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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2024-CP-00-000256

Board Of Field Officers Of The Fourth Brigade,
Mark Calhoun,
F. Preston Wilson,

Appellants,

V.

Members Of City Council Of The City Of Charleston, South Carolina, Caroline Parker, Kevin Shealy, Jason Sakran, Robert M. Mitchell, Karl L. Brady, Jr., Stephen Bowden, Peter Sahid, Jr. Michael S. Seekings, Perry K. Waring, William Dudley Gregorie, And Ross A. Appel,
The City Of Charleston, South Carolina,
The Honorable Alan Wilson, Attorney General For The State Of South Carolina, And
The Honorable John Tecklenburg, Mayor Of The City Of Charleston, South Carolina,

Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2022-CP-10-05123
)	
Board of Field Officers of the Fourth)	
Brigade, Mark Calhoun, F. Preston Wilson,)	
and Andrew Pickens Calhoun,)	
)	
Petitioners,)	
)	
v.)	
)	
Members of City Council of The City of)	**ORDER**
Charleston, South Carolina, Caroline Parker,)	
Kevin Shealy, Jason Sakran, Robert M.)	
Mitchell, Karl L. Brady, Jr., Stephen)	
Bowden, Peter Shahid, Jr., Michael S.)	
Seekings, Perry K. Waring, William Dudley)	
Gregorie, and Ross A. Appel, and The City)	
Of Charleston, South Carolina, The)	
Honorable Alan Wilson, Attorney General)	
For the State of South Carolina, the)	
Honorable John Tecklenburg, Mayor of the)	
City of Charleston, South Carolina,)	
)	
Respondents.)	
_____)	

This matter came before the Court on September 6, 2023, on the City of Charleston Respondents' Motion to Dismiss. Present for the hearing were Petitioners' counsel, Bill Connor and Rob Varnado, as well as counsel for the City of Charleston Respondents, Armand Derfner, Jonathan Altman, Will Cook, Julia Copeland, and Katie Monoc. Memoranda were filed and incorporated into the record, and oral arguments were heard. After careful consideration of filings, submissions by the parties, oral argument, and the applicable law which governs this dispute, the Court hereby GRANTS IN PART the City of Charleston Respondents' Motion to Dismiss.

RELEVANT BACKGROUND

In the late 19th century, a private group known as the Ladies' Calhoun Monument Association erected a statute of former Vice President and U.S. Senator John C. Calhoun on a portion of Marion Square in the City of Charleston. The statue depicted Calhoun seated and included the numbers 1782 and 1850 (his birth and death dates) and the words "TRUTH JUSTICE AND THE CONSTITUTION." In 1898, having achieved its goal and preparing to disband, the Association presented the Monument to the City of Charleston, which thereafter maintained it in its Marion Square location for many years.

In 2020, the City of Charleston removed the statue after City Council voted to do so. Several members of the general public – three individuals and a fraternal organization – asked this Court to order the City to restore the statue. They allege in three causes of action that its removal violated the South Carolina Heritage Act as well as state charitable trust law, and that they as members of the general public are entitled to be the enforcers of the law. A Fourth Cause of Action relates to an agreement about the ultimate disposition of the statue.

The City and its officials (collectively, the City of Charleston Respondents) moved to dismiss the Petition. As set forth below, the Court GRANTS the Respondents' motion and dismisses all counts of the Petition as to the moving parties.

LEGAL STANDARD FOR MOTION TO DISMISS

In considering a motion to dismiss a complaint for failure to state a cause of action, the Court must base its ruling solely on the allegations set forth in the Complaint. *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010). If the facts and inferences drawn from the facts alleged in the Complaint, viewed in the light most favorable to the

Plaintiff, would entitle the Plaintiff to relief on any theory, then the Court must deny the motion. *Id.*

This case does not turn on any disputed facts but instead involves interpretation of South Carolina statutes, specifically, the Heritage Act, the Trust Code, and the Declaratory Judgment Act. Therefore, this case as to movants is ripe for resolution on Respondents' Motion to Dismiss. *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Off.*, 346 S.C. 158, 165, 551 S.E.2d 263, 267 (2001) (citing *Evans v. State*, 344 S.C. 60, 543 S.E.2d 547 (2001)).

I. PETITIONERS ARE NOT ENTITLED TO RELIEF UNDER THE HERITAGE ACT BECAUSE THE LAW CREATES NO PRIVATE RIGHT OF ACTION.

The Heritage Act provides for the "Protection of certain monuments and memorials" as follows:

> (A) No Revolutionary War, War of 1812, Mexican War, War Between the States, Spanish-American War, World War I, World War II, Korean War, Vietnam War, Persian Gulf War, Native American, or African-American History monuments or memorials erected on public property of the State or any of its political subdivisions may be relocated, removed, disturbed, or altered. No street, bridge, structure, park, preserve, reserve, or other public area of the State or any of its political subdivisions dedicated in memory of or named for any historic figure or historic event may be renamed or rededicated. No person may prevent the public body responsible for the monument or memorial from taking proper measures and exercising proper means for the protection, preservation, and care of these monuments, memorials, or nameplates.

S.C. Code Ann. § 10-1-165(A).

It contains no "private right of action," *i.e.*, no language authorizing a private citizen to bring an enforcement lawsuit.

It is fundamental law in South Carolina that when the General Assembly enacts a statute, especially one governing the conduct of government or public entities, private citizens are not

authorized to bring enforcement lawsuits unless the statute itself provides for such private lawsuits.

This principle has been forcefully stated many times:

> [Q]uestions of whether the legislature intended to create a private cause of action should be resolved by the language of the statute. 'When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party.' Generally, 'a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing civil liability.'

Kubic v. MERSCORP Holdings, Inc., 416 S.C. 161, 168, 785 S.E.2d 595, 599 (2016) (internal citations omitted).

The rule was repeated by our Court of Appeals in 2021 in *Ballard v. Newberry County*:

> Critically, nothing in the Public Records Act grants any interested party, however well-intentioned, the right to enforce the act by bringing a civil action.
>
> We agree with the circuit court that there is also no implied civil right to enforce these statutes. A bellwether case on implied causes of action is *Whitworth v. Fast Fare Markets of South Carolina, Inc.*, which explains "the general rule [] that a statute which does not purport to establish a civil liability, but merely makes [a] provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability." 289 S.C. 418, 420, 338 S.E.2d 155, 156 (1985) (quoting 73 Am. Jur. 2d, *Statutes* § 432 (1974)). A private right of action will "be implied only if the legislation was enacted for the special benefit of a private party." *Doe v. Marion*, 373 S.C. 390, 397, 645 S.E.2d 245, 248 (2007).

Ballard v. Newberry Cty., 432 S.C. at 531, 854 S.E.2d at 850-51.

The Court went on:

> No one appears to dispute that the Public Records Act was not enacted for anyone's particular benefit. There is also a virtually unbroken string of precedents refusing to recognize implied rights of action in statutes that—like the Public Records Act—describe the government's basic structure and operation.

This paragraph ended with a footnote listing no fewer than nine cases as authority:

> *Kubic v. MERSCORP Holdings, Inc.*, 416 S.C. 161, 785 S.E.2d 595 (2016); *Marion*, 373 S.C. 390, 645 S.E.2d 245; *Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 602 S.E.2d 51 (2004); *Camp v. Springs Mortg. Corp.*, 310 S.C. 514, 426

> S.E.2d 304 (1993); *Citizens for Lee Cty., Inc. v. Lee Cty.*, 308 S.C. 23, 416 S.E.2d 641 (1992); *Dorman v. Aiken Commc'ns, Inc.*, 303 S.C. 63, 398 S.E.2d 687 (1990); *Whitworth*, 289 S.C. 418, 338 S.E.2d 155; *Patterson v. I.H. Servs., Inc.*, 295 S.C. 300, 368 S.E.2d 215 (Ct. App. 1988); *Herald Pub. Co. v. Barnwell*, 291 S.C. 4, 351 S.E.2d 878 (Ct. App. 1986).

432 S.C. at 531 n.1, 854 S.E.2d at 851 n.1. The rule against implying a private right of action in a statute was stated again recently in *Denson v. National Cas. Co.*, 439 S.C. 142, 886 S.E.2d 228 (2023).

In the case of the Heritage Act, it is clear how disruptive a private cause of action could be. There are thousands of monuments and memorials of every kind throughout the state, some of which are covered by the Heritage Act, but others of which are not. To allow any person or organization, no matter how well-intentioned, to sue the State or any city, county, school district or even an individual school, could (and would) wreak havoc and disrupt the orderly functioning of government and the carrying out of the public's business.

As noted in *Kubic v. MERSCORP*, the right to bring a private suit under a statute is even more restricted than the question of general standing in non-statutory cases because, in statutory cases, the legislature has written law that leaves no room for a court to disagree. *See Kubic v. MERSCORP Holdings, Inc.*, 416 S.C. at 167 n.2, 785 S.E.2d at 598 (2016).

Dismissing this case against the City of Charleston Respondents does not mean there is no remedy to enforce the Heritage Act. The Attorney General is empowered generally to enforce the Constitution and laws of South Carolina. He has taken an active role in matters involving the Heritage Act, issuing many Attorney General's Opinions for guidance to public officials and participating in lawsuits involving the Heritage Act. *E.g., Pinckney v. Peeler*, 434 S.C. 272, 277, 862 S.E.2d 906, 909 (2021). For all these reasons, Petitioners have no right to bring this action against the City of Charleston Respondents.

While the court's holding that there is no private right of action makes it unnecessary to decide whether removal of the statue violated the Act, the court notes that the first sentence of the Act (which prohibits removal or relocation) applies to war memorials, which the Calhoun statute is not; and the second sentence (which applies to streets, bridges, parks, structures, etc. named after persons (i.e. "Calhoun Street")) prohibits only renaming or rededication, which has not happened here. The Court also notes that when the statue was removed in 2020, the Attorney General issued an opinion that the City's action did not violate the Act.

II. PETITIONERS HAVE NO STANDING BASED ON CHARITABLE TRUST LAW.

Petitioners assert that the gift of the Calhoun monument from the Ladies' Calhoun Monument Association to the City created a charitable trust. Even assuming that the allegations of the Petition are sufficient to allege a charitable trust, Petitioners are not eligible to sue to enforce it.

For hundreds of years, the common law the statutes of this state have sharply restricted the persons who may invoke a court proceeding to enforce the terms of a charitable trust. The chief legal officer of a jurisdiction (typically the state Attorney General) plays that principal role, sometimes augmented by the settlor or trustee of the trust, and, rarely, by another person who can show a direct, unique interest. This rule has been stated many times, *e.g.*, "A person whose only interest is that interest held in common with other members of the public cannot compel the performance of a duty the charitable organization owes to the public" Am. Jur. 2d *Charities* § 130, at 126 (internal citations omitted).

The limitation is intended to protect trusts from needless litigation which could dissipate the assets of the charity at the unrestrained option of private citizens who might have only parochial

or personal motivations for suing the charity; at the same time, the list of those who do have standing adequately insures appropriate oversight.

The current law of South Carolina is contained in the South Carolina Trust Code, S.C. Code § 62-7-405(c): "The settlor of a charitable trust, the trustee, and the Attorney General, among others may maintain a proceeding to enforce the trust."

Petitioners argue that the words "among others" create a chain made of many links that somehow reach far enough to give them standing. Their argument is essentially that those two words open the door to broad new categories of people with standing, that one such new category is "beneficiaries" of a trust, that the "beneficiaries," of the Calhoun monument trust are "the people of South Carolina," (Pet., ¶ 67). More specifically, that since two of the petitioners (Preston Wilson and Mark Calhoun) are part of "the people of South Carolina" as residents of South Carolina, they have standing to bring this action.

The Court finds no basis for holding that S.C. Code § 62-7-405(c) was so radically transformed by the words "among others." Rather, the words are designed to promote the purpose of allowing suit by those in the named categories.[1] The words do not provide an excuse to abandon the limitation stated succinctly in our Code.

Significantly, the words "among others," only came into the South Carolina Code when our state adopted the Uniform Trust Code in 2005. The South Carolina Code contains Notes to

---

[1] For example, those words could allow suit by someone who is realistically in the position of settlor or trustee but who for some technical reason or by scrivener's error was not formally designated as such. *See, e.g., Gassick, Trustee of the James A. Bellamy Trust and Personal representative of the Estate of James A. Bellamy v. University of Michigan Regents*, 330 Mich. App. 487, 948 N.E.2d 452 (2019). *See also* ALR Annot. "Who May Maintain Suit or Proceeding to Enforce or Administer Benevolent or Charitable Trust" 124 AKR 1237.

the Uniform Trust Code and Notes to the South Carolina version, for Chapter 7 of Title 62 and for Section 62-7-405. Nowhere in any of these Notes does this court find the broad interpretation that Petitioners suggest.

Before South Carolina's adoption of the Uniform Trust Code, several sections of the South Carolina Code provided for the Attorney General to bring suits to enforce charitable trusts. South Carolina Code 62-7-501 through -507 did so, and they were merged into the present South Carolina version of the Uniform Trust Code.[2]

South Carolina caselaw is in accord. The definitive statement of the law was expressed by our Supreme Court in *Epworth Children's Home v. Beasley*, 365 S.C. 157, 616 S.E.2d 710 (2005). There, in litigation over possible termination of a charitable trust, the Attorney General entered an appearance and thereafter filed an appeal opposing termination of the trust. In an opinion

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[2] The Trust Code is consistent with South Carolina's general standing doctrines. South Carolina's basic requirement (and there are others) is that the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is concrete and particularized. The injury must be of "a personal nature to the party laying claim to standing and not merely of general interest common to all members of the public." *Sea Pines Ass'n for the Protection of Wildlife, Inc. v. S.C. Dep't of Natural Resources*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001). Here, the Petitioners' claimed injuries do not meet this test. They allege that they "will be deprived of their enjoyment" of the Calhoun Monument and that Mark Calhoun has "an interest in preserving the historical memory of their ancestor." (Pet. ¶¶ 55, 76.) That does not meet the standing requirement under our law.

Nor does the doctrine of public importance standing provide any assistance to Petitioners. That doctrine, which has been invoked in certain rare instances by our Supreme Court, certainly would not be applied here where the statute itself restricts standing, where the Attorney General can and does exercise an active oversight role, and where the point of the Trust Code is to restrict standing (not open it wide).

upholding the Attorney General's position, the Supreme Court made clear that the Attorney General is the proper party in such a case:

> South Carolina Code Ann. § 1–7–130 (2005) provides that the "Attorney General shall enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration thereof and, when necessary, prosecute corporations which fail to make to the General Assembly any report or return required by law." Similarly, S.C. Code Ann. § 62–7–503 (1987) provides that the Attorney General shall, when necessary, bring an action to compel trustees to discharge duties imposed upon them by a charitable trust or comply with statutory provisions concerning the administration of charitable trusts. The Attorney General is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts. *Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961).

Epworth Children's Home v. Beasley, 365 S.C. 157, 163 n.3, 616 S.E.2d 710, 713 n.3 (2005).

The prior case on which the *Epworth* decision relied, *Furman University v. McLeod*, is even more pointed and makes clear that others besides the Attorney General usually have no role in such a case:

> Daniel R. McLeod, as Attorney General of South Carolina, upon whom is imposed the responsibility of protecting the interests of the public in matters relating to the administration and enforcement of charitable trusts, has been named Defendant and has filed this answer herein. I find and hold that Daniel R. McLeod, as Attorney General, is the only proper and necessary party defendant to this proceeding. The language of the deeds requiring the maintenance of a school in or near Greenville creates, at most, a public trust. There are no private rights of reversion or reverter. Even if the language should be given that strict construction which the Attorney General advances it would create no private right of action in any individual citizen. The public interest is properly represented by the defendant.
>
> Under Title 1, Section 240 of the 1952 Code of Laws of South Carolina, the Attorney General of South Carolina is charged with the duty of "Enforce the due application of funds given or appropriated to public charities within the State, [and] prevent breaches of trust in the administration thereof."
>
> It is also the general law that in the matter of administering or enforcing charitable trusts, the Attorney General is the proper party to protect the interest of the members of the public at large, as distinct from those having "immediate or peculiar interests."

Id. at 482-83, 120 S.E.2d at 868. [3]

III. WRIT OF MANDAMUS AGAINST THE ATTORNEY GENERAL.

Count Two of the Petition seeks a writ of mandamus against the Attorney General. He is a named defendant but was not served and has not entered an appearance. As such, this claim is not yet ripe for dismissal at the request of Respondents and Respondents lack standing to pursue dismissal of that claim.

IV. PETITIONERS' FOURTH CAUSE OF ACTION IS A NON-JUSTICIABLE REQUEST FOR AN ADVISORY OPINION.

Finally, Petitioners seek a declaratory judgment affirming that the City has promised to give the Board of Field Officers a "right to he heard" as to the ultimate disposition of the Calhoun statute. There is no allegation that the City denies such an agreement or threatens to violate it. The few allegations all relate to speculation – not even current speculation, but speculation of the past. The Petition alleges that the City "previously threatened" to move the Calhoun statute out of state (Pet. ¶ 2) and that the City "had considered" such a move (Pet. ¶ 54). The threatened injury is likewise speculative: "If the City of Charleston in fact transfers" the statute out of state or out of the area (Pet. ¶ 55 and ¶ 56), local and state residents will lose the benefit of the statute and the state courts and Attorney General will lose jurisdiction over it.

---

[3] There is one pre-Trust Code case that might at first glance seem to support expansive standing to sue; however, in fact, this case *does not* support such standing. *Grady v. City of Greenville*, 129 S.C. 89, 123 S.E. 494 (1924). That case, which upheld a city's relocation of a donated monument, had been brought by four surviving Confederate veterans. There, the court explained that it entertained the case "out of deference to the thin, and now almost vanished, 'gray line' of which these four plaintiffs are a worthy part," and emphasized that it was not rendering a decision about their standing to sue. *Id.* at 108, 123 S.E. at 501.

Words like "previously threatened," "had considered," and "if" (twice) do not allege a live, concrete dispute, do not create a justiciable case or controversy, and are not a sufficient basis for a declaratory judgment under S.C. Code § 15-53-10 *et seq.*

Rather, Petitioners seek an advisory opinion because no controversy presently exists, and their claim is not ripe for adjudication. Considerable South Carolina case law holds that a right to such relief is not conferred by the Declaratory Judgment statute, which requires a live controversy. For example, "to fall within the intended purpose and scope of the Declaratory Judgments Act, the parties must seek adjudication of a justiciable controversy." *Tourism Expenditure Review Comm. v. City of Myrtle Beach*, 403 S.C. 76, 81, 742 S.E.2d 371, 373-74 (2013) (citing *Sunset Cay, LLC, v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004)). "[I]t is fundamental that the Declaratory Judgments Act does not eliminate the case-or-controversy requirement." *Id.* at 82, 742 S.E.2d at 374. As a threshold matter, "the existence of an actual controversy is essential to jurisdiction to render a declaratory judgment." *Power v. McNair*, 255 S.C. 150, 153, 177 S.E.2d 551, 552 (1970). The same case also held:

> A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.

Id. at 154, 177 S.E.2d at 553. The Court concluded: "We simply refuse to enter the field of advisory opinions." *Id. at* 154-55, 177 S.E.2d at 553.

Similarly here, and as all these cases show, Petitioners' Fourth Cause of Action fails as a matter of law.

CONCLUSION

IT IS THEREFORE ORDERED that the City of Charleston Respondents' Motion to Dismiss be, and hereby is, GRANTED IN PART on the grounds set forth herein as to all claims

against the City of Charleston Respondents.

This 4th day of January, 2024.

_____

Jennifer B. McCoy
South Carolina Circuit Court Judge

Charleston Common Pleas

Case Caption:	Board Of Field Officers Of The Fourth Brigade , plaintiff, et al VS Members Of City Council Of The City Of Charleston South Car , defendant, et al
Case Number:	2022CP1005123
Type:	Order/Other

So Ordered

s/Jennifer B. McCoy #2764

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1005123

Board Of Field Officers Of The Fourth Brigade et al
PLAINTIFF(S)

Charleston South Carolina City Of The et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiff filed a Motion to Reconsider with this Court on January 12, 2024. The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits. Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 8/34, 842 (1992). A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Plaintiff's Motion to Reconsider is DENIED based on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401–402, 444 S.E.2d 534, 536 (Ct. App. 1994).

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/09/2024 .

Attorney General Of The State Of South Carolina

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Charleston Common Pleas

Case Caption:	Board Of Field Officers Of The Fourth Brigade , plaintiff, et al VS Members Of City Council Of The City Of Charleston South Car , defendant, et al
Case Number:	2022CP1005123
Type:	Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
BOARD OF FIELD OFFICERS OF THE FOURTH BRIGADE, MARK CALHOUN, F. PRESTON WILSON, ANDREW PICKENS CALHOUN Petitioners, vs. MEMBERS OF CITY COUNCIL OF THE CITY OF CHARLESTON, SOUTH CAROLINA, CAROLINE PARKER, KEVIN SHEALY, JASON SAKRAN, ROBERT M. MITCHELL, KARL L. BRADY, JR., STEPHEN BOWDEN, PETER SHAHID, JR., MICHAEL S. SEEKINGS, PERRY K. WARING, WILLIAM DUDLEY GREGORIE, and ROSS A. APPEL AND THE CITY OF CHARLESTON, SOUTH CAROLINA, THE HONORABLE ALAN WILSON, ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA, AND THE HONORABLE JOHN TECKLENBURG, MAYOR OF THE CITY OF CHARLESTON, SOUTH CAROLINA Respondents	CASE NO: 2022-CP-10- **SUMMONS**

TO THE RESPONDENTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to serve your reply to the Petition attached hereto and served herewith upon the subscriber, at his office at 1408 Russell Street, Suite 11, Orangeburg, SC 29115, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition within the time aforesaid, Petitioners will apply to the Court for default judgment and the relief demanded in the Petition.

(Signature Page To Follow)

BILL CONNOR LAW FIRM, LLC.

s/ William M. Connor, V
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Andrew Pickens Calhoun

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Attorney for the Petitioner:
Board of Field Officers

Orangeburg, South Carolina
November 4, 2022

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
BOARD OF FIELD OFFICERS OF THE FOURTH BRIGADE, MARK CALHOUN, F. PRESTON WILSON, ANDREW PICKENS CALHOUN Petitioners, vs. MEMBERS OF CITY COUNCIL OF THE CITY OF CHARLESTON, SOUTH CAROLINA, CAROLINE PARKER, KEVIN SHEALY, JASON SAKRAN, ROBERT M. MITCHELL, KARL L. BRADY, JR., STEPHEN BOWDEN, PETER SHAHID, JR., MICHAEL S. SEEKINGS, PERRY K. WARING, WILLIAM DUDLEY GREGORIE, and ROSS A. APPEL AND THE CITY OF CHARLESTON, SOUTH CAROLINA, THE HONORABLE ALAN WILSON, ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA, AND THE HONORABLE JOHN TECKLENBURG, MAYOR OF THE CITY OF CHARLESTON, SOUTH CAROLINA Respondents	CASE NO: 2022-CP-10- **PETITION**

COMES NOW YOUR PETITIONERS, by and through their undersigned attorney of record, and would respectfully show unto this Honorable Court as follows:

INTRODUCTION

1. This is an action by concerned citizens of South Carolina, particularly residents of the city of Charleston, and descendants of the family of John C. Calhoun to protect and

preserve an important piece of the state's history, a monument erected of the great South Carolina statesman John Caldwell Calhoun (hereinafter sometimes referred to as the "Calhoun Monument").

2. As set forth herein, the City of Charleston has illegally and unlawfully removed the Calhoun Monument from the place where it has stood in Charleston since 1898; the base and pedestal of stone were destroyed, and the statue of Calhoun has been taken by the city. The City of Charleston previously threatened to illegally and unlawfully remove the Calhoun Monument from the jurisdiction of the South Carolina Courts and the South Carolina Attorney General by transferring possession of same to a museum located in Los Angeles, California.

3. Petitioners file this action requesting that this Court issue the following relief:

(a) A declaration that the City of Charleston's action in removing the Calhoun Monument without specific authorization from the South Carolina legislature violates the Heritage Act, South Carolina Statutes Annotated § 10-1-165;

(b) A declaration that the City of Charleston holds the Calhoun Monument as a charitable trust for the benefit of the public citizenry of South Carolina;

(c) A declaration that the Attorney General of the State of South Carolina, Respondent Alan Wilson, is one of the persons who have an obligation under South Carolina Statutes Annotated § 62-7-405(c) to enforce the terms of the charitable trust by which the City of Charleston holds the Calhoun Monument;

(d) A writ of mandamus against Attorney General Alan Wilson, ordering him to take action to protect the public by enforcing the terms of the charitable trust by which the City of Charleston holds the Calhoun Monument;

(e) A declaration that Petitioners have standing to enforce the terms of the charitable trust in light of the Attorney General's default on his responsibility to enforce same;

(f) An Order prohibiting the City of Charleston from transferring possession of the Calhoun Monument to any party outside of the jurisdiction of the State of South Carolina and/or outside of the jurisdiction of the Attorney General to oversee and enforce same; and

(g) A writ of mandamus against the City of Charleston, ordering the City to replace the Calhoun Monument within City limits.

PARTIES

4. Petitioner Board of Field Officers of the Fourth Brigade (successor in interest in 2021 to 'the Washington Light Infantry and Sumter Guards Board of Officers') ("Board of Field Officers") was originally known as either the Board of Field Officers of the Charleston Regiments and/or the Board of Field Officers of the Fourth Brigade and/or the Board of Field Officers of Fourth Battalion. Under its various names, the Petitioner has been in continuous existence and has owned the land commonly known as "Marion Square" in Charleston, South Carolina, since approximately 1834.

5. Petitioner, F. Preston Wilson, is a resident of South Carolina, and is the direct descendant of the Vice President of the Ladies' Calhoun Monument Association, Mrs. Henry W. Conner (Julia Courtney), elected to said office on March 7, 1855, and that Mrs. Julia Conner was the mother of James Conner, who was the father of Henry W. Conner, who was the father of Adele Petigru Conner Simons, who was the mother of

Adele Wilson, who was the mother of Petitioner F. Preston Wilson, and the interest of the said association, and therefore the interest of Petitioner, will be further explained below.

6. Petitioners Mark Calhoun, a resident of the city of Charleston and a descendent of the Calhoun family, and Andrew Pickens Calhoun, former Calhoun representative on the board of Clemson University for historic preservation for a quarter-century, and a descendant of the Calhoun family, have a familial interest in the Statue as a memorial honoring their ancestor as an iconic and honored South Carolinian.

7. Respondent, City of Charleston, South Carolina, is a municipality, and a body corporate and politic of the State of South Carolina located primarily within the County of Charleston, State of South Carolina, and is the county seat for the County of Charleston, State of South Carolina.

8. Respondent, the Honorable Alan Wilson, is the duly elected and installed Attorney General for the State of South Carolina.

9. Respondent, the Honorable John Tecklenburg, is the duly elected and installed Mayor of the City of Charleston, South Carolina.

10. Respondents, the Members of the City Council of Charleston, South Carolina, are the duly elected and installed governing officials voting on executive actions, including those of this lawsuit.

BACKGROUND

11. In 1834, the City Council of Charleston conveyed to the Board of Field Officers of the Charleston Regiments, at Deed Book H 10, Page 382, on file with the Charleston

County Register of Deeds Office, the land commonly known as “Marion Square” in Charleston, South Carolina.

12. The Board of Field Officer’s holdings on Marion Square were subsequently enlarged, and/or made more definite and certain, as follows: (i) in 1835, at Deed Book K 10, Page 245, from the City Council of Charleston to the Board of Field Officers of the Fourth Brigade; (ii) in 1856, at Deed Book V 13, Page161, from Henry Boylston to the Board of Field Officers, (iii) also in 1856, Deed Book V 13, Page 268, from the City Council of Charleston to the Board of Field Officers; (iv) in 1866, at Deed Book A 14, Page 7-442, to the Board of Field Officers of the Fourth Brigade to the City Council of Charleston; and (v) in 1877, at Deed Book G17, Page 136, from the City Council of Charleston to the Board of Field Officers of the Fourth Brigade SC; all of which are also on file with the Charleston County Register of Deeds.

13. During the latter part of the nineteenth century, a group of South Carolina ladies formed an unincorporated association known as the Ladies’ Calhoun Monument Association for the sole purpose of erecting a monument to John Caldwell Calhoun, the former U.S. Vice-President, U.S. Secretary of War and U.S. Senator.

14. This aforesaid unincorporated association was known as the Ladies’ Calhoun Monument Association.

15. Eventually, the Ladies’ Calhoun Monument Association raised sufficient money to procure and erect the aforesaid Calhoun Monument, which stood upon Marion Square in the City of Charleston, State of South Carolina.

16. That on September 16, 1885, by virtue of a Quit Claim Deed recorded at Deed Book D 20, Page 467 in the Charleston County R.O.D. Office, the Board of Field Officers granted to the "Ladies' Calhoun Monument Association" (an unincorporated South Carolina association) a thirty-six (36') x thirty-six (36') feet plot of land in Marion Square. This grant was also supported by virtue of a second Quit Claim Deed recorded at Deed Book D 20, Page 469 in the Charleston County R.O.D. Office, given by the City Council of Charleston to the Ladies' Calhoun Monument Association, on or about October 16, 1885.

17. That by virtue of its September 16, 1885, Quit Claim Deed to the Ladies' Calhoun Monument Association described above, the Board of Field Officers specifically reserved: "that at any time hereafter should the said lot, piece or tract of land cease to be used for the purposes aforesaid there for and thereafter" then "all the right[,] title in trust[,] or claim of every kind and nature whatsoever of the said Ladies' Calhoun Monument Association ... shall cease ... as though this deed had never been executed."

18. The only purpose of the Ladies' Calhoun Monument Association was to raise funds for, and procure for the public, the monument in question.

19. With its purpose accomplished, the Ladies' Calhoun Monument Association resolved to disband.

20. At that time, the Ladies' Calhoun Monument Association sought an entity to which it could entrust the custody and maintenance of the monument.

21. With the unanimous consent of the Mayor of the City of Charleston, and the City Council of the City of Charleston, the Ladies' Calhoun Monument Association decided to entrust the monument to the City of Charleston.

22. The intent was manifest in one letter which has been preserved in the Minutes of the City Council for the City of Charleston, from a special meeting of 18 July 1898.

23. The letter in whole is as follows:

Charleston, S.C. July 7, 1898

To the Hon J. Adger Smyth, Mayor of Charleston - Sir:

You are, of course, aware that after vicissitudes and efforts extending over many years the Ladies' Calhoun Monument Association has at length accomplished the sacred object of Its existence. It has erected a statue-worthy, at least, to remind us all of the great Carolina statesman.

Association is now about to dissolve and disband, and should, therefore, commit to the charge of some one, for all time, the custody, control and care of the monument and spot upon which it stands. Into no more loyal hands could this be entrusted than those which guide and direct our city's life and welfare.

Permit us, therefore, to ask you, as the representative and head of the City Council of Charleston, to receive from us this sacred trust, and to accept the custody, control and care of the Calhoun monument and the grounds around it.

We evidence this by presenting, through you, to the City Council this key to the enclosure, as symbolizing the possession and custody, and ask that the Council preserve and guard It, and all that It represents, so dear to every citizen of this State.

With respect we remain yours truly,

Mrs. Joseph Blackman, corresponding secretary; Miss K. E. DeSaussure, recording secretary, Ladies' Calhoun Monument Association,

(hereinafter "the Blackman DeSaussure Letter").

24. Upon the reading of the dedication to the City Council, Alderman Zimmerman Davis proposed the following resolution:

Whereas, the Ladies' Calhoun Monument Association, "after vicissitudes and efforts extending over many years, has at length accomplished the sacred object of Its existence," by the erection in Marion square of the magnificent monument to South Carolina's greatest son, John Caldwell Calhoun; and whereas, the Association is now about to dissolve and disband, and desires to place the monument under the control and care of the City of Charleston for all time, and has placed In the hands of the Mayor of the city the key to the enclosure, "as symbolizing Its possession and "custody;"

Resolved, That the City Council gratefully accepts the high honor and the responsibilities which It Involves, and pledges the faith of the city to watch over and keep it as a priceless treasure and sacred trust.

Resolved, That his Honor the Mayor be requested to express to the ladies of this Association the thanks of the city and of the entire State for their untiring labors and heroic endurance In the face of many obstacles and difficulties In the completion of such a handsome and imposing monument to the great statesman.

Resolved, That this action of the City Council be suitably engrossed and sent to the Ladies' Calhoun Monument Association.

25. Zimmerman Davis' resolution passed City Council unanimously.

26. But for the promise of the erection of the Calhoun Monument on the spot as well as the City of Charleston's willingness and commitment to accept and maintain the monument, the property would not have been granted at all.

27. Since 18 July 1898, the City of Charleston (hereinafter "City of Charleston") has been a faithful steward of the trust placed in it by the Ladies' Calhoun Monument Association.

CREATION OF THE TRUST UNDER SOUTH CAROLINA LAW

28. The South Carolina Uniform Trust Code as set forth in Article 7 of Title 62 of the South Carolina Code of Laws applies to the construction of all trusts prior to the effective date of 1 January 2014 to the extent that there is a "clear indication of a contrary intent in the terms of the governing instrument… ." South Carolina General Assembly 2013 Act No. 100, § 4.

29. No such contrary intent is evidenced by either the Blackman DeSaussure Letter or the Zimmerman Davis resolution.

30. Under South Carolina law, the existence of a trust hinges upon a declaration creating the trust; a *trust res*; and designated beneficiaries. *Whetstone v. Whetstone*, 309 S.C. 227, 231, 420 S.E.2d 877, 879 (Ct. App. 1992).

31. There is no requirement for a settlor of a Trust to employ or use the word "Trust" in forming a valid trust under the Law of the State of South Carolina. S. Alan Medlin, *Estate Planning in South Carolina: The Law of Wills and Trusts* § 501.1 (2002).

32. The Ladies' Calhoun Monument Association did, in fact, in the Blackman DeSaussure Letter, demonstrate an unambiguous intent to establish not only a trust but for the City of Charleston "to receive from us this sacred trust."
33. The Blackman DeSaussure Letter constitutes a writing.
34. The Blackman DeSaussure Letter constitutes a declaration.
35. The Blackman DeSaussure Letter designates and constitutes the "Calhoun monument and the grounds around it" as the *res* of the Trust.
36. The Blackman DeSaussure Letter designates the public as the beneficiaries of the Trust, as the Calhoun Monument was designed for the benefit of reminding "us all of the great Carolina statesman."
37. Under South Carolina Law, a settlor of a trust need not name the beneficiaries specifically, nor must the settlor identify the beneficiaries at the time of the making or execution of the instrument of trust. South Carolina Code Annotated § 62-7-402(c).
38. Under South Carolina Law, a beneficiary is not required to be designated at all if the trust is a charitable trust. South Carolina Code Annotated § 62-7-402(a)(3)(A).
39. The Blackman DeSaussure Letter evidences an intent to convey the *res* subject to a trust rather than an outright conveyance in fee simple.
40. The Ladies' Calhoun Monument Association intentionally declined to use such words as "grant" or "deeds" or "gives" because they did not intend an unrestricted gift to the City of Charleston in fee.
41. The Ladies' Calhoun Monument Association intentionally employed words such as "custody, control and care" and "possession and custody" to emphasize that the

transaction was not an outright gift or conveyance without restrictions, but rather an entrustment for the charitable benefit of the public.

