BRIEF OF APPELLANT

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,
ANDREW PICKENS CALHOUN

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.

FINAL APELLANTS' BRIEF OF THE BOARD OF FIELD OFFICERS and F. PRESTON WILSON

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STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court ere holding that Appellants the Board of Field Officers and F. Preston Wilson are not among the class of persons who can enforce the Charitable Trust of the Calhoun Monument and therefore Appellants lacked standing to bring the Charitable Trust Act claim?

2. Did the Circuit Court commit an error of law by holding that the Heritage Act is not enforceable by private persons?

3. Did the Circuit Court commit error failing to address Appellant's petition for a Writ of Mandamus against the Respondent City of Charleston?

STATEMENT OF THE CASE

This matter comes before the Court of Appeals on Appellants' appeal of the January 4, 2024 Order of the Circuit Court denying appellants' standing to enforce the Heritage Act and to enforce a charitable trust.

Appellant the Board of Field Officers of the Fourth Brigade ("**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 these various names, the Board of Field Officers has been in continuous existence for nearly two hundred years. Since approximately 1834 it has owned and cared for the land commonly known as "Marion Square" in downtown Charleston, South Carolina.

Appellant 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. Mrs. Julia Conner was the mother of James Conner, who was then the father of Henry W. Conner, who was himself the father of

Adele Petigru Conner Simons, who then was the mother of Adele Wilson, who was in turn the mother of F. Preston Wilson. Through this line Appellant Wilson has inherited property and rights from Mrs. Conner.

The Board of Field Officers and F. Preston Wilson along with two other petitioners brought this case to address the violation of a charitable trust and the Heritage Act committed by the City of Charleston in removing, seizing, and secreting away the Calhoun Monument. The Board of Field Officers directly, and F. Preston Wilson through the actions of his ancestor, are settlors of the charitable trust. Further, they are individually harmed by the violation of the Heritage Act and seek to have the lawlessness of the City of Charleston redressed to enforce the legal obligations of the city and right the harm done.

STANDARD OF REVIEW

> "In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). A 12(b)(6) motion should not be granted if 'facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.' *Id*. The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). Further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Id*."

Plyler v. Burns, 647 S.E.2d 188, 192, 373 S.C. 637 (S.C. 2007). "In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief." *Brazell v. Windsor*, 682 S.E.2d 824, 826, 384 S.C. 512 (S.C. 2009).

> "A motion to dismiss for lack of standing challenges the court's subject matter jurisdiction. See *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). **Whether subject matter jurisdiction exists is a question of law, which this Court is free to decide with no particular deference to the circuit court.** *Id*. (quoting *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631, 631 (Ct. App. 1993)); *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). **Therefore, on appeal, we review the circuit court's findings de novo**. See *Capital City*, 382 S.C. at 99, 674 S.E.2d at 528; *Catawba Indian Tribe*, 372 S.C. at 524, 642 S.E.2d at 753."

South Carolina Public Interest Foundation v. Wilson, 437 S.C. 334, 341, 878 S.E.2d 891 (S.C. 2022) (emphasis added).

FACTS

By 1880, through a series of deeds disclosed in the Complaint, the Board of Field Officers was the owner of the land commonly known as "Marion Square" in Charleston, South Carolina. 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.

As the ladies neared success in the raising of funds, they approached the Board of Field Officers and secured a small piece of Marion Square for use to erect the monument. In 1885, the Board of Field Officers granted to the Ladies' Calhoun Monument Association a thirty-six (36') by thirty-six (36') feet plot of land in Marion Square. The deed to the Ladies' Calhoun Monument Association was made "subject 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 Ladies Calhoun Monument association." Deed from Board of Field Officers to the Ladies Calhoun Monument Association, Sept. 17th, 1885, Deed Book D20, 467 (Charleston R.O.D.) (R. pp. 146 -149). Further, the Board of Field Officers retained a right of reversion if the trust was broken:

> "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**." (emphasis added).

(R. p. 24 ¶ 17) The Ladies' Calhoun Monument Association accepted this property as trustee under the trust created by the Board of Field Officers. The City of Charleston contemporaneously recognized that the Ladies Calhoun Monument Association held this land subject to the trust created by the Board of Field Officers. Deed from City of Charleston, S.C. to the Ladies Calhoun Monument Association, Oct. 16, 1885 (Charleston County R.O.D.) (R. p. 150 - 152) ("[T]he 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 be erected by 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."). Soon the Association raised sufficient

money to procure and erect the Calhoun Monument, which by the terms of the trust would stand in perpetuity upon the plot of land in Marion Square.

