THE STATE OF SOUTH CAROLINA
In Supreme Court

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S.C. SUPREME COURT

IN THE ORIGINAL JURISDICTION

Appellate Case No. 2025-000685

Curtis M. Loftis, Jr., State Treasurer.....Petitioner,

v.

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

PETITIONER'S RETURN TO MOTION TO DISMISS AND REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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RETURN TO MOTION TO DISMISS

Respondent has moved to dismiss this action brought in the Court's original jurisdiction on three grounds: (a) this action raises a nonjusticiable political question; (b) Petitioner's filings fail to state a claim because "the Constitution absolutely permits the action contemplated" by Respondent; and (c) this claim is not ripe for adjudication "[b]ecause no vote has been taken by either the Senate or the House." For the reasons that follow, the Court should deny Respondent's Motion to Dismiss.

A. Petitioner Is Not Raising a "Political Question"

Respondent first argues that the Court should dismiss this action because it raises political questions reserved for the General Assembly that are not appropriate for the Court's adjudication. While Respondent accurately states the law governing political questions, he fails to properly apply that rule to this case.

This Court addressed the political question doctrine in detail in *South Carolina Public Interest Foundation*, a case heavily cited in Respondent's Motion to Dismiss:

> The nonjusticiablity 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.

See South Carolina Pub. Int. Found'n v. Judicial Merit Selection Comm'n, 369 S.C. 139, 142-43, 632 S.E.2d 277, 278 (2006) (emphasis added). Respondent's reliance on this case is ironic, since the highlighted language—which Respondent does not discuss or address—makes clear that this case does ***not*** raise a political question.

Respondent seems to misapprehend the nature of Petitioner's contentions in this matter. Petitioner is not asking this Court to decide whether he should be removed from office. He is not

asking the Court to determine whether he engaged in willful neglect of duty or whether other reasonable cause exists that might not be sufficient for impeachment. He is not asking the Court to decide whether he engaged in any serious misconduct in office or committed a serious crime. He is not asking the Court to make any substantive determinations at all that are outside of the interpretation of the State's Constitution. Instead, the sole purpose of this action is to ask the court engage in the "delicate exercise in constitutional interpretation" to determine whether Removal on Address of a statewide elected official "has in any measure been committed by the Constitution to" the General Assembly. *See South Carolina Pub. Int. Found'n*, 369 S.C. at 142-43, 632 S.E.2d at 278.

The premise of Respondent's Motion to Dismiss begs the question of whether Article XV, Section 3 of the South Carolina Constitution actually applies. The premise of Petitioner's action is that Article XV, Section 3 does *not* apply and does not allow the General Assembly to attempt to remove him by address to the Governor. This is a threshold legal and constitutional question, not a political question. If this Court ultimately determines that Article XV, Section 3 does apply and the General Assembly has the power to act under it, then the actual application of that process thereafter is indeed a political question for the General Assembly. Petitioner is not asking the Court to dictate how the General Assembly decides that political question; rather, he only asks the Court to decide whether removal can be initiated by the Senate against the State Treasurer under Article XV, Section 3.

An examination of the authority cited by Respondent confirms that this case does not present a "political question," since those cases all involved efforts to use the Courts to invade issues clearly within the purview of another branch of government:

- In *South Carolina Public Interest Foundation, supra*, the Court found that the question of whether the Judicial Merit Selection Committee correctly determined that a Circuit Court judge candidate was residentially qualified to seek a seat in the Fourteenth Judicial Circuit. There is no dispute in that case that the Committee was the proper entity to make that determination. The challenge was simply that the Committee's decision was incorrect.

- In *Stone v. Leatherman*, 343 S.C. 484, 484-85, 541 S.E.2d 241, 241 (2001), Article III, § 11 of the Constitution clearly authorized the Senate to judge the election returns and qualifications of its own members. South Carolina Code § 7-17-250 provided that all appeals from protests concerning elections of Senate members were to be made to the Senate itself. Under those circumstances—where it was undisputed that the Senate had the exclusive authority to decide the question—the Court refused to exercise jurisdiction (though it did not specifically reference the political question doctrine).

- In *Culbertson v. Blatt*, 194 S.C. 105, 9 S.E.2d 218 (1940), the Court refused to intervene in a question of qualification of state legislators, which was a matter indisputably within the purview of the General Assembly.

- In *Nixon v. United States*, 506 U.S. 224 (1993), the United States Supreme Court refused to intervene in an impeachment trial of a federal judge, as impeachment authority was limited to the Senate. The Court would not act as an appeal court analyzing the correctness of the Senate's procedure or decision.