42. Words such as “custody, control and care” and “possession and custody” do clearly emphasize a transaction quite short of an outright grant or gift and must either be a trust or bailment.

43. The Blackman DeSaussure Letter constitutes a declaration of trust to the City of Charleston as Trustee over the Calhoun Monument and the grounds underneath it. The unanimously approved resolution proposed by Alderman Zimmerman Davis constitutes acceptance of the Blackman DeSaussure declaration of trust.

44. Under the South Carolina Uniform Trust Code, a “charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in South Carolina Code Annotated § 62-7-405(a).

45. Under the immediately aforesaid Code provision, a charitable trust under § 62-7-405(a) a “charitable trust may be created for the relief of distress or poverty, the advancement of education or religion, the promotion of health, scientific, literary, benevolent, governmental or municipal purposes, or other purposes, the achievement of which purposes is beneficial to the community.”

46. The people of South Carolina are the charitable beneficiaries of the instant trust and its *res*.

47. The stated purpose of the trust is to take “custody, control and care of the monument and spot upon which it stands” and to “preserve and guard It, and all that It represents… .”

48. The trust in question is designed for the advancement of the education of the public as to of one of its most noted statesmen as well as South Carolina history which are benevolent purposes that are deemed beneficial to the community, and which more specifically were deemed by the City of Charleston to be beneficial to the community at the time of the acceptance of the entrustment.

THE CITY OF CHARLESTON THREATENS TO VIOLATE THE TERMS OF THE CHARITABLE TRUST

49. Under the South Carolina Uniform Trust Act, the trustee of a charitable trust is obligated to operate faithfully and loyally to the terms of the trust and not its own self-interest.

50. The City of Charleston cannot unilaterally modify the terms of the trust, and the terms may not be modified unless the modifications comport to the exigencies and strictures set forth in South Carolina Code Annotated § 62-7-413, which they do not, and this includes transferring possession of said monument when that would violate the purpose of the trust, as would be the case in transferring the monument to said exhibition in California.

51. It is clear by the terms of the transfer of custody of control by the Ladies' Calhoun Monument Association of the "spot on which it stands" to the City of Charleston, that the intent of the Settlor of the Trust for the Calhoun Monument was perpetual maintenance of the Calhoun Monument on the spot it sat, which was the obligation that the City Council of Charleston unanimously pledged itself to by its acceptance of the terms of the trust.

52. Moreover, the Board of Field Officers had specifically reserved in their Quit Claim deed [recorded in Book D 20, Page 467 in the Charleston County R.O.D. Office]: "that at any time hereafter should the said lot, piece or tract of land cease to be used for the purposes aforesaid there for and thereafter" then "all the right[,] title in trust[,] or claim of every kind and nature whatsoever of the said Ladies' Calhoun Monument Association ... shall cease ... as though this deed had never been executed." **Thus, it could be alternatively argued that the John C. Calhoun statue is now the property of the Board of Field Officers.**

53. That at or around the time the City executed February 17, 2021, Quit Claim Deed, recorded on or about February 28, 2022, at Book 1082, Page 804 in the Charleston County R.O.D. office [in which the City gave, donated, remised and released and forever quit-claimed back to Board of Field Officers the original thirty-six (36') x thirty-six (36') square feet originally given in 1885 to the Ladies' Calhoun Monument Association] the City also made an oral promise to the Board of Field Officers to give it the "right to be heard" as to the ultimate disposition of the John C. Calhoun Monument, which was memorialized by a June 22, 2020 email between Board of Field Officers' former counsel and the Corporation Counsel for the City of Charleston.

54. Notwithstanding the clear terms of the trust by which the City of Charleston holds the Calhoun Monument – as well as its promise to the Board of Field Officers – the City of Charleston unilaterally decided to remove the monument from its current position and had considered the transfer of possession to a Los Angeles, California museum exhibit which appears purposed to denigrate and demean figures such as John C.

Calhoun it associates with what it calls the 'lost cause'. It still reserves this right to this day.

55. If the City of Charleston in fact transfers possession of the Calhoun Monument to any out-of-area museum or third-party anywhere outside the area – the residents of Charleston and the State of South Carolina – who are the intended beneficiaries of the Calhoun Monument – will be deprived of their enjoyment of same.

56. If the City of Charleston in fact transfers possession of the Calhoun Monument to any out-of-state museum or third-party anywhere – the Calhoun Monument will no longer be in the jurisdiction of South Carolina and the Attorney General of South Carolina will lose the power to supervise the charitable *res* for which the people of the State of South Carolina are the only intended beneficiaries.

FIRST CAUSE OF ACTION:

DECLARATORY JUDGMENT OF VIOLATION OF THE HERITAGE ACT,

SOUTH CAROLINA STATUTES ANNOTATED 10-1-165

57. Petitioners repeat and reallege each and every allegation set forth above as if set forth fully herein.

58. The Calhoun Monument is a monument protected by the provisions of South Carolina Statutes Annotated 10-1-165.

59. The South Carolina legislature has not affirmatively acted to authorize the City of Charleston to remove, even temporarily, the Calhoun Monument.

60. Upon information and belief, the City of Charleston's transfer of possession of the Calhoun Monument to a third party located in Los Angeles, CA, or any other entity,

without affirmative authorization from the South Carolina legislature, would violate the Heritage Act, South Carolina Statutes Annotated 10-1-165.

SECOND CAUSE OF ACTION:

DECLARATORY JUDGMENT THAT THE CALHOUN MONUMENT IS HELD IN CHARITABLE TRUST BY THE CITY OF CHARLESTON, AND A WRIT OF MANDAMUS FOR ATTORNEY GENERAL ALAN WILSON TO ENFORCE THAT CHARITABLE TRUST

61. Petitioners repeat and reallege each and every allegation set forth above as if set forth fully herein.
62. The transfer of the Calhoun Monument by the Ladies' Calhoun Monument Association in trust to be held by the City of Charleston for the benefit of all citizens of South Carolina created a charitable trust.
63. The purpose of the charitable trust created by the Ladies' Calhoun Monument Association was to preserve an important and integral part of the history of South Carolina by commemorating one of its most historically significant statesmen, John Caldwell Calhoun.
64. The trustee for the charitable trust created by the Ladies' Calhoun Monument Association was and is the City of Charleston.
65. As trustee of that charitable trust, the City of Charleston holds the Calhoun Monument in trust for the benefit of the people of South Carolina, and not for the benefit of anyone else, and Mayor Tecklenburg, as the executive of the City of Charleston, must act within the parameters of the charitable trust and the Heritage Act.

66. The City of Charleston's proposal to transfer possession of the Calhoun Monument to a museum outside the area in no way benefits the people of Charleston, nor the people of the State of South Carolina.

67. If the City of Charleston completes the transfer of possession of the Calhoun Monument to any party outside the State of South Carolina, including but not limited to the previously proposed museum in Los Angeles, California, the *res* of the charitable trust created by the Ladies' Calhoun Monument Association will be placed outside of the jurisdiction of the South Carolina courts and the South Carolina Attorney General's oversight control, thereby effectively dissipating the charitable *res* and denying it to its intended charitable beneficiaries, who are the people of South Carolina.

68. The Attorney General of South Carolina, Respondent Alan Wilson, is one of the persons with legal authority and responsibility to enforce the terms of charitable trusts within the State of South Carolina. South Carolina Code Annotated § 62- 7-405(c); *see also, Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961), South Carolina Code Annotated § 1-7-130.

69. Respondent South Carolina Attorney General Alan Wilson has a legal duty to protect the *res* of the charitable trust created by the Ladies' Calhoun Monument Association and **to Defend the Monuments and Memorials protected under the Heritage Act.**

70. To date, Respondent South Carolina Attorney Alan Wilson has taken no action to protect the *res* of the charitable trust created by the Ladies' Calhoun Monument Association and held by Respondent City of Charleston.

71. The duty of the Attorney General to enforce the terms of a charitable trust is a ministerial duty and not a discretionary duty.

72. Accordingly, Petitioners request that this Honorable Court issue a writ of mandamus ordering Attorney General Alan Wilson to take action to protect the *res* of the charitable trust created by the Ladies' Calhoun Monument Association and held by Respondent City of Charleston.

THIRD CAUSE OF ACTION:

DECLARATORY JUDGMENT THAT PETITIONERS MARK CALHOUN, F. PRESTON WILSON & ANDREW PICKENS CALHOUN ARE PERSONS "AMONG OTHERS" IDENTIFIED IN SOUTH CAROLINA STATUTES ANNOTATED § 62-7-405(C) THAT MAY ENFORCE THE TERMS OF THE CHARITABLE TRUST CREATED BY THE LADIES' OF CALHOUN MONUMENT ASSOCIATION

73. Petitioners repeat and reallege each and every allegation set forth above as if set forth fully herein.

74. South Carolina Code Annotated § 62-7-405(c) provides that "[t]he settlor of a charitable trust, the trustee, and the Attorney General, **among others** may maintain a proceeding to enforce the [terms of a charitable] trust" (emphasis supplied).

75. The intended charitable beneficiaries of the Calhoun Monument are the citizens of the State of South Carolina.

76. Petitioner F. Preston Wilson is a direct descendant of the charitable trust's settlor. Petitioner Mark Calhoun is a resident of the City of Charleston and a descendent of

the Calhoun family, and Petitioner Andrew Pickens Calhoun, former Calhoun representative on the board of Clemson University for historic preservation for a quarter-century, is a descendant of the Calhoun family with a familial interest in the Statue as a memorial honoring their ancestor as an iconic and honored South Carolinian and an interest in preserving the historical memory of their ancestor.

77. The Board of Field Officers has standing for this cause of action due to its continual presence and involvement, specifically at the time of quit claims involving (1) the city and the Ladies' Calhoun Monument Association and (2) the Ladies' Calhoun Monument Association and the Board; construction of two monuments; and the eventual return of its property.

78. Petitioners are in the class of "among others" identified in South Carolina Code Annotated § 62- 7-405 (c) who may maintain an action to enforce the terms of the charitable trust for which the Calhoun Monument is the *res*.

FOURTH CAUSE OF ACTION:

DECLARATORY JUDGMENT THAT PETITIONER

BOARD OF FIELD OFFICERS HAS A VALID CONTRACT WITH CITY

79. Petitioners repeat and reallege each and every allegation set forth above as if set forth fully herein.

80. That the oral promise to the Board of Field Officers by the city, giving it the "right to be heard" as to the ultimate disposition of the Calhoun Monument (which was memorialized by a June 22, 2020 email between Board of Field Officers' former counsel and the Corporation Counsel for the City of Charleston) constitutes a valid

and enforceable contract between it and the City, for which the consideration given by the parties was that the city would give the Board of Field Officers the right to be heard and the Board of Field Officers would not bring action against the city for moving the Calhoun Monument.

81. That the Board of Field Officers can enforce this contract against the City of Charleston, which has not followed its contractual obligations to the Board of Field Officers.

WHEREFORE, your Petitioners respectfully pray that this Honorable Court orders the following relief:

(a) An Order declaring that the City of Charleston's action in removing the Calhoun Monument without specific authorization from the South Carolina legislature violates the Heritage Act, South Carolina Statutes Annotated § 10-1-165;

(b) An Order declaring that the City of Charleston holds the Calhoun Monument as a charitable trust for the benefit of the public of the citizens of South Carolina;

(c) An Order declaring that the Attorney General of the State of South Carolina, Respondent Alan Wilson, is one of the persons who have an obligation under South Carolina Statutes Annotated § 62-7-405(c) to enforce the terms of the charitable trust by which the City of Charleston holds the Calhoun Monument;

(d) A writ of mandamus against Attorney General Alan Wilson, ordering him to take action to protect the public by enforcing the terms of the charitable trust by which the City of Charleston holds the Calhoun Monument;

(e) An Order declaring that Petitioners, as concerned members of the public of South Carolina, have standing to enforce the terms of the charitable trust in light

of the Attorney General's default on his responsibility to enforce the charitable trust by which the Calhoun Monument is held;

(f) An Order prohibiting the City of Charleston from transferring possession of the Calhoun Monument to any party outside of the jurisdiction of the State of South Carolina and/or outside of the jurisdiction of the Attorney General to oversee and enforce same;

(g) A writ of mandamus against the City of Charleston, Ordering the City to replace the Calhoun Monument in the same location where it was before the City took it down in what appears to be in anticipation of transferring possession of same to a party outside of this jurisdiction or, in a similar location within the city of Charleston, as agreed to by the parties, and in the same manner;

(h) An Order declaring that the City must keep its oral promise (memorialized in a June 22 email) to the Board of Field Officers as a valid and enforceable contract; and

(i) Such other and further relief as this Court may deem just and proper.

(Signature Page To Follow)

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November 4, 2022

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-10-05123
Board of Field Officers of the Fourth Brigade, Mark Calhoun, F. Preston Wilson, And Andrew Pickens Calhoun, Petitioners, v. Members of City Council of The City of Charleston, South Carolina, Caroline Parker, Kevin Shealy, Jason Sakran, Robert M. Mitchell, Karl L. Brady, Jr., Stephen Bowden, Peter Shahid, Jr., Michael S. Seekings, Perry K. Waring, William Dudley Gregorie, and Ross A. Appel, and The City of Charleston, South Carolina, The Honorable Alan Wilson, Attorney General of the State of South Carolina, and the Honorable John Tecklenburg, Mayor of the City of Charleston, South Carolina, Respondents.	)	**CITY OF CHARLESTON RESPONDENTS' MOTION TO DISMISS**

The City of Charleston and its officials who are named as individual respondents, listed below,[1] hereby move to dismiss the Petition pursuant to Rule 12(b)(6), S.C.R.C.P., for failure to state facts sufficient to constitute a cause of action, including, *inter alia*, that petitioners lack standing to assert the claims in the Petition, that the South Carolina Heritage Act does not apply, that there is no basis for the petitioners' charitable trust claims, that petitioners lack equity, and other grounds to be stated in a Memorandum of Law to be filed at an appropriate time before hearing.

[1] John Tecklenburg, Caroline Parker, Kevin Shealy, Jason Sakran, Robert M. Mitchell, Karl L. Brady, Jr., Stephen Bowden, Peter Shahid, Jr., Michael Seekings, Perry K. Waring, William Dudley Gregorie, and Ross A. Appel.

February 1, 2023

Respectfully submitted,

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Attorneys for Respondents The City of Charleston, South Carolina and the individual City of Charleston officials named herein

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2022-CP-10-05123
)	
Board of Field Officers of the Fourth)	
Brigade, Mark Calhoun, F. Preston Wilson,)	
and Andrew Pickens Calhoun,)	
)	
Petitioners,)	
)	
v.)	
)	
Members of City Council of The City of)	
Charleston, South Carolina, Caroline Parker,)	
Kevin Shealy, Jason Sakran, Robert M.)	
Mitchell, Karl L. Brady, Jr., Stephen)	
Bowden, Peter Shahid, Jr., Michael S.)	
Seekings, Perry K. Waring, William Dudley)	
Gregorie, and Ross A. Appel, and The City)	
Of Charleston, South Carolina, The)	
Honorable Alan Wilson, Attorney General)	
For the State of South Carolina, the)	
Honorable John Tecklenburg, Mayor of the)	
City of Charleston, South Carolina,)	
)	
Respondents.)	
_____)	

City of Charleston Respondents' Memorandum in Support of Motion to Dismiss[1]

In 2020, the City of Charleston removed from Marion Square a statue of John C. Calhoun which had stood there for many years. Now,[2] several members of the general public – three individuals and a fraternal organization, the Board of Field Officers of the Fourth Brigade

[1] Apparently, the Attorney General has not been served and has not entered an appearance. That does not significantly affect the claims against these Respondents and should not delay granting this Motion to Dismiss.

[2] A similar lawsuit by three of the Petitioners -- Mark Calhoun, F. Preston Wilson, and Andrew Pickens Calhoun -- against these same Respondents was filed January 4, 2022, and was voluntarily dismissed without prejudice on September 2, 2022.

(formerly known as the Washington Light Infantry) -- ask this Court to order the City to restore the statue. They allege that its removal violated the South Carolina Heritage Act as well as state charitable trust law, and that they as members of the general public are entitled to be the enforcers of the law. These theories are advanced in three causes of action: Heritage Act (First Cause of Action), and charitable trust law (Second and Third Cause of Action).[3] A Fourth Cause of Action, on behalf of the Board of Field Officers, alleges that it has an agreement with the City of Charleston giving it a right to be heard as to the ultimate disposition of the Calhoun monument and asks for a declaration that this agreement is enforceable, although the Petition does not allege any actual or threatened breach by the City.

The City and its officials move to dismiss the Petition in its entirety on grounds that the Petitioners lack standing to asset their claims in this action and that Petitioners have shown no entitlement to the various declaratory judgments they seek. More specifically:

- The First Cause of Action (Heritage Act) should be dismissed both because there is no private right of action to enforce the Heritage Act and because removal of the Calhoun statute did not violate any of the terms of the Heritage Act.
- The Second and Third Causes of Action (Charitable Trust) should be dismissed because petitioners have no standing to enforce a charitable trust – neither by a writ of mandamus against the Attorney General (Second Cause) nor directly by themselves (Third Cause).

[3] The Second and Third Causes of Action differ in that the Third asserts their own right to sue for relief under charitable trust law, while the Second seeks a writ of mandamus to force the Attorney General to seek such relief.

- The Fourth Cause of Action should be dismissed because, with no allegations of breach or threatened breach, this is a request for an advisory opinion, not a justiciable controversy.

Background

Across the known world and throughout history, humankind has used symbols to send messages to other people, messages that identify the sender and are intended to do so. As the Supreme Court of the United States said in referring to monuments located in public parks:

> Public parks are often closely identified in the public mind with the government unit that owns the land. City parks ranging from those in small towns, like Pioneer Park in Pleasant Grove City, to those in major metropolises, like Central Park in New York City—commonly play an important role in defining the identity that a city projects to its own residents and to the outside world.

Pleasant Grove City v. Summum, 555 U.S. 460, 472 (2009).

Inevitably, times change, and sometimes messages and symbols change – the original messengers may change their minds or they may be replaced by new messengers with different preferences. Canvases are painted over, temples see the light of new religions, statues are moved or removed. Such changes are the responsibility of the owner or custodian, either private or public. If the owner or custodian is public, like the City of Charleston, any decision about a monument or other symbol is made in the ordinary way, by the City government acting in its representative capacity to carry out what it perceives to be the public interest and the interests and preferences of the City's constituents.

Unless constrained by law, it is the City, not disappointed citizens, that makes decisions about symbols, like any other municipal decisions. Here, Petitioners wish the City had made a different decision about the Calhoun statue. They are now asking for court assistance in obtaining

a different decision, but as shown below, there is no legal basis for a court to accommodate their desire.

In this state, the General Assembly has enacted the South Carolina Heritage Act, which, as a state statute, is part of the governing law that is controlling upon the City of Charleston. The City and the named official Respondents understand their obligations, and all have scrupulously observed the Heritage Act. As public officials, the Respondents are obligated to do so and, as set forth in this Memorandum, the City (along with the named official Respondents) have fully honored their obligations pursuant to state law while faithfully exercising the duties of their offices.

FACTS

The following essential facts are alleged in the Petition: In the late 19th century, a private association known as the Ladies' Calhoun Monument Association erected a statute of John C. Calhoun on a portion of Marion Square in the City of Charleston. (Pet. ¶¶ 13-15.) In 1898, having achieved its goal and preparing to disband, the Association "sought an entity into which it could entrust the custody and maintenance of the monument." (Pet. ¶¶ 19-20.) "With the unanimous consent of the Mayor of the City of Charleston, and the City Council of the City of Charleston, the Ladies' Calhoun Monument Association decided to entrust the monument to the City of Charleston." (Pet. ¶ 21.) The Calhoun monument remained at Marion Square from 1898 until the City removed it in 2020.

The petition further alleges that the City "previously threatened" to transfer the statue to a museum in California (Pet. ¶ 2.), but contains no allegations of a present intention to that effect. The Petition alleges that the threatened injury is as follows: "If the City of Charleston in fact transfers" the statute out of state, local and state residents will lose the benefit of the statute, (Pet. ¶ 55), and "If the City of Charleston in fact transfers" the statute out of state, the state courts and

Attorney General will lose jurisdiction over it. With particular reference to the Fourth Cause of Action, Petitioners allege that the City has agreed that the Board of Field Officers has a "right to be heard" as to the ultimate disposition of the statute (Pet. ¶ 53), but contains no allegation of any violation or threatened violation of that agreement.

The Petition does not further identify John C. Calhoun or describe the monument. However, Respondents believe the Court can take judicial notice of certain widely known and undisputed facts as follows: John C. Calhoun was an eminent South Carolinian who held high national office including U.S. Congressman, U.S. Senator, and U.S. Vice President. The statue depicts Calhoun seated and includes the numbers 1782 and 1850 (his birth and death dates) and the words "TRUTH JUSTICE AND THE CONSTITUTION."

LEGAL STANDARD FOR MOTION TO DISMISS

In considering a motion to dismiss a complaint based on failure to state facts sufficient to state a cause of action, the Court must base its ruling solely on the allegations set forth in the Complaint. *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010). If the facts and inferences drawn from the facts alleged in the Complaint, viewed in the light most favorable to the Plaintiff, would entitle the Plaintiff to relief on any theory, then the Court must deny the motion. *Id.* Thus, motions to dismiss are often denied when a Complaint turns largely on factual matters.

By contrast, where a Complaint largely involves interpretation of a statute or other legal authority, an order of dismissal is common. Where the dispute "is not as to the underlying facts but as to the interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss." *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Off.*, 346 S.C. 158, 165, 551 S.E.2d 263, 267 (2001) (citing *Evans v. State*, 344 S.C. 60, 543 S.E.2d 547 (2001)).

The latter is the case here. The First Cause of Action turns on the interpretation of the South Carolina Heritage Act, while the Second and Third Causes of Action involve interpretation of a section of the South Carolina Trust Code. The Fourth Cause of Action turns on the interpretation of the South Carolina Declaratory Judgment Act. Therefore, this case is ripe for resolution on Respondents' Motion to dismiss.

I. PETITIONERS ARE NOT ENTITLED TO RELIEF UNDER THE HERITAGE ACT.

a. There is no Private Right of Action to Enforce the Heritage Act.

It is hornbook law in South Carolina that when the General Assembly enacts a statute, especially one governing the conduct of government or public entities, private citizens are not authorized to bring enforcement lawsuits unless the statute itself provides for such private lawsuits. This principle has been forcefully stated many times:

> [Q]uestions of whether the legislature intended to create a private cause of action should be resolved by the language of the statute. 'When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party.' Generally, 'a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing civil liability.'

Kubic v. MERSCORP Holdings, Inc., 416 S.C. 161, 168, 785 S.E.2d 595, 599 (2016) (internal citations omitted).

The rule was forcefully repeated by our Court of Appeals in 2021 in *Ballard v. Newberry County*:

> Critically, nothing in the Public Records Act grants any interested party, however well-intentioned, the right to enforce the act by bringing a civil action.
>
> We agree with the circuit court that there is also no implied civil right to enforce these statutes. A bellwether case on implied causes of action is *Whitworth v. Fast Fare Markets of South Carolina, Inc.*, which explains "the general rule [] that a statute which does not purport to establish a civil liability, but merely makes [a] provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability." 289 S.C. 418, 420, 338 S.E.2d 155, 156 (1985) (quoting 73 Am. Jur. 2d, *Statutes* § 432 (1974)). A private right of action will "be implied only if the legislation was enacted for the special benefit of a private party." *Doe v. Marion*, 373 S.C. 390, 397, 645 S.E.2d 245, 248 (2007).

Ballard v. Newberry Cty., 432 S.C. at 531, 854 S.E.2d at 850-51.

The Court went on:

> No one appears to dispute that the Public Records Act was not enacted for anyone's particular benefit. There is also a virtually unbroken string of precedents refusing to recognize implied rights of action in statutes that—like the Public Records Act—describe the government's basic structure and operation.[1]

Footnote 1 to that case, referenced at the conclusion of the above paragraph, listed no fewer than nine cases as its authority:

> *Kubic v. MERSCORP Holdings, Inc.*, 416 S.C. 161, 785 S.E.2d 595 (2016); *Marion*, 373 S.C. 390, 645 S.E.2d 245; *Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 602 S.E.2d 51 (2004); *Camp v. Springs Mortg. Corp.*, 310 S.C. 514, 426 S.E.2d 304 (1993); *Citizens for Lee Cty., Inc. v. Lee Cty.*, 308 S.C. 23, 416 S.E.2d 641 (1992); *Dorman v. Aiken Commc'ns, Inc.*, 303 S.C. 63, 398 S.E.2d 687 (1990); *Whitworth*, 289 S.C. 418, 338 S.E.2d 155; *Patterson v. I.H. Servs., Inc.*, 295 S.C. 300, 368 S.E.2d 215 (Ct. App. 1988); *Herald Pub. Co. v. Barnwell*, 291 S.C. 4, 351 S.E.2d 878 (Ct. App. 1986).

432 S.C. at 531 n.1, 854 S.E.2d at 851 n.1.

In the case of the Heritage Act, it is clear how disruptive a private cause of action could be. There are literally thousands of monuments and memorials of every kind throughout the state, some of which are covered by the Heritage Act but others of which are not. To allow any self-appointed person or organization, no matter how well-intentioned, to sue the State or any city, county, school district or even an individual school, could (and would) wreak havoc and disrupt the orderly functioning of government and the carrying out of the public's business.

Although the question whether there is a "private right of action under a statute" is not quite the same as the non-statutory question of "standing to sue," it is still instructive to look at cases in other states involving "standing to sue" over a city's removal of a monument or memorial. In those cases, courts have repeatedly rejected the standing of persons or organizations, even when they claim a special interest, such as suits by the Sons of Confederate Veterans, *McMahon v. Fenves*, 946 F.3d 266, 270-71 (Texas: 5th Cir. 2020) or the United Daughters of the Confederacy.

United Daughters of the Confederacy v. City of Winston-Salem, 853 S.E.2d 216 (N.C. Ct. App. 2020).

As noted in *Kubic v. MERSCORP*, the right to bring a private suit under a statute is even more restricted than the question of general standing in non-statutory cases, because in statutory cases, the legislature has made a decision, and that decision leaves no room for a court to overrule it. *See Kubic v. MERSCORP Holdings, Inc.*, 416 S.C. at 167 n.2, 785 S.E.2d at 598 (2016).

Dismissing this case does not mean there is no remedy to enforce the Heritage Act. The Attorney General is empowered generally to enforce the Constitution and laws of South Carolina. He has taken an active role in matters involving the Heritage Act, issuing many Attorney General's Opinions for guidance to public officials and participating in lawsuits involving the Heritage Act. *E.g.*, *Pinckney v. Peeler*, 434 S.C. 272, 277, 862 S.E.2d 906, 909 (2021). For all these reasons, Petitioners have no right to bring this action.

b. The Provisions of the Heritage Act Do Not Bar Removal of the Calhoun statute.

The Petition contains a conclusory allegation that "the Calhoun Monument is a monument protected by the provisions of South Carolina Statutes Annotated 10-1-165," which is the Heritage Act (Pet. ¶ 58). Notably, however, there is no allegation communicating any reason why the Heritage Act prevents the actions which the Petition says the City has taken or "previously threatened" to take. And, applying the facts alleged and judicially noticed to the text of the Heritage Act, it becomes clear that removal of the Calhoun Monument (or a "previously threatened" transfer) did not and would not violate the plain language of the Act.

The Heritage Act provides for the "Protection of certain monuments and memorials" as follows:

> (A) No Revolutionary War, War of 1812, Mexican War, War Between the States, Spanish-American War, World War I, World War II, Korean War, Vietnam War, Persian Gulf War, Native American, or African-American History monuments or memorials erected on public property of the State or any of its political subdivisions may be relocated, removed, disturbed, or altered. No street, bridge, structure, park, preserve, reserve, or other public area of the State or any of its political subdivisions dedicated in memory of or named for any historic figure or historic event may be renamed or rededicated. No person may prevent the public body responsible for the monument or memorial from taking proper measures and exercising proper means for the protection, preservation, and care of these monuments, memorials, or nameplates.

S.C. Code Ann. § 10-1-165(A).

Two operative sentences provide relief under two specific, different circumstances set forth in the Heritage Act—neither of which affords these Petitioners any relief.

The first sentence applies to war memorials of nine named wars and two ethnic histories, and states what acts are prohibited for these memorials: they may not be "relocated, removed, disturbed or altered." Plainly, John C. Calhoun is not a war and a monument dedicated to him is not a war memorial as listed in the Heritage Act.

The second sentence applies to any "street, bridge, structure, park, preserve, reserve, or other public area of the state" if it is named after "a historic figure or event." Unlike the restrictions in the first sentence, the only limitation in this category is that such places may not be "renamed or rededicated." Although John C. Calhoun is a "historic figure" and his statute may be a "structure" within the meaning of the Act,[4] it has obviously not been "renamed or rededicated."

[4] It could be debated whether or not a statute is a "structure" within the meaning of the second sentence of the Act. The other subjects of the second sentence are all geographic places, which suggests that "structure" might be limited to a building or the like. This issue need not be decided here because the words "renamed or rededicated" are obviously inapplicable and decisive.

The statue was indeed "removed," but that is an action forbidden only for items covered by the *first* sentence, not items covered by the *second* sentence. *See Hodges v. Rainey*, 341 S.C. 79, 86-87, 533 S.E.2d 578, 582 (2000) (quoting Black's Law Dictionary 602 (7th ed. 1999) and *Timmons v. South Carolina Tricentennial Comm'n*, 254 S.C. 378, 175 S.E.2d 805 (1970) ("The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that "to express or include one thing implies the exclusion of another, or of the alternative. . . .When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.").

As a matter of law, there is no room for creativity when interpreting the Heritage Act; laws are to be interpreted as they are written. *Richland Cty. Sch. Dist. Two v. S.C. Dep't of Educ.*, 335 S.C. 491, 496, 517 S.E.2d 444, 447 (Ct. App. 1999) (internal citations omitted) ("The legislature's intent should be ascertained primarily from the plain language of the statute…If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation, and the court has no right to look for or impose another meaning…Words used in a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the operation of the statute.").

For all the above-stated reasons, Petitioners' claims arising under the Heritage Act should be dismissed.

II. PETITIONERS' CLAIMS ARISING OUT OF CHARITABLE TRUST ARGUMENTS FAIL FOR LACK OF STANDING.

Petitioners assert that the gift of the Calhoun monument created a charitable trust. Even if that were true, however, Petitioners are not eligible to sue to enforce a charitable trust.

For hundreds of years, the common law everywhere and the statutes of this state have sharply restricted the persons who may invoke a court proceeding to enforce the terms of a charitable trust.[5] The chief legal officer of a jurisdiction (typically the state Attorney General) plays that principal role, sometimes augmented by the settlor or trustee of the trust, and, rarely, by another person who can show a direct, unique interest. This rule has been stated many times, *e.g.*, "A person whose only interest is that interest held in common with other members of the public cannot compel the performance of a duty the charitable organization owes to the public" Am. Jur. 2d *Charities* § 130, at 126 (internal citations omitted).

The limitation is intended to protect trusts from needless litigation which could dissipate the assets of the charity at the unrestrained option of private citizens who might have only parochial or personal motivations for suing the charity; at the same time, the list of those who do have standing adequately insures appropriate oversight.

The current law of South Carolina is contained in the South Carolina Trust Code, S.C. Code § 62-7-405(c):

> "The settlor of a charitable trust, the trustee, and the Attorney General, among others may maintain a proceeding to enforce the trust."

Now the Petitioners seek to upset this careful balance by a chain of illogic based on misapplying two words of the South Carolina Trust Code. The two words are "among others," and petitioners say this means "beneficiaries." The Petition then takes the next step of rendering

[5] Without conceding the point, Respondents assume for the purpose of this Motion that there is a charitable trust here. A charitable trust was found to exist in *Grady v. City of Greenville*, 129 S.C. 89, 123 S.E. 494 (1924), but further analysis of that case is unnecessary here because it is so clear that Petitioners have no standing to enforce a charitable trust even if there is one.

the Code section meaningless by expanding the term "beneficiaries." They say "*the intended charitable beneficiaries [of the Calhoun Monument], who are the people of South Carolina*." (Pet., ¶ 67.) Then, since Petitioners Wilson and Calhoun are residents of South Carolina (Pt., ¶¶ 5, 6), that means they have standing to bring this action. The problem with this theory is that it also gives standing to all of the *other* 5,118,424 South Carolinians (2020 census).

That is not what S.C. Code §62-7-405(c) or its words "among others" mean.

So, if those words do not mean "the general public," as Petitioners claim, what do they mean? The Michigan Supreme Court gave an example, where a charitable gift was set up as a pair of trusts, and the principal trustee was somehow not a trustee of the trust to be sued. There, the court held that trustee was "among others" entitled to sue. In other words, "among others" means someone who logically is in the position of trustee or settlor but who for some technical or structural reason is omitted from the structurally correct category. In other words, "among others" is designed to promote the purpose of allowing suit by those in the named categories, not an excuse to abandon the limitation. *Gassick, Trustee of the James A. Bellamy Trust and Personal representative of the Estate of James A. Bellamy v. University of Michigan Regents*, 330 Mich. App. 487, 948 N.E.2d 452 (2019). *See also* ALR Annot. "Who May Maintain Suit or Proceeding to Enforce or Administer Benevolent or Charitable Trust" 124 AKR 1237.

In addition, the words "among others," only came into the South Carolina Code when our state adopted the Uniform Trust Code in 2005. The South Carolina Code contains Notes to the Uniform Trust Code and Notes to the South Carolina version, for Chapter 7 of Title 62 and for Section 62-7-405. Nowhere in any of these Notes is there a hint of a revolutionary change such as Petitioners suggest.

Before South Carolina's adoption of the Uniform Trust Code, several sections of the Code provided for the Attorney General to bring suits to enforce charitable trusts. South Carolina Code 62-7-501 through 507 did so, and they were merged into the present South Carolina version of the Uniform Trust Code. The cases are in accord. The definitive statement of the law was expressed by our Supreme Court in *Epworth Children's Home v. Beasley*, 365 S.C. 157, 616 S.E.2d 710 (2005). There, in litigation over possible termination of a charitable trust, the Attorney General entered an appearance and thereafter filed an appeal opposing termination of the trust. In the course of an opinion upholding the Attorney General's position, the Supreme Court made plain that the Attorney General is the proper party in such a case:

> South Carolina Code Ann. § 1–7–130 (2005) provides that the "Attorney General shall enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration thereof and, when necessary, prosecute corporations which fail to make to the General Assembly any report or return required by law." Similarly, S.C. Code Ann. § 62–7–503 (1987) provides that the Attorney General shall, when necessary, bring an action to compel trustees to discharge duties imposed upon them by a charitable trust or comply with statutory provisions concerning the administration of charitable trusts. The Attorney General is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts. *Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961).