Having achieved their purpose, the Ladies' Calhoun Monument Association made arrangements in 1898 to disband the Association. The primary arrangement was appointing a suitable successor trustee to receive the trust created by the Board of Field Officers. The Association found such trustee in the City of Charleston and asked "the City Council of Charleston[] to receive from us this sacred trust." (R. p. 25 ¶ 23) (citing letter from Mrs. Joseph Blackman, corresponding secretary and Miss K.E. DeSaussure, recording secretary, Ladies' Calhoun Monument Association, to Hon. J. Adger Smith, Mayor of Charleston, (July 7, 1898).)The trust the Association transferred to the City was the same trust created by and received from the Board of Field Officers in 1885.

With the express and unanimous consent of the Mayor and the City Council, **the City did in fact accept the Calhoun Monument in such trust.** (R. p. 26 ¶ 24) "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." Res. of City of Charleston (Enacted July 18, 1898) (passed unanimously at a Special Meeting).

From 1898 to 2020, the City was a faithful steward of the trust placed in it by the Ladies' Calhoun Monument Association and the Board of Field Officers. However, in the summer of 2020, civil unrest visited the John C. Calhoun monument with vandalism against the statue and ensuing protests and demands it come down. The City Council shortly moved to break the trust and a vote was taken on June 23, 2020 to remove the monument. The actual removal took place within hours of the vote. 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 (in a warehouse on the peninsula) where it has remained since being removed.

The City, recognizing the violation of the terms of the trust and the reversion right in the deed, promptly deeded the 36’ x 36’ portion of Marion Square back to the Board of Field Officers. However, demands to return the Monument wrongfully taken from the land have been denied. This suit by the settlors of the trust to enforce the trust and recover the Monument follows.

ARGUMENTS

I. PETITIONERS WILSON AND THE BOARD OF FIELD OFFICERS ARE NOT MERE MEMBERS OF THE GENERAL PUBLIC IN RELATION TO THE CHARITABLE TRUST, AND AS PERSONS INTRICATELY LINKED TO THE SETTLING OF THE CHARITABLE TRUST HAVE STANDING TO ENFORCE THE TRUST.

The Circuit Court explains eloquently why members of the general public do not usually have standing to enforce the terms of a charitable trust. The Court even goes so far to assert that settlors and trustees only 'sometimes' have a role to play in enforcing a trust, despite the clear language of S.C. Code Ann. § 62-7-405(c) providing that "the settlor of a charitable trust [and] the trustee . . . may maintain a proceeding to enforce the trust."

The law is clear that settlors may maintain a proceeding to enforce a charitable trust. *Id.* The Circuit Court ignored Petitioners' assertions and arguments that Wilson and the Board of Field Officers are settlors of the trust who have statutory standing to maintain this action. Merely dismissing these two petitioners by lumping them in with 'the general public' violates the standard of review for a motion to dismiss which requires giving every doubt in favor of the non-moving party. It is also a gross misapplication of the law which explicitly recognizes standing of settlors.

a. THE BOARD OF FIELD OFFICERS IS A SETTLOR OF THE CHARITABLE TRUST UNDER WHICH THE CITY OF CHARLESTON POSSESSES THE CALHOUN MONUMENT.

By 1885 the Board of Field Officers was the owner in fee simple of Marion Square; the park in downtown Charleston which would become home to the Calhoun Monument later that year. (R. pp. 22- 23). The Ladies' Calhoun Monument Association, desiring a place to install

their monument where it could be viewed by the public, approached the Board of Field Officers and requested use of Marion Square. (R. pp. 23-24).

The Board of Field Officers deeded a portion of Marion Square to the Ladies' Calhoun Monument Association ***in trust*** "for the purpose of a site for the Calhoun Monument" with condition "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." (R. p. 24) (citing Deed from the Board of Field Officers to the Ladies Calhoun Monument Association, Sept. 17th, 1885, Deed Book D20, 467 (Charleston County R.O.D.).The Ladies' accepted this deed and trust necessarily becoming the trustees with the Board of Field Officers as the Settlors. The City of Charleston explicitly recognized that the Ladies' took this property "subject to the trust." Deed from the City of Charleston to the Ladies Calhoun Monument Association, Oct. 17, 1885, Deed Book D20, 469 (Charleston County R.O.D.).

Not twenty years later, the Ladies' Calhoun Monument Association, having achieved their purpose of erecting a monument to South Carolina's greatest son, turned over the responsibilities of trustee to the City of Charleston. (R. pp. 25-26) ("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.").