Respondent does not ask this Court to invade the General Assembly's domain and substitute its judgment as to whether there is a substantive basis to warrant the removal of the State Treasurer. It merely asks that the Court answer the *legal* question of whether the Constitution actually permits the Senate to pursue removal of the Treasurer on address to the Governor, regardless of the Senate's underlying reasons for initiating this course of action. Respondent merely asks that the Court be the arbiter of the constitutional rules, not that it actually decide the merits of the Senate's effort to remove a wildly popular constitutional statewide official.

If Respondent's argument is taken to its logical conclusion, this Court could never determine the constitutionality of an action of another branch of government. Obviously, this is not what the political question doctrine means. That rule only prohibits the Court from substituting its will for that of another co-equal branch of government in a matter clearly and fully within that other branch's discretion. Nothing in the rule prohibits the Court from doing what Petitioner asks here: decide *whether the constitution grants* the General Assembly authority to remove him on address to the Governor, rather than by impeachment.

B. The Court Should Not Dismiss This Action for Failure to State a Claim.

1. Respondent's Reliance on the Efforts to Remove Former Treasurer Cardozo 150 Years Ago Is Without Merit.

In an effort to support the constitutionally challenged route the Senate is currently attempting to take, Respondent devotes significant attention to the notorious efforts to remove former Treasurer Francis Lewis Cardozo from office nearly 150 years ago. While Respondent argues that an unsuccessful effort was made to remove Mr. Cardozo from office under Article XV, Section 4 (the precursor to the current Section 3), he does not cite any authority establishing that Mr. Cardozo was actually subjected to an attempted Removal on Address. Respondent does not provide any detailed statement about the efforts to remove Treasurer Cardozo. Instead, Respondent states without citation that the Removal on Address clause of the 1868 constitution "formed the basis for legislative proceedings initiated in 1875 to remove Treasurer Francis Lewis Cardozo from office." (*See* Respondent's Mot. to Dismiss, at 9).

Respondent's only citation about efforts to remove Treasurer Cardozo is to March 11, 1875, statements made by Senate President Pro Tempore Stephen A. Swails, the excerpts of which do not even name Mr. Cardozo. Such statements, offered in support of Respondent's interpretation of Article XV, are not relevant to or probative of the determination of the intent of the General Assembly:

> As to the Attorney General's insistence that subsequent statements by individual legislators evidence the legislative intent to ban all masks mandates, this Court has held the Court may not look to the opinions of legislators or others concerned in the enactment of the law—expressed subsequent to enactment—to ascertain the intent of the legislature. [Citations omitted.] It is well established that courts will disregard the subsequently expressed opinions of individual legislators as to the intent of the legislature as a whole when construing a statute. [Citations omitted.]

See Creswick v. University of S.C., 434 S.C. 77, 83–84, 862 S.E.2d 706, 709–10 (2021). For this reason, the Court should not rely upon the cited statements by Senator Swails.

Respondent's notably vague description of the process utilized by the Legislature in the case of Mr. Cardozo undermines the credibility of his suggestion that the legislature actually pursued Removal on Address in Mr. Cardozo's case. Respondent does not cite any authority

showing how the Senate actually engaged in an effort to Remove on Address, the procedures used, or what actually occurred. There is nothing in the record to show—if Removal on Address was in fact attempted—how the Senate reached the decision to use that process or how it implemented it. Simply put, there is little evidence or authority to support the idea that any misguided efforts to remove Mr. Cardozo should be relied upon to illuminate whether this Court (150 years later) should interpret Article XV, Section 3 to allow the Removal on Address of Petitioner based on accusations that Respondent concedes do not rise to the level of impeachment.

It is surprising that Respondent would even favorably cite the efforts to remove Treasurer Cardozo. In anything, a brief review of the history surrounding the reprehensible efforts to remove Mr. Cardozo from office discloses why the Senate's invocation of Section 3 here to remove a statewide elected constitutional official is so dangerous:

> Elected state treasurer in 1872, Cardozo drew praise from both Republican and Democratic newspapers for his honesty and scrupulous management of public funds. In 1874 a handful of legislators attempted to have Cardozo *impeached after he refused to cooperate in their corruption schemes*, but Cardozo successfully refuted the charges. Cardozo won reelection as state treasurer in 1874 and 1876, but his political career came to an end with the return of the Democrats to power. On April 14, 1877, Governor Wade Hampton III sent Cardozo a letter demanding that he vacate his office. Cardozo relented on May 1. Soon after, he was indicted for corruption as part of a systematic attempt by Democrats to destroy the reputation of the Republican Party and its black leaders. Cardozo was the highest-ranking target of the prosecutions. With his reputation for honesty, he demanded a trial, and in November 1877 he was tried for conspiracy to issue a fraudulent pay certificate. Despite the questionable evidence against him and Cardozo's able defense, a jury of six blacks and six whites convicted Cardozo by an improper majority vote. He spent more than six months in jail before being pardoned in April 1879 by Governor William Simpson after federal election fraud charges against some white Democrats were dismissed.

(*See* https://www.scencyclopedia.org/sce/entries/cardozo-francis-lewis/ (accessed April 16, 2025)). In other words, in the case Treasurer Cardozo, the poorly-defined process that is recounted by Respondent as "Removal on Address" without competent citation was one of several tools used to intimidate and bully a Jewish, African-American elected official because he would not cooperate in the misdeeds of his political opponents.

This is precisely why the only tool for removal of a statewide elected constitutional official should be the formal process of impeachment. Procedures for the removal of such constitutional officials should not be an arrow in the quiver of rivals to settle political scores. As the case of Treasurer Cardozo illustrates, non-impeachment routes present a danger of political misuse. The General Assembly should not be given the power to seek to remove such high-level officials for vague reasons such as "neglect" or "reasonable cause." Removal from office should be a last resort used in only the rarest of cases for the most severe misconduct through the formal process of impeachment.

In light of the foregoing, Respondent's reliance on the claimed prior use of the process of removal on address is misplaced and does not support Respondent's argument that the constitutional allows the Senate to remove Petitioner, a statewide elected official, by address to the Governor.

2. Respondent's Reliance on *McDowell* Is Misplaced.

Petitioner has previously explained on brief that *McDowell v. Burnett*, 92 S.C. 469, 75 S.E. 873 (1912), does not control because it did not address the application of Article XV, Section 3 to statewide elected officials. Additionally, Petitioner has argued that that Respondent's analysis cannot endure beyond the constitutional amendments of Article XV, via Act 65 of 1971. (*See* Petitioner's Brief, at 15-17). Respondent's Motion to Dismiss does not undermine Petitioner's arguments with regard to the applicability of *McDowell.* Respondent also cites *State v. Rhame*, 92 S.C. 455, 75 S.E.2d 881 (1912), as additional support for its application of *McDowell*. *Rhame*, in the same fashion as *McDowell*, involved neither the removal of a statewide elected official, nor the invocation of any process for removal on address, nor an impeachment proceeding pursuant to the Constitution, nor any other form of removal of office requiring the participation of the General Assembly.

Respondent's attempt to use *McDowell* to support his argument that there is no ambiguity in Article XV flies in the face of *McDowell*'s explicit language when examining the language "all other executive and judicial officers" contained in Article XV:

> In the widest and usual meaning of the words, "all other executive and judicial officers," would include every officer of the state not of the legislative department from the highest to the most insignificant. Yet, even if sections 3 and 4 of article 15 stood alone, it would hardly be reasonable to suppose that the framers of the Constitution meant to use the words in such a broad sense that every petty officer of the state and county, except in case of conviction of embezzlement, should be subject to impeachment, and could be removed only by impeachment or address of two–thirds of the General Assembly. ***But they do not stand alone, and it must be that "all other executive and judicial officers" was meant in some limited sense***, for section 27 of article 3 clearly contemplates the removal of officers of some kind in a manner other than by impeachment, address of the General Assembly, or conviction of embezzlement. That section must have some meaning, and its meaning, if possible, must be reconciled with the article relating to impeachment. In other words, if both provisions are to be given effect, there must be a line of distinction somewhere between impeachable executive and judicial officers and those smaller local officers subject to removal under the statutes of the state or the common law. ***The use of such general terms as "all executive and judicial officers," "all civil officers," and the like in the impeachment articles of Constitutions, where they must have been meant to have some limited meaning, is one of the most curious anomolies of legislation***. However difficult the task, the court must try to find the line of distinction which the convention probably had in mind and mark that as the true line.

