly or by conviction of embezzlement or of appropriation of trust funds and in these modes only.

McDowell, 92 S.C. 469, 75 S.E. at 876 (emphasis added).

Petitioner’s dismissal of that case therefore is misplaced. While the removal of a statewide officer was not at issue, the Court evaluated what is now Article XV, § 3 as part of determining whether its language encompassed a magistrate. And any differences in language between that at issue in *McDowell* and that in effect today hardly is material to the question before this Court. *McDowell*’s holding remains as applicable today as it was in 1912. Arguably, the *McDowell* court’s proximity in time to the actual drafting of these provisions provides more clarity as to the meaning and utility of this removal provision than the lack of understanding and questions expressed within the West Working Papers. *See also State v. Rhame*, 92 S.C. 455, 75 S.E. 881, 884 (1912) (“[F]or the rule was thus laid down in *McDowell v. Burnett*, . . . : ‘Every executive and judicial officer whose authority and jurisdiction extends over the entire state, in whose official conduct the entire state is concerned, and whose office was created by the Constitution, or created by statute and filled by election by the people at large, is removable by impeachment or by the Governor on address of the General Assembly, or by conviction of embezzlement or appropriation of trust funds and in these modes only.’”).

Petitioner would have the Court ignore the plain language of the Constitution and the clear analysis found in *McDowell* because of the allegedly “substantial revisions” that “materially amended” Article XV through Act 65 of 1971. However, as Petitioner points out in its own brief, the only change to the removal clause in Article 15 was its reordering as Section 3 when Article XV was amended by Act 65 of 1971. The General Assembly specifically did not alter the language of this provision in 1971. As such, while *McDowell* may be over 100 years old, the Court’s thorough analysis remains as apposite today as it did in 1912.

C. ***Any level of reviewing the language of Article XV, § 3 requires a conclusion that the State Treasurer is an executive officer subject to removal on address to the Governor.***

(1) *The State Treasurer is an executive officer encompassed by the plain language of Article XV, § 3.*

Even if the Court determines that it should consider the merits of Petitioner’s argument, a plain and ordinary reading of Article XV, § 3 leads to the conclusion that the provision encompasses the Treasurer. When the Court must interpret the Constitution, it employs rules similar to those used to construe statutes. *E.g., State v. Long*, 400 S.C. 511, 514, 753 S.E.2d 425, 426 (2014). But constitutional construction is not necessary here because there is no ambiguity to construe. *Smith v. Tiffany*, 419 S.C. 548, 556, 799 S.E.2d 479, 483 (2017) (holding that, absent an ambiguity, there is nothing for a court to construe; that is, the court should not look beyond the statutory text to discern its meaning); *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 582 (2000) (“If a statute’s language is plain, unambiguous, and conveys a clear meaning the rules of statutory interpretation are not needed and the court has no right to impose a another meaning.”).

Because the language used clearly encompasses the Treasurer as an executive officer, there is no ambiguity in Article XV, § 3 for the Court to construe. *See McDowell*, 92 S.C. 469, 75 S.E. at 876. That provision requires—“shall”—the Governor to “remove any executive or judicial officer on the address of two thirds of each house of the General Assembly.” Petitioner contends that “any executive or judicial officer” does not apply to him because the impeachment provisions in Article XV, §§ 1 and 2 refer to “officials elected on a statewide basis” and that this language versus that used in Article XV, § 3 creates an ambiguity that the Court must construe. Petitioner is not correct.

A plain and ordinary reading of “executive officer” demonstrates that Petitioner is indeed subject to the provisions of Article XV, § 3. Petitioner surely would not dispute that he is an officer in the Executive Branch. Nor could he, because the Treasurer is defined as one of the State’s

executive officers in Article VI of the Constitution. S.C. Const. art. VI, § 7. (“There shall be elected by the qualified voters of this State a . . . Treasurer . . .”). As an executive officer, Petitioner therefore by definition is subject to Article XV, § 3 and there is no basis for creating an ambiguity by looking at other constitutional provisions.

The continuing application and validity of Article XV, § 3 with respect to the Treasurer is further illustrated by Article VI:

Officers shall be removed for incapacity, misconduct, or *neglect of duty*, in such manner as may be provided by law when no mode of trial or removal is provided in this Constitution.

S.C. Const. art. VI, § 9 (emphasis added). Because Article XV, § 3 provides a mode of removal for executive officers that neglect their duty, there is no authority—or reason, for that matter—for the General Assembly to provide for another means.⁵ Moreover, by reference to “mode of trial or removal,” Article VI, § 9 plainly encompasses all of the provisions of Article XV.