The City of Charleston, knowing this was a trust created by the Board of Field Officers, accepted this sacred trust and assumed responsibility as trustee. (R. p. 26) ("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.").

The City of Charleston, trustee, is in a direct relationship with the Board of Field Officers, settlor. The Board of Field Officers created a trust, in writing, for the charitable purpose of displaying a monument to Vice-President Calhoun. Deed from the Board of Field Officers to the Ladies Calhoun Monument Association, Sept. 17th, 1885, Deed Book D20, 467 (Charleston County R.O.D.) (R. pp. 146-149). The Ladies' Calhoun Monument Association accepted the position of trustee and improved upon the real property in trust by installing a permanent improvement in the Calhoun Monument. Once done, the Ladies' passed on the position of trustee to the City asking the city "**to receive from us this sacred trust**." The trust received and accepted by City was the trust created by the Board of Field Officers.

The City has patently recognized the obligations of the trust created by the deed and have quit claimed the subject property to the Board of Field Officers. When "the settlor retains an interest in the trust property, he can of course maintain a suit against the trustee to protect that interest." RESTATEMENT (SECOND) OF TRUSTS § 200 cmt. b (1959). The terms of the trust were violated the moment the City Council voted to remove the Calhoun Monument. At that time the deed to the trust "cease[d] . . . as though the deed had never been executed." (R. p. 24). The following removal, seizing, and holding of the Calhoun Monument by the City is a violation of the trust which the Board of Field Officers seeks to remedy through this suit.

As the settlor of the trust, S.C. Code Ann. § 62-7-405(c) clearly provides standing to the Board of Field Officers to enforce the trust. The City has provided no argument that said trust does not exist and nor could it at this stage because all well pled allegations are accepted as true.

Further, the City has explicitly acknowledged in recorded instrument that the trust exists. Deed from the City of Charleston to the Ladies Calhoun Monument Association, Oct. 17, 1885, Deed Book D20, 469 (Charleston County R.O.D.) (R. pp. 150-152). The Court erred in denying the Board of Field Officers, the settlor of the trust, standing to bring this suit to determine the extent of the trust and to enforce the same.

b. WILSON IS THE DIRECT DESCENDANT OF AN OFFICER OF THE UNINCORPORATED ASSOCIATION WHICH IS THE SETTLOR OF THE CHARITABLE TRUST UNDER WHICH THE CITY OF CHARLESTON POSSESS THE CALHOUN MONUMENT, AND THROUGH HIS ANCESTOR HE HAS INHERITED THE RIGHTS AND OBLIGATIONS OF THE SETTLOR.

The Board of Field Officers is not the only settlor in this case. Petitioner Wilson 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." (R. pp. 21-22 ¶. 5). As a descendant, he has inherited the property and rights of his ancestor.

"An unincorporated association is in no sense a legal entity and is not made so by the statute." *Medlin v. Ebenezer Methodist Church*, 132 S.C. 498, 502, 129 S.E. 830 (S.C. 1925). Thus the rights and obligations of such an association belong to the members individually. Our Supreme Court observed in *Bates v. Palmetto* that "[i]f there be a bequest to a[n unincorporated] society by that name, the individuals composing it, who may be identified by evidence, take as natural persons, in the same manner as if each had been particularly named; and that, if it be upon a lawful trust, they will be compelled to execute it." *Bates v. Palmetto Soc.*, 6 S.E. 327, 330 28 S.C. 476 (S.C. 1888). Likewise, if an unincorporated association is subject to a judgment, the judgment creditor may recover from the individual members of the

association. *Crocker v. Barr*, 409 S.E.2d 368, 305 S.C. 406, 409 (S.C. 1991) ("The South Carolina statute leaves the option open to allow for the recovery of a judgment against the individual members of the association."); S.C. Code Ann. § 15-35-170. And if an unincorporated association is sued, the suit is effectively against each member. *Elliott v. Greer Presbyterian Church*, 181 S.C. 84, 186 S.E. 651, 652 (S.C. 1936) ("When the complaint was served upon the [unincorporated association] by service upon [an officer], the result was that all who were members of the church at the time of the execution of the note became parties defendant."). Further, "[m]embers of such associations are all principals." *Hall v. Walters*, 226 S.C. 430, 85 S.E.2d 729, 732 (S.C. 1955).