See McDowell, at 875 (emphasis added). In other words, *McDowell* declined to focus on the "all other" or "any"… "executive and judicial officers" language in Sections 3 and 4 of the then-existing Article XV and interpret it as plain language. The means by which *McDowell* stated in *dicta* that impeachment and removal on address applied to statewide elected officials was by *first* declining to take the language of Article XV solely at face value, and then by declaring that such language was ambiguous, i.e. "one of the most curious anomolies of legislation." *Id*. at 875. Just as *McDowell* did not take Article XV at face value—because of the illogical implications that attended such a conclusion—the Court is also now entitled to examine post-1971 Article XV to ascertain the intent of the legislature.

3. Respondent's Construction of Article XV of the Constitution is Incorrect.

In his Motion to Dismiss, Respondent argues that Petitioner's claims must fail because the plain language of Article XV, Section 3 of the South Carolina Constitution provides that all "executive officers" may (actually, must) be removed from office by the Governor on address of the General Assembly. For the following reasons, Respondent's arguments must fail.

To understand the development of the constitutional provisions governing impeachment and removal, it is helpful to trace the evolution of those sections over the past century and a half. For purposes of this analysis, Respondent will first cite Article VI of the 1865 Constitution—when the Treasurer was still elected by the General Assembly, not by statewide popular vote—which provided the following with regard to impeachment:

ARTICLE VI.

SECTION 1. The House of Representatives shall have the sole power of impeaching, but no impeachment shall be made, unless with the concurrence of two-thirds of the House of Representatives.

SECTION 2. All impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present.

SECTION 3. The Governor, Lieutenant-Governor, and all civil officers, shall be liable to impeachment for high crimes and misdemeanors, for any misbehavior in office, for corruption in procuring office, or for any act which shall degrade their official character. But judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of honor, trust or profit under this State. The party convicted shall, nevertheless, be liable to indictment, trial, judgment and punishment according to law.

CONSTITUTION.

SECTION 4. All civil officers, whose authority is limited to a single Judicial District, a single Election District, or part of either, shall be appointed, hold their office, be removed from office, and, in addition to liability to impeachment, may be punished for official misconduct, in such manner as the General Assembly, previous to their appointment, may provide.

SECTION 5. If any civil officer shall become disabled from discharging the duties of his office, by reason of any permanent bodily or mental infirmity, his office may be declared to be vacant, by joint resolution, agreed to by two-thirds of the whole representation in each House of the General Assembly: *Provided*, That such resolution shall contain the grounds for the proposed removal, and, before it shall pass either House, a copy of it shall be served on the officer, and a hearing be allowed him.

The 1868 Constitution substantially revised the provisions in its Impeachment article (then codified at Article VII) (emphasis added):

> SECTION 1. The House of Representatives shall have the sole power of impeachment. A vote of two-thirds of all the members elected shall be required for an impeachment, and any officer impeached, shall thereby be suspended from office until judgment in the case shall have been pronounced.
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> SECTION 2. All impeachments shall be tried by the Senate, and when sitting for that purpose, they shall be under oath or affirmation. No person shall be convicted except by vote of two-thirds of all the members elected. When the Governor is impeached, the Chief Justice of the Supreme Court, or the senior Judge, shall preside, with a casting vote in all preliminary questions.
>
> SECTION 3. The Governor and ***all other executive and judicial officers***, shall be liable to impeachment; but judgment in such case shall not extend further than removal from office. The persons convictt1d, shall nevertheless, be liable to indictment, trial and punishment according to law.
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> SECTION 4. For any wilful neglect of duty, or other reasonable cause, which shall not be sufficient ground of 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.

Sections 3 and 4 were substantially the same in the 1895 Constitution (recodified in Article XV). Thus, from 1868 through the 1895 Constitution, both impeachment and removal on address were authorized for all "executive and[/or] judicial officers."

In 1970, Article XV ("Impeachment") was substantially rewritten and the paragraphs renumbered. In relevant part, for the first time the General Assembly used different language to describe those subject to impeachment and those subject to Removal on Address (emphasis added):

> **SECTION 1. Power of impeachment; vote required; suspension of officer impeached.** The House of Representatives alone shall have the power of impeachment in cases of serious crimes or serious misconduct in office ***by officials elected on a statewide basis, state judges, and such other state officers as may be designated by law***. The affirmative vote of two-thirds of all members elected shall be required for an impeachment. Any officer impeached shall thereby be suspended from office until judgment in the case shall have been pronounced, and the office shall be filled during the trial in such manner as may be provided by law.
> . . .
>
> **SECTION 3. Removal of officers by Governor on address of General Assembly.** For any willful neglect of duty, or other reasonable cause, which shall not be sufficient ground of 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, or by his counsel, or by both, before any vote for such address; and in all cases the vote shall be taken by yeas and nays, and be entered on the Journal of each house respectively.