Epworth Children's Home v. Beasley, 365 S.C. 157, 163 n.3, 616 S.E.2d 710, 713 n.3 (2005).

The prior case on which the *Epworth* decision relied, *Furman University v. McLeod*, is even more pointed and makes clear that others besides the Attorney General usually have no role in such a case: *Furman University*, 238 S.C. 475 at 482-83, 120 S.E.2d 865 at 868:

> Daniel R. McLeod, as Attorney General of South Carolina, upon whom is imposed the responsibility of protecting the interests of the public in matters relating to the administration and enforcement of charitable trusts, has been named Defendant and has filed this answer herein. I find and hold that Daniel R. McLeod, as Attorney General, is the only proper and necessary party defendant to this proceeding. The

> language of the deeds requiring the maintenance of a school in or near Greenville creates, at most, a public trust. There are no private rights of reversion or reverter. Even if the language should be given that strict construction which the Attorney General advances it would create no private right of action in any individual citizen. The public interest is properly represented by the defendant.
>
> Under Title 1, Section 240 of the 1952 Code of Laws of South Carolina, the Attorney General of South Carolina is charged with the duty of "Enforce the due application of funds given or appropriated to public charities within the State, [and] prevent breaches of trust in the administration thereof."
>
> It is also the general law that in the matter of administering or enforcing charitable trusts, the Attorney General is the proper party to protect the interest of the members of the public at large, as distinct from those having "immediate or peculiar interests."

Id. at 482-83, 120 S.E.2d at 868.

One other case should be mentioned, *Grady v. City of Greenville*, 129 S.C. 89, 123 S.E. 494 (1924). That case, like this case, involved a monument donated to a city in the 1890s by a Ladies' Memorial Association; it differed in that it was a monument dedicated to veterans of the Civil War. It was placed in a city street, but after some years the city sought to move it because of increasing traffic.

Four still-living veterans of the Civil War sued to block the move. Somewhat surprisingly, the Supreme Court reached the merits. The Court recognized a city's broad autonomy in governance and upheld the City's decision to move the monument.

That case might seem to support the claim of Petitioners in the instant case that they have standing to bring this petition, but an examination of the *Grady* decision shows just the opposite. At the end of its opinion, the Supreme Court added a crucial paragraph. That paragraph first recited the standard rule that only persons with a particular interest beyond that of the general public can have standing to bring an action, and the Court then disclaimed any intention to depart from that rule. Instead, the paragraph made clear that reaching the merits was a gesture of respect for the

honored veterans of the War:

> Under the foregoing views it is unnecessary to consider whether the plaintiffs have shown such peculiar interest in the monument, differing, not only in degree, but in kind, from the general public, as entitles them to maintain the action. Out of deference to the thin, and now almost vanished, "gray line" of which these four plaintiffs are a worthy part, we have given the case as full and careful consideration as if the plaintiffs' technical right to maintain the action were unquestioned; but we are not to be understood as passing on the point as a question of law.

Id. at 108, 123 S.E. at 501.[6]

III. PETITIONERS CANNOT MANDAMUS THE ATTORNEY GENERAL

In the Second Cause of Action, Petitioners recognize that the Attorney General has statutory authority to act to protect charitable trusts, and somehow translates this highly discretionary role into a ministerial task. The Attorney General is quite capable of acting when he sees a genuine threat to the security of a charitable trust. Cases cited in this Memorandum and others show the current Attorney General and his predecessors have all done so when they perceived a need.

Our Supreme Court has repeatedly held that mandamus is available only in the rarest of cases, under conditions that are not present in this case:

> Mandamus is the highest judicial writ and is issued to compel a public official to

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[6] Even if the Trust Code did not preclude Petitioners' claim, they would still lack standing to sue under South Carolina's general standing doctrines. South Carolina's basic requirement (and there are others) is that the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is concrete and particularized. The injury must be of "a personal nature to the party laying claim to standing and not merely of general interest common to all members of the public." *Sea Pines Ass'n for the Protection of Wildlife, Inc. v. S.C. Dep't of Natural Resources*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001). Here, the Petitioners' claimed injuries do not meet this test. They allege that they "will be deprived of their enjoyment" of the Calhoun Monument and that Mark Calhoun has "an interest in preserving the historical memory of their ancestor." (Pet. ¶¶ 55, 76.) That is simply not enough in this or any Court.

> perform a ministerial duty, not a discretionary duty, and only when there is a specific right to be enforced, a positive duty to be performed, and no other available legal remedy. *Riverwoods, L.L.C. v. County of Charleston*, 349 S.C. 378, 563 S.E.2d 651 (2002); *City of Rock Hill v. Thompson*, 349 S.C. 197, 563 S.E.2d 101 (2002); *Ex parte Littlefield*, 343 S.C. 212, 540 S.E.2d 81 (2000); *Redmond v. Lexington County Sch. Dist. No. 4*, 314 S.C. 431, 445 S.E.2d 441 (1994).

Miller v. State, 377 S.C. 99, 101, 65 S.E.2d 492, 493 (2008).

Moreover, in this case, Petitioners' request for a writ of mandamus is simply a roundabout way of trying to get standing for themselves to sue over a charitable trust – standing that they clearly do not have, as shown in the previous section of this Memorandum.

IV. CLAIMS LIKE PETITIONERS' HAVE FAILED IN OTHER STATES

In recent years, other states have faced controversies over moving or removing monuments. In some of these instances, members of the general public, like Petitioners here and others claiming special status, have sought to assert legal interests and theories entitling them to court decrees blocking removal of statues or monuments. Their grounds have essentially been variations on the themes sounded by Petitioners in this case. In response, courts in one state after another have firmly rejected attempts – often quite inventive – to block state or local governments from proceeding with decisions made in the exercise of their governmental authority.

A survey of the national landscape shows that courts have routinely dismissed monument removal lawsuits for lack of standing when based on a plaintiffs' disappointed expectations and have rejected other legal theories which sought to tie the hands of local governments. Instead, courts have repeatedly upheld government police power to act in what it determines is the public interest.

Following is a brief summary of only some of the cases involving legal challenges to removal of monuments which had been privately donated in the late 19th or early 20th century:

Virginia. Charlottesville removed privately donated statutes of Robert E. Lee and Stonewall Jackson. The city was sued for violating a 1997 Virginia statute similar to the South Carolina Heritage Act, but the state law was held to be prospective only and thus inapplicable to these old statutes. *City of Charlottesville v. Payne*, 856 S.E.2d 203 (Va. 2021).

In Richmond, the Governor removed a Robert E. Lee statue which the state had accepted in 1890 with a promise to hold it "perpetually sacred to the Monumental purpose to which they have been devoted and that she will faithfully guard it and affectionately protect it." Adjacent property owners and heirs of the original grantor sued on various theories. The Virginia Supreme Court held that a statute on public land is "*government speech*," which private citizens cannot control and which the 1890 officials had no power to alienate; *Taylor v. Northam*, ---. In another case, the Court held that the gift did not create an easement enforceable by private citizens against the State. *Gregory v. Northam*, 862 S.E.2d 273, 275 (Va. 2021).

Louisiana. New Orleans City Council voted to remove statues of Robert E. Lee, Jefferson Davis and P.G.T. Beauregard. Tempers flared. *See, e.g.*, Richard Faucett, *Tempers Flare Over Removal of Confederate Statues in New Orleans*, N.Y. TIMES (May 7, 2017); Kevin Litten, *Efforts to remove Confederate monuments in New Orleans go back decades*, TIMES-PICAYUNE (Mar. 14, 2017). Historical organizations alleged violation of federal laws including the National Historic Preservation Act and other federal and state laws, In one of the most widely reported Confederate monument removal cases, the federal courts upheld the City's action on all counts. *Monumental Task Comm., Inc. v. Foxx*, 259 F. Supp.3d 494 (E.D. La. 2017). *See also Monumental Task Comm., Inc. v. Chao*, 678 Fed. Appx. 250 (5th Cir. 2017).

Texas. The University of Texas removed Jefferson Davis and Woodrow Wilson in 2015 following the Mother Emanuel shooting and removed Robert E. Lee and Albert Sidney Johnston in 2017 after the Klan-Nazi events in Charlottesville. A Sons of Confederate Veterans chapter sued, along with others including a descendant of the statutes' donor, all claiming violation of their First Amendment rights. In *McMahon v. Fenves*, 946 F.3d 266, 270-71 (5th Cir. 2020), an opinion that mirrors many other court decisions, the court rejected the claims (and another case against San Antonio) for lack of standing – it said standing depends on proving particular injury beyond that suffered by the general public. Without such injury, the plaintiffs there – like those here in Charleston – are merely seeking to undo a political decision they lost:

> "Plaintiffs would of course prefer a world where the University and the City display Plaintiffs' favored monuments."

Id. at 271. But:

> "Our system of governance assigns the vindication of value preferences to the democratic political process, not the judicial process."

Id. at 268 (rejecting strong feelings and family connections to Confederate monuments as insufficient injuries for purposes of standing).

North Carolina. Even those persons or organizations that would seem to have the closest connection to Confederate monuments are uniformly dismissed for lack of standing. *United Daughters of the Confederacy v. City of Winston-Salem*, 853 S.E.2d 216 (N.C. Ct. App. 2020) (dismissing for lack of standing a lawsuit brought by a heritage association against city and county governments involving the removal of a Confederate statue listed in the National Register of Historic Places); *Hist. Preservation Action Comm., Inc. v. City of Reidsville, N.C.*, 753 S.E.2d 400 (N.C. Ct. App. 2013)(dismissing plaintiffs' claims for lack of standing to challenge a city's decision to remove a damaged Confederate monument).

Mississippi. State university (Ole Miss) made major changes on campus, including moving and renaming Confederate monuments, street names, and building names on campus. An SCV chapter and other heritage organizations sued to enforce the state's "Heritage Act" (adopted in 2004 and closely resembling the South Carolina Heritage Act). State courts construed the suit as one for a writ of mandamus and held they had no standing to bring such a suit. *Miss. Div. of Sons of Confederate Veterans v. University of Miss.*, 269 So.3d 1235 (Miss. Ct. App. 2018).

Tennessee. *Sons of Confederate Veterans v. City of Memphis*, No. M2018-01096-COA-R3-CV, 2019 WL 2355332 (Tenn. Ct. App. June 4, 2019) (dismissing plaintiff's claims for lack of standing where city officials transferred ownership of Confederate monuments to a nonprofit entity that removed them).

Florida. Confederate heritage associations challenged city of Lakeland's relocation of a privately-funded Confederate monument and claimed the city's action infringed their ability to preserve the history of the South, express their free speech, vindicate the cause for which the Confederate veteran fought, and protect and preserve Memorials to American veterans. The United States Court of Appeals for the Eleventh Circuit rejected these claims because they did not give rise to the type of injury needed to show standing. *Gardner v. Mutz*, 962 F.3d 1329, 1341 (11th Cir. 2020).

Kentucky. In a lawsuit brought by a plaintiff claiming to be a descendant of Jefferson Davis and other Confederate officials, the court dismissed the suit and upheld removal of a Confederate monument in the City of Louisville. *Callan v. Fischer*, No. 3:16-CV-734-TBR, 2017 WL 4273106 (W.D. Ky. Sept. 26, 2017).

The above-cases show that people and organizations like Petitioners in this case have asked courts to block removal of monuments in state after state, alleging every conceivable personal stake and every conceivable legal theory of entitlement. They have not succeeded.

V. PETITIONERS' FOURTH CAUSE OF ACTION SHOULD BE DISMISSED AS SIMPLY A REQUEST FOR AN ADVISROY OPINION.

Finally, Petitioners seek a declaratory judgment affirming that the City has promised to give the Board of Field Officers a "right to he heard" as to the ultimate disposition of the Calhoun statute. There is no allegation that the City denies there is such an agreement or threatens to violate it. Instead, the few allegations all relate to speculation – not even current speculation but speculation of the past. The Petition alleges that the City "previously threatened" to move the Calhoun statute out of state, Pet. ¶ 2, and that the City "had considered" such a move. (Pet. ¶ 54.) The threatened injury is likewise speculative in the extreme: "If the City of Charleston in fact transfers" the statute out of state, local and state residents will lose the benefit of the statute, (Pet. ¶ 55), and "If the City of Charleston in fact transfers" the statute out of state, the state courts and Attorney General will lose jurisdiction over it.

With all due respect, words like "previously threatened," "had considered," and "if" (twice) do not allege a live, concrete controversy, do not create a justiciable controversy, and are not a sufficient basis for a declaratory judgment under S.C. Code 15-53-10 *et seq.*

Rather, Petitioners are just seeking an advisory opinion, because no controversy presently exists and the claim is not ripe for adjudication. Considerable South Carolina case law holds that a right to such relief is not conferred by the Declaratory Judgment statute, which requires a live controversy. For example, "to fall within the intended purpose and scope of the Declaratory Judgments Act, the parties must seek adjudication of a justiciable controversy." *Tourism Expenditure Review Comm. v. City of Myrtle Beach*, 403 S.C. 76, 81, 742 S.E.2d 371, 373-74 (2013) (citing *Sunset Cay, LLC, v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466

(2004). "[I]t is fundamental that the Declaratory Judgments Act does not eliminate the case-or-controversy requirement." *Id.* at 82, 742 S.E.2d at 374. As a threshold matter, "the existence of an actual controversy is essential to jurisdiction to render a declaratory judgment." *Power v. McNair*, 255 S.C. 150, 153, 177 S.E.2d 551, 552 (1970). The same case also said:

> 'A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.

As all these cases show, Petitioners' Fourth Cause of Action must fail.

CONCLUSION

The Petitioners have presented several theories for relief, none of which have legal substance. Accordingly, the Petition should be dismissed in its entirety.

SIGNATURE PAGE TO FOLLOW

August 30, 2023

Respectfully submitted,

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Attorneys for Respondents The City of Charleston, South Carolina and the individual City of Charleston officials named herein

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
BOARD OF FIELD OFFICERS OF THE FOURTH BRIGADE, MARK CALHOUN, F. PRESTON WILSON, ANDREW PICKENS CALHOUN Petitioners, vs. MEMBERS OF CITY COUNCIL OF THE CITY OF CHARLESTON, SOUTH CAROLINA, CAROLINE PARKER, KEVIN SHEALY, JASON SAKRAN, ROBERT M. MITCHELL, KARL L. BRADY, JR., STEPHEN BOWDEN, PETER SHAHID, JR., MICHAEL S. SEEKINGS, PERRY K. WARING, WILLIAM DUDLEY GREGORIE, and ROSS A. APPEL AND THE CITY OF CHARLESTON, SOUTH CAROLINA, THE HONORABLE ALAN WILSON, ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA, AND THE HONORABLE JOHN TECKLENBURG, MAYOR OF THE CITY OF CHARLESTON, SOUTH CAROLINA Respondents	CASE NO: 2022-CP-10-05123 **MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

PETITIONERS, by and through their undersigned counsel, respectfully submit this **Memorandum in Opposition to Defendants' Motion to Dismiss.**

BACKGROUND AND FACTS

The historic facts about the John C. Calhoun monument and the parties' involvement and/or connection to the monument establishment and Charitable Trust are outlined in the Petition. Respondents' memorandum repeated the substantive historic allegations from Petitioners'

Complaint. What bears repeating for the sake of this motion is that the City accepted the Calhoun Monument by way of unanimous resolution of City Council on 18 July, 1898 as follows:

> "Whereas, the Ladies Calhoun Monument Association, 'after vicissitudes and efforts extending over many years, has at length accomplished the sacred object of its existence,' by the erection in Marion Square of the magnificent monument to South Carolina's greatest son, John Caldwell Calhoun; and whereas, the Association is now about to dissolve and disband, and desires to place the monument under the control and care of the City of Charleston for all time, and has placed in the hands of the Mayor and the city the key to the enclosure, 'as symbolizing its possession and custody'; Resolved, That the City Council gratefully accepts the high honor and the responsibilities which it involves, and pledges the faith of the city to watch over and keep it as a priceless treasure and sacred trust. Resolved, that his Honor the Mayor by (*sic*) requested to express to the ladies of this Association the thanks of the City and the entire State for their untiring labors and heroic endurance in the face of many obstacles and difficulties in the completion of such a handsome and imposing monument to the great statesman. Resolved, that this action of the City Council be suitably engrossed and sent to the Ladies Calhoun Monument Association."

Relevant to the issue of Petitioners' standing under the Public Importance exception (further explained below) are the events and decisions surrounding the destruction of the monument and removal of the lifelike statue of John C. Calhoun on June 24, 2020, and then later plans to transfer the statue of Calhoun to Los Angeles for display in an exhibit subjecting the Calhoun statue and name to "ridicule". This background provides an example that connects the purpose of both the Heritage Act and South Carolina Trust Code of protection of such historic artifacts as the Calhoun Monument and Statue. It is also relevant to the issue of the particular harm to the Petitioners and the relation of that harm to the issue of standing.

Shortly after the death of George Floyd in the summer of 2020, nationwide civil unrest came to Charleston, South Carolina. As described in the Charleston City Paper (July 8, 2021, edition):

> "The night of May 30, 2020, a group of people took to upper King Street downtown, breaking windows and setting fires following a day of protest marches throughout downtown in which hundreds of people demonstrated against the police killing of George Floyd in Minneapolis a few days earlier."

In the weeks following, civil unrest also moved to the John C. Calhoun monument with vandalism against the statue and ensuing protests and demands it come down. This was during the time of heated unrest which included ubiquitous threats of "no justice, no peace" against decision-makers for not following the directives of those protesting against particularly historic monuments.

A Charleston City Council vote was taken on June 23 to remove the statue, and the actual removal took place within hours of the successful vote to the cheers of the crowds. While the base of the structure was destroyed by the City, the statue of Calhoun was transferred from Marion Square and stored outside of public view in an undisclosed location alleged by the City. Petitioners understand from the City it is located in a warehouse on the peninsula, where it has remained since being removed (note: to this point, neither the Petitioners nor their counsel have been given permission to assess the condition of the statue).

While the statue languished out of site, in 2021, the city began coordination with Hamza Walker, Director of "LAXART" (further described hereafter), to send the John C. Calhoun statue to the Los Angeles, California "LAXART Monument" exhibit. When the City of Charleston's Commission on History, whose members were approved by City Council, voted on December 15, 2021 to send the statue to LAXART, a dissenting commission member said the following about the decision:

> "The remaining light and honor of respect cannot be extinguished by subjecting Calhoun to further ridicule in the form of a distant or traveling show."

The impending transfer of the Calhoun Statue to LAXART for "ridicule" was the catalyst for a lawsuit brought by descendants of the Calhoun family and of the Ladies Calhoun Monument

Association who created the statue and transferred it to the City of Charleston in trust. This group had previously waited to see what the City had planned for the statue and did not have plans to sue until the said LAXART plan. The Board of Field Officers of the 4th Brigade (hereafter "Board of Field Officers"), the organization holding title to Marion Square at the time of the erection of the statue and in the present, joined as Petitioner. This was due to the organization's connections to the Ladies Calhoun Monument group as the provider of the real property to the group before the city accepted said transfer (establishment of the Charitable trust), and their connection to the removal of the Calhoun Monument in 2020 as described in the Petition.

After the said destruction of the Monument and warehousing of the Calhoun statue, the South Carolina Supreme Court issued its opinion upholding the Constitutionality of the **"Heritage Act"** (though with a majority vote of the legislature to act versus the original super majority). The South Carolina Supreme Court Declaratory Judgment Opinion 28062 (2021) upholding the Constitutionality of SC Code subsection 10-1-165(A) **"Heritage Act"** provided the following passage relevant to the powers of state versus local government with regard to historic memorials we argue include the Calhoun Monument and the rededication of Marion Square (further explained below):

"The Petitioners argue subsection 10-1-165(A) conflicts with Home Rule because it prevents local governments from acting on requests of the public for the change, removal, or relocation of controversial historic monuments or memorials." They contend local governments are in a better position to act with regard to this subject because "they can be more responsive" to the thoughts of the community. This may be true, but Home Rule is not about who holds the better wisdom. Home Rule does not allow local governments to ignore legislatively enacted state law because they are in a more suitable position to address an issue. Subsection 10-1-165(A) does not

apply to a specific county or geographic area and, thus, it is a general law with respect to territorial classifications. Further, as we analyzed above, the statute is not an unconstitutional special law in any other respect. Importantly, "the subject matter of the legislation is not peculiar to [any] political subdivision." *Kleckley v. Pulliam*, 265 S.C. 177, 187, 217 S.E.2d 217, 222 (1975). Therefore, we hold subsection 10-1-165(A) does not violate Home Rule and all counties must comply with it because "no county shall be exempted from the general laws." S.C. Const. art. VIII, § 7."

STANDARD OF REVIEW

"Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure do not have identical standards of review. In particular, the rules differ as to whether this Court needs to accept the well-pleaded allegations of the complaint as true. Under Rule 12(b)(1), this Court "examines whether the complaint fails to state facts upon which jurisdiction can be founded." *Rega v. Rega*, No. 19-259, 2019 WL 4466977, at *3 (D.S.C. Sept. 17, 2019) (interpreting Federal Rule 12(b)(1)). When resolving a Rule 12(b)(1) motion, the Court "may consider undisputed facts and any jurisdictional facts that it determines." Id. (same). As a result, the Court may review "affidavits and other evidence outside the pleadings . . . in support of a motion to dismiss based on lack of jurisdiction." *Baird v. Charleston Cty*., 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999).

Under Rule 12(b)(6), by contrast, the complaint should be "construed liberally and the Court must presume all well plead facts to be true." *Charleston Cty. School Dist. v. Harrell*, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011). So a Rule 12(b)(6) dismissal is improper "[i]f the facts alleged and inferences reasonably deductible from the allegations set forth in the complaint, viewed in the light most favorable to the plaintiff on any theory." *Doe v. Bishop of Charleston*, 407

S.C. 128, 134, 754 S.E.2d 494, 497 (2014). "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

This motion to dismiss under Rule 12(b)(6), by the arguments as set forth below, should fail under the above standard.

ARGUMENTS

1.) **Petitioners are Uniquely Positioned to Justify Public Importance Standing in the Enforcement of the Heritage Act.**

The Respondents argue the Petitioners have no private right of action to enforce the Heritage Act, despite all the aforementioned attributes of the Petitioners giving them a particular connection to the Calhoun Monument and the particular harm involved with its destruction and removal. This is allegedly because the legislature did not provide for a private right of action, and therefore the only party able to enforce the Heritage Act is the South Carolina Attorney General. This argument fails for the same reason as the Respondents' further arguments for dismissal of Petitioners due to standing in the Charitable Trust related causes of action.

The oversight of the Petitioners' said attributes was intentional, as Petitioners should have a private right of action under the public-importance exception. South Carolina courts have previously granted standing for similar parties in similar situations. This has occurred even when the legislature has not expressly granted a private right of enforcement. Under the public-importance exception doctrine, "a court may confer standing upon a party when an issue is of such public importance as to require its resolution for future guidance." *Baird*, 333 S.C. at 531, 511 S.E.2d at 75. With that, a plaintiff need not prove a concrete or particularized injury, *S.C. Pub. Interest Found. v. S.C. Dep't of Transp*., 421 S.C. 110, 118, 804 S.E.2d 854, 858–59 (2017), nor

show that he has "an interest greater than other potential plaintiffs." *Davis v. Richland Cty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 742 (2007). A court determining whether to confer public importance standing should strike an appropriate balance between affording "access to the judicial process to address alleged injustices" and avoiding "numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits." S.C. Pub. Interest Found., 421 S.C. at 118, 804 S.E.2d at 859 (internal quotation marks omitted). But the key consideration is whether resolution is needed for future guidance, as that is what makes an issue transcend a purely private matter and rise to the level of public importance.

With regard to the Heritage Act, this Court should strike the balance in favor of the Petitioners to all for the public importance exception. First, these petitioners have arguably suffered harm and have a greater interest than others due to connection with the name and reputation of John C. Calhoun and the forced change to Marion Square. Second, future guidance will be needed for future enforcement of Heritage Act cases as the enforcement potentially includes hundreds of monuments throughout the state. Additionally, as in this case, courts will be grappling with enforcement as well as what falls under the Heritage Act and so this resolution rises to the level of public importance. The unique status of the Petitioners to Calhoun tips the balance in favor of addressing injustices against the potentially high number of lawsuits. The result of this case could be needed guidance as to who, beyond the SC Attorney General, bring a Heritage Act case (and who is included in "among others" for a Charitable Trust action as argued further below) and therefore limit cases and yet take the high caseload from the Attorney General's office. Critically important to South Carolina is a better understanding of what is covered by Heritage Act (and what government officials must do when they wish to make a change to a Charitable Trust as South Carolina Courts have allowed for the courts to consider equitable deviation to the Charitable Trust,

but the City seems to believe they did not have to seek equitable deviation before destroying the monument and warehousing the statue). It is important to note that South Carolina courts have granted public-importance standing in far less compelling circumstances than these—in cases asserting, for example, that a preservation society exceeded its authority by conveying property,[1] that a county exceeded its authority by issuing hospital bonds,[2] that a school district violated its procurement regulations by entering into construction contracts without following the prescribed competitive sealed-bidding procedure[3].

1 *Evins v. Richland Cty. Historic Pres. Comm'n*, 341 S.C. 15, 21, 532 S.E.2d 876, 879 (2000).
2 *Baird*, 333 S.C. at 531, 511 S.E.2d at 75.
3 *Sloan v. Sch. Dist. of Greenville Cty.*, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (Ct. App. 2000).

2.) **The Heritage Act Protects Statues and Monuments of Historically Important figures and Clearly Includes John C. Calhoun, "South Carolina's greatest son."**

Respondents argue that the John C. Calhoun Monument is not protected by the Heritage Act. First, they argue "Plainly, John C. Calhoun is not a war and a monument dedicated to him is not a war memorial as listed in the Heritage Act". The Heritage Act lists the major US wars from the Revolutionary War to the Persian Gulf War, and this includes the wars of which John C. Calhoun was involved as an elected public official, namely the War of 1812 and the Mexican-American War (see Dr. Sinisi Affidavit describing his involvement). The Respondents' narrow reading of the Heritage Act would arguably not fit any of the war memorials in South Carolina, and therefore would not meet the intent of the Legislature in passing the Heritage Act. The controversy which brought about the Heritage Act was over the Confederate Battle Flag which was moved from on top of the statehouse to a place on state grounds. Under the Respondents' narrow definition that flag was not a "war", but a banner associated with one side of the conflict.

Almost all "war memorials" in the state are honoring those associated with a war, and not honoring the war itself. Arguably the wars listed since World War II were not declared wars and therefore even a memorial to the war would not fit the definition Respondents argue.

Respondents go further in acknowledging the Calhoun Monument can fall under the category of "structure" in the second part of the Heritage Act, but then argue the monument was not renamed or rededicated:

> "The second sentence applies to any "street, bridge, structure, park, preserve, reserve, or other public area of the state" if it is named after 'a historic figure or event.' Unlike the restrictions in the first sentence, the only limitation in this category is that such places may not be 'renamed or rededicated.' Although John C. Calhoun is a "historic figure" and his statute may be a "structure" within the meaning of the Act,4 it has obviously not been 'renamed or rededicated.'"

This argument fails on multiple counts. The Heritage Act prohibits re-dedicating a structure or public area. Dedicate means to devote something to a particular subject or purpose. First, when the heavy construction vehicles tore down the monument and removed the statue, the plot of real property which had been an integral part of the Monument for over a century, which the City transferred by Quit Claim Deed to the Board of Field Officers and Marion Square, was rededicated without Calhoun's presence. That is, the plot of land, a public area, was devoted to a new purpose. More importantly, Marion Square (named after South Carolina Revolutionary War hero Francis Marion) was rededicated, i.e., given a new purpose, without the presence of John C. Calhoun's Monument as centerpiece of the historic War Memorial.

3.) **Petitioners' claims arising out of Charitable Trust arguments fail for lack of standing.**

Respondents next argue that Petitioners' lack standing to enforce the Charitable Trust of the Calhoun Monument. They make no argument against the existence of the Charitable Trust, but

again argue that the sole party able to enforce the Charitable Trust is the South Carolina attorney general. The South Carolina Trust Code, S.C. Code § 62-7-405(c) reads: "The settlor of a charitable trust, the trustee, and the Attorney General, among others may maintain a proceeding to enforce the trust." Respondents misconstrue the Petition in claiming: "Then, since Petitioners Wilson and Calhoun are residents of South Carolina (Pt., ¶¶ 5, 6), that means they have standing to bring this action. The problem with this theory is that it also gives standing to all of the other 5,118,424 South Carolinians (2020 census)." As with the Respondents' arguments about standing in the Heritage Act, they fail to acknowledge the unique status of the Petitioners giving rise to the Petitioners' arguments of falling under the "among others" of SC Code 62-7-405(c). Falling under the caveat "among others" is necessary in this case and a reason that caveat is included. The Ladies Calhoun Monument Association dissolved after transferring the Monument in Trust to the City as Trustee, and having destroyed the Monument and warehoused the statue the City has violated the Trust. If the Legislature intended only the Attorney General to have power to enforce a Charitable Trust, there would be little reason to include the "among others" caveat.

The Petitioners provide the background and connection of the Board of Field Officers as intrinsically involved with the Charitable trust at the start of the trust, when they transferred part of their real property of Marion Square to the Ladies Calhoun Monument Association, throughout the duration of the Trust while the Monument was within Marion Square, and at the destruction of the Monument when the City gave back the said real property of the Monument. Few other parties could ever have this kind of connection to a Charitable Trust as in this case, and without their initial contribution of land, the Settlor could not have created the Trust. In fact, the City's return of the land to the Board recognizes that it is indeed the Settlor entitled to the return of the property given in Trust when the Charitable Trust was violated. The other Petitioners include the direct

descendant of one of the senior officers of the Ladies Calhoun Monument Association, and since the Association was dissolved in reliance on the City honoring the Trust, this is the closest possible link to the Ladies Calhoun Monument Association itself.

Finally, the descendants of Calhoun who have that incredibly unique interest and connection to the Trust. The Respondents try to stretch by using Michigan precedence to define "among others" for South Carolina.

The Respondents claim: "The definitive statement of the law was expressed by our Supreme Court in Epworth Children's Home v. Beasley, 365 S.C. 157, 616 S.E.2d 710 (2005)." A close reading of that opinion shows that the Supreme Court was not limiting enforcement of Charitable Trusts to the Attorney General, but declaring his special role in protecting the interest of the public at large: "Similarly, S.C. Code Ann. § 62–7–503 (1987) provides that the Attorney General shall, when necessary, bring an action to compel trustees to discharge duties imposed upon them by a charitable trust or comply with statutory provisions concerning the administration of charitable trusts. The Attorney General is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts. Furman Univ. v. McLeod, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961)." The Supreme Court was not opining that other parties could not enforce a Charitable Trust, but that the Attorney arguably must enforce it (which lends weight to Petitioners' argument for Mandamus of the Attorney General as argued below). Taking the Respondents' argument to its conclusion would prevent the parties to the trust from enforcing it and rendering useless the provision allowing for "among others,". Respondents' arguments cut directly against Section 62-7-405(c) and Supreme Court guidance.

In addition to the above, the Public Importance exception allowing standing would apply if the Petitioners are not determined to fall under the "among others" of Section 62-7-405(c). As

stated in *Sloan v. School Dist. Of Greenville County*, even a taxpayer has standing to challenge unauthorized or illegal governmental acts under this exception. 342 S.C. 515, 520, 537 S.E.2d 299, 301 (Ct.App.2000). This case is of such importance that if the Petitioners are not found to fall under the "among others" for standing to enforce the Charitable Trust, the Court should confer standing so it may provide for future guidance. See *Sloan v. Wilkins*, 362 S.C. at 436-37, 608 S.E.2d at 583, abrogated on other grounds, *Am. Petroleum Inst. v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009). Petitioners have personal standing due to the harm experienced and described above, and furthermore, the issues in question are of such public importance, that the Court should grant standing by recognizing the Respondents' interpretation of Section 62-7-405(c) is extreme and this matter requires the kind of guidance intended with the Public Importance exception.

In what appears to be a preemptive argument over a case Respondents likely assumed Petitioners would use a authority for standing, they mention Grady v. City of Greenville, 129 S.C. 89, 123 S.E. 494 (1924) first. Respondents' summary comparison of that case to this one is fit to repeat: "That case, like this case, involved a monument donated to a city in the 1890s by a Ladies' Memorial Association; it differed in that it was a monument dedicated to veterans of the Civil War. It was placed in a city street, but after some years the city sought to move it because of increasing traffic. Four still-living veterans of the Civil War sued to block the move." The Court held in favor of the Veterans. The Respondents go on to argue this case goes against Petitioners and specifically point to the following part of the opinion:

> "Under the foregoing views it is unnecessary to consider whether the plaintiffs have shown such peculiar interest in the monument, differing, not only in degree, but in kind, from the general public, as entitles them to maintain the action. Out of deference to the thin, and now almost vanished, "gray line" of which these four plaintiffs are a worthy part, we have given the case as full and careful consideration as if the plaintiffs' technical right to maintain the action were

unquestioned; but we are not to be understood as passing on the point as a question of law. Id. at 108, 123 S.E. at 501."

Upon close examination of this passage and the full opinion, it does nothing but help further the arguments of the Petitioners. First, the City of Greenville was acting in the interest of its duty as trustee with its plans to move the memorial from what was becoming a high traffic area, an unforeseen circumstance at the creation of the Trust. The City was not planning to destroy the monument and warehouse what was left, but was seeking an equitable deviation from the Charitable Trust due to the said unforeseen changes of circumstance since creation of the Trust. After a hearing, the Court saved the monument from being moved. Petitioners should have the same ability to be heard on the Charitable Trust. If the Respondents had properly described the status of the Petitioners, they would not have been able to insinuate the Petitioners were no different from the "general public" which was the differentiation from the Confederate veterans of *Grady*. The Petitioners possess a connection to the Charitable Trust similar to and arguably above that of the said Confederate veterans as family members of Calhoun, as well as the organization which we have argued was intricately intertwined with the Trust.

4.) **Petitioners Cannot Mandamus the Attorney General**

After Respondents have argued that the South Carolina Attorney General is the only party in the state to enforce both the Heritage Act and Charitable Trust, but in particular a Charitable Trust, they then argue that his role is "highly discretionary", but in the ultimate Catch-22 that Petitioners cannot attempt to Mandamus the Attorney General to enforce a Charitable Trust. Respondents have provided a quote from the South Carolina Supreme Court opining that Mandamus is appropriate when no other legal remedy is available. Yet throughout their arguments, Respondents have argued that the South Carolina Attorney General is the only party who can

enforce the Heritage Act or Charitable Trust but in a "highly discretionary" manner. Following Respondents' arguments about the Attorney General would leave other parties with Mandamus as the only legal remedy if the Attorney General does not act to enforce, which then fits with the Respondents' quote of the South Carolina Supreme Court.