This view is supported in an Attorney General’s opinion signed by Attorney General Daniel R. McLeod, a contemporary of those who adopted the 1971 revision of the 1895 Constitution. There, in an opinion issued to William A. Dallis, the Court Administrator, Attorney General McLeod expressed his opinion that Article XV, § 3 does not extend to “any officers except those identified in Section 1 [of Article XV], i.e. ‘officials elected on a state-wide basis, state judges, and such other state officers as may be designated by law.’” 1974 Op. S.C. Att’y Gen. No. 3688,

⁵ Petitioner’s discussion of S.C. Code Ann. § 8-11-60 therefore is of no consequence. Because the mode for removing Respondent from office in this instance is provided by Article XV, § 3, the General Assembly is constitutionally foreclosed from enacting a removal law. By enacting S.C. Code Ann. § 8-11-60 the General Assembly simply recognized that those elected by the General Assembly (such as college trustees, members of the Public Service Commission, and the Legislative Audit Council) do not fall within the scope of Article XV, § 3 and a law to effectuate that process was necessary. Far from supporting Petitioner’s position, his discussion of the point actually undermines his claim.

1974 WL 21207 (Jan. 7, 1974). In response to the fact that Article XV, § 3 was the subject of discussion by the West Committee and the West Committee’s statement that the section should be removed from the Constitution⁶, Attorney General McLeod stated:

The General Assembly, however, included the section in new Article XV and in my opinion it embraces only those officials subject to impeachment and is designed to provide a means of removing officers on address of the General Assembly whose conduct does not reach the gravity of ‘serious crimes or serious misconduct in office’ but who should in the judgment of the General Assembly, be removed from office.

Id.

So it is here. Article XV, § 3 applies to Petitioner and the purpose of that provision is providing a mechanism for the General Assembly and the Governor to remove an officer whose conduct in office imperils the State but does not rise to the level of impeachment. By invoking Article XV, § 3, the Senate is exercising a constitutional authority reserved for itself and the House of Representatives. The General Assembly’s actions pursuant to Article XV, § 3 are not subject to judicial challenge and the Senate must be allowed to proceed.

⁶ The West Committee can be useful to understanding the State’s constitution. However, the Court has rejected the Committee’s conclusions when they are not persuasive. *See, e.g., Planned Parenthood South Atlantic v. State*, 438 S.C. 188, 882 S.E.2d 770 (2023). In this instance the West Committee should be of little persuasiveness because the committee was under the impression that the address method for removing an officer had never been used. That is clearly not the case as can be demonstrated by the employment of that method in the unsuccessful attempt to remove Treasurer Cardozo in 1875. The Committee’s lack of historical context, and that of the Petitioner, leads to an erroneous conclusion concerning the intent and scope of Article XV, § 3. Moreover, the West Committee’s conclusions were clearly rejected by the General Assembly and, ultimately, by the people of South Carolina. *See also* Cole Blease Graham, Jr., *THE SOUTH CAROLINA STATE CONSTITUTION: A REFERENCE GUIDE*, 199 (2007) (“[Article XV, § 3] permits the General Assembly to initiate removal on grounds *other than grounds for impeachment* and is not likely to be proposed for revisions or elimination by the General Assembly. Thus, it may be viewed by some not as a redundant provision but a means for the legislature to deal with exceptional cases, however defined.”) (emphasis in original).

- (2) *Even if the Court determines it necessary to evaluate the language of Article XV, § 3, it is inescapable that the State Treasurer is an executive officer subject to removal on address.*

But even if this Court concludes that it should consider Petitioner's claim that Article XV, § 3 is somehow ambiguous, construction of the language would not change the position advanced by Respondent: Petitioner is subject to Article XV, § 3 and must be removed from office by the Governor upon the address of two-thirds of the Senate and of the House of Representatives. Petitioner's effort to escape the provisions of Article XV, § 3 is based on purported differences between Article XV prior to revision and Article XV as revised and currently configured. Although there is a language difference between the two versions, that does not allow the State Treasurer to escape removal on address as an executive officer. In fact, it is preposterous for the State Treasurer to suggest he is not plainly an executive officer.

The fact that the Constitution provides for impeachment of statewide officers in Article XV, § 1 does not change that fact that Article XV, § 3 applies to the Treasurer as well. Petitioner's argument hinges on the language differences between Article XV, § 1, which references "officials elected on a statewide basis" and Article XV, § 3, which references an "executive . . . officer." But some of the language difference arises from the fact that, prior to the 1971 revisions, Article XV contained four sections: impeachment was provided for in §§ 1-3 and removal upon address to the Governor provided in § 4. Specifically, § 1 provided that it was applicable to "[a]ny officer" and § 3 stated that impeachment was applicable to "[t]he Governor and all other executive and judicial officers." In 1971, §§ 1 and 3 were combined to the present-day language.