Respondent does not even attempt to explain why, in 1970, the General Assembly changed the language of the impeachment provision to limit it to "officials elected on a statewide basis, state judges, and such other state officers as may be designated by law." Respectfully, the only logical interpretation of Article XV is that proffered by Petitioner: statewide elected constitutional officials can only be removed by impeachment, while lower level executive officers (including those locally elected) can be removed for lesser cause and with lesser procedural protections.

"[K]eeping in mind that amendments to our Constitution become effective largely through the legislative process . . . the Court applies rules of construction similar to those used to construe statutes." *State v. Long*, 406 S.C. 511, 514, 753 S.E.2d 425, 426 (2014). The "interpretation of a statute is a question of law for the Court." *See Hopper v. Terry Hunt Constr.*, 383 S.C. 310, 314, 680 S.E.2d 1, 3 (2009). "A specific statutory provision prevails over a more general one." *Wooten ex rel. Wooten v. South Carolina Dep't of Transp.*, 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999). "Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered *an exception to*, or a qualifier of, the general statute and given such effect." *Capco of Summerville, Inc. v. J.H. Gayle Const. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (emphasis added). This is precisely the scenario before the Court.

Section 3 of Article XV is general, applying to allow removal of *any* executive and judicial officers (assuming, *arguendo*, that the Treasurer is an executive officer). However, Sections 1-2 of Article XV, providing for impeachment, are far more specific and restricted in scope. Those Sections require the more formal process of impeachment for, *inter alia*, statewide elected officials. Thus, under standard rule of construction, Sections 1-2 (as the more specific) are to be construed as *exceptions to* Section 3 (removal on address). Under Article XV, executive and judicial officers generally can be removed on address to the Governor for neglect and lower levels of misconduct. The *exception to this rule is for* statewide elected officials and state judges, who must be impeached for serious crimes or serious offenses in office. This more specific rule must be read as the only way that statewide elected officials can be removed from office. If the General Assembly intended that impeachment be only one option for the removal of statewide elected officials, it could have explicitly said so.

As Respondent argued in his original filings—including his Brief of Petitioner—any other construction of Article XV leads to the absurd result that a statewide elected official could be removed from office for any reason that triggers action in the General Assembly without the

procedural protections of impeachment. This would disincentivize the use of impeachment, since an easier path to removal exists through removal on address to the Governor. Petitioner has asked, "Why would the Constitution make it easier to remove a statewide elected official on address than to remove him by Impeachment?" (*See* Petitioner's Br., at 11). Respondent has not satisfactorily answered that question (and cannot do so). If a statewide constitutional official commits a crime, would it not be logical that it should be easier to remove her from office than it would be to remove her for neglect?[1] The answer to that question is self-evident.

Additionally, as Petitioner previously argued, interpreting Section 3 as Respondent argues would all but negate Sections 1 and 2; "[a]statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995). Respondent has not explained how this argument does not undermine his construction of Article XV.

Neither Petitioner nor Respondent contends that the language of Article XV is seamless. There are anomalies in the words used, regardless of how Section 3 is interpreted. The essence of ambiguity is that the words can reasonably be read in more than one way, which is unquestionably the case here. Petitioner's proposed interpretation should prevail, however, because it is logical and because the Court should not readily infer intent on the part of the drafters of the Constitution to lower the burden for nullifying a statewide popular election.

For the foregoing reasons, the Court should deny Respondent's Motion to Dismiss and should grant the relief requested by Petitioner in this matter.

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[1] Respondent seems to suggest that impeachment standards are more stringent because that "sets a deliberately high threshold concerning removal proceedings that carry the gravity of criminal prosecution." (*See* Respondent's Mot. to Dismiss, at 15-16). However, this argument is not supportable, since the Constitution is clear that "[j]udgment in such case [of impeachment] shall be limited to removal from office." *See* S.C. Const. Art. XV, Sec. 2. In other words, impeachment does not carry any criminal ramifications, only removal from office. Again, Respondent cannot explain why the Constitution would make it difficult to remove statewide elected official for a serious crime, but easier to remove the same official for mere neglect or carelessness.