5.) **Claims Like the Petitioners' Have Failed In Other States.**

Respondents' arguments about the removal or destruction of monuments in other states does not provide authority for South Carolina with its own unique history and laws, including Charitable Trust provisions and Heritage Act. The examples provided are primarily of what other jurisdictions have done under pressure of civil unrest, like that described above with respect to Charleston in May/June 2020. Different from those cases which deal almost exclusively with Confederate Memorials, John C. Calhoun died a decade prior to that War. The process of actions and decisions made under threats of civil unrest have brought a historic cleansing which includes the removal of the iconic monument to Thomas Jefferson from the New York City Hall, removal of the iconic Theodore Roosevelt monument from in front of the New York Museum, even removal of statues dedicated to figures like Abraham Lincoln. Different from those states, South Carolina has traditionally respected state and national history.

6.) **Petitioners Fourth Cause of Action Should Be Dismissed As Seeking An Advisory Opinion.**

Respondents argue that "Petitioners are just seeking an advisory opinion, because no controversy presently exists" with regards to the Board of Field Officers. According to Respondents: "Petitioners seek a declaratory judgment affirming that the City has promised to give the Board of Field Officers a 'right to be heard' as to the ultimate disposition of the Calhoun statue.

There is no allegation that the City denies there is such an agreement or threatens to violate it. Instead, the few allegations all relate to speculation." After the actions of the Respondents, including the Respondents' plans to transfer the Calhoun statue to LAXART without consultation of the Board of Field Officers (which appears to have been prevented because Petitioners filed suit), as well as the continued warehousing of the Statue without consultation of the Board of Field Officers (or even providing the exact whereabouts of it for the Board to inspect the condition", this controversy goes well beyond "speculation". By its actions, the City appears to either disregard its promise to the Board of Field Officers or denies such even while appearing to admit it for the purposes of its motion. Of note, the Mayor has publicly stated he has plans to transfer the statue to the State Museum, but even that plan was not discussed with the Board of Field Officers.

CONCLUSION

When the City leadership came under pressure by what was described above in May/June 2020, the correct course for City leadership was to seek Legislative approval to move the Calhoun Monument in keeping with the Heritage Act. If they believed it did not fall under the Heritage Act, which position we disagree as argued above, they were also aware the Monument was being held in Charitable Trust. At least they do not argue against it being in Charitable Trust in their motion. In that event, the proper course would have been to seek judicial approval to move the Monument to a more suitable location (to fulfill the promises made in taking possession of the Monument in trust over a century ago) under the doctrine of Equitable Deviation.

Instead of taking the steps required by South Carolina law, the City appears to have given in to a politically charged situation and destroyed the monument and warehoused the statue

immediately after a vote taken under pressure of protesters. The Heritage Act and said Charitable Trust provisions were meant to prevent what happened. As described above, Petitioners as family of Calhoun and the Ladies Calhoun Monument Association were harmed by the destruction of the Monument. Then were further harmed by the City's abrogation of the promises made when taking possession of the Monument by making plans to send the statue to California to face "ridicule". Though the City claims by its motion it does not deny making the said promise to the Board of Field Officers "to be heard" on plans for the Monument, Board members were not consulted about the plans to send the statue to LAXART and have not been consulted about the Mayor's publicly stated plans to transfer the statue to the state museum.

Beyond the past, present, and future harm to Petitioners, their standing in this matter exceeds to normal ground of the Public Importance exception to standing, both with the Heritage Act and Charitable Trust. John C. Calhoun was arguably South Carolina's most important and accomplished son, and this case allows for critical future guidance for the Heritage Act and Charitable Trust provisions. Allowing standing in this unique case with these unique Petitioners does not stand to create a deluge of lawsuits and harm judicial economy. The guidance flowing from this case will likely help with judicial economy for the reasons presented. Petitioners met the standard to defeat the Respondents' motion to dismiss and allow for the courts to more fully hear the arguments of parties and make determinations affecting future generations of South Carolinians.

FOR THE FOREGOING REASONS, Petitioners ask that this Court deny Respondents' Motions to dismiss.

Respectfully submitted.

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2022-CP-10-05123
)	
Board of Field Officers of the Fourth)	
Brigade, Mark Calhoun, F. Preston Wilson,)	
and Andrew Pickens Calhoun,)	
)	
Petitioners,)	
)	
v.)	
)	
Members of City Council of The City of)	
Charleston, South Carolina, Caroline Parker,)	
Kevin Shealy, Jason Sakran, Robert M.)	
Mitchell, Karl L. Brady, Jr., Stephen)	
Bowden, Peter Shahid, Jr., Michael S.)	
Seekings, Perry K. Waring, William Dudley)	
Gregorie, and Ross A. Appel, and The City)	
Of Charleston, South Carolina, The)	
Honorable Alan Wilson, Attorney General)	
For the State of South Carolina, the)	
Honorable John Tecklenburg, Mayor of the)	
City of Charleston, South Carolina,)	
)	
Respondents.)	
)	

City of Charleston Respondents' Reply

Most of the arguments in Petitioners' Opposition to the Motion to Dismiss were dealt with in our original Memorandum, except one – that Petitioners have "public importance standing." That is a doctrine sometimes invoked by South Carolina courts (not by federal courts). It does not help Petitioners here.

If this case involved "standing to sue," Petitioners would still have a tough row to hoe because the public importance doctrine is quite narrowly applied. It is not a general cure-all, but an unorthodox doctrine reserved for exceptional cases.

Petitioners face a tougher row, though, because what they need – and do not have – is not "standing," but a "private right of action to enforce a statute."

Where a statute is involved, the question is whether the General Assembly conferred a private right of action to enforce an Act. As shown in our Memorandum in Support of the Motion to Dismiss, a private right of action to enforce a statute is more restrictive than the general question of "standing" because it is a question of legislative intent. If the General Assembly has not included in a statute a provision giving private citizens the authority to enforce the statute, it is not within a court's province to do so.

The strict reading of "right to sue" under a state statute was confirmed just this year in *Denson v. National Cas. Co.,* 439 S.C. 142, 886 S.E.2d 228 (2023), where our Supreme Court rejected a private right of action under S.C. Code § 61-2-145, an insurance law. A long paragraph in that opinion emphasized the high bar against implying a right of action in a statute that does not explicitly confer one.

The "public importance doctrine" is not mentioned in *Denson,* nor apparently in other cases involving "private right to enforce a statute" (such as the cases cited in Respondents' main Memorandum). In other words, the judge-made doctrine of "public importance standing," rare even in general litigation, plays little or no role in statutory litigation.

In this case, this point applies not only to the Heritage Act claim, but to the charitable trust claim as well. The charitable trust claim seeks authorization to sue under S.C. Code § 62-7-405(c), but the General Assembly has strictly limited the categories of those who can sue under that law to enforce a charitable trust. Our main memorandum explained why the General Assembly's strict limits should not be violated by a wide-open reading of the words "among others." Petitioners now ask for the same type of wide-open reading, this time using the "public

importance doctrine." Their alternative effort should fail too.

Respectfully submitted,

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STATE OF SOUTH CAROLINA	*	COURT OF COMMON PLEAS
	*	
COUNTY OF CHARLESTON	*	TRANSCRIPT OF RECORD

----------x

BOARD OF FIELD OFFICERS OF THE FOURTH BRIGADE, et al,	*	
Petitioners,		
vs.	*	Case No. 2022-CP-10-05123
MEMBERS OF CITY COUNCIL OF THE CITY OF CHARLESTON, et al.,	*	
Respondents.	*	

----------x

September 6, 2023

B E F O R E:

The Honorable Jennifer McCoy, Presiding Judge

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Bill Connor, Esq.
Attorney for the Petitioners

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Jonathan Altman, Esq.
Attorney for the Respondents

Recorded by: Webex Recording

Transcribed by: Bobbi Fisher, RPR
SC Official Court Reporter III

I N D E X

DESCRIPTION	PAGE
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E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

THE COURT: Okay. The Board of Field Officers Fourth Brigade, City Council. Let's get those folks on here.

MR. DERFNER: Hello, Your Honor, this is Armand Derfner, and I'm here with Jonathan Altman, and we represent the respondents, which is the members of the City Council and the mayor of the City of Charleston. And so we're here on a motion to dismiss on the grounds that there's no claim stated that the petitioners are allowed to present.

This case has to do with the removal of the John C. Calhoun statute from Marion Square back in 2020 that the City Council voted on and removed the statue. And the Petitioners have raised a number of causes of action, and the basic question from our point of view is: Is there a private right of action to sue -- that the Petitioners can sue on?

The principal claims are, under the Heritage Act of South Carolina and under a Charitable Trust theory, which is in the Code, and our belief -- that's what this motion is about -- is that there is no private right of action; that these are causes of action where the legislature has to have created a cause of action; that there is no inherent private cause of action; and that, unless the

Petitioners can show that the legislature has evidence that an intent to create a right of action for them, this Court can't -- the Petitioners can't ask the Court to create one.

The Petitioners are several members of the general public: three individuals and one organization. That organization is that Petitioner, the Board of Field Officers, etc., which is what we used to know as the Washington Light Infantry. They own Marion Square; they have for many years.

So the question really, as I say, is about: Has the legislature created causes of action -- a private right of action for members of the general public to enforce either the Heritage Act or to enforce a claim under a Charitable Trust law.

Let me also give a little background on this case. This is, obviously, a motion to dismiss so we take all the allegations in the complaint as true, but this is not the first time. You may remember there was a similar lawsuit filed back at I think the beginning of 2022 by these same Petitioners minus the Washington Light Infantry against the same Respondents. That claim, which was basically the same as the current one except the current one adds a separate -- a fourth cause of action on behalf of the Washington Light Infantry -- and I'll just call them that

because that's what we're all used to calling them -- that the three -- the first three cause of actions were the same, and they were filed in, as I say, early 2022, and they were filed against these same Respondents and the Attorney General of South Carolina.

That case, you may remember, went through five versions, because there was the original summons and complaint -- summons and petition, and then it was amended four separate times. The Attorney General answered in that case, including an answer that said there was no violation of the Heritage Act, and we filed a motion to dismiss.

There was a hearing scheduled on the motion to dismiss, as I recall, in mid to late September of last year, and on the eve of the hearing, the Petitioners asked for a voluntarily dismissal, we consented, and the case was voluntarily dismissed.

Not long afterwards, I think in November of this past year, the petition was filed again. It was essentially identical as the first one -- again, suing the Attorney General and the City defendants, again, saying there was a violation of the Heritage Act as well as a violation of a charitable trust, but it added the fourth cause of action on behalf of the Washington Light Infantry -- that's the Board of Field Officers -- and that was a

cause of action about an agreement with the City. It did not allege that there was any -- that the City had violated that agreement or planned to violate it.

But, anyway, so we got that -- we have the new complaint. The interesting thing about the new complaint is that the Attorney General was never served. The Attorney General was never served, and this is one of the fundamental problems of the case because one of the causes of action was asking for a mandamus against the Attorney General and other causes -- the other causes of action, which were Heritage Act and Charitable Trust, in our minds, are actions that the Attorney General is supposed to enforce and does enforce.

The Petitioners were asking for relief -- were asking to be able to proceed on theories that, in our view, the legislature has not authorized them to do because the legislature says that the Attorney General's job is to do those things. And, in fact, the Attorney General has been very active in the field of charitable trust law. The Attorney General files cases to enforce or protect charitable trusts all the time, and I think Your Honor has probably heard some of those cases.

And the Heritage Act, the Attorney General not only defended the well-known Pinckney against Peeler case in the Supreme Court, but has written at least half a dozen

opinion letters on the Heritage Act. One of those opinion letters is 50 pages long; I read it all.

So the question is: Why is the Attorney General not here and what does the petition really mean if they haven't bothered to serve the Attorney General?

So with that kind -- oh, and I should also say, we have also had some other new developments. In last year's case and in the complaint petition here, there was no -- the only allegation of standing of the right of the Petitioners to bring the case was that they were members of the general public and beneficiaries of the charitable trust. We filed a motion to dismiss challenging both those grounds, and then, in the opposition to the motion to dismiss for the first time, we heard a new supposed basis of the Petitioner's right to bring the lawsuit, and that's public importance standing, which is a doctrine, as Your Honor is familiar with, I'm sure, that the courts in South Carolina have used a handful of times but not really in cases where the private right of action to enforce a statute is concerned. They have predominantly been cases where a private -- a public importance cause of action or public importance standing is used in a constitutional claim or a general equitable claim, but it's played little or no role in -- when the question is, "Has the legislature authorized a private cause of action?"

But that was a wholly new type of standing claim or wholly type -- new type of claim that would allow the Petitioners to bring this lawsuit. Then, I guess right at a day or so ago, a new filing claim, and this was a pair of affidavits dealing with John C. Calhoun. The initial claim, apparently for all last year or this year, the initial understanding -- or initial claim, I guess, was that John C. Calhoun, that statue was a -- fit into the Heritage Act because it was named after a person. It didn't seem to allege any specific connection with a war memorial. And I'll get to war memorial in a minute, but Your Honor may be familiar with the Heritage Act protects certain war memorials and certain structures named after people or events.

So we got another new theory -- I think it was yesterday or the day before -- a pair of affidavits from historians seeming to tie -- about John C. Calhoun's role as a member of Congress in the War of 1812 and as a U.S. Senator in the war -- the Mexican War, and I guess the theory there would be that this is -- this is a war memorial of the War of 1812 or the Mexican War.

So we have got a whole number of new claims, and frankly, to my mind, what they look like is a recognition that the original claims weren't going anywhere, had no substance.

So I'm sorry if I have taken a while on this background, but let me -- I'm going to talk now a little bit about the actual legal theories involved and the causes of actions. Before I do that, I just want to refer Your Honor to a section near the end of our memorandum -- I think it's on pages 17 to 19. And that's a survey of similar cases about confederate monuments in a dozen other states, and what those cases show is that, in state after state, people have brought actions to try to prevent the removal of confederate or confederate-related monuments. They brought them on every theory -- every legal or constitutional theory that can be imagined: First Amendment, Fourteenth Amendment, loss of private property rights, Charitable Trust, Estate Heritage Act claim in Mississippi. And they have been brought by every conceivable kind of claim of standing, from next-door residents in Richmond to claims by the United Daughters of The Confederacy or Sons of Confederate Veterans, organizations with close ties to confederate institutions, as well as by descendents of the donor of the statue in Texas; descendents of the subject of the statue, Jeff Davis, in Kentucky.

The point is, every theory has been raised, every base of standing has been alleged, and in not one of those cases -- and it's probably about 30 or 40 cases in a dozen

states -- not one of those cases has ever gone anywhere. As far as I know, they have all been not simply lost; I think every one of them has been dismissed without a trial for lack of standing, lack of equity, a whole bunch of grounds but all relating to the same kind of thing we're talking about.

So that's -- I guess that's all background.

Now, the question is, what about the right to enforce a statute? Our memorandum talks that in some detail. I think pages 7 to 9 is where we talk mostly about it. In the MERSCORP case of a couple of years ago and a whole string of other cases, the Supreme Court has talked about the fact that the private right to bring an action is much narrower even than regular standing; that there has to be a legislative intent shown in order to give somebody a right to bring a lawsuit to enforce a statute. That is -- it's clearly no such legislative intent shown under the Heritage Act, and that also goes for these other claims, which is a claim under Charitable Trust law. And Charitable Trust law, the statute, which is, I think, Section 62-7-405, it says the settlor or the trustee or the Attorney General can bring a suit to enforce the terms of a charitable trust or to protect the trust or -- and it says "among others." These -- the Petitioners here claim that they are people that --

basically, "among others" is so elastic that it allows anybody to bring a lawsuit. And it's clear -- I won't go into detail but we have spelled it out in the memorandum why the words "among others" do not have that kind of elastic meaning that would allow these Petitioners -- well meaning, I'm sure but simply members of the general public, they're not -- they just don't have the right to bring an action under -- for -- over Charitable Trust when the Attorney General has that job -- and we have cited many cases with Attorney General Dan McLeod and others -- where it's clear that it's the Attorney General's job to enforce and protect charitable trusts, and the Attorney General does it all the time.

Likewise, there's no intent shown by the legislature to allow private citizens to bring lawsuits under the Heritage Act. And both those things are pretty obvious. The point is, with the Heritage Act, the legislature set up some guardrails and decided that certain types of monuments should be protected in certain ways, and we have spelled out also in the memorandum what we think the Heritage Act means.

And, as I say, the Attorney General agreed. The Attorney General offered a -- issued an Attorney General's opinion when the City took the statue down, saying it did not violate the Heritage Act, and he also answered the

first petition in this case and all four -- well, I don't know how many he had. He answered the fourth amended version. And he said this does not violate the heritage act and he explained why. And our memorandum also explained why.

But the point is, the legislature meant to put guardrails up around statues, monument, etc., did not intend to straight-jacket cities or counties or school districts by allowing everybody on earth to come in and bring a lawsuit.

And, as I say, the fact that the Petitioners here are now apparently suggesting that, "Well, John C. Calhoun statue is a monument -- is a war memorial of the War of 1812 or the Mexican War, that's, frankly, pretty far-fetched, and I think it shows why the Attorney General is vested with power to enforce it, because the Attorney General really speaks for the State in many ways. He reflects the point of view of the General Assembly and the public policy of the State whereas if private citizens have standing or are unable to bring a lawsuit, they can bring a lawsuit on any theory, even the theory that the John C. Calhoun statue is a war memorial of the War of 1812, and I don't think the legislature -- there's no showing that the legislature meant to allow that, and it's the Petitioners who have the burden to show that.

Likewise, when you come to charitable trust, it's even clearer that the legislature would not want to subject charitable trusts, often of limited assets, small personnel -- the legislature certainly would not have wanted to allow everybody or anybody, no matter how well intentioned, to sue a charitable trust and possibly deplete the assets of the trust, etc. It's the attorney general's job.

Now, I understand, you know, City -- we acknowledge that the attorney general has the power to do these things, and, in fact, we consulted with the attorney general when the statute was taken down, and the attorney general said it did not violate the Heritage Act.

So the point is that all the law suggests that there's no private right of action. As I say, the Petitioners now, at the last minute, have raised a notion of public importance standing. The Supreme Court -- our Supreme Court has used that in about a half dozen cases. I think the Court of Appeals has allowed it a couple more times.

I'm not saying that it never comes up in a statutory case, but I have never seen a case -- and I have read cases till my eyes are tired -- but I have never seen a case in South Carolina where there's a discussion of whether there's a private right of action and a Court has

said, "Well, in this case, we find a public importance standing."

I think there are a hand -- a couple of cases -- I think two that I have read in which a case that involved interpretation of a statute did get a public importance standing, and one of those is cited by the Petitioners here, the Bear (ph) case from Charleston County originally, but there was no discussion about the private right of action issue. And whether it was overlooked or didn't come up or whatever, the point is, there's no case that, when the issue was raised about whether there's a private right of action to enforce a statute, there's no case -- I'm pretty confident; I have never seen one -- in which public importance standing is used.

So I think the public importance standing, unfortunately for Petitioners, is misplaced here.

So you go through -- those are the basic principles. Now, I know I have talked a long time, but let me just go through the different causes of action here very quickly.

The first cause of action is that we violated the Heritage Act. And as I say, the attorney general, when he was in the case the first time, said we didn't. The attorney general said we didn't.

And by the way, let me just backtrack a second. This taking down of the statue was not some secret event.

It was done out in public in the way that City Councils operate. The attorney general knew about it. He offered an opinion immediately that said it was not a violation of the act. There were discussions, as I'll come to in a minute. There was even an agreement with the Washington Light Infantry that we'll talk about in a minute. It was done in a City Council meeting where, as I recall, virtually every City Council member stood up and gave an explanation of his or her vote because it was obviously an important thing. The statue -- any statue in a park represents that city. The City or reasons of representation decided that it did not want to be represented there by this statue. That's a political decision. That's a political decision that is made in the ordinary representational way, not by -- frankly, not by courts.

So the first cause of action is the Heritage Act. I think I have covered that. The second cause of action asks for a mandamus from this Court to order the attorney general to bring an action. I forget if it's under the Heritage Act or the Charitable Trust theory but a mandamus to make the attorney general do something. Your Honor is probably more familiar with this than I am, but Courts can't mandamus constitutional officers on discretionary acts. The constitutional officer has the job of deciding

what he thinks the law requires, and it's not a ministerial act by any means. And so you can't mandamus the attorney general.

And, of course, that brings again the question about why isn't the attorney general here? Why did the Petitioners never serve the attorney general? I have no idea, but it sort of strikes at the heart of the very -- of the whole petition.

The third cause of action is wanting to make the City to enjoin -- enjoin or a request a declaratory judgment, that the City has violated the charitable trust principle -- the equitable principles of charitable trust law by removing the statute. And here is where we have discussed why members of the general public don't have the right to bring an action to enforce charitable trust law. Their theory is that the words "among others" allow them, as members of the general public or the beneficiaries theoretically of the statue -- members of the general public can bring that lawsuit, and as we sort of puckishly mentioned in the memorandum, that would mean all five million residents of South Carolina could do it. It doesn't matter, frankly, that these Petitioners are in one case a descendent of John Calhoun or a descendent of one of the members of The Ladies of Calhoun Monument Association. The fact is, they really are still, as they

say, however well-intentioned, they're members of the general public, and the legislature certainly did not intend for any -- for just members of the general public to sue and threaten the assets and operations of a charitable trust.

Here, the charitable trustee is the City -- was the City -- is the City, and it can take care of itself. But if members of the general public can sue over a charitable trust, it's an unlimited principle. And the legislature had control -- has control over who can sue. The legislature has said the settlor, the trustee, the attorney general. And those three categories of plaintiffs in such a case, to protect a charitable trust, are perfectly capable of protecting all charitable trusts. There's no reason -- it would be really a violation of the legislative intent and the legislative language to say that "among others" means anybody in the general public.

We gave an example in the memorandum of how the word "among others" might be -- might make it possible in a case where there was some particular person with a specific reason to be involved who had been left out by some drafting, and that may be the answer. But whatever it is, "among others" does not mean the general public.

Those are the first three causes of action, and they were what was in the first case.

The fourth cause of action is brought by the Washington Light Infantry that says, well, it had an agreement with the City before the statue came down that it would have a right to be heard as to the ultimate disposition of the statue. And, frankly, yes, that agreement certainly was made. It was made before the statue came down. The City has no intention of violating that agreement, and if we are able to figure out an ultimate disposition, which we'd love to do, we're certainly delighted to talk to the Washington Light Infantry, and we have no intention of breaching that.

That being the case, it's not clear why that cause of action is there because it really does just ask for an advisory opinion. In the memorandum, I think we have gone through the petition and shown that there's no allegation of violation or a threat of violation. So that's asking for an advisory opinion.

I think that's -- let me just check with my learned co-counsel.

(Pause in the proceedings.)

MR. DERFNER: Yeah, I just want to make clear, there was an agreement. I was involved in it, frankly, between the City and the Washington Light Infantry and their lawyer, and they issued a statement, including the statement that said they did not own any -- they did not

own the statue, and we all went ahead and the statue came down.

That agreement is still there. We have not done -- we have not disposed of or had the ultimate disposition of the statue, but we certainly are ready to talk with them about any possible disposition.

I also want to just mention one last thing: There's an implication -- this is not in the petition as such, but there's an implication and there's a reference to it in the opposition to our motion to dismiss that this was some sudden thing that came along, that the City suddenly did it in the dark of night at some point.

This happened -- the City pulled the statue down in June 2020 after not only a lot of discussion but I remember myself having discussions and being involved in discussions with City officials as early as 2017. So by the time the decision was ultimately made by the City council in its representative capacity, it had been a topic of discussion for several years. What about putting some words on the statue? Putting some context? Moving it here? Moving it there? It was a knotty problem; it finally got resolved.

It got resolved the way these things get resolved. Cities, state legislatures, they represent people. The people who wanted the statue to stay went to the City,

spoke at City Council, button-holed City Council members. That was their -- not only their right, their obligation, just as the obligation of people who wanted the statue down was to speak up.

The City Council made a decision. People support, who want the statue up, they went to the attorney general. They asked the attorney general to intervene. That didn't work. They have gone to the State legislature. All these are things that they're supposed to do, and this is how the process works. They were -- the statue was up there for a long time. The sentiment was to keep it there for a long time. That's changed.

The City represents its constituents. The State represents its constituents. Those -- that is how you decide these questions, and, in that situation, it is not appropriate for people who are disappointed, unfortunately, to come to a court and ask the Court with -- to override the public political bodies with no authorization and no statute that tells the Court it can do that.

Thank you very much, Your Honor. I'm sorry I took so long.

THE COURT: Okay. That's all right. You know, we understand there's a lot to get on the record. I want to try to give everybody the opportunity to do that today. I

know you're all trying to establish a record, first and foremost today.

In that vein, you know, we allot 30 minutes, whatever you put on your motion cover sheet. There are other 2:30 hearings after this, believe it or not, and several 3:30 hearings after that, so I understand. Once again, though, I want everybody to have an opportunity.

So who will be presenting on behalf of the plaintiff today?

MR. CONNOR: Your Honor, it's Attorney Bill Connor. And I would like to --

THE COURT: Yes, sir.

MR. CONNOR: -- but this --

THE COURT: Happy to hear from you.

MR. CONNOR: Thank you.

And I represent the Petitioners, Descendents of Calhoun as well as Descendent of The Ladies Calhoun Monument Association. And I'm speaking for all Petitioners, including the Board of Field Officers, the organization that was there at the inception of the statue being erected, the Charitable Trust, all the way up.

I didn't plan to go through this, but there's been a lot of -- a lot misconstrued with the procedural history going through two cases that came in, so I do need to go back over the record.

The Calhoun monument, at the end of June 2020, was destroyed. The statue was warehoused at that time. This was during a time that, quite frankly, there was a lot of protests, civil unrest, and I mention that memorandum because the vote was taken, and there was no time whatsoever to go -- take the vote, go to the Court to seek equitable deviation where the statue could say how to save the monument. The monument is gone. What we're talking about now is a statue.

There was no lawsuits brought at that time. It wasn't until a year and a half later when the City started coordinating with an exhibit that at least one of the members of the history commission said it would ridicule Calhoun out in Los Angeles when things -- the statue had been warehoused, nothing is to be done by it, the monument has been destroyed, the charitable trust has been absolutely abrogated, as I'll talk about. At that time was where the first lawsuit, among the descendents of Calhoun, were clearly -- had an investment within the statute was brought.

After that was brought, there was no answer from the City. There were some changes because there were different people who had been City Council members, and, obviously, this is a complex case, but there was discussions that were started before their first motion to

dismiss, and those seemed to be bearing some kind of progress. And, really, that's what should have happened with the equitable deviation I'll talk about as well.

But because of that and because at that time the -- my clients believed things were progressing, we did a notice of dismissal before we ever got a memorandum. So we talk about legal theories changing, there was no legal theories out here beyond the fact that we did a complaint and there was no answer, there was no memorandum, no nothing when it was dismissed. Nothing happened. It stayed warehoused.

And right now, to this day, we don't know where it is. We have been told it's in an undisclosed location, but we have had no communication. The Board of Field Officers, which, again, was there at the inception of when the statue went up, has not been sought. Obviously, it brought the lawsuit, so the whole idea that they're going to keep the word by talking to them just has not happened, so it was brought again.

I'm going to talk through why I didn't serve the attorney general. We do have alternative causes of actions and alternative theories. I will say this, that, again, we received no memorandum from the other side, no answer, so we need to wait until last week -- you know, last week, we final got something, as the storm's coming

in, as to what their motion to dismiss is all about. So I dropped everything and as you know, Your Honor, worked till -- through Saturday to answer what they had. And as part of it was to wait for affidavits to come in from professors. The whole idea that affidavits suddenly showed up to -- for a new cause of action, yes, of course they're going to mention different theories on why Calhoun failed the Heritage Act, but it wasn't some kind of -- it was not the way it was being presented by the other side.

I do want to go into -- in fact, instead of going through my memorandum to keep -- for the sake of time, I want to respond to the memo that came in yesterday. I didn't get a chance to see it until late last night -- and just reply to that. Because, actually, the public importance exception is one of our theories that we fall under, and my memorandum is full of the reasons that we do. But, for the sake of time, I want to go ahead and answer the Denson case that was used, because I found, in reading through it closely, this case actually helps us in showing we got standing.

This is a case that was -- a Supreme Court certified question and it really came down to the issue -- it was a 3M shop case that involved a DUI death and good Plaintiff's lawyers trying to find where the deep pockets are. Went all the way through the dram shop, there was an

insurer through the insurance company. And so that's the sort of nature of the type of case that came in when -- as we were talking about the issue of standing on this.

And within this, the courts did opine -- I'm going to give this to the -- to the other side -- that generally, when a statute does not expressly create civil liability, no private cause of action exists. But then it goes on specifically to say there are two parts of the way it's implied in the statute, and that's -- this goes on to other cases as well to back this up.

Number one, the essential purpose of the statute is to protect the kind of harm the plaintiff has suffered, and number two, he's a member of the class the statute intended.

They also mention too, by the way, it's sort of a difference in the Denson case than ours that legislation and derogation of common law must be strictly construed. I mean, in their case, again, we're talking about a DUI death going all the way up to an insurance company, and the issue was that the insurance company didn't report a lapse with the bar's insurance. So clearly, again, good Plaintiff's lawyer is doing all they can, but it was completely disconnected, no privity, nothing like our case as far as the harm and the damage.

And we believe, actually, we fit in these two

categories, the Petitioners. The memorandum expresses more than just the public exception doctrine, and the key thing is that, if you look at the Pinckney opinion, the Supreme Court upholding constitutionality of the Heritage Act, it's kind of interesting because this is what comes into play with the Heritage Act is that there were -- as the Supreme Court knows in the Pinckney opinion, there were negotiations, there were quid pro quos, and there was trade-offs to satisfy different groups, including taking a statue off to put in a house -- the grounds of the State House and also building a civil rights memorial.

If you look in the Heritage Act that was developed at the same time, it specifically talks about memorials to African-Americans and Native Americans along with the wars. Based on what the Supreme Court talks about, there were two groups of people that were being protected -- there were special groups -- and could be harmed by local governments, like what Charleston did here, within weeks of Kingstree riots going up to three weeks later, making a vote, and hours later, tearing down a monument without going to seek any kind of deviation of the charitable trust, that's what the Heritage Act was meant to prevent.

I would say, too, as we go into the issue of the Heritage Act and at least the position that the other side is taking, is that the Heritage Act is solely for wars in

the first part of the Heritage Act, and it really -- as my memorandum makes clear, that's preposterous -- it was intended. There's almost no monuments to the wars themselves. People die in wars and wars are terrible, and even the banner they took off the top of the State House to put in the grounds was not a war. So it doesn't go that clear.

But I will say this, that in considering the public importance exception, there are answers -- there are things that need to be answered. The Pinckney decision wasn't long ago, and I can't think of any other Heritage Act cases that's been brought. There's very little case law telling people what falls under the Heritage Act.

But a key thing again is, is it's our client's fallen into it. And if you look at our clients, they're not just members of the general public. The Board of Field Officers was right there at the inception. They gave a piece of land to the ladies who put together all the money in the monument. They gave them that piece of land. And it will become important in the second part of the Heritage Act that that becomes something that deals with the Heritage Act. They gave a piece of land. They put it up. They basically controlled it for all the years until the City finally took it down, so intricately involved within it.

They suffered harm. They have suffered the harm to -- a change to Marion Square, which they own, even though reputations and the expectation they would help honor the trust themselves, all those things that fall into how they come into play. There's reputational damage. My clients, again, are the descendents.

I believe that the legislature intended to protect those who cared about history, particularly that associated with Civil War, particularly, in this case, people who are family members of historical statues and other memorials.

But, in the alternative, there's the second piece of the Heritage Act, and that goes into issues of renaming within structures, and this becomes important because it's not as simple as John C. Calhoun. I would tell you to go and read the affidavits. John F. Kennedy writes he's one of the top five senators in U.S. history, one of the most important senators, so it is a piece, but it also goes into the issue that he was one of the top members of Congress to help hold the union together in the War of 1812, you know, build up the army that was fought in the Mexican-American War, he was intricately involved in that. So there's a number of things that put him under that.

But, additionally, when the City decided to just, within hours of the vote, take a crane out, crush the

monument, destroy the monument, take the statue off on the very top -- had to put it somewhere; you couldn't just destroy it with a crane -- they quitclaim deeded the land that was there back to the board.

So, number one, they're intricately involved, Heritage Act-wise; and secondly, that arguably became a rededication. The land there was dedicated to John C. Calhoun. And if you read the Heritage Act, it becomes very clear that a structure, if it's named after a historic figure or event, is renamed or rededicated. It wasn't renamed necessarily, but you have another problem which is that Marion Square itself was named after General Francis Marion, Revolutionary War hero, and that changed the -- it rededicated taking Calhoun off.

So it's theories. And I understand right now we have alternate theories that we have to bring standing to help protect the statue, but each one of these theories is backed by arguments.

THE COURT: Respectfully, I want to hone you in on the fact -- I understand you got your positions and you're passionate about that. This is a motion to dismiss that I can only consider on the pleadings and the statute, so if you could just focus on that, that would be appreciated and we can cut to the chase.

As I mentioned, I have several other hearings that

we're far, far behind on due to the fact that this was only allotted a 30-minute time slot and we have been going about an hour, but go ahead.

MR. CONNOR: Well, Your Honor -- and I appreciate that, and the other side gave the time and they used up the half hour, so thank you, though. I'll do my best.

The "among others." The Charitable Trust Act provisions allow for not just the settlor, which, in this case, would have been the Ladies Calhoun Society that dissolved when they gained things in trust but also the trustee. The trustee is the City who destroyed the monument and warehoused the statue somewhere and it's never -- and tried to (indiscernible).

So those two parties, it does leave "among others," not just the attorney general. And I can't think of another party but the Board Of Field Officers who is more intricately involved and would have been intended to help those charitable trusts.

I'd just take you to what was said within the Charitable Trust to just show -- because it's important for this piece, but "The City accepts the high honor and responsibilities which involves pledges (indiscernible) to watch over and keep as a priceless treasure in sacred trust." They had a charitable trust with the statue. They destroyed the statue. They have got the monument --

or destroyed the monument, got the statue in a warehouse, and, at this point, they want -- one of the issues of the whole thing is we believe that the inequitable deviation, which is a concept they could use within Charitable Trust; they should have gone to the Courts, sought some kind of deviation saying they can't stay in Marion Square but where can we put it? Instead, they destroyed most of it. They left the statue in a warehouse; we don't know where it is. They claim they're making plans but we're not part of it. The Petitioners have reached out to say let's come to an agreement. It's probably -- I mean, they're going to be reasonable in what needs to happen, but, right now, the concern is what's happened since then. So equitable deviation.