In short, the rights and obligations of an unincorporated association are held individually by the members. This is especially true for officers of the association who take personal action to direct and contract on behalf of an organization. *Medlin v. Ebenezer Methodist Church*, 132 S.C. 498, 129 S.E. 830 (S.C. 1925) (Defendant, "an officer and member of the unincorporated association, having actively participated in the execution of the contract evidenced by the note, having in fact made it, became personally liable upon the contract.").

Wilson's ancestor was one of those officers and members of the unincorporated association which erected the Calhoun Monument, and thus she, as one of the individuals composing and directing the society, assumed the role as trustee when the Ladies' Calhoun Monument Association became a trustee. Likewise, when the unincorporated association passed the mantle of trustee to the City of Charleston with additional terms to "keep it as a priceless treasure" Wilson's ancestor became a co-Settlor of the trust originally settled by the Board of Field Officers. (R. p. 26 ¶ 24). Mrs. Conner held this position as co-trustee and co-Settlor

individually due to the fact the Ladies Calhoun Monument Association was unincorporated and thus all rights and obligations were held directly by its members.

As long as the charitable trust exists, the position of settlor remains in the creator of the trust. As noted above, the original creator of the trust is the Board of Field Officers. To the extent a new trust was created, or the trust was modified or added to, the Ladies' Calhoun Monument Association is a settlor, and by virtue of its composure, all of its members are settlors (and trustees). *Bates v. Palmetto Soc.*, 6 S.E. 327, 330 28 S.C. 476 (S.C. 1888); *Elliott v. Greer Presbyterian Church*, 181 S.C. 84, 186 S.E. 651, 652 (S.C. 1936). Thus Mrs. Conner was in the position of both trustee and settlor.

Mrs. Connor had a right to enforce the trust both as a settlor and as a trustee. Edward C. Halbach Jr., Standing To Enforce Trusts: Renewing and Expanding Professor Gaubatz's 1984 Discussion of Settlor Enforcement Gaubatz's 1984 Discussion of Settlor Enforcement, 62 U. Miami L. Rev. 4 (April, 2008) ("[I]t is appropriate to view any trustee as having standing for [enforcement] purposes" of charitable trusts.). Like any other intangible right or asset, the right to enforce the trust as settlor or trustee passes down to future generations as long as the trust exists to enforce. *All Saints Parish v. Episcopal Church*, 685 S.E.2d 163, 385 S.C. 428 (S.C. 2009) (describing how the lower court determined that the unknown heirs of the trustees named in 1745 still held legal title for property held in trust) (lower court overturned on other grounds); *See generally Obermeyer v. Bank of America*, N.A., 140 S.W.3d 18 (Mo. 2004) (allowing the settlor's heirs to bring suit to interpret the provisions of the charitable trust.). This inheritance of the settlor position is also necessary because the beneficiaries, being the public at large, do not have the same interest and incentive that beneficiaries of private trusts would have to enforce a

trust. Thus, recognizing an inherited right as settlor encourages accountability of the trustee to the purpose of the trust and therefore encourages future charitable trusts.

Wilson is one of a limited class of persons who, by virtue of his ancestor's actions and rights, is a settlor who may enforce the obligations of this charitable trust. The Court erred in not recognizing Wilson's unique position different from the general population of South Carolina at large, and Wilson has statutory standing to bring this suit to enforce the Charitable Trust. S.C. Code Ann. § 62-7-405(c).

c. THE CIRCUIT COURT'S INTERPRETATION OF S.C. CODE ANN. § 62-7-405(C) VIOLATES THE RULE AGAINST SURPLUSAGE BY FAILING TO PLACE ANY MEANING UPON THE WORDS "AMONG OTHERS."

The Circuit Court was challenged with interpreting the meaning of S.C. Code Ann. § 62-7-405(c) which provides that "[t]he settlor of a charitable trust, the trustee, and the Attorney General, among others may maintain a proceeding to enforce the trust." The Circuit Court erred in reading out of the statute the language "among others."

Verba cum effectu sunt accipienda. "A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995). Relegating the term "among others" "to promote the purpose of allowing suit by those in named categories" effectively makes their inclusion duplicative. This statutory construction does not allow.

In Section 405(c), the General Assembly recognized standing in four classes of persons: Settlors, trustee, the Attorney General, and "others." The "among others" must have a meaning beyond the other enumerated persons. The question is who are these "others" whom have standing?