C. The Court Should Not Dismiss This Action as Unripe.

Respondent finally argues that the Court should dismiss this action because Petitioner's claims are not ripe for decision because "there has been no vote on the proposed resolution by either legislative body, let alone one yielding two-thirds approval." (*See* Respondent's Mot. to Dismiss, at 16-17). Respondent correctly observes that "[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, he incorrectly concludes that "Petitioner presents nothing more than an abstract constitutional question that may never arise to a real and substantial controversy." (*See* Respondent's Mot. to Dismiss, at 17). For the reasons that follow, the Court should deny Respondent's Motion to Dismiss.

Respondent's suggestion that this case presents a merely contingent, hypothetical or abstract dispute borders on the ludicrous. There is nothing abstract about what the Senate is threatening to do to Petitioner on April 21, 2025. The Senate has disclosed hundreds of pages of documents it may use against Petitioner. It plans to make a lengthy and detailed public case against Petitioner. It plans to subject Petitioner or his representatives to interrogation by Senators, while denying Petitioner the right to confrontation of his accusers with cross examination. It plans to publicly tarnish Petitioner's reputation through an unconstitutional proceeding designed for the purpose of removing him from office. This will culminate with a vote to potentially have an address by one house of the General Assembly to the Governor for Petitioner's removal. Even if the House does not follow suit, this theatrical procedure will irreparably damage Petitioner's political future and undermine his ability to carry out his duties to hundreds of thousands of voters who have elected him to multiple terms. This is not a possibility. It is not speculation. This is a certainty, unless the Court acts to ensure that the Senate does not exceed its constitutional limitations.

For the foregoing reasons, the Court should deny Respondent's Motion to Dismiss and should grant Petitioner the relief requested in his filings.

REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

A. For the Reasons Set Forth Above, This Action Is Not Premature.

Respondent first argues that the Court should dismiss Petitioner's action because it is premature because the Senate has not actually voted to remove Petitioner yet. However, as discussed above, this action involves a harm to Petitioner that is very real and imminent. It is beyond dispute that, on Monday April 21, 2025, the Senate will publicly present a case against Petitioner and vote to remove him from office. Petitioner believes that the Senate is not constitutionally authorized to follow that process. The harm that he will suffer is not merely a vote to remove him from office. The harm is that the Senate will seek to use an unconstitutional procedure in an effort to achieve political ends. If the Court does not grant Petitioner the relief he requests, he will suffer harm to his reputation and ability to fulfill his constitutional duties. The law does not require that Petitioner wait until the conclusion of an unconstitutional proceeding before he can challenge it.

In order to protect Petitioner's rights—and the integrity of the constitution—the Court should grant interim injunctive relief to maintain the status quo pending resolution of this matter.

B. Petitioner Will Be Irreparably Harmed in the Absence of Injunctive Relief

Respondent next contends that the Court should deny Petitioner's request for injunctive relief because Petitioner will not be irreparably harmed. However, it is apparent that—if Petitioner is correct that Section 3 does not apply to him as a statewide constitutional elected official—permitting the Senate's proceedings to move forward on April 21 will violate his rights under the constitution and will damage the integrity of our constitutional system. As set forth above, the proposed proceedings will publicly expose Petitioner to attacks on his reputation in a manner that severely constrains his ability to defend himself. Irrespective of the result of any vote, he will sustain irreparable harm as a public servant. Once the Senate begins these constitutionally-flawed proceedings, Petitioner will never be able to fully repair his reputation. A person's reputation, once tarnished, can never be completely restored to its original condition. It

will always carry doubt and suspicion. This is particularly true in the case of a popularly elected official, whose ability to effectively govern depends upon the trust placed in him by his constituents.

C. Petitioner Has Demonstrated a Likelihood of Success on the Merits

As discussed above, Petitioner has a strong argument in favor of his contention that he is not subject to removal on address under Article XV, Section 3. Although the case presents difficult legal questions, Petitioner has made a well-supported claim in this matter.

D. For the Reasons Set Forth Above, This Action Does Not Raise a "Political Question".

Additionally, as set forth above, Respondent's claim that Petitioner's contentions in this matter raise political questions is without merit. Petitioner does not ask the Court to usurp the authority of the General Assembly. Petitioner does not seek to have the Court substitute its judgment for that of the Senate. Petitioner only asks the Court to interpret the constitution to ensure that the Senate complies with its constitutional obligations.

CONCLUSION

For the foregoing reasons, the Court should deny Respondent's Motion to Dismiss this matter. In addition, the Court should grant Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction, and grant interim injunctive relief maintaining the status quo by prohibiting Respondent from acting until the Court determines the constitutionality of its effort to remove Petitioner from office.

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Dated: April 17, 2025