On the issue of the attorney general, this was debated. We did leave in the mandamus. Part of the issue is, is the other side would have you believe that the attorney general is the only party that can enforce either the Heritage Act or Charitable Trust, despite the "among others." And so we're stuck with, "Okay, if you take that position, then the only thing we have is to be able to -- on a mandamus -- to force the attorney general to come in on a Charitable Trust Act. And that's one -- right now, he did make his opinion about the Heritage Act, but for judicial economy, we -- assume that we do the motion to

dismiss, as they did last time, without an answer; we assume that part will be the mandamus. If we're grandstanding this case, we plan to not even serve -- we will dismiss the attorney general, and we'll take this forward with our standing.

Again, if you go through the memorandum, we have plenty of grounds under the public importance exception. We believe it applies here. Even if the Court is on the line -- on the fence about which way to go, I would say there's so many public importance exception issues, which I have outlined in the memorandum, that talk about the -- giving guidance to future South Carolinians. There's very little case law. There's a lot of issues that come up within this.

I would just repeat a couple of things that came -- you can see them in the affidavits. You know, John F. Kennedy, again, called Calhoun one of the five most important senators, and, as you'll see, one of the top historians has said Calhoun was also perhaps the most original influential political philosopher in American history, intellectually shaped the debates of his time, in other words, the most significant and consequential in South Carolina and American -- South Carolinian and America history.

This kind of case will not come up against. The

idea of frivolous lawsuits is not there. It didn't come up until it was forced into by my clients. There's a lot of questions that need to be answered, and we believe, again, under the two-prong test, that they do fall under the protected categories for moving them forward.

I'm not even going to answer the issues about the other states. I would just point out that states, during a certain time in 2020, made some decisions that many would find very precipitous. I think the one here, how quickly the monument was destroyed really ties into a lot of what was going on. And we don't need that again in South Carolina. We don't need to see Thomas Jefferson coming out of the City Hall in New York and things of that nature, which will happen if we don't send a guidance out about how to handle the statute.

And I'll just -- would ask the Court to deny the motions -- the respondents' motion to dismiss, just, again, to allow for these important issues to be ironed out by future -- for future generations.

MR. DERFNER: Your Honor, I can just take 30 seconds, if you don't mind.

THE COURT: About 30 seconds will be fine. And I don't want to -- utmost respect to everybody involved; it's just, you know, my -- I have got to also respect the time of the other attorneys here. Go ahead.

MR. DERFNER: Number one, we do not in any way mean to disparage John C. Calhoun. That is not what this case is about.

Number two, we would ask the Court to take judicial notice, since it's not in the record, of the attorney general's answer in the first case; that I think the Court can take judicial notice of its own records, including pleadings.

Paragraph 28 of the attorney general's answer in the first case gives his position on the Heritage Act. And, number three, just one clarification. I think, in terms of terminology, the statue of John C. Calhoun is what was given in 1898. The City later added about a 100-foot pedestal -- not pedestal, pole -- column on which the statue rested. And to the statue is still intact. The pedestal, which was erected later, is what doesn't exist anymore but nobody -- that's not integral to the statutes. That's my 30 seconds. Thank you, Your Honor.

MR. VARNADO: And just literally 15 seconds is that same piece of ground, which we consider part of the structure, was then deeded back without Calhoun there. So that whole piece, I would say, runs into the Heritage Act. Thank you, Your Honor.

THE COURT: Sure. All right. Thank y'all so much. Obviously, I'll have to dig into our briefs and the case

law you cited and let you know if I need anything else. Okay?

MR. DERFNER: Thank you.

MR. VARNADO: Thank you, Your Honor.

THE COURT: All right. Thank you. You're free to leave.

(The above matter concluded.)

CERTIFICATE OF TRANSCRIBER

CASE NAME/NUMBER: Board of Field Officers v. Members of City Council/City of Charleston

2022-CP-10-05213

DATE OF HEARING: 9/6/23

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I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information, and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

_/s/ Bobbi Fisher_____

Bobbi Fisher, RPR and Certified Transcriber

Date Submitted: 3/9/24

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
BOARD OF FIELD OFFICERS OF THE FOURTH BRIGADE, MARK CALHOUN, F. PRESTON WILSON, ANDREW PICKENS CALHOUN Petitioners, vs. MEMBERS OF CITY COUNCIL OF THE CITY OF CHARLESTON, SOUTH CAROLINA, CAROLINE PARKER, KEVIN SHEALY, JASON SAKRAN, ROBERT M. MITCHELL, KARL L. BRADY, JR., STEPHEN BOWDEN, PETER SHAHID, JR., MICHAEL S. SEEKINGS, PERRY K. WARING, WILLIAM DUDLEY GREGORIE, and ROSS A. APPEL AND THE CITY OF CHARLESTON, SOUTH CAROLINA, THE HONORABLE ALAN WILSON, ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA, AND THE HONORABLE JOHN TECKLENBURG, MAYOR OF THE CITY OF CHARLESTON, SOUTH CAROLINA Respondents	CASE NO: 2022-CP-10-05123 **AFFIDAVIT** **OF CLYDE WILSON**

COMES NOW, Clyde Wilson, first duly sworn, who deposes and states as follows:

I was awarded the Ph.D by the University of North Carolina in 1971. I was a member of the faculty of the History Department of the University of South Carolina-Columba for 34 years, retiring as Distinguished Professor. Among other activities I was the primary editor of *The Papers of John C. Calhoun,* a documentary editing and publication project which ran from the 1950s to 2005, when I

published the 28th and final volume. These 28 volumes included the letters, speeches, and writings of Calhoun as completely as possible.

In the 1950s the National Historical Publications and Records Commission recommended documentary publication projects for select early American leaders---Washington, Jefferson, Madison, Jackson, Clay, Webster, and John C. Calhoun. The University of South Carolina undertook the project for Calhoun and continued to support the project to its end, as did the NHPRC. The South Carolina Department of Archives and History also provided support. Scholarly reviewers wrote of the quality and importance of *The Papers of John C. Calhoun.*

In 1959 a U.S. Congressional committee chaired by future President John F. Kennedy named Calhoun as one of the 5 most important Senators in American history. Kennedy included a complimentary comment on Calhoun in his book, *Profiles in Courage* (1956). In 1951 the Pulitzer Prize for Biography was awarded to Margaret Coit's sympathetic book, *John C. Calhoun: American Portrait.*

In a long-term and international perspective, Calhoun's importance in history is great. He is the most important person ever produced by South Carolina. He held most of the high offices of the federal government, legislative and administrative, for 40 years, 1811—1840. Beyond this, Calhoun is one of the very few political leaders who has been recognized as one of the most important political philosophers in U.S. history. His "A Disquisition on Government" is still studied and praised worldwide today. British, Italian, and Japanese scholars have written about him, among others.

Even if we discount all else, Calhoun's role in American military

history justifies a memorial. In regard to both war and peacetime defense his role was very important and one must say almost heroic. He first came to public attention protesting against the U.S. government's lack of response to highhanded British interference with American ships, stopping them on the high seas and seizing sailors into their own Navy. Response was necessary both for national honor and defense of our citizens. This stand caused his neighbors to send him to the U.S. House of Representatives in his twenties.

In his first speech in the House, against the opponents of action, he was called "one of those masters spirits who stamp their image on the age in which they live." He drafted the declaration of war for the House. For Calhoun his responsibility was only beginning. In legislation and debate he played a foremost role during the war. He was called "the young Hercules who carried the war on his shoulders."

The most important aspect of Calhoun's role in the military is his eight year service as Secretary of War from age 35 to 42. The War Department was the largest and most far-flung part of the government. It ended the war in organizational and financial chaos, inefficiency, and the need to reduce it to peacetime size. President Monroe had offered the position to several prominent men who turned it down. It required a lot of hard work with little likelihood to enhance prestige. But Calhoun, feeling a responsibility for the effects of the war and for national defense, took on what was regarded as an impossible and thankless job.

His service as Secretary of War (covered in volumes 2—9 of *The Papers of John C. Calhoun)* is generally regarded as the most outstanding of any man in earlier American history. There is no question that he built

a force that greatly aided the victories of the U.S. army in the Mexican War and the Civil War.

Calhoun reorganized Army administration into a system of bureaus---commissary, quartermaster, ordnance, engineers, medical, and others, placed the ablest officers in charge and required accountability from them. This system was copied in Europe.

He planned and saw built the system of Atlantic and Gulf coastal defenses that remained important up to at least World War I.

The prestige and importance of West Point dates from this period. Calhoun raised entrance requirements and put the best officers in charge. The institution not only provided military skill and knowledge but was long the best college in the U.S. for engineering and administrative training.

Calhoun's goal in these reforms was to provide a small peacetime army that was quickly expandable in case of need. Able officers and organization could mobilize the eager American volunteers who would appear to support a just cause. Most West Point men served a few years in the army and then went into private engineering and industry, a great help to building up the country.

His service of Secretary of War was so outstanding that both John Quincy Adams and Andrew Jackson, who agreed on nothing else, accepted Calhoun as Vice President in 1824.

In 1844 President Tyler appointed Calhoun Secretary of State. During one year he negotiated a peaceful settlement of the contentious Oregon Territory issues, establishing the U.S./Canadian boundary where it has remained. He also undertook negotiations that would guarantee that Texas would join the Union as a State.

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On the Mexican War Calhoun's mature statesmanship provides perhaps much wisdom for future generations. While supporting and praising the Army, he sat silent in the vote on a declaration of war. He believed that President Polk had brought on war by provoking an unnecessary border incident. This was a very bad precedent. A state of war came into existence without a Congressional declaration. He also warned against imperialism—taking over foreign peoples and governments. This was bound to destroy republican freedom.

SWORN to before me this

31 day of August, 2023

CLYDE WILSON

Notary Public for S.C.

CARLTON KELLY
NOTARY
PUBLIC
Exp. May 18, 2028
SOUTH CAROLINA

My Comm. Exp: May 18, 2028

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
BOARD OF FIELD OFFICERS OF THE FOURTH BRIGADE, MARK CALHOUN, F. PRESTON WILSON, ANDREW PICKENS CALHOUN Petitioners, vs. MEMBERS OF CITY COUNCIL OF THE CITY OF CHARLESTON, SOUTH CAROLINA, CAROLINE PARKER, KEVIN SHEALY, JASON SAKRAN, ROBERT M. MITCHELL, KARL L. BRADY, JR., STEPHEN BOWDEN, PETER SHAHID, JR., MICHAEL S. SEEKINGS, PERRY K. WARING, WILLIAM DUDLEY GREGORIE, and ROSS A. APPEL AND THE CITY OF CHARLESTON, SOUTH CAROLINA, THE HONORABLE ALAN WILSON, ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA, AND THE HONORABLE JOHN TECKLENBURG, MAYOR OF THE CITY OF CHARLESTON, SOUTH CAROLINA Respondents	CASE NO: 2022-CP-10-05123 **AFFIDAVIT** **OF KYLE SINISI**

COMES NOW, Kyle Sinisi, first duly sworn, who deposes and states as follows:

1. I am a tenured full professor of history at The Citadel. I came to The Citadel in 1994 after earning a BA in History from the Virginia Military Institute and the MA and Ph.D. from Kansas State University. I specialize in American History, the Civil War, and military history. I currently serve also on the Advisory Council for the National Civil War Museum and am the President of the Board of Directors for the Friends of Charleston National Parks. I am a past president of the Board

of Directors for the Fort Sumter Civil War Round Table. I am the author of two books on the Civil War (one a prize winner) and have co-edited a third on Southern History. I am co-editor of the "War and Society" line of books for the Rowman and Littlefield Publishing Group. I write to document the important role John C. Calhoun played in the history of the War of 1812, South Carolina, and the United States.

2. In 1810, John C. Calhoun was elected to the U.S. House of Representatives from the 6th District of South Carolina. Although a Jeffersonian Republican, Calhoun was a staunch nationalist. Accordingly, his attitudes regarding foreign and military policy were such that he was easily classified by contemporaries, and later historians, as a "War Hawk." The greatest foreign policy issue of the day involved Great Britain and Napoleonic France. As both powers engaged in frequent wars through the first decade of the nineteenth century, they invariably dragged the United States into the conflicts. At stake was commerce and the United States' desire to trade with both powers and their allies. That desire for trade inevitably put American ships on the high seas in areas that saw Britain and France take turns seizing those ships. Presidents Jefferson and Madison attempted various embargoes against Britain and France, but none appeared to work, and the ultimate consequence was a crippled American economy and domestic political resentment, especially in New England.

3. While many Americans saw fit to blame France, a greater number perceived Britain as the malefactor. Enmity still simmered from the American Revolution. But more important, there were a number of other issues that attracted the ire of John C. Calhoun and the War Hawks. First, Britain's seizure of American shipping was coupled with its impressment of their crews into the Royal Navy under the principle of "once an Englishman, always an Englishman." Second, there was the perception that Britain stoked tensions among the Indians living on the western frontier from Canada to Georgia in the name of either recovering territory lost during the Revolution or stopping further American western expansion. Armed conflict with various tribes and factions of the Iroquois Confederacy, Shawnee, and Creek prodded political leaders such as Calhoun to gird for war with Great Britain.

4. Calhoun was certainly in a position to help lead the United States into war. A gifted orator who possessed the ability to make compelling arguments, Calhoun was a constant companion to the Speaker of the House of Representatives, Henry Clay. Both thought alike regarding the culpability of Britain and the need for action to stop her. As speaker, Clay appointed Calhoun to the House Committee on Foreign Relations. Shortly thereafter, the South Carolinian became its chairman. Calhoun then spoke frequently against Britain and the concurrent need for the United States to prepare for war. The country's military, despite the alarums and foreign tensions of the previous decade, was woefully unprepared for war, and Calhoun meant to change that as quickly as possible.

When diplomatic relations with Britain collapsed in 1812, it was Calhoun who wrote the committee report recommending "an immediate appeal to arms." It was also Calhoun who then introduced the war measure before the House.

5. Once the war commenced, Calhoun helped craft the financial policies that would sustain the effort. Against much opposition, he advocated that the government finance the war through large loans. He also served as a vocal political supporter for the war and its vigorous prosecution. He particularly argued for the expansion of the regular army as opposed to a reliance upon state militia. Calhoun was indefatigable in his war leadership, which inspired a House colleague to call him ""the young Hercules who carried the war on his shoulders."

6. Despite these accolades, Calhoun's greatest contribution to the war effort was perhaps the simple realization that the sectional divisions within the United States needed to be healed. Calhoun thus sought to allay the concerns of those in New England who opposed the war. He advocated various commercial concessions, which largely meant the repeal of the embargo and importation acts that paralyzed New England's economy and prompted a secession movement in 1814.

7. Having labored mightily in support of the war, Calhoun was no less committed to American nationalism at the end of the struggle in 1815. He viewed the Treaty of Ghent as only theoretically ending the war and prefiguring another conflict. Calhoun therefore embarked on a political crusade in the 1820s to strengthen the

American military. It culminated with his acclaimed service as secretary of war under President James Monroe.

8. The War of 1812 catapulted Calhoun to political prominence and leadership. For the next thirty-five years, Calhoun was always center stage in American political life. He would serve the United States as a senator, secretary of war, secretary of state (for two different presidents), and vice president (for another two different presidents). He would be the only South Carolinian elected to the vice presidency. Calhoun was also perhaps the most original and influential political philosopher in American history. Intellectually, he shaped the political debates of his time on matters ranging from slavery to the minority rights of the states. John C. Calhoun was, in other words, the most significant and consequential South Carolinian in American history.

KYLE SINISI

SWORN to before me this
4th day of ~~August~~ September, 2023

Dana N. Price Richardson
Notary Public for S.C.

My Comm. Exp: 18 May, 2030

DANA N. PRICE RICHARDSON
Notary Public
State of South Carolina
My Commission Expires May 18, 2030

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Board of Field Officers of the Fourth Brigade, Mark Calhoun, F. Preston Wilson, and Andrew Pickens Calhoun, Petitioners, V. Members of City Council of The City of Charleston, South Carolina, Caroline Parker, Kevin Shealy, Jason Sakran, Robert M. Mitchell, Karl L. Brady, Jr., Stephen Bowden, Peter Shahid, Jr., Michael S. Seekings, Perry K. Waring, William Dudley Gregorie, and Ross A. Appel, and The City Of Charleston, South Carolina, The Honorable Alan Wilson, Attorney General For the State of South Carolina, the Honorable John Tecklenburg, Mayor of the City of Charleston, South Carolina, Respondents.	CASE NO: 2022-CP-10-05123 **POST HEARING SUPPLEMENTAL MEMORANDUM SUBMITTED BY LEAVE OF THE COURT**

PETITIONERS' REPLY TO THE CITY OF CHARLESTON:

Prior to the motion to dismiss hearing, Respondents filed a Reply memorandum to Petitioners' Memo in Opposition, and the Petitioners had insufficient time to file a written Reply and therefore planned to answer it fully during the hearing. Respondents requested 30 minutes for the hearing, and used nearly the entire 30 minutes before Petitioners could respond.

Respondents spent substantial time summarizing the procedural aspects of this matter going back as far as to the filing and amendments of an earlier case (which did not include some of the Petitioners). This procedural summary required answer by Petitioners to correct the record, which left little time to argue the relevant points. By the time counsel for Petitioners was able to address the merits, his time was limited due to the above. Counsel for Respondents requested to submit documents after the hearing and was granted leave to do so without exception (and filed documents beyond that request). Counsel requested the Court's leave to submit this supplemental reply memorandum, and appreciates the Court's permission to properly respond.

Respondents' argument against Petitioners' standing is predicated on the recent decision (Certified Question) by the South Carolina Supreme Court, *Denson v. National Cas. Co*., 439 S.C. 142, 886 S.E.2d 228 (2023). According to Respondents, the opinion of the Supreme Court in this case went against Petitioner's arguments for standing for both the Heritage Act action and Charitable Trust action under S.C. Code Section 62-7-4-5(C). However a close reading of the *Denson* opinion, furthers the argument that Petitioners have a private right of action under a statute based on the two-part test from *Denson* (see below). This is in addition to arguments for standing under the Public Importance Exception.

First, it is important to note the difference in fact pattern between *Denson* and this case, as the differences assist with Petitioners' arguments the Court should not strictly construe the statutes for Heritage Act and Charitable Trust. *Denson* was a dram shop case involving a DUI death. Plaintiff counsel in the case alleged negligence per se against the insurance company for the bar which served the drinks to the drunk driver. The bar's insurance coverage had lapsed and yet the insurance company failed to report the lapse which was required by statute. The certified question

for the SC was whether negligence per se would apply. In answering that question the Court opined about standing when a statute does not expressly create civil liability.

The court opined that "Generally, when a statute does not expressly create civil liability no private cause of action exists" and then went on to offer the exceptions. According to the Court, a statute can imply a private cause of action by a two-party test:

1. The essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered.
2. That he is a member of the class the statute is intended to protect.

It's important to note that the Court also opined that "Legislation in derogation of common law must be strictly construed." As so, conversely, legislation not in derogation of common law need not be strictly construed. We ask the Court to take judicial notice that neither the Heritage Act nor the Charitable Trust Act are in derogation of common law, particularly within the context of the Calhoun case.

Petitioners meet the said two-part test for standing, particularly as their statutes should not be strictly construed. Critical to the two-part test to Petitioners' arguments is the *Pinckney* opinion of the Supreme Court upholding the constitutionality of the heritage act. The *Pinckney* opinion described in detail the quid pro quos for both sides of the Confederate Battle Flag issue within the Legislature. The Court makes clear the Heritage Act was formed and passed due to compromises from both sides for protection of competing groups or classes of people.

Of note, A Civil Rights memorial was to be created on state grounds in exchange for the moving of the Confederate battle flag on State House grounds. The Court noted that the Heritage Act provided for special protection of African American and Native American Monuments/Memorials. The Supreme Court specifically recognized these two groups did not

include other groups (in apparent violation of equal protection), and yet recognized the uniqueness of those groups in the context of this debate. This was another quid pro quo for the group protected by the Heritage Act which includes Petitioners. By Legislative intention, the Heritage Act was to protect the class of people who appreciate and value South Carolina history, including history connected to memorials associated with the Civil War, other wars, or South Carolina historic figures like John C. Calhoun.

The Petitioners as the family of John C. Calhoun and the Board of Field Officers (organization intertwined with the history of Calhoun and the Calhoun Monument) are part of a class harmed in the way the legislature sought to protect under the Heritage Act. Specifically, Petitioner descendants were harmed by the reputational damage to their family name/reputation when the monument was destroyed and the statue warehoused. A year and a half later, they were further harmed with the publicized plans to send the statue to LAXART in California for ridicule, which generated the lawsuit. Petitioner Board of Field Officers was harmed by the loss of a historical attraction of great value to Marion Square property and the board's reputation as protectors of the Charitable Trust.

With regards to the Charitable Trust cause of action and standing, our clients meet the said two-pronged test of *Denson*, in addition to our earlier arguments about why Petitioners, particularly the Board of Field Officers, have standing under the caveat "among others" of SC Code Section 62-7-405(c). The Charitable Trust Act expressly includes a private right of action to the parties to the creation of the Trust, "among others". It also impliedly includes a private right to our clients in a class of people intended to be benefited by the Charitable Trust. Those who have a unique connection to the Charitable Trust, like the family members, and whose family name/reputation can be harmed if the Trust is violated. The Board of Field officers was even more

uniquely associated with the Charitable Trust and even more uniquely harmed by the abrogation of the trust.

Petitioners such as the Board of Field Officers who are the direct beneficiaries of a trust are among those contemplated to be protected by the statute, particularly as this statute is not to be strictly construed as per *Denson*. The Charitable Trust could not have been established without the Board providing the real property for the Calhoun monument/structure. It could not have been protected and maintained for the more than century of its existence without those said Petitioners. Lastly, the real estate provided as part of the Trust was transferred back to the Petitioners after the monument was removed. If Petitioners are not included in "among others", it begs the question of who else could possibly fit that description.

The two part test in *Denson* bolsters the conclusion that is already clear under the Public Importance reasoning of *Pinckney*. The *Denson* decision does not overrule *Pinckney* but instead supports the granting of judicial review in this current matter. With that, our many arguments for the Public Importance Exception made in in our Memorandum in Opposition should supplement the two-part *Denson* test. This is because the said *Denson* Decision leaves open other considerations, Public Importance Doctrine, and when the Legislation is not in derogation of common law and not to be strictly construed.

Last notes: At the end of the Motion to Dismiss hearing, Counsel for Respondents claimed Paragraph 28 of the Attorney General's Answer to the previous lawsuit of this matter asserted that the Heritage Act does not apply in this matter. The hearing ended right after this assertion, without any time to verify. Paragraph 28 does not exclude a court determination this case falls under the Heritage Act if it is considered a rededication (of which Petitioners have argued in our Memorandum in support).

FINAL NOTE ABOUT SC ATTORNEY GENERAL: Counsel for Respondents questioned why Petitioners haven't served the Attorney General. Answer is as follows: Petitioners' primary position is having standing to bring the claims. In the alternative, we have included our Mandamus claim. Respondents were expected to bring a Motion to Dismiss. We reasonably assumed they would seek to dismiss both individual standing and Mandamus. If Petitioners' standing is upheld, we plan to Dismiss the Mandamus action and AG if the Court has not dismissed it. Petitioners' counsel believed it within due diligence to name the Attorney General and Mandamus, but with the Attorney General already having answered previously (court has a copy), we did not believe judicial economy was best served by serving the Attorney General before the motion to dismiss.

Due to the foregoing reasons, it would be absolutely inappropriate to dispose on a motion to dismiss a case of such weighty and complex nature, and of such great public importance prior to a full opportunity for discovery and development of issues.

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Mark Calhoun, F. Preston Wilson, &
Andrew Pickens Calhoun

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
BOARD OF FIELD OFFICERS OF THE FOURTH BRIGADE, MARK CALHOUN, F. PRESTON WILSON, ANDREW PICKENS CALHOUN, PETITIONERS, VS. MEMBERS OF CITY COUNCIL OF THE CITY OF CHARLESTON, SOUTH CAROLINA, CAROLINE PARKER, KEVIN SHEALY, JASON SAKRAN, ROBERT M. MITCHELL, KARL L. BRADY, JR., STEPHEN BOWDEN, PETER SHAHID, JR., MICHAEL S. SEEKINGS, PERRY K. WARING, WILLIAM DUDLEY GREGORIE, AND ROSS A. APPEL AND THE CITY OF CHARLESTON, SOUTH CAROLINA, THE HONORABLE ALAN WILSON, ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA, AND THE HONORABLE JOHN TECKLENBURG, MAYOR OF THE CITY OF CHARLESTON, SOUTH CAROLINA, RESPONDENTS.	CASE NO.: 2022-CP-10-05123 **PETITIONERS' MOTION TO RECONSIDER ORDER GRANTING DISMISSAL**

Petitioners respectfully submit this Motion for Reconsideration pursuant to rule 59(e), SCRCP. Petitioners show the court as follows:

LAW:

"A motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" Arnold

v. State, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992) (quoting Budinich v. Becton Dickinson and Co., 486 U.S. 196, 200, 108 S.Ct. 1717, 1720, 100 L.Ed.2d 178, 184 (1988)). As a result, "a party is usually allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." Elam, 362 S.C. at 21, 602 S.E.2d at 778-9. Thus, a motion for reconsideration is "one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument." Id. (emphasis added)

ARGUMENTS:

The Petitioners respectfully request the court vacate its order granting Respondents' dismissal of all causes of action of the Petition (with the exception of Mandamus of the Attorney General) for the following reasons:

1. In framing the status and identity of the Petitioners, the Court begins with a "Relevant Background" with the verbatim (and erroneous) description Respondents used in their memorandum and proposed order requested of the court to marginalize Petitioners as solely members of the public: "Several members of the general public – three individuals and a fraternal organization – asked this Court to order the City to restore the statue. They allege in three causes of action that its removal violated the South Carolina Heritage Act as well as state charitable trust law, and that they as members of the general public are entitled to be the enforcers of the law." This becomes critical as Court's decision not to grant standing continuously reverts back to the Petitioners being alleged to be members of the General public and nothing further. No part of the ruling attempts to

distinguish the two separate Petitioners, each represented by separate counsel and having different ground of standing. One of two Petitioners, Board of Field Officers of the Fourth Brigade, was the organization which provided the real property at the site of the Calhoun Monument at the inception of the Charitable Trust, controlled and maintained the area of the monument at Marion Square, and was quit claimed the real property provided from the City when they tore down the monument. Identifying this Petitioner as solely a "fraternal organization" in relation to the Monument and Marion Square and calling this Petitioner solely a member of "the general public… entitled to be enforcers of the law" and indistinguishable from the descendants of Calhoun is not only factually incorrect but creates a false basis to deny standing, particularly with regards to the Charitable Trust Act (see below).

2. Further, this order as currently written could have a severely negative precedential impact on future standing cases in the state by demanding a "private right of action" clause in legislation for standing. Were this ruling to be accepted by other courts as a correct statement of law of standing, neither Pinckney nor any of a long line of declaratory judgment cases would be allowed as precedence, because the issues they raised did not involve statutes with a "private right of action" clause. In a just-published Court of Appeals case dealing with the issue of Standing, the South Carolina Court of Appeals held: "To bring an action in South Carolina, 'a party must possess standing either 'by statute, through the principles of constitutional standing, or through the public importance exception.' S.C. Dep't of Soc. Servs. v. Boulware, 422 S.C. 1, 7, 809 S.E.2d 223, 226 (2018) (quoting Youngblood v. S.C. Dep't of Soc. Servs., 402 S.C. 311, 317,

741 S.E.2d 515, 518 (2013)).” Davis v. Connelly, 2024-UP-006, Appellate Case 2020-001348 (S.C. App. Jan 03, 2024). This did not acknowledge the Petitioners arguments for public importance exception or principals of constitutional standing, but solely repeated the Respondents’ incorrect assertion that Petitioners lacked standing under the private right of action analysis. Precedence does not and should not require a private right of action clause as the sole means of standing.

Further, the Court doesn’t answer the Petitioners’ arguments for why even the Supreme Court’s Denton opinion, used by Respondents to allegedly further their arguments, would allow for standing. Beyond principles of constitutional construction or the public importance exception, according to the Court in Denton, a statute can imply a private cause of action by a two-party test: 1. The essential purpose of the statute is to protect from the kind of harm the petitioners have suffered. 2. That he is a member of the class the statute is intended to protect. It’s important to note that the Court also opined that “Legislation in derogation of common law must be strictly construed.” Conversely, legislation not in derogation of common law need not be strictly construed. Neither the Heritage Act nor the Charitable Trust Act are in derogation of common law. Petitioners meet the said two-part test for standing under the Denton analysis. Critical to the two-part test to the Calhoun casd is the Pinckney opinion of the Supreme Court upholding the constitutionality of the heritage act. The Pinckney opinion described in detail the quid pro quos for both sides of the Confederate Battle Flag within the Legislature. The Court asserts the Heritage Act was formed and passed due to compromises from both sides for protection of competing groups or classes of people. Of note, A Civil Rights

memorial was to be created on state grounds in exchange for the moving of the Confederate battle flag on State House grounds. The Court noted that the Heritage Act provided for special protection of African American and Native American Monuments/Memorials. The Supreme Court specifically recognized these two groups, did not include other groups (in apparent violation of equal protection), and yet recognized the uniqueness of those groups in the context of this debate. This was another quid pro quo for the group protected by the Heritage Act which includes Petitioners. By Legislative intention, the Heritage Act was to protect the class of people who appreciate and value South Carolina history, including history connected to memorials associated with the Civil War, other wars, or South Carolina historic figures like John C. Calhoun. The Petitioners as the family of John C. Calhoun and the Board of Field Officers (organization intertwined with the history of Calhoun and the Calhoun Monument) are part of a class harmed in the way the legislature sought to protect under the Heritage Act. Specifically, Petitioner descendants were harmed by the reputational damage to their family name/reputation when the monument was destroyed and the statue warehoused. A year and a half later, they were further harmed with the publicized plans to send the statue to LAXART in California for ridicule, which generated the lawsuit. Petitioner Board of Field Officers was harmed by the loss of a historical attraction of great value to Marion Square property and the board's reputation as protectors of the Charitable Trust.

3. In dismissing the Heritage Act claim, the Court permitted the Respondent's erroneous assertion, "The Court also notes that when the statue was removed in 2020, the Attorney General issued an opinion that the City's action did not violate

the Act." The Attorney General did not issue an opinion the City did not violate the Act. The Attorney General made a personal video statement (also transcribed in the Post and Courier in an article about the Statue). On July 25, 2020, the Attorney General issued an opinion about the Constitutionality of the Heritage Act, but not about the Calhoun Monument removal. Please note below that the Attorney General stated he would focus on the Constitutionality of the Heritage Act. The following was the conclusion of the Attorney General's statement to the media in Charleston: "Our Legal Analysis of the law's ambiguity, coupled with the organization's understanding from the City of Charleston that it would protect and care for the statue until a suitable place was found for it led us to the decision not to file a legal challenge at this time but instead to focus on the overall legal defense of the Heritage Act". In Paragraph 28 of the Attorney General's answer to the first lawsuit brought against Respondents over the removal of the Calhoun Statue, the Attorney General asserted that a court could find that the removal of the Calhoun Monument violated the "rededication" provision of the Heritage Act.

4. In dismissing the Charitable Trust Claim, the Court permitted Respondent's erroneous assertion Petitioners justified their standing upon: "since two of the petitioners (Preston Wilson and Mark Calhoun) are part of "the people of South Carolina" as residents of South Carolina, they have standing to bring this action." As the arguments and memorandum make clear, Petitioners distinguished themselves as descendants of Calhoun and the treasurer of the Settlor of the trust, and emphasized the better grounds for standing of the Board of Field Officers of the Fourth Brigade. As noted above, this party's standing claim went well beyond

the flippant marginalization of being solely "the people of South Carolina". The Board was an integral part of the Charitable Trust from the beginning to the end in the 19th century until now. It provided real property for the Monument's placement and stood watch over the monument for over a century. In its role of "housing" the monument of Marion Square, the public looked to this party in the care of the Trust and monument, as the Fraternal Organization continually contributed to the display and care of the monument by taking care of the land which surrounded it and providing ingress and egress to access the monument.

5. In dismissing the fourth cause of action, the Court approved the Respondent's erroneous assertion with regards to the promise of the Board's input on the future placement of the Calhoun Monument: "There is no allegation that the City denies such an agreement or threatens to violate it." The Court provides no justification for the Respondent's publicized plans to send the Calhoun statue to Los Angeles to the LAXART exhibit to be demeaned, generating the start of litigation in December 2021 to prevent the transfer of the statue to LAXART. Nothing prevents the Respondents from arbitrarily transferring the Calhoun statue to another such location to be dishonored.

CONCLUSION:

For the reasons outlined above, Petitioners respectfully request the Court vacate its order dismissing all causes of action (except Mandamus of the Attorney General) and dismiss Respondents' motion.

January 11, 2024

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-10-05123
Board of Field Officers of the Fourth Brigade, Mark Calhoun, F. Preston Wilson, And Andrew Pickens Calhoun, Petitioners, v. Members of City Council of The City of Charleston, South Carolina, Caroline Parker, Kevin Shealy, Jason Sakran, Robert M. Mitchell, Karl L. Brady, Jr., Stephen Bowden, Peter Shahid, Jr., Michael S. Seekings, Perry K. Waring, William Dudley Gregorie, and Ross A. Appel, and The City of Charleston, South Carolina, The Honorable Alan Wilson, Attorney General of the State of South Carolina, and the Honorable John Tecklenburg, Mayor of the City of Charleston, South Carolina, Respondents.	)	**CITY OF CHARLESTON RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION FOR RECONSIDERATION**

The Court has correctly held that the Attorney General, not private citizens, is the one who may bring a claim under the Heritage Act or the S.C. Trust Code. Petitioners' Rule 59 motion is no more than a request that the Court change its well-considered decision.

Wherefore, Petitioners' Rule 59 motion should be denied.

January 22, 2024

Respectfully submitted,

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Attorneys for Respondents The City of Charleston, South Carolina and the individual City of Charleston officials named herein

as is set forth and declared in the said Indenture.
In witness whereof I have hereunto set my hand and seal this twelfth day of February in the year of Our Lord One thousand eight hundred and fifty seven
Signed Sealed and delivered
in the presence of } A P Reigné. (Seal)
M P O'Connor
James W. May

The State of South Carolina } Personally appeared before me
Charleston District } James W. May and made oath that he saw the within named Alfred P. Reigné sign seal and deliver the foregoing instrument of writing and that he with M P O'Connor witnessed the execution thereof
Sworn before me this twelfth day of February Anno Domini 1857
Thos. G. Simons Jr } James W. May.
Notary Public
Office Mag

Recorded 12 Oct 1885
C Kirwan Jr Rec
Ass Deputy

Board of Field Officers
South Brigade 1861
To
Conveyance
The Ladies Calhoun Monument Ass'n

The State of South Carolina

Know all Men by these presents that the Board of Field officers of the South Brigade South Carolina Volunteer Troops a body Corporate under and by virtue of the Laws of said State in consideration of the sum of Five dollars to them in hand paid at and before the sealing of these presents by the Ladies Calhoun Monument Association also a body corporate under and by virtue of said Laws the receipt whereof is hereby acknowledged have granted bargained sold and released and by these presents do grant bargain sell and release unto the said The Ladies Calhoun Monument Association their successors and assigns All that certain piece or tract of land situate lying and being in Charleston and being a part of Marion Square thirty six feet square the centre of which square shall be in the centre of the main drive from Calhoun Street to the great gate of the Citadel and one hundred and ten feet (170 ft) from the front inside curbing of the pavement of Calhoun Street the whole of the said piece of land being a square.
Together with all and singular the rights Members

hereditaments and appurtenances to the said premises belonging or in any wise incident or appertaining.