Respondent has created a straw man of Appellant's argument claiming that beneficiaries alone cannot be "among others." Appellant's however are not mere beneficiaries and Respondents' assertions fall wide of the mark. "[M]odern authority, supported by leading treatises and by a large and growing body of cases and statutes recognizes that a person who has a 'special interest' in the performance of a charitable trust has standing to sue the trustee to prevent or remedy a breach of trust, or otherwise to enforce the trust." Edward C. Halbach Jr., Standing To Enforce Trusts: Renewing and Expanding Professor Gaubatz's 1984 Discussion of Settlor Enforcement Gaubatz's 1984 Discussion of Settlor Enforcement, 62 U. Miami L. Rev. 4 (April, 2008).

The Board of Field Officers and Wilson are persons with 'special interest'. Appellant Board of Field Officers is a settlor of the trust which provided the land, with a right of reversion, for the erection of the monument. It also owns the land which entirely surrounded the Monument and was responsible for providing ingress and egress to the Monument and assisting with the respectful display of the Monument and surrounding grounds. Adjacent landowners have been held to have special interest standing to enforce charitable trusts. *Grabowski v. City of Bristol*, 780 A.2d 953, 955 (Conn. App. Ct. 2001) (standing granted because, as owners of adjoining land, the individuals had interests greater than the public generally in the restricted use of the trust property). Appellant Wilson is a direct descendant of an officer of the unincorporated association which erected the Calhoun Monument, and he has inherited rights and responsibilities from that officer. *See generally Obermeyer v. Bank of America*, N.A., 140 S.W.3d 18 (Mo. 2004) (allowing the settlor's heirs to bring suit to interpret the provisions of the charitable trust.). Each Appellant is but one link off of the Ladies Calhoun Monument

Association.

Each Appellant asserts he stands in the shoes of the settlor of the charitable trust. But even if not a settlor "for some technical reason" the words "among others" allows these Appellants, intimately related to the trust in its creation and by its settlors, to bring suit to enforce the trust. This "special interest" standing is necessary to ensure adequate oversight of the charitable trust.

The Circuit Court rightly recognizes that charitable trusts should be subject to oversight, and the General Assembly has placed that responsibility for oversight with the settlor, the trustee, the Attorney General, and others. Of these identified persons, who is here to enforce the charitable trust of the Calhoun monument? Not the trustee for it has violated the terms of the trust secreting the Calhoun Monument away and out of sight for four years. The Attorney General? Yes, but he has refused to act.[1] Should those persons, as the circuit court alleges, be the end of the list in these circumstances?

> "Where a trustee of a public charitable trust is a governmental agency… [that] will not seek instructions of the court as to its duties …. and where . . . the attorney general as *parens patriae*, has actively joined in supporting the alleged breach of trust, **the citizens of this State would be left without protection, or a remedy, unless we hold, as we do, that members of the public, as beneficiaries of the trust, have standing to bring the matter to the attention of the court.** Were we to hold otherwise, the City … would be free to dispose… [of] the trust comprising Kapiolani Park…without the citizens of the City and State having any recourse to the courts. **Such a result is contrary to all principles of equity and shocking to the conscience of the court**.");

Kapiolani Park Pres. Soc'y v. City of Honolulu, 751 P.2d 1022, 1025 (Haw. 1988) (emphasis

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[1] Where there is generally a lack of enforcement by the public authorities, a "liberal rule as to standing . . . seems decidedly in the public interest." *City of Patterson v. Patterson Gen. Hosp*., 235 A.2d 487, 495 (N.J. Super. Ct. Ch. Div. 1967).
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added.). **Emphatically NO**. The General Assembly foresaw this very "conscience shocking" scenario, which would lead to the disposal of the trust, and provided for an additional class of persons to enforce the trust. "The administration of charitable trusts stands only to benefit if in addition to the Attorney General other suitable means of enforcement are available." *Holt v. Coll. of Osteopathic Physicians & Surgeons*, 394 P.2d 932, 935-36 (Cal. 1964) (citation and internal quotation marks omitted).

If the Court does not view Appellants as Settlors, then they should be recognized to have standing as persons with special interest. The Appellants come to the Court not as members of the public at large, but as the entity which donated, in trust, the land used to display the Calhoun Monument for over a century, maintained all the adjacent land to the monument, and the inheriting descendant of an officer of the unincorporated association which paid for and erected the Calhoun Monument. This is not a chain of many links. It is merely one link from the settlor to these Appellants. Thus these Appellants have a "special interest" intimately linked to the Ladies Calhoun Monument Association and are "among [the] others" which the General Assembly recognized as having authority to enforce the terms of a trust.