At bottom, the fact that Article XV, §§ 1 and 3 are complimentary and govern the same officials is illustrated by § 3's caveat that its coverage goes to conduct "which shall not be sufficient ground of impeachment." *See also* Graham, *supra*, n.6. This is because Article XV, § 1 governs impeachment for "serious crimes or serious misconduct in office" and sets a deliberately high

threshold concerning removal proceedings that carry the gravity of criminal prosecution. Section 1 is not designed to address lesser—but still significant—failures such as incompetence, dereliction, or willful neglect of official duties that may not warrant impeachment. Section 3 thus fills a critical role in the constitutional structure. This language confirms that the framers envisioned a dual-track removal scheme: § 1 for grave offenses, and § 3 for serious but non-criminal misconduct. Far from being a stand-alone provision, § 3 compliments § 1 and ensures a mechanism for addressing a broader range of official failings. Moreover, there was no need for the framers to separately list each statewide elected official in § 3, because such officials were already covered by § 1.

In sum, Petitioner erroneously contends that that the officials covered by Article XV, §§ 1 and 3 are not identical because the wording is not identical. But as a historical and a language matter, Article XV, § 3 applies to Petitioner as an executive officer and the purpose of that provision is to provide a procedure for the General Assembly on address to the Governor to remove an officer whose conduct in office imperils the State but does not rise to the level of impeachment. An “executive officer” is an “official elected on a statewide basis.” A contrary conclusion requires rejecting years of historical and judicial precedent. Construing the Constitution to permit only impeachment for statewide elected officials as the only method of removal would lead to an absurd result: a public official who commits willful neglect or incompetence, but no crime, would be immune from accountability. That interpretation would frustrate the Constitution’s commitment to accountable governance. The framers plainly intended otherwise.

3. Petitioner’s claim is not ripe.

Petitioner’s claims are not ripe for adjudication in any event. “A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.” *Pee Dee Elec. Co-op., Inc. v.*

Carolina Power & Light Co., 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). However, there has been no vote on the proposed resolution by either legislative body, let alone one yielding two-thirds approval. And as referenced above regarding the proceedings to remove Treasurer Cardozo in 1875, there is no guarantee that there will be an affirmative two-thirds vote by both bodies. Therefore, at this point, Petitioner presents nothing more than an abstract constitutional question that may never arise to a real and substantial controversy. *See In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 146, 568 S.E.2d 338, 350 (2002) (declining to address constitutional challenge to sexually violent predator procedures because the petitioner had never been adjudicated a sexually violent predator).

Conclusion

This case belongs with the Court's original jurisdiction, but it should not advance beyond that stage. Petitioner is asking this Court to opine on issues where the Constitution delegates authority to the General Assembly by seeking to stop an inherently political process that falls exclusively within the General Assembly's constitutional domain. Moreover, Petitioner has not stated a claim based on the language of Article XV, § 3, historical precedent, and the precedent of this Court. President Alexander therefore urges the Court to take this matter in its Original Jurisdiction and dismiss the case with prejudice to put an end to the misuse of the Judiciary by Petitioner and allow the Senate to proceed with the discharge of its Constitutional duties and obligations as it determines appropriate.

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Respectfully submitted,

South Carolina Senate

s/Kenneth M. Moffitt

Kenneth M. Moffitt (S.C. Bar No. 74179)
John P. Hazzard, V (S.C. Bar No. 9579)
Cassidy E. Murphy (S.C. Bar No. 102023)
Brian Cohl (S.C. Bar No. 101699)
PO Box 142
Columbia, SC 29202
(803) 212-6300
kenmoffitt@scsenate.gov
johnhazzard@scsenate.gov
cassidymurphy@scsenate.gov
briancohl@scsenate.gov

Burr & Forman LLP

Sara S. Parrish (S.C. Bar No. 78762)
115 Fairchild Street, Suite 200
Daniel Island, SC 29492
(843) 984-6151
sparrish@burr.com

Tracey C. Green (S.C. Bar No. 9342)
1221 Main Street, Suite 1800
Columbia, SC 29201
(803) 753-3224
tgreen@burr.com

*Counsel for Thomas C. Alexander, President of the
South Carolina Senate*

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Columbia, South Carolina