To have and to hold all and singular the said premises before mentioned unto the said The Ladies Calhoun Monument Association their Successors and assigns forever. Subject nevertheless to the following Trusts and Conditions, that is to say: The said Lot piece or tract of land shall be used for the purpose of a site for the Calhoun Monument about to be erected by the said The Ladies Calhoun Monument association. And should at any time hereafter the said lot piece or tract of land cease to be used for the purpose aforesaid then upon and thereafter all the right title interest or claim of every kind and nature whatsoever of the said The Ladies Calhoun Monument association their successors and assigns in and to the same shall cease and determine, and the said land shall revert and vest in the said Board of Field Officers of the Fourth Brigade South Carolina Volunteer Troops their successors and assigns as though this deed had not been executed. Provided that in case said Monument shall at any time be destroyed by any casualty the right and title hereby conveyed shall remain and continue in full force upon said Monument being restored within ten years from the date of such casualty. But unless said Monument shall be restored within said ten years the said lot piece or tract of land shall revert to and vest absolutely in said Board of Field officers of the Fourth Brigade So Ca Volunteer troops their successors or assigns as above provided.

In testimony whereof the said Board of Field Officers of the Fourth Brigade South Carolina Volunteer troops have hereunto caused their Corporate Seal to be affixed and these presents to be signed by their President and their Secretary this Seventeenth day of September in the year of Our Lord One thousand eight hundred and Eighty five and in the One hundred and tenth year of the Sovereignty and Independence of the United States of America.

Signed Sealed and delivered in the presence of
Thos W Hughes
Edward F Milan

J. A. Huguenin (LS) (Seal)
Brig Genl Comdg 4th Brig SCVT
& President Board of Field Officers
attest
Henry A de Saussure (Seal)
Secty B of FO 4th Brig SCVT

The State of South Carolina }
Charleston County } Personally appeared before me Thos W Hughes and made oath that he saw the within named J. A. Huguenin Brig Genl Comdg 4th Brig SCVT & President Board of Field officers and Henry A. de Saussure Secty of Said Board sign seal and as their act and deed deliver the within written deed, and that he with Edward F Milan witnessed the execution thereof.

Sworn to before me this 18th day of September AD 1885
Wm Aiken Kelly (Seal)
Notary Public

Thos W Hughes

Recorded 17 Oct 1885
[illegible] Jr Reg
m clerk

[Transcription of Deed: by Dr. Chris Rucker.]

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Board of Field Officers

Fourth Brigade SCVI

To Conveyance

The Ladies Calhoun Monument Association

The State of South Carolina

Know all men by these presents that the Board of Field Officers of the Fourth Brigade South Carolina Volunteer Troops a body Corporate and under by virtue of the laws of said state in consideration of the sum of five dollars to them in hand paid at and before the sealing of these presents by The Ladies Calhoun Monument Association also a body corporate under and by virtue of said Laws (the receipt of which is hereby acknowledged) have granted bargained sold and ___ed and by these presents do grant bargain sell and _____ unto the said the Ladies Calhoun Monument Association their successors and assigns.

All that certain piece or tract of land situate lying and being in Charleston and being a part of Marion Square thirty six feet square the center of which square shall be in the center of the main drive from Calhoun Street to the great gate of the Citadel and one hundred and ten feet (110 ft) from the present inside curbage of the pavement of Calhoun Street the shape of this piece of land being a square.

Together with all and singular the rights, Members, hereditaments and appurtenances to the said premises belonging or in any wise incident or appertaining.

To have and to hold all under singular the said premises before mentioned unto the said The Ladies Calhoun Memorial Association their successors and assigns forever subject nevertheless to the following trusts and conditions, that is to say: The said lot, piece or tract of land shall be used for the purpose of a site for the Calhoun Monument about to be erected by the said The Ladies Calhoun Monument Association and should at any time hereafter the said lot, piece or tract of land cease to be used for the purpose aforesaid thereupon and thereafter all the rights title interest [in trust] or claim of every kind and nature whatsoever of the said The Ladies Calhoun Monument Association their successors and assigns in and to this land shall cease and _det_____ and the said land shall re_____ back in the said Board of Field Officers of the Fourth Brigade South Carolina Volunteer Troops their successors or assigns as though this deed had not been executed. Provided that in case said monument shale at any time be destroyed by any casualty this right and title hereby conveyed shall remain and

continue in full force on said monument being restored with ten years from the date of such casualty. But unless said monument shall be restored within said ten years, the said lot, piece or tract of land shall revert to and reside absolutely in said Board of Field of officers of the Fourth Brigade So.Ca. Volunteer troops their successors or assigns as above provided.

In testimony whereof the said Board of Field Officers of the Fourth Brigade of South Carolina Volunteer Troops have hereunto caused their corporate seal to be affixed and these presents to be signed by their president and their secretary this seventeenth day of September in the year of our Lord one thousand eight hundred and eighty five and in the one hundred and tenth year of the sovereignty and independence of the United States of America.

Signed

Etc, etc

T. A. Huguenin

Brig. Genl. Cmndg 4th Brigade SCVI

& President Board of Field Officers

Henry A. DeSausseur

Secretary, B of F O 4th Brig SCVI

The City Council of Charleston
To
The Ladies Calhoun Monument
Association
} Conveyance

The State of South Carolina
Whereas the Board of Field Officers of the South Brigade South Carolina Volunteer troops by deed bearing date the Seventeenth day of September Eighteen hundred and eighty four have granted and released unto the Ladies Calhoun Monument Association their successors and assigns a certain piece or parcel of the grounds known as Marion Square subject to the limits and conditions that said piece or parcel should be used for the purpose of a site for the Calhoun Monument about to be erected by the said The Ladies Calhoun Monument Association, And whereas the City Council of Charleston hath consented and agreed that the said piece or parcel of said Square should be used for the aforesaid purpose

Now Know all Men by these Presents that the City Council of Charleston in consideration of the premises aforesaid and of the sum of One dollar to it in hand paid by the said The Ladies Calhoun Monument Association, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and by these presents doth grant and release unto the said The Ladies Calhoun Monument association all right title interest and estate which the said City Council of Charleston has or might have in and to the piece or parcel of Marion Square which has been conveyed by the said The Board of Field Officers of the South Brigade South Carolina Volunteer troops to the Ladies Calhoun Monument association as aforesaid - To have and to hold the said premises unto the said The Ladies Calhoun Monument association their successors and assigns subject nevertheless that the premises hereby granted and released shall be used for the purpose of a site for the Calhoun Monument to be erected by the said The Ladies Calhoun Monument association as aforesaid and for no other purpose according to the terms of the deed first aforesaid. In testimony whereof the said City Council of Charleston have hereunto caused their Corporate Seal to be affixed and these presents to be signed by their Honor the Mayor of the City of Charleston this Sixteenth day of October in the year of Our Lord One thousand eight hundred and eighty four and in the one hundred and tenth year of the Sovereignty and Independence of the United States of America.

Signed Sealed and delivered
in the presence of
Thos. Frost Jr.
R. G. O'Neale

Wm A. Courtenay Mayor
attest W. W. Simons Clk
Clerk of Council

The State of South Carolina
Charleston County
} Personally appeared before me R. G. O'Neale who being duly sworn says that he saw Wm A. Courtenay Mayor of the City of Charleston sign and W. W. Simons Clerk of the City Council of Charleston affix the seal of the City of Charleston to the within written deed and that he with Thomas Frost Jr. witnessed the execution thereof.

R. G. O'Neale

Sworn to before me this Sixteenth day of October A.D. 1885 — J. O'Dea J.C.

Recorded 17 Oct 1885. Edmund Jr. Bellinger M.C.C.

[Transcription of Deed: by Dr. Chris Rucker]

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The City Council of Charleston

To Conveyance

The Ladies Calhoun Monument Association

The State of South Carolina

Whereas the Board of Field Officers of the Fourth Brigade South Carolina Volunteer Troops by deed bearing date the seventeenth day of September eighteen hundred and eighty five have granted and released unto the Ladies Calhoun Monument Association their successors and assigns a certain piece or parcel of the grounds known as Marion Square subject to the trust and condition that said piece or parcel shall be used for the purpose of a site for the Calhoun Monument about to by erected be the said The Ladies Calhoun Monument Association and whereas the city council of Charleston hath considered and agreed that the said piece or parcel of said Square shall be used for the aforesaid purpose.

Now know all men by these presents that the city council of Charleston in consideration of the presents aforesaid and of the sum of one dollar to it in hand paid by the said The Ladies Calhoun Memorial Association at and before the sealing and delivery of these presents hath granted and released and by these presents- doth grant and release unto the said The Ladies Calhoun Memorial Association all right to the interest and estate which the said City Council of Charleston has or might have in and to this piece or parcel of Marion Square which has been conveyed by the said The Board of Field Officers of the Fourth Brigade of South Carolina Volunteer Troops to the Ladies Calhoun Monument Association as aforesaid- To have and to hold the said premises unto the said The Ladies Calhoun Monument Association their successors and assigns subject never the less that the premises granted and released shall be used for the purpose of a site for the Calhoun Monument to be erected by the said The Ladies Calhoun Memorial Association as aforesaid and for no other purpose according to the terms of the deed first aforesaid. In testimony whereof the said City Council of Charleston has hereunto caused their corporate seal to be affixed and these present to be signed by his Honor the Mayor of the City of Charleston this sixteenth day of October in the year of our Lord one thousand eight hundred and eighty-five and in the one hundred and tenth year of the Sovereignty and Independence of the United States of America.

Signed sealed and delivered Wm A. Courtenay, Mayor

In the presence of attest W. W. Simons

Thomas Frost Jr clerk of Council

R. G. O'Neal

The State of South Carolina

Charleston County Personally appeared before me R. G. O'Neal who being duly sworn says that he saw W. A. Courtenay Mayor of the city of Charleston sign and W. W. Simons Clerk of the City Council of Charleston affix the seal of the City of Charleston to the within written deed and that he with Thomas Frost Jr. witnessed the execution thereof.

Sworn to before me this sixteenth day of October 1885 R. G. O'Neal

Received 17 October 1885

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CHARLESTON CHAPTER OF THE UNITED DAUGHTERS OF THE CONFEDERACY, Petitioner, v. CHARLESTON COUNTY SCHOOL DISTRICT, CHARLESTON COUNTY SCHOOL DISTRICT BOARD, Respondents.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-10-03667 **Amicus Brief of Attorney General**

As the State's chief legal officer and on behalf of the public, the Attorney General respectfully files this amicus brief in opposition to Respondents' Motion to Dismiss. The Attorney General regularly files amicus briefs in cases that implicate matters of public importance. *See State ex rel. Condon v. Hodges*, 349 S.C. 232, 232, 562 S.E.2d 623, 629 (2002); *see also State ex rel. McLeod v. McInnis*, 278 S.C. 307, 311, 295 S.E.2d 633, 635 (1982) ("The Attorney General, by bringing this action in the name of the State, speaks for all of its citizens and may, on their behalf, bring to the Court's attention for adjudication charges that there is an infringement in the separation-of-powers area.").

BACKGROUND

The Charleston Chapter of the United Daughters of the Confederacy ("UDC") filed suit against the Charleston County School District ("CCSD") and the Charleston County School District Board in July 2024 over alleged violations of the South Carolina Heritage Act ("Heritage Act"). The UDC's Petition generally alleges that Respondents violated the Heritage Act by

removing the Lee Memorial Highway Marker ("Lee Memorial") from the grounds of the Charleston County Charter School for Math and Science.

The Lee Memorial is a Confederate memorial or monument that was erected by the Charleston Chapter of the United Daughters of the Confederacy (the "UDC") in 1948 at 1002 King St., Charleston, SC. (*The Herald*, "Unveil Lee Memorial Highway Marker," May 11, 1948, attached hereto as **Exhibit A**). At the time the Lee Memorial was erected, the property was home to Rivers High School. Today, the property is home to the Charleston Charter School for Math and Science.

The UDC erected the memorial in memory of Confederate General Robert E. Lee. *(The News and Courier*, "Lee Memorial Marker to Be Unveiled Monday," May 7, 1948, attached hereto as **Exhibit B**) ("The Charleston chapter of the United Daughters of the Confederacy has extended invitations to the unveiling of the marker to be dedicate to the memory of General Robert E. Lee Monday morning at 10 o'clock."). The Lee Memorial also commemorated a planned state highway named in his honor. The memorial is made of stone and metal and prominently features the seal of the Confederate States of America.

According to the National Park Service, Robert E. Lee "became one of the most memorialized figures of the former Confederacy" in the years following the Civil War. National Park Service, "Memorialization of Robert E. Lee and the Lost Cause," https://tinyurl.com/f9jsux6e (accessed January 8, 2025).

Without consulting with or seeking approval from the South Carolina General Assembly, the removal of the Lee Memorial was authorized in July 2021 after school officials petitioned for its removal. *See* Patrick Phillips, "City Defends Decision to Remove Robert E. Lee Highway Marker," *Live 5 News*, https://tinyurl.com/2j5tmdz2 (accessed January 13, 2025).

The Respondents moved to dismiss the Petition on December 13, 2024. In moving to dismiss the UDC's claims, Respondents argued in part that the South Carolina Heritage Act does not apply in these circumstances and that the UDC lacks a private right of action to assert its claims under the Heritage Act. The Attorney General's amicus brief addresses both of these arguments in turn.

ARGUMENT

I. The Heritage Act Prohibits the Removal of the Lee Memorial.

1. History of the Heritage Act

The Heritage Act is widely considered to be a "grand compromise" that "accomplished one of the greatest achievements in the political history of South Carolina—the removal of the Confederate flag from the dome of our Capitol, the seat of government for all our people." *Pinckney v. Peeler*, 434 S.C. 272, 298, 862 S.E.2d 906, 920 (2021). This "grand compromise" arose during a period of intense debate over the future of the Confederate flag at the South Carolina Capitol Building.

The Confederate flag was first placed atop the South Carolina Capitol in 1962 to celebrate the South Carolina Civil War Centennial, also known as the Confederate Centennial. *See* S.C.A.G. Op. dated May 8, 1968 (1968 WL 12270). In the decades following its placement, the flag deeply divided South Carolinians. (*The State*, "Lawmakers may be dodging hot issues, going to voters," March 27, 1994, attached hereto as **Exhibit C**) ("The Confederate battle flag has stirred cries of heritage or hate since it was raised in 1962.").

The removal of the flag became a key issue in the 2000 Legislative Session with serious debate between pro-flag and anti-flag legislators. Over months of debate, pro-flag legislators expressed concern about the effect the removal of the flag would have on other Confederate

memorials and emblems in the state. Some, in fact, expressly conditioned their support of removal of flag on protection for such memorials and emblems. (*The State*, "Hodges' plan garners critics, supporters," February 13, 2000, attached as **Exhibit D**) ("Sen. Courson, coauthor of the Heritage Act, said protection for monuments, markers and other emblems of Confederate history is essential to win his vote.").

The South Carolina General Assembly eventually reached a compromise position on the removal of the flag in the spring of 2000. Pursuant to the terms of the compromise, certain pro-flag legislators agreed to support the removal of the flag from the dome of the Statehouse, and certain anti-flag legislators agreed to support legal protections for historic monuments, memorials, and public areas—including Confederate monuments, memorials, and public areas—across the state. *See Pinckney*, 434 S.C. at 293–94, 862 S.E.2d at 918 ("After decades of controversy, members who opposed removing the flag from the dome of the Capitol became willing to compromise if given the assurance that doing so would not 'open the floodgates,' and if the renaming and removal of other historic items could be prevented. Thus, the 'pro-flag' legislators agreed to remove the Confederate flag from the State House dome, but in anticipation of further efforts to rename or remove other memorials, agreed to do so only if those memorials would be protected.").

Section 1 of the Heritage Act achieved the compromise's purpose of removing the Confederate flag from the dome of the State House. *See* S.C. Code Ann. § 1-10-10. In relevant part, Section 1 provides the following: "The flags authorized to be flown atop the State House and in the chambers of the Senate and House of Representatives are the United States Flag and the South Carolina State Flag." S.C. Code Ann. § 1-10-10(A).

Section 3 of the Heritage Act achieved the compromise's purpose of protecting historic monument, memorials, and certain public areas. In relevant part, Section 3 provides the following:

> No Revolutionary War, War of 1812, Mexican War, War Between the States, Spanish-American War, World War I, World War II, Korean War, Vietnam War, Persian Gulf War, Native American, or African-American History monuments or memorials erected on public property of the State or any of its political subdivisions may be relocated, removed, disturbed, or altered. No street, bridge, structure, park, preserve, reserve, or other public area of the State or any of its political subdivisions dedicated in memory of or named for any historic figure or historic event may be renamed or rededicated. No person may prevent the public body responsible for the monument or memorial from taking proper measures and exercising proper means for the protection, preservation, and care of these monuments, memorials, or nameplates.

S.C. Code Ann. § 10-1-165(A).

Although the text of Section 3 of the Heritage Act applies to a broad class of historic monuments, memorials, and public areas, the General Assembly intended the section to protect Confederate monuments, memorials, and public areas specifically. Indeed, by enacting Section 3 of the Heritage Act, the General Assembly sought to explicitly address pro-flag legislators' concerns about the preservation Confederate monuments, memorials, and other public areas in the state. Two of the chief architects of the Heritage Act (and two of the Confederate flag's most ardent defenders in the General Assembly), Senators Glenn McConnell and John Courson, intended the act to protect "Confederate street names and monuments all over the state." (*The State*, "Flag," April 16, 2000, attached hereto as **Exhibit E**).

At the time of its adoption, the section was popularly understood to extend protection to a wide variety of Confederate monuments and memorials, including monuments and memorials to individual Confederate leaders—such as Wade Hampton, III and Robert E. Lee. (*The State*, "Built upon history," May 1, 2000, attached hereto as **Exhibit F**) ("A 1997 history document cited 211 monuments to the Confederacy in South Carolina. Among the most honored was Wade Hampton

III, the Confederate general who went on to become governor of South Carolina and a U.S. Senator."); (*The New York Times*, "S. Carolina Senate Votes to Remove Confederate Flag," April 13, 2000, https://tinyurl.com/3vrd2bkv (accessed January 8, 2025) ("Reflecting a concern that other Confederate monuments might come under attack, the measure also requires that no Confederate or African-American history monuments on public property throughout the state be removed or altered, and no public area named for any historical figure be changed.").

Since its enactment, supporters and opponents of the Heritage Act have recognized that the Act's protections extend to Confederate monuments of all types across the state. (*The Greenville News*, "S.C. Confederate monuments in spotlight," August 23, 2017, attached as **Exhibit G)** (recognizing the Heritage Act's applicability to a variety of Confederate monuments—including monuments to Confederate leaders).

The South Carolina Attorney General's office has also recognized the act's applicability to a wide variety of Confederate monuments and symbols. *See* S.C.A.G. Op. dated June 10, 2014 (2014 WL 2757536) (recognizing the applicability of Heritage Act to the Confederate Battle Flag); S.C.A.G. Op. dated December 13, 2004 (2004 WL 3058237) (recognizing applicability of Heritage Act to Confederate monuments in Wade Hampton Veterans Park); S.C.A.G. Op. dated July 18, 2001 (2001 WL 957759) (recognizing applicability of Heritage Act to over one hundred and seventy Confederate monuments and markers throughout South Carolina, including monuments and markers erected by the UDC).

The South Carolina Supreme Court upheld the constitutionality of the substantive provisions of the Heritage Act in *Pinckney v. Peeler*, 434 S.C. 272, 862 S.E.2d 906 (2021). In *Pinckney*, the Court invalidated the Act's requirement that the section could only be "amended or repealed upon passage of an act which has received a two-thirds vote on the third reading of the

bill in each branch of the General Assembly." S.C. Code Ann. § 10-1-165(B). Thus, following *Pinckney*, protected monuments, memorials, and public areas under Section 3 may only be removed or otherwise changed by "a majority vote" of the General Assembly.

2. The Heritage Act and the Lee Memorial

As explained above, the Heritage Act prohibits the relocation, removal, disturbance, or alteration of any "monument[] or memorial[]" to the "War Between the States" that is "erected on public property of the State or any of its political subdivisions." S.C. Code Ann. § 10-1-165. In light of the above-referenced text, history, and subsequent interpretation of the Heritage Act, there can be no doubt that the Lee Memorial constitutes a "monument[] or memorial[]" to the "War Between the States." Any argument to the contrary plainly lacks merit and ignores the ordinary and popular meaning of the text.[1] *See City of Charleston v. Oliver*, 16 S.C. 47, 52 (1881). Indeed, the drafters of the Heritage Act, its supporters, its opponents, the Attorney General's Office, and the general public have long understood the act to apply broadly to a diverse array of Civil War figures and symbols.

Further, there does not appear to be any real dispute that the Lee Memorial was erected on the "public property of the State or any of its political subdivisions."

By relocating and removing the Lee Memorial without approval from the General Assembly, Respondents violated the Heritage Act.

[1] In fact, according to the Southern Poverty Law Center, Robert E. Lee is the individual most frequently honored in Confederate memorials across the United States. Southern Poverty Law Center, "Whose Heritage? Public Symbols of the Confederacy" (3d ed.), https://tinyurl.com/3tm9jcr7 (accessed January 8, 2025).

II. Petitioner has properly asserted claims against Respondents under the Heritage Act.

As an initial matter, the Attorney General notes that his Office has long taken the position that a circuit court may resolve a lawsuit brought by private citizens over the application of the Heritage Act. *See, e.g., See* S.C.A.G. Op. dated Sept. 7, 2012 (2012 WL 4283911) (noting that clarification from the courts may be necessary to resolve the applicability of the act in a particular circumstance); *see also* S.C.A.G. Op. dated Feb. 25, 2015 (2015 WL 1093151) (noting that private parties with legal standing may seek relief under the Heritage Act through the courts).

Petitioner in this case has properly asserted claims against the Respondents for at least three reasons. First, and in contrast to the arguments advanced by Respondents, the legislative history of the Heritage Act indicates that the General Assembly intended to provide broad protections for thousands of monuments across the State. In keeping with this intent, it seems plain that the General Assembly intended for the Heritage Act to create an implied right of action for private plaintiffs. *See Denison V. National Casualty Company*, 439 S.C. 142, 151, 886 S.E.2d 228, 233 (2023) (describing "legislative intent" as the "main factor in determining whether a statute gives rise to a private cause of action"). And as Petitioner notes in its response, the UDC itself seems to be particularly well-suited to be a private plaintiff since the organization itself erected the monument in the first instance.

Second, given the importance of the Heritage Act to South Carolina's history, Petitioner arguably has public importance standing. In such cases, a plaintiff need not always demonstrate that the relevant statute has an implied private right of action. *See Sloan v. Dep't of Transp.*, 365 S.C. 299, 304, 618 S.E.2d 876, 879 (2005).

Third, Petitioner has filed a mandamus petition, which itself provides a means for remedy or relief in this case. *See Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 36, 512 S.E.2d 106,

109 (1999). Importantly, mandamus relief may even be appropriate in cases in which a court is required to interpret a statute. *See Willimon v. City of Greenville*, 243 S.C. 82, 87, 132 S.E.2d 169, 171 (1963) ("But where the only doubt that clouds the issue consists in the construction of the statute which confers the right or imposes the duty, the writ will issue if the Court, after considering the law, concludes that it confers the right claimed or imposes the duty asserted; otherwise, it will be denied.").

As described above, the Heritage Act plainly imposes a duty on Respondents not to alter the Lee Memorial absent the consent of the General Assembly.

CONCLUSION

The Attorney General respectfully requests that this Court deny Respondents' Motion to Dismiss.

Respectfully submitted,

s/ Thomas T. Hydrick

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January 14, 2025

Exhibit A

Unveil Lee Memorial Highway Marker

CHARLESTON — (P) — [illegible]

Superforts Leave On Global Flight

WASHINGTON — (P) — [illegible]

RAILWAY UNION APPEALS SUIT

COLUMBIA — (P) — [illegible]

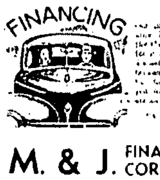
Painless Penicillin Compound Developed

WASHINGTON — [illegible]

6 In Chester County Race For Sheriff

CHESTER — (P) — [illegible]

Sheriff William M. Peden is not seeking re-election.



PERSONAL

John please forgive me and come home. Honestly I have reformed and I promise that from now on I will use only a Sun Beam from Master from the Carolina Sales Co., P. O. Box 521, Charlotte Highway.

Perils of Pauline

Five year Paulina Villanueva, who quite obviously is unhappy about the quarter she swallowed. Dr. Alvin Geery and his esophagoscope hit the jackpot and retrieved the quarter. Nurse Helen Weist comforts the two-year-old at Philadelphia's St. Luke's Children's Hospital.

Dixie Dew Ice Cream Firm Is Bought By Coble Dairy

New Owners Plan Complete Service For Rock Hill Area

Ray Coltrane, vice president of Coble Dairy Products, Inc., of Lexington, N. C., announced today that his company has taken over the operations of the Dixie Dew Ice Cream company in Rock Hill.

The Rock Hill area will be serviced with a complete line of ice cream products produced by the company, Coltrane said, and added that the facilities of Coble Dairy Products, Inc., are among the most modern in the United States.

The organization which began with a small milk plant in Lexington, N. C., in 1934, is one of the largest processing plants in the Southeast today. It includes milk producing plants at Lexington and North Wilkesboro in North Carolina and South Boston, Va., with 20 outside receiving and distributing plants. The Coble company recently opened distributing places in Atlanta, Ga., Miami and Jacksonville, Fla.

[illegible]

Comic Opera To Be Given At Winthrop

[illegible]

Perry Seagle Named President English R Club At High School

[illegible]

Charleston Residents Sue Santee Cooper For Water Damages

CHARLESTON — (P) — [illegible]

TWUA Contract With Industrial Mill Renewed For Year

Officials of the Local Textile Workers Union of America (CIO) announced today their contract with the Industrial Cotton Mill had been renewed for another year with an improved vacation schedule for employes.

[illegible]

Williams Baby Dies; Graveside Rites Held

[illegible]

FORTUNE LEFT STUDENT BODY

ANN ARBOR, Mich. — (P) — [illegible]

LATEST Market Report

NEW YORK — (P) — Calling off of the threatened railway strike [illegible]

NEW YORK — (P) — Cotton futures opened 45 cents a bale lower to 20 cents higher.

	Prev. Close	Open
May	37.92	37.96
July	37.17	37.20
Oct.	33.85	33.87
Dec.	33.18	33.14
March	32.88	32.84
May	32.57	32.60

Exhibit B

Society Calendar

Communications for the department may be telephoned to No. 5531 between the hours of 11 and 2 o'clock, and 4 and 8 o'clock on week days. The department closes at 4 o'clock on Saturdays. Meeting notices and other articles for the Sunday paper must be sent in on Thursday. Written communications and the like must be in typewritten form and must be signed by the sender.

TODAY

9:30 a. m.—Registration of new pupils at Sacred Heart school.
4 p. m.—May festival by James Simons school on grounds of Enston Homes.
5-7 p. m.—Tea at home of Mrs. Frederick Richards, 100 Tradd street, for Garden Club Council members, committee chairmen and flower show winners.
7:30 p. m.—Junior open house at YWCA.
8 p. m.—"Spring Green", comedy presented by Junior Footlight Players at Rivers high school, auspices of Rivers PTA.
8 p. m.—Betsy Ross chapter, OES, at Exchange club building, St. Andrew's parish.
8 p. m.—Charleston BTU group in Midland Park Baptist church.

TOMORROW

3:30-5 p. m.—May party for kindergarten department of Asbury Memorial Methodist church on church grounds.
8 p. m.—Senior open house at YWCA.

Girl Scout Items From Summerville

SUMMERVILLE, May 6. Special: Girls of scout troops 20 and 60 who are working on drawing and painting badges, under the supervision of Mrs. C. R. Price, visited studios in Charleston Saturday.

Nine children visited the studios of Alfred Hutty, Mrs. Elizabeth O'Neal Verner and the pink house where Alice Huger Smith's paintings are on exhibition. They also viewed the paintings in Charleston's city hall.

They were entertained at tea at the home of Miss Alice Huger Smith and her sister, Miss Caroline Smith.

Girl scouts of Troop 60 who are working on their second class rank were addressed by Frank DeParle at a meeting held Wednesday afternoon at the scout hut. Mr. DeParle spoke of the composition of a symphony orchestra and illustrated his talk with charts, pictures and played several instruments.

Mayor Albert Peters addressed the group on the conservation of trees and the work done by the tree commission. He traced the history of trees in Summerville and the origin of the law protecting them. His talk was in connection with the group working on tree finder badges.

The following badges were awarded at the meeting: hostess, Susan Simons and Sandra Sweet; cyclist, Susan Hawley, Louisa Miles, June Nichols, Vivi Kirk, June Kizer, Eileen Muckenfuss, Carol Lee Davis; reader badge, Vivi Kirk, Susan Hawley, June Kizer, Eileen Muckenfuss, Louisa Miles. Vivi Kirk was awarded a clothing badge.

A report was made on a trip to Folly Beach which was participated in by 16 girls and four adults. Shells were collected on this trip and salt water life observed.

Plans were made for a field trip Saturday, May 15, to Wadmalaw island where they will visit Bear's Bluff laboratory.

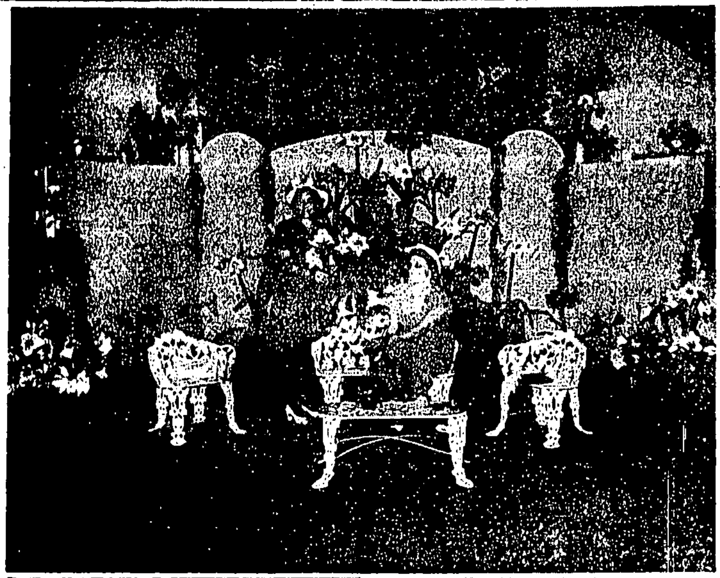
A display of seashells will be made in local store windows at an early date. Shells for these exhibits must be turned in by May 10.

Summerville Camellia Society Hears Mr. Hastie

SUMMERVILLE, May 6. Special: Norwood Hastie, Jr., of Charleston addressed a meeting of the Summerville Camellia society here Tuesday night. He spoke of spraying and the control of insects and mites. He illustrated his talk with specimens and told also of fertilization times and methods.

Walter Allan, program chairman, announces that his committee will meet Saturday, May 15, at which time suggestions will be welcomed as to the subjects to be discussed at future meetings.

The next meeting will be held in September and the subject will be planting and culture in the fall. Mr. Hastie again will be the speaker and will exhibit slides developed at Magnolia gardens in order that purchasers may know what to buy.



FLOWER SHOW SCENES—Top, Mrs. Arthur Bonnell Schirmer (seated top picture) chairman, and Mrs. Frederick Richards, co-chairman of the flower show staged by the Council of Garden Clubs of Greater Charleston Wednesday and Thursday at Charleston County Agricultural hall, admire specimens of the amaryllis exhibit entered in the non-competitive professional class by Mr. Herman Dryer, of Adams Run. Left below, Mrs. E. H. Zeigler, of Riverland Terrace, president of the council, rearranges the stalk of white gladioli, entered by Mrs. J. C. Long, of Mount Pleasant. It won the purple ribbon as the most outstanding horticultural exhibit and also the silver cup offered by the Agricultural Society of South Carolina for the best horticultural specimen. Right below, Miss Alicia Rhett, director of women's programs for Radio Station WTMA, inspects the blue ribbon awarded the Byrnes Downs Garden club for its period arrangement exhibit. (Staff Photos by Reilly).

Lee Memorial Marker to Be Unveiled Monday

The Charleston chapter of the United Daughters of the Confederacy has extended invitations to the unveiling of the marker to be dedicated to the memory of General Robert E. Lee Monday morning at 10 o'clock.

The marker was donated by the city of Charleston and has been erected by the UDC chapter on the grounds of Rivers high school, which parallels the Lee Memorial highway.

Mrs. Tristram T. Hyde is chairman of arrangements, with Mrs. Henry Muller, president of the Charleston chapter, and Mrs. T. Ritchie Simmons, president of the state UDC, as her committee.

The marker will be unveiled by Arthur Joye Jenkins, son of Mrs. Ralph M. Byrd, of the Citadel, and the late Mr. Arthur Jenkins. He is the descendant of a long list of Confederate officers. Mr. G. L. Buist Rivers will be the speaker.

The Lee Memorial highway comprises U. S. highway No. 52 from Charleston to its junction with State highway No. 31; State highway No. 31 to its intersection by State highway No. 2, between St. Matthews and Columbia; State highway No. 2 from the intersection through Columbia to Greenville.

The measure to create the highway was introduced in the general assembly by Mr. M. F. Winter, former representative from Berkeley county, at the request of Mrs. Alice Gaston Walden, of Columbia, chairman of the committee to have the road so designated, and Mrs. H. M. Winter, vice chairman.

Flower Show Chairmen To Entertain With Tea

Mrs. Arthur Bonnell Schirmer and Mrs. Frederick Richards, chairman and co-chairman respectively of the flower show given Wednesday and yesterday by the Council of Garden Clubs of Greater Charleston, have arranged a tea in honor of members of the council, including the presidents of each of the 15 clubs, committee chairmen and the ribbon winners in the show. The tea will be given from 5 to 7 o'clock this afternoon in the garden of Mrs. Richards's home at 100 Tradd street.

Those assisting will be Mrs. William I. Holt, Mrs. C. Creighton Frampton, Mrs. James M. Hagood, Mrs. Gustave P. Richards, Mrs. W. R. Patrick, Mrs. Burgh S. Burnet and Mrs. Henry J. Mann.