This right to enforce the charitable trust is an appropriate remedy in this unique situation the exercise of which will encourage future charitable trusts. Edward C. Halbach Jr., Standing To Enforce Trusts: Renewing and Expanding Professor Gaubatz's 1984 Discussion of Settlor Enforcement Gaubatz's 1984 Discussion of Settlor Enforcement, 62 U. Miami L. Rev. 4 (April, 2008). (In appropriate circumstances, however, a recognition of special-interest standing reflects society's interest not only in enhancing the enforcement of charitable trusts but also in honoring the reasonable expectations of settlors and the donor public. It is important in the balancing of

these considerations to take account of the inherent limitations of attorney-general enforcement, essentially, limitations of resources, information, and the constraints of other responsibilities, as well as conflicting duties and real-world influences."). Even had the Court determined that Appellant Wilson and the Board of Field Officers were not settlors, they should have been granted standing as specially interested parties included "among others."

II. THE CIRCUIT COURT INCORRECTLY DETERMINED THAT S. C. CODE ANN. § 10-1-165 ("THE HERITAGE ACT") CREATES NO PRIVATE RIGHT OF ACTION AND IS ONLY ENFORCEABLE BY THE ATTORNEY GENERAL.

Through the Heritage Act the General Assembly imposed an obligation upon local governments and state entities and set forth protections against relocating, removing, disturbing, altering, renaming or rededicating a variety of monuments, memorials and structures. S. C. Code Ann. § 10-1-165(A). While imposing a legal obligation upon local governments and state entities, and absolutely prohibiting a long list of actions without an authorizing bill from the General Assembly, the statute is scant on enforcement.

The statute clearly provides that "[n]o 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." *Id.* But who can force "the public body responsible for the monument or memorial [to] tak[e] proper measures and exercise[e] proper means for the protection, preservation, and care of these monuments, memorials, or nameplates?" Respondents assert that only the government can hold the government accountable!

This is not accurate. There is a means for citizens to force a government to perform its duty. Where an inferior government office refuses to do its job, citizens may seek a court order in the form of a writ of mandamus to compel the government office to do its job. *Milster v. City of Spartanburg*, 68 S.C. 26, 46 S.E. 539 (S.C. 1903) (finding that two taxpayers could bring a cause of action against the city to require issuance and collection of tax assessments). *Willimon v. City of Greenville*, 243 S.C. 82, 132 S.E.2d 169 (S.C. 1963) (upholding the issuance of a writ of mandamus "directing that the City of Greenville and its officers comply with Section 47-1327, Code of Laws of South Carolina, 1962.").

"The Primary purpose or function of a writ of mandamus is to enforce an established right, and to enforce a corresponding imperative duty created or imposed by law." *Willimon v. City of Greenville*, 243 S.C. 82, 132 S.E.2d 169, 170-71 (S.C. 1963). “The United States Supreme Court, in *Commissioners of Taxing District v. Loague*, 129 U.S. 493, 9 S.Ct. 327, 330, 32 L.Ed. 780, said this: ‘Mandamus lies to compel a party to do that which it is his duty to do without it. It confers no new authority, and the party to be coerced must have the power to perform the act.’” *Green v. West*, 161 S.C. 161, 163, 159 S.E. 23 (S.C. 1931). "Mandamus will issue only to compel a public official to perform a mandatory legal duty.” *City of Rock Hill v. Thompson*, 349 S.C. 197, 563 S.E.2d 101 (S.C. 2002) (citing *Redmond v. Lexington County School Dist. No. Four*, 314 S.C. 431, 445 S.E.2d 441 (1994))."

Here the General Assembly has placed a duty upon the City of Charleston. Namely to care for its monuments and memorials and not to relocate the same. S.C. Code Ann. § 10-1-165(A). The City of Charleston has failed to follow that duty. Appellants seek to force the City to follow the law and perform their duty. This is the very essence of a mandamus: “to compel a

party to do that which is his duty to do without it." *Commissioners of Taxing District v. Loague*, 129 U.S. 493, 9 S.Ct. 327, 330, 32 L.Ed. 780.

Respondents have casted their standing argument as one against a private cause of action, but they have missed a key difference. Appellants do not seek monetary damages for the City of Charleston's failure to follow the law, they seek to force the City of Charleston to follow the law (and the charitable trust) and re-erect Calhoun to his place of honor. This is a core remedy for a writ of mandamus, and the Circuit Court failed to even address the action for a writ of mandamus against the Respondents.

Given that Appellants are seeking nothing more than to have the City of Charleston perform its duty as required by the General Assembly a writ of mandamus is appropriate. As the Respondents' failure to do their duty harms the public at large and places other monuments, many of great artistic work, in the City of Charleston at risk, standing should be granted under the public importance doctrine.