The judges in the show were entertained at luncheon Wednesday afternoon at Browton Inn. They were accompanied by Mrs. Hagood, chairman of judges; Mrs. E. H. Zeigler, president of the council, Mrs. Schirmer and Mrs. Frederick Richards.

Kindergartens Observe Child Health Day

More than 100 children attended the annual child health day observance by the two schools of the Free Kindergarten association yesterday in Hampton Park. About 30 mothers also were present.

After being served milk and crackers the children were told stories by Miss Elizabeth Simons, of the Charleston Museum staff, using colored pictures of animals.

Mrs. Williams Heads Parish Auxiliary

Mrs. C. E. Williams was elected president of the auxiliary to St. Andrew's Exchange club yesterday following a luncheon meeting at Hotel Marion on the Isle of Palms. Other officers named were Mrs. S. M. Colclough, Jr., vice president; Mrs. Ralph G. Van Ness, treasurer; Mrs. William J. Schroder, recording secretary, and Mrs. Walter L. Shaffer, corresponding secretary.

Plans were discussed for the state convention of the Exchange club here May 29-30 and volunteer committees named to assist the host club.

Mrs. C. Capers Smith was announced as the leader for the Girl Scout troop sponsored by the auxiliary. Mrs. J. B. Harris is the representative from the parish for Scout work.

The auxiliary voted to contribute $25 to the cancer control fund. Copies of the revised by-laws to the constitution were distributed by Mrs. Harold Petit. The auxiliary also voted to present two scholarships to the College of Charleston to St. Andrew's high school graduates next year if two students have almost the same high averages. No scholarship will be awarded this year because of the 12th grade being added.

Twenty-three members and two guests attended the social meeting at the home of Mrs. J. B. Hartnett after the luncheon. Mrs. Williams won the consolation prize, a homemade cake offered by Mrs. Hartnett.

The guests were Mrs. D. D. Rhame, guest of Mrs. Petit and Mrs. Nelson Delaune, of Biloxi, Miss., guest of Mrs. Shaffer.

Ladies Bible Class Meets in Summerville

SUMMERVILLE, May 6. Special: The Ladies Bible class of Summerville Baptist church held its monthly business meeting Monday afternoon at the home of Mrs. A. W. Myers.

Eleven members were present. Mrs. William Ivey, president, presided. The meeting opened with a devotional by Mrs. T. J. Wright. Mrs. Earl Owens was appointed chairman of the visiting committee.

Plans were formulated for a rummage sale to be held Saturday, May 15, at the city hall for the benefit of the carpet funds.

Awendaw School Has Flower Show

Awendaw graded school held its first flower show Wednesday afternoon. The exhibits, in quality, number and interest shown, were described as a credit to both pupils and teachers. Mr. Vincent C. Williams is principal of the school. The teachers, Mrs. Pearl B. Morrison, Mrs. Caroline Johnson and Mrs. James H. King, were assisted by Miss Harriet Johnson.

There were four groups of exhibits, wild flowers, garden flowers, miniatures and bird houses. The judges were Mrs. W. W. McIver, Mrs. J. P. Cranwell and Mrs. O. A. Hamlin, all of Mount Pleasant.

Tri-color ribbons awarded for outstanding exhibits went to Duane Brunson among the boys for miniature arrangement of wild flowers, and to Patsy Campbell among the girls for exhibit of pink roses in blue vase.

Blue ribbons for garden flowers were won by Mary Ellen Thames, Duane Brunson (two), Florence Nelson, James Wyndham, Charlotte Morrison, Patsy Campbell, Ronald Jeannette (two), Mary Emma White, Janie Hodge, Charlotte Porte (two) and Johnny Campbell.

Blue ribbons for bird houses were given Franklin Hayworth, Carlton Gaskins, Eugene Campbell, Duane Brunson, Elbert White, Sidney White, Hiram Hodge, Johnny Joe Waligarski, Mickey Kales, H. P. White, Teddy Wyndham, Sylvia Kales and Robert Leviner.

In the miniature group blue ribbons went to W. P. Fender, Emma Jane Hodge, Janie Hodge, Margie Hodge, Douglas Murrell, Duane Brunson, Louise White and Mary Ellen Thames.

Yellow ribbons were won by Kenneth Campbell, Tillman Port, Edna Jackson, Lillie Porte, Nelson Summersett, Douglas Murrell, Sylvia Kales, Phyllis Player, Robert Leviner, Johnny Joe Waligarski, H. P. White, Mary Ellen Thames, Elbert White, Duane Brunson and Geneva Hodge.

Red ribbons went to Mary Ellen Thames, Louise White, Margaret Porte, Teddy Wyndham, Jenette Murrell, H. P. White, Betty Lou Campbell, Mabel Wells, Sarah Cumbee (two), Emma Jean Gaskins, W. P. Fender, Octavia Cumbee, John Thomas Porte, June Richardson, Frank Benton, Patricia Cumbee and Nancy Wells.

Pressure Cooker Clinic Slated at Conway

CONWAY, May 6. Special: There will be a pressure cooker clinic Friday, May 7, in the auditorium of the agricultural building in Conway.

Miss Margaret Martin, extension food production and conservation specialist, will have necessary equipment for checking cookers and will be in Conway from 10 a. m. to 1 p. m.

Amateur Show To Be Given By Grace Auxiliary

A "Flora Dora Sextette" composed of men will be one of the highlights of the amateur theatrical show to be given at 8 o'clock tonight under the auspices of the Woman's auxiliary of Grace Protestant Episcopal church. The sextette will include Messrs. E. Lloyd Willcox, Harold Simmons, Louis G. Fischer, Jr., Henry D. Burdell, Sidney C. Snelgrove and James Mathews.

The show will take place in the parish house. Proceeds will be devoted to the lighting fund of the church. Miss Maybelle Witham is general chairman of the show. Her committee includes Mrs. Harold Simmons, Mrs. Walter B. Metts and Mrs. Ernest A. Wehman. Miss Irene Smith has charge of stage make-up, and Messrs. Edwin Kelly and Penrod Simmons, of props.

Mr. A. Eugene Geer will be master of ceremonies. The program will include songs by a "barber shop quartet," composed of Messrs. David Penninger, William Schroder, J. R. Gready, and Jack Heneberry, accompanied by the Rev. Eugene West, assistant rector of the church.

A skit, "Dr. Know-It-All", will be presented by Mr. Willcox, with Mrs. Fischer and Mrs. G. Simms McDowell as audience. Mrs. Ethel Gready Turner will sing several selections, accompanied by Mrs. Eugene West, who will play several numbers. Miss Anne Ford Melton will present a ballet number, "The Skater's Waltz". Dr. Robert M. Hope will pose as the man getting a shave during the singing of the barber shop chorus. Miss Witham will give a reading, "The Woman's Auxiliary".

Rebekah Assemblies To Meet at Winthrop

COLUMBIA, May 6. Special: The state-wide gathering of the Rebekahs of South Carolina will be held May 11 at Winthrop college in Johnson Hall.

This meeting will precede the annual assembly meeting which will be held on May 12. Special guests will be Mrs. Inez S. Crosby, of Camden, Maine, vice president of the association of Rebekah Assemblies, Independent Order of Odd-fellows, and Mrs. Josie Morrow, past president. Mrs. Dandilyon Taylor, of Columbia, is state president.

Church News

CHARLESTON BTU

The Charleston group of the Baptist Training Union will meet at 8 o'clock tonight at Midland Park Baptist church. Members are asked to note the change in place of meeting. Mr. Paul G. Craven is director of the group. A film, "The Man Who Forgot God," will be shown by Mr. Harry R. Schiedermann. Special music will be directed by Mr. Walton Coppedge.

CLYDE VARN CIRCLE

Clyde Varn circle of Cherokee Methodist church met Wednesday night with Mrs. A. L. Podmore, 57 Allen drive, Dorchester Terrace. Mrs. R. H. Hargrove was welcomed as a new member. Mrs. C. M. Watson gave a report of the building fund.

The next meeting will take place June 2 with Mrs. Eugenia Smith, dual lane highway, Navy Yard.

Community Notes From Summerville

SUMMERVILLE, May 6. Special: The morning circle of the Woman's Society of Christian Service of Bethany Methodist church met Tuesday morning with Mrs. Bruce Limehouse. Mrs. M. M. Salisbury, leader, led the devotional and Mrs. T. M. Clyburn was in charge of the program. Fifteen members attended.

Miss Virginia Canady, a student at Coker college, spent the week-end here with her parents, Mr. and Ms. L. W. Canady. She had as her guests, Miss Helen Hamilton, of Edgefield; Miss Shirley Jenkins and Miss Harryann Stabler, of North; Miss Nancy Padgett, of Saluda, and Miss Jean Lebanon, of Conway. All were guests at a Citadel hop.

Commander and Mrs. W. A. Brown, of Arcadia, Calif., were guests Wednesday of Mrs. E. H. Swann.

Mrs. Don Spoonheim, of Fargo, N. D., is spending the week here with her sister, Mrs. Bennie Limehouse.

Mrs. George Segelken is visiting relatives in Lexington this week.

Mrs. C. S. Rodgers, of Teaneck, N. Y., is spending the week here with her sister, Mrs. L. W. Canady.

Junior Musical Club To Meet Tomorrow

The Junior Musical Art club of high school membership, will meet tomorrow afternoon at 4 o'clock at the Musical Art club hall. Officers will be installed by Miss Florence Milligan, president of the senior Musical Art club. Miss Mary Drake will play a piano solo.

Personals

Mr. and Mrs. Grady E. Smart, of Windermere, and their guest, Mrs. J. H. Beagley, of England, are visiting Mrs. Smart's mother in Newberry.

* * *

Mrs. W. E. Thomas, of 36 South Battery, left the city yesterday to join her husband, Chief Boatswain's mate Thomas, in Honolulu. Mrs. Thomas is the former Miss Elizabeth Hildebrandt.

* * *

Miss Margaret Bayly, of 71 Warren street, left yesterday afternoon for New Orleans for a week-end visit with Miss Elizabeth Watson. Miss Watson, director of the USO Travelers' Aid office here before it was closed last year, is doing post-graduate work at Tulane university.

PTA News

ALBEMARLE

Mrs. William M. Leech, president of the Cooper River Council of Parent-Teacher associations, installed officers for the Albemarle Parent-Teacher association yesterday afternoon at the school. The association voted to contribute money for corsages for the school's junior-senior banquet.

A dance program was presented under the direction of Miss Judy Ollmann, after which refreshments were served by the first grade mothers and teachers. Open house was held in the classrooms, where parents saw exhibits of the children's work.

Railway Mail Auxiliary Meets

Plans for a picnic were discussed at a meeting of the Railway Mail association auxiliary Wednesday afternoon at the home of Mrs. H. G. Farmer, Mount Pleasant. Two new members, Mrs. Harry J. Luhrs, Jr., and Mrs. T. L. Mendenhall were welcomed.

Mrs. J. B. Baldwin won the prize for the most unusual hat at the hat sale during the social hour. Mrs. J. H. Kuhne also won a prize. Refreshments were served later.

The next meeting will be with Mrs. L. L. Smith, 146 Darlington avenue.

St. Paul's School Group To Sponsor Entertainment

The Junior Homemakers association of St. Paul's high school, near Meggett, will sponsor a program by a hillbilly band of Columbia at 8 o'clock tonight in the school auditorium.

Exhibit C

Lawmakers may be dodging hot issues, going to voters

The Associated Press

Voters send politicians to the State House to pass laws. Increasingly, however, S.C. lawmakers want voters to decide questions that are too hot for the legislators to handle.

For instance, the question of whether to continue allowing video poker goes to each county's voters in November. Lawmakers couldn't decide on a ban or regulation, so they passed the regulations and said voters should decide on the ban.

The Confederate battle flag has stirred cries of heritage or hate since it was raised in 1962. Now a push is on to let voters decide whether to keep it flying above the State House.

And a candidate for governor wants the voters to approve every general tax increase.

Some lawmakers and political observers say the tendency to ask voters to solve problems is often a coward's move and is wrong. Others say it is a growing grass-roots focus on government to control taxes.

"It could be cowardly, it could be cunning, it could be deference to special interests, who through advertising can influence an election," said University of South Carolina political science Professor Blease Graham.

State law requires voters to decide changes in the state constitution, like a proposal for a state lottery.

But if it doesn't involve the Constitution, lawmakers should decide, said House Judiciary Chairman Jim Hodges, D-Lancaster.

"It's dangerous when the Legislature begins to take the view that every tough opinion needs to be made by the public. That becomes an easy way out, to avoid dealing with thorny public policy issues."

[illegible]

"It's dangerous when the Legislature begins to take the view that every tough opinion needs to be made by the public. That becomes an easy way out, to avoid dealing with thorny public policy issues," Hodges said.

Not so, said Sen. Glenn McConnell, who favors letting the voters settle emotional issues.

The Charleston Republican has tried unsuccessfully for years to get legislative approval for anyone to initiate a referendum with enough signatures from registered voters, similar to the voter initiatives in states like California.

"Emotional issues tend to get jammed up in the politics," McConnell said. "The only way to settle them is to submit to the feelings of the voters."

McConnell, however, gained scant support among lawmakers last week for his push for a vote on the flag.

But the campaign cry of Republican gubernatorial candidate David Beasley has taken the trend toward public participation to a new level. Beasley, former House majority leader turned Republican, has called for voters to OK all general tax increases.

It's not cowardice but political courage "to look voters in the eye and convince them" to spend more money, he said.

Tax revolt groups say the issue is government reform.

"We're for the representative form of government, but representative government has become disconnected from the family and the people," said Jim Gordon, coordinator of the Palmetto Tax Coalition.

An election-year campaign promise like Beasley's will hold vote appeal for those voters, said Graham, the political scientist. Sooner or later, politicians must listen, but voters also must be reasonable, he said.

"A fiscal diet is one thing, fiscal starvation is another," he said.

Hodges questions whether ceding such control to voters is good policy.

"They're suggesting a government-by-town-meeting approach, and I don't think it works that well. It's difficult to try to lay the facts out in front of all the decision-makers," he said. "It's hard enough in the Legislature."

WALL

FROM B1

[illegible] complaint about it. The residents seem happy with it, and it has cut down on crime," he said.

The tenants have taken pride in the wall as a protective shield from outsiders who often eluded police by [illegible] among the maze of brick buildings.

Fauser said it appears that residents feel good about the wall because it hasn't been defaced with spray paint. "The thing's been up nearly two years now and has no graffiti."

But the wall started changing last week when Waldrop began work on the mural. After creating drawings of the Wall of Fame inductees from

The mural will be unveiled April 5, as the Housing Authority kicks off its 60th anniversary celebration.

photographs, the artist made slides of his work. He then used a projector to cast enlarged images of the portraits onto the wall, traced by Benedict College fraternity members. They also coded areas corresponding to two paint colors, which neighborhood kids and high school and college volunteers filled in Saturday.

By then, Waldrop, a nationally known artist who designed the George Rogers mural on Assembly Street, had done his part and was holding his breath.

"My job is just getting them to slow down," said Waldrop, whose $5,000 commission came in part from a local arts grant and donations.

Nicka Long, 11, had the singular pleasure of painting the chin of her dad, inductee Willie Long, director of student services at Midlands Tech.

"It feels funny," said the Hand Middle School student. "It looks like him but not when you're up this close."

Other portraits included educators King B.L. Jeffries, Augustus Rodgers, LeDena Martin Gordon, Mildred Weathers McDuffie, Violet Martin McKie and Bessie Pauline Williams, college athletics administrator Harold A. White, former legislator Frank E. McBride, nursing administrator Jean S. Hopkins, newspaper publisher Isaac Washington, physician Thaddeus Bell, and cinematographer Delano Boulware. The late Frances Davenport Wright could not be included because a photo of the educator was not available.

The mural will be unveiled April 5, as the Housing Authority kicks off its 60th anniversary celebration. At that time, three more names will be added to the wall, though Fauser said their portraits won't be included for at least five years.

In the meantime, residents like Rebecca Sligh enjoyed watching the kids spruce up her neighborhood.

"It's going to be beautiful," she said from her stoop across the street at Allen-Benedict Court apartments. "I hope we can keep it that way."

Pilot slightly injured in coastal plane crash

The Associated Press

MYRTLE BEACH — A single-engine plane crashed into the Intracoastal Waterway Saturday, but the pilot escaped with only a cut lip and a bump on his head.

Authorities said a Cessna 150 that was used to tow advertising banners crashed when Joseph A. Meskaty, the pilot, lost control after a banner he was trying to pick up off a runway became tangled with another banner.

Acting Capt. Charlie Pryor of the North Myrtle Beach Fire Department said a passing boat picked up Meskaty.

He was treated at Grand Strand General Hospital and released.

Salvage efforts will begin today, said Coast Guard Chief Petty Officer Charles Wood.

Exhibit D

THE CONFEDERATE FLAG DEBATE

Hodges' plan garners critics, supporters

■ The House Speaker wants to see the Confederate flag on Main Street

BY KATHRYN WINIARSKI
Staff Writer

Gov. Jim Hodges' plan to move the Confederate flag to a less visible memorial on the State House grounds met with support, criticism and questions Saturday from lawmakers.

Hodges will describe the plan in detail at a Monday news conference outside the State House, but he's already gathered substantial support.

State Sens. John Drummond, D-Greenwood; John Land, D-Clarendon; and Greg Gregory, R-Lancaster; and Mayors Joe Riley of Charleston and Bob Coble of Columbia are among those who said Saturday that they back the proposal.

However, others, including Sen. Darrell Jackson, D-Richland, steadfastly oppose the plan, saying the Confederate flag should not be flown anywhere on the State House grounds. The National Association for the Advancement of Colored People, and other black leaders, also take that position, viewing the flag as a symbol of racism and oppression.

Still others, including House Speaker David Wilkins, R-Greenville, and Sen. John Courson, R-Richland, praise Hodges' efforts at resolving the issue. But they are shying from support, saying they want the flag placed at the more visible Soldiers' Monument. That site would better showcase the heritage and chivalry the flag represents, they said.

"I'm glad the governor has now given us a specific proposal. That's what people have been looking for," said Wilkins.

"The plan I would support places the flag in what I think is the most appropriate place — the Soldiers' Monument."

There have been no shortage of flag relocation plans in recent months. They range from moving the flag to the Confederate Relic Room on Sumter Street, an idea supported by the NAACP and other black leaders, to leaving it atop the State House dome, as advocated by Sen. Glenn McConnell, R-Charleston, and the Sons of Confederate Veterans.

Under Hodges' proposal, the rectangular flag now atop the State House dome would be removed. A square Confederate battle flag, used by the Army of Northern Virginia, would be flown on a flagpole at the statue of Confederate Gen. Wade Hampton. The Sumter Street memorial was erected near the turn of the last century to honor one of the state's greatest war heroes.

FILE PHOTO

Wade Hampton memorial

Gov. Jim Hodges has come up with a plan that would move the controversial Confederate flag, which is currently atop the State House in Columbia, to a place near this statue of Civil War Gen. Wade Hampton III. The statue is also on the State House grounds.

"I could certainly support that plan," Senate leader Drummond said Saturday. "I just hope everyone else can support it, and we can get this over with."

The governor's plan also incorporates parts of the 1994 Heritage Act, which requires Confederate monuments and markers be protected, as well as Confederate names on streets and buildings.

Precisely which aspects of the Heritage Act are written into Hodges' plan will be revealed Monday, said Hodges spokeswoman Nina Brook.

Courson, coauthor of the Heritage Act, said protection for monuments, markers and other emblems of Confederate history is essential to win his vote.

"We want to see a comprehensive settlement of this issue, and the flag is just a component of it," said Courson, the great-great grandson of a Confederate veteran.

'An excellent proposal.' An array of elected officials, prominent business leaders and university presidents are expected to stand with Hodges during Monday's announcement.

Among those expected to attend are Sens. Land, Gregory and Wes Hayes, R-York, and Mayors Riley and Coble, both Democrats.

"I think it's a plan that could work," Coble said Saturday. Placing the flag on the Sumter Street side of the State House grounds is much better than locating it at the higher-visibility Soldiers' Monument on Main Street, he said.

Coble and Riley proposed a solution in September but are willing to band with Hodges.

"I think it's an excellent proposal and one that achieves the goal that we're all seeking," Riley said. "That is, to find a common-ground solution to the removal of the Confederate battle flag, and to find an acceptable way to resolve this impasse."

Throughout the debate, the South Carolina Chamber of Commerce has refrained from taking a position on any plan. But chamber president Hunter Howard said Saturday that Hodges' plan is "a very progressive compromise."

"It reflects the concerns of the various parties," he said. "It takes the Confederate flag — the one attributed to the racial tension — off the State House grounds and replaces it with a different flag. ... That flag (now flying) is so much associated with racial tension, through the Ku Klux Klan."

'Once and for all.' The quest to move the flag from the State House dome became an economic issue earlier this year.

On Jan. 1, the NAACP began a boycott to force the flag's removal.

The Legislature alone has the power to take the flag down.

NAACP officials could not be reached for comment Saturday. But NAACP official Lonnie Randolph said Friday his group is unlikely to support Hodges' plan.

Jackson said that could cripple Hodges' plan. "He is introducing a plan that could have no black support when it comes to a Senate vote," Jackson said, predicting senators might not want to sign on if they think public opposition will continue.

The Assembly of African American Leaders, the group that initiated the King Day at the Dome Rally last month, came out against the new plan on Sunday.

The group "believes that the Confederate flag should be removed from the State House dome, out of the Senate and House Chambers, and off the State House grounds," it said in a statement.

Land called the plan bold and wonderful, and said a majority of the Senate supports it. But, he cautioned, the plan could die on the Senate floor if fewer than 29 senators support it.

Any fewer would leave room for a possible filibuster, in which debate is intentionally drawn out until the bill dies, he said.

"We're close, but we just don't know yet," Land said. "How quickly it will pass the Senate depends on how hard we're willing to fight."

Said Hayes, "I think the plan is a very positive step forward. It moves the flag to a place of honor ... in a historically appropriate place."

Putting components of the Heritage Act into any final plan is critical to getting lawmakers' support, Land said.

Many want guarantees that should the flag be removed, it will not trigger a "domino effect" in which historical Confederate reminders are stripped from public places.

"They want to pry the plaques off the wall in Texas," Gregory said.

"We need to have an agreement between all parties that this thing will be put to rest, once and for all."

MONK

FROM PAGE A1

"We want finality to this issue," said McConnell, stressing that any solution must include protection for Confederate names like Lee County, named for Gen. Robert E. Lee.

Previously, the support of all six senators in the group was believed essential for any bill to pass the Senate. The six senators represent all major sides. Five of the six are open to compromise; only McConnell isn't.

So, for weeks, negotiations have been stalled. Hodges has played the role of moderator-therapist, trying to get parties to talk their way to an agreement.

Last week, with no agreement in sight, McConnell quietly moved to draft a bill to lower the flag, but keep it in a highly visible position. On Friday, Hodges' lieutenants contacted insiders saying the governor will announce his own bill to take the flag down and put it at a low-profile site.

Bill filing will take the flag issue to the highly public forum of the Senate floor. Officials had hoped that if the six-senator group, with its extremes, could find a solution, then the 46-member Senate would quickly ratify it.

And if the Senate were to approve a proposal with broad support, that would influence the 124-member House. Both chambers must approve any solution.

Late last week, McConnell signaled a small shift in position.

He now is willing, he said in an interview, to fly the flag of a black S.C. unit of Union soldiers, along with the Confederate battle flag, at the Confederate Soldier's Monument in front of the State House. This S.C. black unit saw action against white rebels.

"They answered the call to a different drummer," McConnell said, saying this would demonstrate respect for the different sides.

Previously, McConnell backed only two options: keep the flag on the State House dome, or place it at the highly visible Confederate Soldier's Monument in front of the capitol.

Locating it elsewhere "would be a surrender of the flag, that would be shameful," he said.

McConnell's two sites — one implies sovereignty, the other is very visible — are unacceptable to the NAACP, which on Jan. 1 instituted a nationwide tourism boycott against South Carolina until the flag comes down.

Land

'Dead in it.' Of all the senators, McConnell is the one you don't want to fight.

Since being elected in 1980, he's challenged and often beaten major S.C. institutions, from the former Old Guard of senior senators to the University of South Carolina, when he demanded ex-president Jim Holderman open financial records.

Quick on his feet, McConnell is a dramatic speaker. A master of procedure, he hamstrings opponents with rules. He's so effective as a negotiator that Sen. President Pro Tem **John Drummond**, a Democrat, often puts McConnell on joint House-Senate committees to forge compromises.

McConnell is a bachelor who devotes huge amounts of time to issues. The Senate is one of his life's great passions.

Another: The Confederacy. Several weekends a year, he dresses in rebel soldier garb, grabs a replica Enfield rifle and fights mock war. This month, he will fight in Aiken in a replay of Gen. William Sherman's march through South Carolina.

"When you re-enact, it's like you are there and living in it," said McConnell, who has given up most of his law practice for his Confederate-related activities.

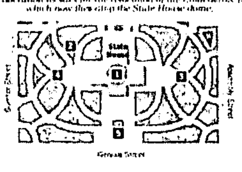
At McConnell's CSA Galleries, in a large mall off Interstate 26 just north of Charleston, shelves are stocked with Civil War and Southern memorabilia.

Products include Confederate trinkets, bumper stickers saying "Lest We Forget, The Civil War, America's Holocaust" and $5.50 rolls of toilet paper with pictures of Sherman and the inscription, "Still wipin' up the South."

But the bulk of his 8,400 square-foot store is devoted to what McConnell calls "high-end collectibles," including fine pewter Civil War statues and limited edition prints with prices up to $4,000. These prints depict Confederate soldiers as noble heroes, faces lit with bravery and valor. McConnell also has pictures of black soldiers and Yankees in the same romantic style. McConnell's favorite: a bloodied young rebel, wrapped in a bullet-torn Confederate flag.

New sites proposed for the Confederate flag

These locations on the State House grounds are currently under consideration as sites for the relocation of the Confederate flag which now flies atop the State House dome.



1 Flag's current location on the State House dome.
2 Wade Hampton statue, Gov. Jim Hodges is expected to favor this site.
3 Preferred site of Sen. David Thomas for a $3 million Confederate memorial.
4 Circle of flags of the Confederacy, proposed by Mayor Bob Coble of Columbia and Mayor Joe Riley of Charleston.
5 Confederate Soldier Monument, which is McConnell's alternate site for the Confederate flag and other flags.

ROB WEIGAND/THE STATE

People who know him say principle motivates him. McConnell doesn't care about polls; he doesn't seek higher office.

McConnell became interested in the Confederacy in the mid-'80s, when he learned state bureaucrats refused to let the remains of an unknown S.C. rebel soldier lie in state in the State House. The body was dug up at a Virginia condo parking lot.

"That really bothered me. His government sent him off to death and wouldn't receive his remains," McConnell.

That experience launched him into a study of Confederate issues. He now has followers statewide who look to him to defend the flag.

'My man of honor.' The group's second pro-flag senator is **John Courson**, R-Richland. He is as passionate about the 1860s as McConnell. Courson studies Civil War military tactics; he walks old battlefields; he can weep when thinking of sacrifices S.C. soldiers made. His hero is Lee.

"He is my man of honor, for two reasons," said Courson, 55. "First, his military tactics are still studied around the world. Second, he could have waged guerrilla warfare for another five years. Robert E. Lee, as much as Abraham Lincoln, preserved the Union."

Every morning as Courson walks downstairs at home, he sees Lee's portrait. In his garage, as he starts his car, he sees another Lee portrait. In his office, flanked by a Confederate battle flag, there is a Lee bust.

Courson has two conditions for the flag dispute: that it be settled with "finality" and "honor." Finality means no more arguing over the flag's position or other Civil War issues. Honor means nobody steals the flag.

Courson wants the flag at the Soldier's Monument. He does not want it on the dome because it is not a sovereign flag. But he would keep it there if it can't fly at the Soldier's Monument.

In an interview last week before Hodges' proposal became known, Courson indicated he was open to flying the flag at the Wade Hampton monument at the rear of the State House — if his principles of "honor" and "finality" are met. Hampton, an S.C. general and postwar hero to whites, fought under Lee with the Confederate battle flag. That flag is a smaller, square version of the flag now atop the dome.

Hayes

But short term, Courson is unlikely to break with McConnell, who calls the Hampton site "down in the gully."

'What the flag means to me.' Opposing McConnell and Courson are two black senators who are lifelong NAACP members — **Kay Patterson**, D-Richland, and **John Matthews**, D-Orangeburg.

"When I was young, in Bowman, my father ran a barber shop. In the summer, the KKK would come to town and march. The thing I remember is those white hoods and the Confederate flag," said Matthews, 70.

Matthews grew up in the 1930s and 1940s, in S.C.'s white supremacist era, when white officials fought to keep blacks in inferior schools and segregate them in public places.

"The last time I ever saw a grown man cry was when whites cut off the credit of a black farmer they found was a NAACP member," Matthews said.

Patterson, 69, grew up in Sumter. He remembers watching white politicians brag to crowds at the county courthouse how tough they could be on blacks.

"They try to 'out-nigger' each other," said Patterson, remembering Confederate flags in the crowds. "They didn't give a damn about black people, how we felt."

It wasn't unusual for white supremacists to kill or beat blacks they didn't like, Patterson said. "That's what the flag means to us who lived back during that time."

Since 1975, when he arrived in the S.C. House, Patterson has made speech after speech to take the flag down.

"I would get on the floor and start raising hell and yelling at the top of my voice. That stuff would go all over the world, but it didn't get the flag down," said Patterson.

Lately, he's toned down his rhetoric.

The group's fifth senator is **John Land**, D-Clarendon, 80. From a mostly black district, he wants the flag down. He'll support Hodges' proposal.

The sixth senator is **Wes Hayes**, 47, R-York. Open to compromise, he wants the flag in a place of honor. But he said, "A lot of lawmakers will find it difficult to get too far from McConnell."

Continuing the war. Other dynamics are contributing to the gridlock over the flag:

- This is an election year; the 170 lawmakers — especially whites, who are in the majority — don't want to offend voters.
- The NAACP boycott antagonizes many whites, who don't consider themselves racists but revere the flag. It also irks the Palmetto State's sense of fierce independence that was, in part, responsible for secession in 1860.
- Middle-of-the-road proposals are losing ground. After Sen. **David Thomas**, R-Greenville, proposed a wall for the Confederate dead, he was picketed by a Sons of Confederate Veterans group. Their signs compared Thomas to Hitler. A proposal by Mayor **Bob Coble** of Columbia and Mayor **Joe Riley**, for a circle of flags, has fallen flat.

McConnell wants things kept simple. His supporters just want the flag on the dome or the Soldier's Monument, he said.

Drummond, the Senate leader who appointed the six-senator group, said like nearly all white Southerners, he loves the Confederate flag. But understanding blacks' views is crucial, he said.

Since World War II, the flag often was used by whites to harass blacks, he said. After the Civil War, whites put up seven Confederate memorials on State House grounds, he added. None had a Confederate flag.

"That tells me they wanted to honor those men, but they didn't want to continue the war," said Drummond.

McConnell, standing at his store next to his favorite picture of the bloodied rebel, said if the flag goes to a low-profile site, that's an admission it is a shameful and racist symbol. And yes, he knows some call him an obstructionist.

"That doesn't bother me. That means I keep them from getting what they want," he said.

John Monk is The State's news columnist. He can be reached at 803-771-8464 or P.O. Box 1333, Columbia, SC 29202. His e-mail is jmonk@thestate.com

Exhibit E

CONTINUED FROM PAGE A1

FLAG

FROM PAGE A1

In a meeting in Matthews' Senate office late Tuesday afternoon, NAACP officials told the Senate's seven African-American members that they might consider a proposal to display two Confederate flags in a granite and glass case behind the Confederate soldier monument at Main and Gervais streets. The plan would be better, they said, if it included a Union flag carried by black South Carolinians.

Under that proposal, which had been offered by Courson and Sen. Darrell Jackson, D-Richland, two authentic flags of the Confederacy would be displayed inside the building. NAACP officials had told Matthews — who relayed the message to the other senators — that one of the black regimental flags should be part of the display.

Matthews wouldn't discuss what happened in the meeting, saying his conversations with NAACP officials were confidential. Efforts to reach NAACP representatives were unsuccessful Friday, but details of events came from descriptions provided by other senators.

During the same meeting, NAACP leaders examined a miniature clay model of "healing waters," a proposed sculpture that some senators wanted to combine with a "circle of flags." But they said that plan — a combination of proposals offered by Sens. Glenn McConnell, R-Charleston, and Maggie Glover, D-Florence — contained too many statues of Civil War soldiers and too many flags.

"It just seemed too theme-parkish and to me it kind of defaced our state Capitol," said Jackson, who also opposed the plan.

After NAACP officials left, the conversation continued in a conference room in the Gressette Building. Moore picked up a piece of legal-sized paper used in the model for the sculpture — "I peeled up a piece of the sidewalk," he said — and used it to count votes for the various proposals.

"I think that's when some senators started to realize that we really had two options that we could leave there with," Jackson said. "One was the status quo, which would leave us with three flags. ... Or we could cut a deal where we could work out a compromise that involved one Confederate flag anywhere on, or around the state Capitol. And so we began to look at that."

Gradually, the conversation returned to the plan for encasing the flags. But Jackson, an African-American who aligned himself with the NAACP throughout the debate, left the State House thinking the votes weren't there to make it happen. A pastor at Bible Way Church on Atlas Road, he presided over a service that evening.

"I said from my pulpit that there may be a decision tomorrow that we're going to make on the flag that may not be popular," Jackson recalled. "And you may not like it, but I want you to know that I'm doing what I think is best for the people."

Members of his church responded with an ovation, he said.

Meanwhile, around 9 p.m., the five Senate leaders, joined by Senate Clerk Frank Caggiano, walked over to the State House in search of a suitable place to hang one of the black regimental banners.

They were standing inside the door of the second-floor lobby, with the Confederate soldier monument visible through the window, when Drummond spoke. "He said he was tired of all these new flags," Land said. "He said what we're trying to do is eliminate a flag."

Courson, a defender of Southern heritage who has worked to forge a compromise, suggested as they stood there that the way to build consensus on the issue was to return to the terms of the 1994 Heritage Act, which passed the Senate but not the House.

Earlier in the day, he and McConnell had said they might be able to live with a narrower version of the act, a single battle flag on the monument, with additional protections for Confederate street names and monuments all over the state.

Moore said that might be the only plan that could pass. Matthews balked and said the NAACP would be opposed to it, but he agreed to talk with them.

The next morning, all seven black members of the Senate met in Land's office. They all agreed that the only proposal with enough votes to pass was the plan for a single flag.

"In this business, after being down here for 26 years, you have to know when to hold them and when to fold them," Sen. Kay Patterson, D-Richland, explained later. "This is folding time. This is the best you're going to get out of this South Carolina Senate. You're going to catch hell getting this through the South Carolina House."

Jackson huddled with NAACP leaders to inform them of his decision. He later said the choice was between fighting a bloody battle that might not end this year and bringing an end to an issue that has torn the state apart.

Jackson said Land and Drummond told the black senators that they would not have supported the plan without them. "If we said no, they would not have done it," Jackson said. "Land would not have done it, and Drummond would not have gone against us on that."

Shortly before the Senate convened, Moore told McConnell that the votes were there to pass the bill. McConnell, surprised, passed the news to Sen. Arthur Ravenel, R-Charleston, an ally in defense of the flag.

"He said, 'Something happened over there,'" Ravenel recalled. "He said, 'They've caved in on it.'"

Before the flag debate began, several senators met in Drummond's office on the second floor to hammer out final details of the agreement. When concerns were raised about the height of the flag, Ravenel suggested it be placed no higher than 20 feet.

That was done to satisfy black senators' insistence that the flag not be taller than the monument, which stands 23 feet tall.

At the end of that meeting, Land pulled Ravenel aside and asked him to apologize publicly for calling the NAACP the "National Association for Retarded People" in a speech earlier this year. Land said it would send a strong message of conciliation, and give the compromise momentum going into the House.

Ravenel refused, although Jackson — who had demanded such an apology on the first day of this year's session — said Ravenel made a conciliatory gesture. But neither senator would say what that was.

When the votes were taken around 4 p.m. Wednesday, six of the seven black senators voted yes. Glover, in tears, did not vote at all.

Drummond said the courage of the black senators was the key to passing the measure — though it might have helped that only two of the seven face opposition in campaigns for reelection this year.

But McConnell, a fierce defender of the flag who held his ground at the soldier monument, also praised the black legislators.

"Folks on our side need to understand, those African-American senators in the Senate who took that vote and voted to transfer the flags to the monument did so without the blessings of the NAACP, and really with great courage, and with a great sense of responsibility to try to settle this matter once and for all," McConnell said.

Matthews, who at 59 is a soft-spoken leader in the Senate, described his vote for the compromise as "probably the most difficult vote I ever cast."

"But that's what you're there for," he added. "I think at some point you've got to make a decision. We've been dealing with this issue for 26 years."

After the Senate adjourned, many members gathered in the center of the chamber, congratulating each other with hugs and handshakes. Courson's eyes were moist.

Other senators did not stay around for the celebration.

"I got in my car and drove around for an hour," Jackson said, "and then went home."

Reach Joseph S. Stroud at (803) 771-8475 or jstroud@thestate.com.

Exhibit F

Built upon history

While the heritage bill before the House would "protect" the names of more than 200 Confederate era memorials, those memorials are a focal point of the legislative debate. A 1997 history document cited 311 monuments to the Confederacy in South Carolina.

Among the most honored was Wade Hampton III, the Confederate general who went on to become governor of South Carolina and a U.S. senator. Several S.C. counties, streets, parks and buildings have names honoring the Confederacy. Here are just a few.

COUNTIES

- **Hampton County** — Named for the Confederate general from South Carolina
- **Lee County** — Named for Robert E. Lee, commander of the Confederate Army of Northern Virginia

STREETS

- **Confederate Avenue** — Columbia
- **Hampton Street** — Columbia, named for the Confederate general
- **Wade Hampton Boulevard** — Greenville, also named for the Confederate general

PARK

- **Maxcy Gregg Park** — Columbia, named for the Confederate general mortally wounded at Fredericksburg, Va.

SCHOOLS OR FACILITIES

- **Wade Hampton High** — Hampton County
- **Wade Hampton High** — Greenville
- **Wade Hampton Building** — State House complex

NAMES

FROM PAGE A1

its political subdivisions, may be moved, removed or altered.

- No street, bridge, structure, preserve, reserve or other public area of the state or any of its subdivisions dedicated in memory of or named for any historic figure or event may be renamed or rededicated.

The bill goes on to state that a two-thirds vote of the General Assembly is required to make a name change otherwise banned by the legislation.

Jim Daniel, a member of the Hampton Town Council, said he doesn't see the need for the General Assembly to go to this extent to control local names.

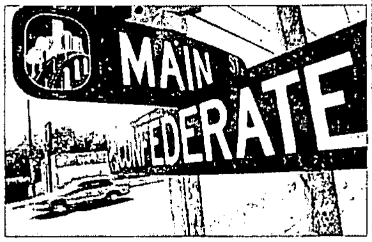
"I think that's a decision we should make locally," said Daniel, who also is news director of radio station WBHC in Hampton.

Hampton, of course, is in Hampton County, named in 1879 for Wade Hampton, the former governor and Confederate general whose name and likeness is also all over Columbia, including streets, subdivisions and a statue on the State House grounds.

Daniel said the subject of changing the Hampton name was put on a talk radio show just to air the topic out.

"You can imagine, we got some pretty strong opinions against that," he said.

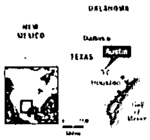
[illegible]



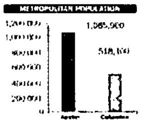
A section of the Senate-passed heritage bill that would move the Confederate flag off the State House dome also prevents local governments from changing the names of streets, bridges, and other public facilities with historic names, including Confederate Avenue in Columbia.

How Austin, Columbia compare

Here's a look at some key comparisons between the cities of Austin and Columbia.



METROPOLITAN POPULATION



AREA [illegible]

TAXES

Austin:	Columbia:
[illegible]	[illegible]
• Sales tax is 8.25%	• Sales tax is 5%

AVERAGE HOME PRICE

Austin:	Columbia:
• $148,065	• $122,244

AUSTIN

FROM PAGE A1

SCE&G Chairman Jack Shields, Richland County Council Chairwoman Kit Smith and Lexington County Council Chairman Johnny Jeffcoat.

While much of the trip will involve fact finding, the high-profile, high-level summit will be an opportunity for the area's leaders to work on some of the area's most thorny challenges.

Among them:

- **A convention center.** Columbia, Richland County and Lexington County are embarking on a project to build a $20 million to $30 million, approximately 170,000-square-foot regional convention center on Lincoln Street in the Vista.

Land for the project already has been purchased — the same $4 million tract that will be home to the University of South Carolina's new $70 million basketball and minor league hockey arena.

Mayor Bob Coble, a main proponent of the facility, said he hopes to use the trip to both learn from Austin's successful center and lay the groundwork for a financial deal with the two counties to pay for it.

[illegible]

> "You can always learn from the mistakes they made and the successes they've had."
> — Columbia Mayor Bob Coble

by hiring a firm, forming a convention center authority or a combination.

The Austin Convention Center is a 411,000-square-foot facility that covers four city blocks. An expansion is under way that would double the size of the center.

Despite the size differences, Columbia officials said they hope to get a blueprint for developing and marketing a convention center.

"Everything is bigger in Texas," Coble said. "But you can always learn from the mistakes they made and the successes they've had."

- **Fostering city-university partnership.** The city of Austin and the state of Texas have partnered with the University of Texas to [illegible]

[illegible]

Palms said.

So with help from state government, UT was positioned to assist the city when Austin made its move into the high-tech market, he said.

"The state poured in seed money (to the university) early," Palms said. "We don't have anything like that in South Carolina.

"But business working hand in hand with state government can make that happen."

- **Developing public transportation.** Austin's public transportation system is one of the best in the country, Columbia's isn't.

SCE&G owns the bus system here under a century-old court decision linked to the company's monopoly on electric and gas service.

Columbia officials are negotiating with SCE&G to take over the system. The city is also taking a lead role in forming a regional transportation authority that would oversee and likely expand service.

Midlands officials said they hope to learn valuable lessons from Austin's system.

"A lot of people cooperate to make that a good system," said Jim Papadea, a Columbia City Council member who [illegible]

[illegible]

MOORE

FROM PAGE A1

[illegible]

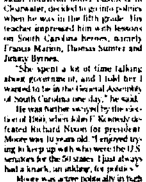


Exhibit G

IN THE AFTERMATH OF CHARLOTTESVILLE

S.C. Confederate monuments in spotlight

Some local leaders say it's time to end Heritage Act limits

NATHANIEL CARY
NCARY@GREENVILLENEWS.COM

Tucked away behind a stand of trees that line Main Street in Greenville, the Greenville County Confederate Monument stands nearly invisible to passers-by on the street.

The monument is of a Confederate soldier holding a rifle. It bears an inscription on three sides, a poem to the dead soldiers in a land where the white flag is never waved.

On its south side, the poem reads;

All lost, but by the graves
Where martyred heroes rest
He wins the most who honor saves
Success is not the test
The world shall yet decide
In truth's clear far off light
That the soldiers
Who wore the gray and died
With Lee, were right.

The monument's location hasn't always been so quiet.

It was built in 1892 by the Ladies Memorial Association of Greenville County. It was placed in the middle of Main Street during a period in the state's history when Pitchfork Ben Tillman was governor and the state's Legislature passed Jim Crow laws that oppressed and disenfranchised the state's African-American population for decades.

When the automobile came to Greenville, the city council decided to move it from the middle of the street, citing it as a safety hazard, according to historical records and "A Guide to Confederate Monuments in South Carolina: 'Passing the Silent Cup'" by Robert S. Seigler.

So in 1924, it was moved to its current location, just outside the gates to Springwood Cemetery, where it stands accompanied by two cannons.

Another monument was added nearby in 1935, this one to Robert E. Lee, the Confederate general, and other markers were later added, one to mark a Confederate Armory and another — erected in 1961 by Greenville County Confederate Centennial Commission — honored the five men from Greenville County who signed the state's Ordinance of Secession, "Dedicated in reverence and admiration for their courage and integrity."

Lillian Brock Flemming, a member of Greenville City Council who volunteered with the local chapter of the NAACP during the era of desegregation and whose husband, J.M. Flemming, is the current chapter president, remembers exactly when she first found out about the monument.

It was 23 years ago. Her son, J.M. Flemming II, was working on a school project and needed to find a historical marker. Flemming drove him to the cemetery where they walked around and he found the Confederate monument, she said.

"I was in shock," Flemming said. "I had no knowledge that that thing was up there."

Now, as cities across the South wrestle with whether to take down Confederate monuments, most recently in response to tragic events in Charlottesville, Virginia, last weekend that left three people dead, some in South Carolina have called for changes to the Heritage Act, the state law that requires a two-thirds vote from the General Assembly to change or remove a monument or rename a school or street named after a historical figure.

Flemming said she's spoken privately about the Confederate monument in Greenville before, but never publicly.

"This is South Carolina," she said Wednesday, saying she'd be in favor of local control over decisions on whether to take down Confederate monuments.

In South Carolina, the Heritage Act, passed in 2000 as a compromise to remove the Confederate flag from the Statehouse dome, prevents municipalities, schools or other institutions from changing or removing monuments.

Some have tried, including The Citadel, which wanted to remove two Confederate battle flags from its chapel, and the city of Greenwood, which wanted to change the inscription on a plaque that designated those killed in World War II as "white" or "colored."

After the Confederate flag was removed from the Statehouse grounds in 2015 following the shooting deaths of nine worshipers by a white supremacist in Charleston, House Speaker Jay Lucas said he wouldn't entertain any further Heritage Act requests while speaker, a statement he reaffirmed this week.

Tuesday, the Charleston NAACP, the National Action Network and Rep. Wendell Gilliard, D-Charleston, called for the state to repeal or change the Heritage Act.

JEFFREY COLLINS/AP

A participant stood at attention on July 10 at a South Carolina Secessionist Party event at the monument to Confederate soldiers at the South Carolina Statehouse in Columbia. The group says it will raise the Confederate flag every year on that date to commemorate the day the flag was removed from the front lawn of the state capitol.

State Sen. Karl Allen said he hasn't been involved in those discussions but said he would ask his fellow legislators to listen to the majority of South Carolinians who he said don't believe the Confederate symbols represent them.

"I look at it as an inherited thing and what I'm learning from my colleagues and from the citizens of South Carolina is that there is not much pride in the inheritance of some of the things that are protected by the Heritage Act," Allen said. "So I foresee that there will be a growing amount of support for efforts, not only in South Carolina, but nationally, to scale back or repeal these symbols that a certain race or segment of society can no longer take pride in."

At issue is the future of hundreds of monuments, not to mention roads, bridges, streets or school buildings named after Confederate leaders or white supremacists in South Carolina.

Rep. Gary Clary, R-Clemson, an early supporter among House Republicans to take down the Confederate flag from the Statehouse, said he doesn't see a repeal to the Heritage Act being successful.

Clary said he's in favor of state control over decisions about monuments to maintain order after what he called chaos in other cities when local governments voted to remove monuments.

"I think we only have to look at Charlottesville and New Orleans and different places where they had the ability to do these things individually," he said. "Right, wrong or indifferent, the Heritage Act provides a certain level of control and more security in that the entire Legislature and the state is going to be making decisions on that rather than local decisions."

Rep. Chandra Dillard, D-Greenville, said she hadn't given much consideration to the issue prior to Charlottesville but would be willing to look at the issue if it came up.

In Greenville, at Towers East Apartments across the street from the Confederate monument, residents who sat on benches or walls along the sidewalk said they watched as a group of white men hoisting Confederate flags posed for pictures in front of the monument Aug. 13, the same day flag-bearing vehicles drove past a rally for peace and against hate that was held outside the Peace Center.

That bothered some of the residents, though most said they just ignore the monuments.

By late Wednesday afternoon, someone had scrawled on a piece of paper lying near the monument, "Take it down."

Another paper, taped to the monument itself sometime during the day, contained a quote by Robert E. Lee he penned in 1869 to a state senator about a proposed monument at Gettysburg, Pennsylvania. It read, "I think it wiser moreover not to keep open the sores of war but to follow the examples of those nations who endeavored to obliterate the marks of civil strife, to commit to oblivion the feelings engendered."

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy
Circuit Court Judge

CASE NO. 2022-CP-10-05123

BOARD OF FIELD OFFICERS
OF THE FOURTH BRIGADE,
MARK CALHOUN,
F. PRESTON WILSON,
ANDREW PICKENS CALHOUN ..... Appellants,

v.

MEMBERS OF CITY COUNCIL OF
THE CITY OF CHARLESTON,
SOUTH CAROLINA, et al ..... Respondents.

NOTICE OF APPEAL

Board of Field Officers of the Fourth Brigade, Mark Calhoun, F. Preston Wilson, and Andrew Pickens Calhoun appeal: (I) the Order granting Respondents' Motion to Dismiss in part (dated Jan 4, 2024), attached herewith as Exhibit "A"; and (II) the Form 4 Order Denying the Appellant's Motion to Reconsider (dated Feb 9, 2024), attached as Exhibit "B," both given by the Honorable Jennifer B McCoy, South Carolina Circuit Court Judge.

Respectfully submitted,

*Signature page follows

February 23, 2024

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy
Circuit Court Judge

CASE NO. 2022-CP-10-05123

BOARD OF FIELD OFFICERS
OF THE FOURTH BRIGADE,
MARK CALHOUN,
F. PRESTON WILSON,
ANDREW PICKENS CALHOUN ..... Appellants,

v.

MEMBERS OF CITY COUNCIL OF
THE CITY OF CHARLESTON,
SOUTH CAROLINA, et al ..... Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the ***Appellants' Notice of Appeal*** in the above referenced case has been served upon counsel of record by mailing a copy in an envelope properly addressed with postage prepaid on this day to the following, on the **23rd Day of February, 2024** or service via email if so indicated:

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VIA EMAIL

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Exhibit "A"

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2022-CP-10-05123
)	
Board of Field Officers of the Fourth)	
Brigade, Mark Calhoun, F. Preston Wilson,)	
and Andrew Pickens Calhoun,)	
)	
Petitioners,)	
)	
v.)	
)	
Members of City Council of The City of)	**ORDER**
Charleston, South Carolina, Caroline Parker,)	
Kevin Shealy, Jason Sakran, Robert M.)	
Mitchell, Karl L. Brady, Jr., Stephen)	
Bowden, Peter Shahid, Jr., Michael S.)	
Seekings, Perry K. Waring, William Dudley)	
Gregorie, and Ross A. Appel, and The City)	
Of Charleston, South Carolina, The)	
Honorable Alan Wilson, Attorney General)	
For the State of South Carolina, the)	
Honorable John Tecklenburg, Mayor of the)	
City of Charleston, South Carolina,)	
)	
Respondents.)	
)	

This matter came before the Court on September 6, 2023, on the City of Charleston Respondents' Motion to Dismiss. Present for the hearing were Petitioners' counsel, Bill Connor and Rob Varnado, as well as counsel for the City of Charleston Respondents, Armand Derfner, Jonathan Altman, Will Cook, Julia Copeland, and Katie Monoc. Memoranda were filed and incorporated into the record, and oral arguments were heard. After careful consideration of filings, submissions by the parties, oral argument, and the applicable law which governs this dispute, the Court hereby GRANTS IN PART the City of Charleston Respondents' Motion to Dismiss.

RELEVANT BACKGROUND

In the late 19th century, a private group known as the Ladies' Calhoun Monument Association erected a statute of former Vice President and U.S. Senator John C. Calhoun on a portion of Marion Square in the City of Charleston. The statue depicted Calhoun seated and included the numbers 1782 and 1850 (his birth and death dates) and the words "TRUTH JUSTICE AND THE CONSTITUTION." In 1898, having achieved its goal and preparing to disband, the Association presented the Monument to the City of Charleston, which thereafter maintained it in its Marion Square location for many years.

In 2020, the City of Charleston removed the statue after City Council voted to do so. Several members of the general public – three individuals and a fraternal organization – asked this Court to order the City to restore the statue. They allege in three causes of action that its removal violated the South Carolina Heritage Act as well as state charitable trust law, and that they as members of the general public are entitled to be the enforcers of the law. A Fourth Cause of Action relates to an agreement about the ultimate disposition of the statue.

The City and its officials (collectively, the City of Charleston Respondents) moved to dismiss the Petition. As set forth below, the Court GRANTS the Respondents' motion and dismisses all counts of the Petition as to the moving parties.

LEGAL STANDARD FOR MOTION TO DISMISS

In considering a motion to dismiss a complaint for failure to state a cause of action, the Court must base its ruling solely on the allegations set forth in the Complaint. *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010). If the facts and inferences drawn from the facts alleged in the Complaint, viewed in the light most favorable to the

Plaintiff, would entitle the Plaintiff to relief on any theory, then the Court must deny the motion. *Id.*

This case does not turn on any disputed facts but instead involves interpretation of South Carolina statutes, specifically, the Heritage Act, the Trust Code, and the Declaratory Judgment Act. Therefore, this case as to movants is ripe for resolution on Respondents' Motion to Dismiss. *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Off.*, 346 S.C. 158, 165, 551 S.E.2d 263, 267 (2001) (citing *Evans v. State,* 344 S.C. 60, 543 S.E.2d 547 (2001)).

I. PETITIONERS ARE NOT ENTITLED TO RELIEF UNDER THE HERITAGE ACT BECAUSE THE LAW CREATES NO PRIVATE RIGHT OF ACTION.

The Heritage Act provides for the "Protection of certain monuments and memorials" as follows:

> (A) No Revolutionary War, War of 1812, Mexican War, War Between the States, Spanish-American War, World War I, World War II, Korean War, Vietnam War, Persian Gulf War, Native American, or African-American History monuments or memorials erected on public property of the State or any of its political subdivisions may be relocated, removed, disturbed, or altered. No street, bridge, structure, park, preserve, reserve, or other public area of the State or any of its political subdivisions dedicated in memory of or named for any historic figure or historic event may be renamed or rededicated. No person may prevent the public body responsible for the monument or memorial from taking proper measures and exercising proper means for the protection, preservation, and care of these monuments, memorials, or nameplates.

S.C. Code Ann. § 10-1-165(A).

It contains no "private right of action," *i.e.,* no language authorizing a private citizen to bring an enforcement lawsuit.

It is fundamental law in South Carolina that when the General Assembly enacts a statute, especially one governing the conduct of government or public entities, private citizens are not

authorized to bring enforcement lawsuits unless the statute itself provides for such private lawsuits.

This principle has been forcefully stated many times:

> [Q]uestions of whether the legislature intended to create a private cause of action should be resolved by the language of the statute. 'When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party.' Generally, 'a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing civil liability.'

Kubic v. MERSCORP Holdings, Inc., 416 S.C. 161, 168, 785 S.E.2d 595, 599 (2016) (internal citations omitted).

The rule was repeated by our Court of Appeals in 2021 in *Ballard v. Newberry County*:

> Critically, nothing in the Public Records Act grants any interested party, however well-intentioned, the right to enforce the act by bringing a civil action.
>
> We agree with the circuit court that there is also no implied civil right to enforce these statutes. A bellwether case on implied causes of action is *Whitworth v. Fast Fare Markets of South Carolina, Inc.*, which explains "the general rule [] that a statute which does not purport to establish a civil liability, but merely makes [a] provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability." 289 S.C. 418, 420, 338 S.E.2d 155, 156 (1985) (quoting 73 Am. Jur. 2d, *Statutes* § 432 (1974)). A private right of action will "be implied only if the legislation was enacted for the special benefit of a private party." *Doe v. Marion*, 373 S.C. 390, 397, 645 S.E.2d 245, 248 (2007).

Ballard v. Newberry Cty., 432 S.C. at 531, 854 S.E.2d at 850-51.

The Court went on:

> No one appears to dispute that the Public Records Act was not enacted for anyone's particular benefit. There is also a virtually unbroken string of precedents refusing to recognize implied rights of action in statutes that—like the Public Records Act—describe the government's basic structure and operation.

This paragraph ended with a footnote listing no fewer than nine cases as authority:

> *Kubic v. MERSCORP Holdings, Inc.*, 416 S.C. 161, 785 S.E.2d 595 (2016); *Marion*, 373 S.C. 390, 645 S.E.2d 245; *Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 602 S.E.2d 51 (2004); *Camp v. Springs Mortg. Corp.*, 310 S.C. 514, 426

S.E.2d 304 (1993); *Citizens for Lee Cty., Inc. v. Lee Cty.*, 308 S.C. 23, 416 S.E.2d 641 (1992); *Dorman v. Aiken Commc'ns, Inc.*, 303 S.C. 63, 398 S.E.2d 687 (1990); *Whitworth*, 289 S.C. 418, 338 S.E.2d 155; *Patterson v. I.H. Servs., Inc.*, 295 S.C. 300, 368 S.E.2d 215 (Ct. App. 1988); *Herald Pub. Co. v. Barnwell*, 291 S.C. 4, 351 S.E.2d 878 (Ct. App. 1986).

432 S.C. at 531 n.1, 854 S.E.2d at 851 n.1. The rule against implying a private right of action in a statute was stated again recently in *Denson v. National Cas. Co.,* 439 S.C. 142, 886 S.E.2d 228 (2023).

In the case of the Heritage Act, it is clear how disruptive a private cause of action could be. There are thousands of monuments and memorials of every kind throughout the state, some of which are covered by the Heritage Act, but others of which are not. To allow any person or organization, no matter how well-intentioned, to sue the State or any city, county, school district or even an individual school, could (and would) wreak havoc and disrupt the orderly functioning of government and the carrying out of the public's business.

As noted in *Kubic v. MERSCORP*, the right to bring a private suit under a statute is even more restricted than the question of general standing in non-statutory cases because, in statutory cases, the legislature has written law that leaves no room for a court to disagree. *See Kubic v. MERSCORP Holdings, Inc.,* 416 S.C. at 167 n.2, 785 S.E.2d at 598 (2016).

Dismissing this case against the City of Charleston Respondents does not mean there is no remedy to enforce the Heritage Act. The Attorney General is empowered generally to enforce the Constitution and laws of South Carolina. He has taken an active role in matters involving the Heritage Act, issuing many Attorney General's Opinions for guidance to public officials and participating in lawsuits involving the Heritage Act. *E.g., Pinckney v. Peeler,* 434 S.C. 272, 277, 862 S.E.2d 906, 909 (2021). For all these reasons, Petitioners have no right to bring this action against the City of Charleston Respondents.

While the court's holding that there is no private right of action makes it unnecessary to decide whether removal of the statue violated the Act, the court notes that the first sentence of the Act (which prohibits removal or relocation) applies to war memorials, which the Calhoun statute is not; and the second sentence (which applies to streets, bridges, parks, structures, etc. named after persons (i.e. "Calhoun Street")) prohibits only renaming or rededication, which has not happened here. The Court also notes that when the statue was removed in 2020, the Attorney General issued an opinion that the City's action did not violate the Act.

II. PETITIONERS HAVE NO STANDING BASED ON CHARITABLE TRUST LAW.

Petitioners assert that the gift of the Calhoun monument from the Ladies' Calhoun Monument Association to the City created a charitable trust. Even assuming that the allegations of the Petition are sufficient to allege a charitable trust, Petitioners are not eligible to sue to enforce it.

For hundreds of years, the common law the statutes of this state have sharply restricted the persons who may invoke a court proceeding to enforce the terms of a charitable trust. The chief legal officer of a jurisdiction (typically the state Attorney General) plays that principal role, sometimes augmented by the settlor or trustee of the trust, and, rarely, by another person who can show a direct, unique interest. This rule has been stated many times, *e.g.*, "A person whose only interest is that interest held in common with other members of the public cannot compel the performance of a duty the charitable organization owes to the public" Am. Jur. 2d *Charities* § 130, at 126 (internal citations omitted).

The limitation is intended to protect trusts from needless litigation which could dissipate the assets of the charity at the unrestrained option of private citizens who might have only parochial

or personal motivations for suing the charity; at the same time, the list of those who do have standing adequately insures appropriate oversight.

The current law of South Carolina is contained in the South Carolina Trust Code, S.C. Code § 62-7-405(c): "The settlor of a charitable trust, the trustee, and the Attorney General, among others may maintain a proceeding to enforce the trust."

Petitioners argue that the words "among others" create a chain made of many links that somehow reach far enough to give them standing. Their argument is essentially that those two words open the door to broad new categories of people with standing, that one such new category is "beneficiaries" of a trust, that the "beneficiaries," of the Calhoun monument trust are "the people of South Carolina," (Pet., ¶ 67). More specifically, that since two of the petitioners (Preston Wilson and Mark Calhoun) are part of "the people of South Carolina" as residents of South Carolina, they have standing to bring this action.

The Court finds no basis for holding that S.C. Code § 62-7-405(c) was so radically transformed by the words "among others." Rather, the words are designed to promote the purpose of allowing suit by those in the named categories.[1] The words do not provide an excuse to abandon the limitation stated succinctly in our Code.

Significantly, the words "among others," only came into the South Carolina Code when our state adopted the Uniform Trust Code in 2005. The South Carolina Code contains Notes to

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[1] For example, those words could allow suit by someone who is realistically in the position of settlor or trustee but who for some technical reason or by scrivener's error was not formally designated as such. *See, e.g., Gassick, Trustee of the James A. Bellamy Trust and Personal representative of the Estate of James A. Bellamy v. University of Michigan Regents*, 330 Mich. App. 487, 948 N.E.2d 452 (2019). *See also* ALR Annot. "Who May Maintain Suit or Proceeding to Enforce or Administer Benevolent or Charitable Trust" 124 AKR 1237.

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the Uniform Trust Code and Notes to the South Carolina version, for Chapter 7 of Title 62 and for Section 62-7-405. Nowhere in any of these Notes does this court find the broad interpretation that Petitioners suggest.

Before South Carolina's adoption of the Uniform Trust Code, several sections of the South Carolina Code provided for the Attorney General to bring suits to enforce charitable trusts. South Carolina Code 62-7-501 through -507 did so, and they were merged into the present South Carolina version of the Uniform Trust Code.[2]

South Carolina caselaw is in accord. The definitive statement of the law was expressed by our Supreme Court in *Epworth Children's Home v. Beasley*, 365 S.C. 157, 616 S.E.2d 710 (2005). There, in litigation over possible termination of a charitable trust, the Attorney General entered an appearance and thereafter filed an appeal opposing termination of the trust. In an opinion

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[2] The Trust Code is consistent with South Carolina's general standing doctrines. South Carolina's basic requirement (and there are others) is that the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is concrete and particularized. The injury must be of "a personal nature to the party laying claim to standing and not merely of general interest common to all members of the public." *Sea Pines Ass'n for the Protection of Wildlife, Inc. v. S.C. Dep't of Natural Resources*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001). Here, the Petitioners' claimed injuries do not meet this test. They allege that they "will be deprived of their enjoyment" of the Calhoun Monument and that Mark Calhoun has "an interest in preserving the historical memory of their ancestor." (Pet. ¶¶ 55, 76.) That does not meet the standing requirement under our law.

Nor does the doctrine of public importance standing provide any assistance to Petitioners. That doctrine, which has been invoked in certain rare instances by our Supreme Court, certainly would not be applied here where the statute itself restricts standing, where the Attorney General can and does exercise an active oversight role, and where the point of the Trust Code is to restrict standing (not open it wide).

upholding the Attorney General's position, the Supreme Court made clear that the Attorney General is the proper party in such a case:

> South Carolina Code Ann. § 1–7–130 (2005) provides that the "Attorney General shall enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration thereof and, when necessary, prosecute corporations which fail to make to the General Assembly any report or return required by law." Similarly, S.C. Code Ann. § 62–7–503 (1987) provides that the Attorney General shall, when necessary, bring an action to compel trustees to discharge duties imposed upon them by a charitable trust or comply with statutory provisions concerning the administration of charitable trusts. The Attorney General is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts. *Furman Univ. v. McLeod,* 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961).

Epworth Children's Home v. Beasley, 365 S.C. 157, 163 n.3, 616 S.E.2d 710, 713 n.3 (2005).

The prior case on which the *Epworth* decision relied, *Furman University v. McLeod*, is even more pointed and makes clear that others besides the Attorney General usually have no role in such a case:

> Daniel R. McLeod, as Attorney General of South Carolina, upon whom is imposed the responsibility of protecting the interests of the public in matters relating to the administration and enforcement of charitable trusts, has been named Defendant and has filed this answer herein. I find and hold that Daniel R. McLeod, as Attorney General, is the only proper and necessary party defendant to this proceeding. The language of the deeds requiring the maintenance of a school in or near Greenville creates, at most, a public trust. There are no private rights of reversion or reverter. Even if the language should be given that strict construction which the Attorney General advances it would create no private right of action in any individual citizen. The public interest is properly represented by the defendant.
>
> Under Title 1, Section 240 of the 1952 Code of Laws of South Carolina, the Attorney General of South Carolina is charged with the duty of "Enforce the due application of funds given or appropriated to public charities within the State, [and] prevent breaches of trust in the administration thereof."
>
> It is also the general law that in the matter of administering or enforcing charitable trusts, the Attorney General is the proper party to protect the interest of the members of the public at large, as distinct from those having "immediate or peculiar interests."

Id. at 482-83, 120 S.E.2d at 868. [3]

III. WRIT OF MANDAMUS AGAINST THE ATTORNEY GENERAL.

Count Two of the Petition seeks a writ of mandamus against the Attorney General. He is a named defendant but was not served and has not entered an appearance. As such, this claim is not yet ripe for dismissal at the request of Respondents and Respondents lack standing to pursue dismissal of that claim.

IV. PETITIONERS' FOURTH CAUSE OF ACTION IS A NON-JUSTICIABLE REQUEST FOR AN ADVISORY OPINION.

Finally, Petitioners seek a declaratory judgment affirming that the City has promised to give the Board of Field Officers a "right to he heard" as to the ultimate disposition of the Calhoun statute. There is no allegation that the City denies such an agreement or threatens to violate it. The few allegations all relate to speculation – not even current speculation, but speculation of the past. The Petition alleges that the City "previously threatened" to move the Calhoun statute out of state (Pet. ¶ 2) and that the City "had considered" such a move (Pet. ¶ 54). The threatened injury is likewise speculative: "If the City of Charleston in fact transfers" the statute out of state or out of the area (Pet. ¶ 55 and ¶ 56), local and state residents will lose the benefit of the statute and the state courts and Attorney General will lose jurisdiction over it.

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[3] There is one pre-Trust Code case that might at first glance seem to support expansive standing to sue; however, in fact, this case *does not* support such standing. *Grady v. City of Greenville*, 129 S.C. 89, 123 S.E. 494 (1924). That case, which upheld a city's relocation of a donated monument, had been brought by four surviving Confederate veterans. There, the court explained that it entertained the case "out of deference to the thin, and now almost vanished, 'gray line' of which these four plaintiffs are a worthy part," and emphasized that it was not rendering a decision about their standing to sue. *Id.* at 108, 123 S.E. at 501.

Words like "previously threatened," "had considered," and "if" (twice) do not allege a live, concrete dispute, do not create a justiciable case or controversy, and are not a sufficient basis for a declaratory judgment under S.C. Code § 15-53-10 *et seq.*

Rather, Petitioners seek an advisory opinion because no controversy presently exists, and their claim is not ripe for adjudication. Considerable South Carolina case law holds that a right to such relief is not conferred by the Declaratory Judgment statute, which requires a live controversy. For example, "to fall within the intended purpose and scope of the Declaratory Judgments Act, the parties must seek adjudication of a justiciable controversy." *Tourism Expenditure Review Comm. v. City of Myrtle Beach*, 403 S.C. 76, 81, 742 S.E.2d 371, 373-74 (2013) (citing *Sunset Cay, LLC, v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004)). "[I]t is fundamental that the Declaratory Judgments Act does not eliminate the case-or-controversy requirement." *Id.* at 82, 742 S.E.2d at 374. As a threshold matter, "the existence of an actual controversy is essential to jurisdiction to render a declaratory judgment." *Power v. McNair,* 255 S.C. 150, 153, 177 S.E.2d 551, 552 (1970). The same case also held:

> A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.

Id. at 154, 177 S.E.2d at 553. The Court concluded: "We simply refuse to enter the field of advisory opinions." *Id. at* 154-55, 177 S.E.2d at 553.

Similarly here, and as all these cases show, Petitioners' Fourth Cause of Action fails as a matter of law.

CONCLUSION

IT IS THEREFORE ORDERED that the City of Charleston Respondents' Motion to Dismiss be, and hereby is, GRANTED IN PART on the grounds set forth herein as to all claims

against the City of Charleston Respondents.

This 4th day of January, 2024.

Jennifer B. McCoy
South Carolina Circuit Court Judge

Charleston Common Pleas

Case Caption: Board Of Field Officers Of The Fourth Brigade , plaintiff, et al VS Members Of City Council Of The City Of Charleston South Car , defendant, et al

Case Number: 2022CP1005123

Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764

Exhibit "B"

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1005123

Board Of Field Officers Of The Fourth Brigade et al
PLAINTIFF(S)

Charleston South Carolina City Of The et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiff filed a Motion to Reconsider with this Court on January 12, 2024. The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits. Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 8/34, 842 (1992). A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Plaintiff's Motion to Reconsider is DENIED based on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401–402, 444 S.E.2d 534, 536 (Ct. App. 1994).

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/09/2024 .

Attorney General Of The State Of South Carolina

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Charleston Common Pleas

Case Caption: Board Of Field Officers Of The Fourth Brigade , plaintiff, et al VS Members Of City Council Of The City Of Charleston South Car , defendant, et al

Case Number: 2022CP1005123

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

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