> "[The SC Supreme] Court has consistently acknowledged that even without an allegation of particularized injury, "standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance." *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004); see *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013); *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008); *Baird v. Charleston Cnty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999); *Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741-42 (2007); *S.C. Pub. Interest Found. v. S.C. Dep't of Transp. (SCDOT*), 421 S.C. 110, 118-19, 804 S.E.2d 854, 859 (2017).
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> "The key to the public importance analysis is whether a resolution is needed for future guidance." *ATC S., 380 S.C.* at 199, 669 S.E.2d at 341; see *SCDOT*, 421 S.C. at 119, 804 S.E.2d at 859; *Vicary v. Town of Awendaw*, 425 S.C. 350, 359, 822 S.E.2d 600, 604 (2018). Courts must cautiously balance competing interests—the citizenry's need to hold public officials accountable for alleged injustices and "the concomitant integrity of government action"—to determine whether the issue presented is 'inextricably connected to the public need for

> court resolution for future guidance.' *SCDOT*, 421 S.C. at 118-19, 804 S.E.2d at 858 (quoting *Sloan v. Greenville Cnty*., 356 S.C. 531, 551, 590 S.E.2d 338, 349 (Ct. App. 2003)); *ATC S.*, 380 S.C. at 199, 669 S.E.2d at 341; see *Sanford*, 357 S.C. at 434, 593 S.E.2d at 472. Only then can the issue 'transcend[ ] a purely private matter and rise[ ] to the level of public importance.' *ATC S*., 380 S.C. at 199, 669 S.E.2d at 341."

South Carolina Public Interest Foundation v. Wilson, 437 S.C. 334, 341-42 878 S.E.2d 891 (S.C. 2022). Further, since the City has wholly failed to protect the Calhoun Monument, the grounds for standing should be liberally construed to protect the public interest. *City of Patterson v. Patterson Gen. Hosp*., 235 A.2d 487, 495 (N.J. Super. Ct. Ch. Div. 1967) (Where there is generally a lack of enforcement by the public authorities, a "liberal rule as to standing . . . seems decidedly in the public interest.").

What monuments are displayed and the procedure required for removing them is undeniably of great public importance. This issue has been deemed by the S.C. General Assembly of such importance that no action may be taken *without an express act of the General Assembly*. S.C. Code Ann. § 10-1-165(b). It is difficult to imagine an issue of more public importance than one which the General Assembly has exercised explicit authority to granularly control. *See Pinckney v. Peeler*, 434 S.C. 272, 279, 862 S.E.2d 906, 910 (S.C. 2021) ("I have never seen another debate as emotional as this one.").

In addition to the public importance, there must also be need for 'future guidance.' Here such a situation exist. There are hundreds of monuments in South Carolina which are arguably protected by the Heritage Act.[2] What duty is imposed on those governments bound to protect and

[2] Appellants acknowledge that dicta in the Circuit Court's January 4, 2024 order questioned whether the Calhoun Monument was protected under the Heritage Act. While that dicta is not dispositive, Appellants asserted in their complaint that the Calhoun Monument is protected by the Heritage Act.

care for them? Can the City of Charleston remove other monuments in its care and custody? Which monuments are actually covered by the Act? Is the monument to the USS Amberjack at White Point Gardens a World War II monument? Is the monument to Mayor Max Heller in Greenville City protected from removal because the space occupied by the monument would be rededicated if it were removed?

These are all questions that define the boundaries and edges of the Heritage Act. This case would serve as importance guidance to the people who have an interest in the history of this great state, to the local governments who have a duty to care for protected monuments, and to the General Assembly who may believe monuments to be protected which the courts view otherwise. Due to the questions raised and the great importance of them, public importance standing to compel Respondents to follow the Heritage Act is appropriate, and the Appellants should be recognized with standing to seek a Writ of Mandamus.

First, the Act explicitly protects monuments and memorials to the war of 1812. Seldom, if ever, are monuments erected to "a war." Rather, monuments are erected to remember and honor the men who participated in a war. *See* The South Carolina Spanish American War Veterans Monument with dedications to "The South Carolina Troops in the Spanish American War."; The Partisan Generals Monument with dedication "to the memory of South Carolina's Generals Sumter, Marion, Pickens, and her patriot sons who fought for independence." Each located on the State House Grounds. Participation in a war can take many forms, and while history may focus on the generals or the man on the front lines, the behind the scene supporters responsible for crafting policy or for the production and delivery of the implements of war are just as important to the efforts. Calhoun was such a man. He drafted the declaration of war for the US House for the War of 1812. In fact, "he was called 'the young Hercules who carried the war on his shoulders." Aff'd of Clyde Wilson, August 31, 2023(R. pp.120 - 124). He was intrinsically linked with the War of 1812, and his efforts there catapulted him to a prominent career in politics. His memorial certainly, in part, honors the contributions he made to the war effort in 1812.

Second, the removal of the monument, even if not directly protected, had the effect of repurposing the use of this public land. The 36' x 36' parcel of land owned by the City was dedicated solely to honoring Calhoun, a historic figure by any accounts. By removing the monument, the City effectively rededicated this plot of land to other uses.

III. THE CIRCUIT COURT ERRED BY FAILING TO ADDRESS APPELLANTS' PETITION FOR A WRIT OF MANDAMUS AGAINST THE CITY OF CHARLESTON.

Appellants, among other causes of actions and remedies, sought a writ of mandamus against the City of Charleston compelling the city to fulfil its obligation under the Heritage Act. (R. p. 20 ¶ 3(d)). A writ of "mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy." *City of Rock Hill v. Thompson*, 349 S.C. 197, 199-200, 563 S.E.2d 101 (S.C. 2002) (citing *Ex parte Littlefield*, 343 S.C. 212, 540 S.E.2d 81 (2000); Willimon v. Greenville, 243 S.C. 82, 132 S.E.2d 169 (1963)).

The Heritage Act compels the care for and display of public monuments by generally prohibiting their removal, and this duty falls upon the public entity controlling each monument. S.C. Code Ann. § 10-1-165. The City of Charleston is only authorized to enact "regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State." S.C. Code Ann. § 4-9-25. The enacting of the resolution directing the removal of the Calhoun Monument and the subsequent removal of the monument was a violation of not only the duties of the Heritage Act but also *ultra vires* as an illegal act. The City has a positive duty not to remove the Calhoun Monument or to repurpose the land upon which it sat.

If, as the Circuit Court asserts, there is no other remedy available to Appellants, then a writ of mandamus is available to compel Respondents to perform their mandatory legal duty imposed under the Heritage Act. It was error for the Circuit Court to brush off without so much as an acknowledgement Appellants' request for a writ of mandamus.

For the reasons asserted above, Appellants believe they have standing to bring the above causes of action to enforce the Heritage Act and the Charitable Trust. However, should those causes of action not be available, then a writ of mandamus is an appropriate remedy to compel the City of Charleston to follow the Heritage Act, and it was error for the Circuit to dismiss this action against Respondents in the entirety.

CONCLUSION

The Appellant, Board of Field Officers, created the trust under which the City of Charleston held the Calhoun Monument. Deed from Board of Field Officers to the Ladies Calhoun Monument Association, Sept. 17th, 1885, Deed Book D20, 467 (Charleston R.O.D.) (R. pp. 146-149). The Appellant Wilson has inherited the responsibility and legal rights of the members in the Ladies Calhoun Monument Association to enforce their addition to the charitable trust. Their standing as Settlors should be recognized and the lower court reversed.

Even if they were not settlors, each has a special interest in enforcing the charitable trust. Each are intimately linked with the settlors. The Board of Field Officers is uniquely positioned as the only adjacent landowner to the Monument and the holder of the reversion right of the Monument land itself. Wilson is a direct inheritor of the rights of settlor and trustee held by his ancestor which assisted in the founding of the association which paid for and erected the Monument. Therefore each is appropriately among the class of "among others," those with 'special interest' who stand apart from the general public and can enforce the terms of the charitable trust.

The Heritage Act imposes a legal duty upon South Carolina governments to care for and protect the monuments in their possession and not to repurpose or rededicate structures and land

in their control. When that duty is breached, a writ of mandamus is an appropriate means to compel the government officials to take the ministerial actions to obey the law and fulfil the duty imposed by the General Assembly. While the act of enforcing may fall to the Attorney General broadly, the realities of his office and its limited resources counsel a liberal rule on standing to protect the public interest and enforce the positive duties of local governments to achieve the charitable purpose intended by the erection of monuments and memorials.

For the reasons stated, this Court should reverse the judgment of the Circuit Court, recognize the Appellants Board of Field Officers' and Wilson's standing to bring these causes of action against Respondents, and remand this case to the Circuit Court for subsequent proceedings.

Respectfully submitted,

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