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S.C. SUPREME COURT

In the Supreme Court of
South Carolina



IN THE ORIGINAL JURISDICTION
OF THE SUPREME COURT

Case No. 2026-000032

SOUTH CAROLINA PUBLIC INTEREST FOUNDATION and JAMES
WENINGER..... Plaintiffs

v.

HENRY MCMASTER, in his official capacity as Governor of the State of
South Carolina; MAJOR GENERAL ROBIN B. STILLWELL, in his official
capacity as Adjutant General of the South Carolina National Guard
..... Defendants

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STATEMENT OF THE ISSUES

In August 2025, President Trump directed the U.S. Secretary of Defense to “coordinate with State Governors” to bring additional National Guard troops to the District of Columbia under 32 U.S.C. § 502(f). Governor McMaster “answered the call” by deploying 200 troops for a 30-day mission in August, and 300 troops for a 90-day mission in December. The second deployment is ongoing.

Governor McMaster made no attempt to justify either extraterritorial deployment under South Carolina law. This raises two important questions:

1. Does South Carolina law constrain the Governor’s authority to deploy National Guard troops in response to a federal request under 32 U.S.C. § 502(f)?
2. Was the Governor’s December 2025 deployment of 300 South Carolina National Guard troops to Washington, D.C. *ultra vires*?

INTRODUCTION

The Governor’s deployment of 300 South Carolina National Guard (SCNG) troops to the District of Columbia exceeded his lawful authority. Despite the federal invitation, this is by no means a federal mission. Rather, this deployment was ordered by, and remains under the command of, Governor McMaster. Thus, its lawfulness cannot derive from federal law; it must be separately justified by the “authorities *that already exist* under state law.” *District of Columbia v. Trump*, No. 25-5418, 2025 WL 3673674, *9 (D.C. Cir. Dec. 17, 2025) (*District of Columbia II*) (emphasis in original) (quoting *District of Columbia v. Trump*, -- F. Supp. 3d --, 2025 WL 3240331, at *24 (D.D.C. Nov. 20, 2025) (*District of Columbia I*)).

South Carolina laws do not authorize the challenged deployment. Governor McMaster’s deployment authority is constitutionally assigned by S.C. Const. art. XIII, § 3, and statutorily circumscribed by S.C. Code Ann. §§ 25-1-1810, *et seq.* None of those authorities discuss extraterritorial deployments. Indeed, the Governor has no inherent authority to send the SCNG on operational missions across state lines. Rather, extraterritorial deployments are only authorized where requested under the Emergency Assistance Compact (EMAC) or the Counterdrug Activities Compact (CAC). Because neither compact was invoked to justify this deployment, the order was *ultra vires*.

Alternatively, even if South Carolina’s general deployment authorities could permit *some* extraterritorial deployments, they do not justify *this* deployment. The Governor may only deploy active duty SCNG troops, as potentially relevant here, in the event of a “tumult, riot or a mob,” “a body of men acting together by force” to commit crimes, or an “imminent danger,” S.C. Code Ann. § 25-1-1840; or to “execute the laws” or “preserve the public peace.” S.C. Const. art. XIII, § 3. But the troops deployed by the Governor are not quelling a “tumult, riot or a mob,” responding to a “disaster,” or forestalling an “imminent danger”; rather, they are merely engaged in

passive crime deterrence, like patrolling parks and public transit stations, or participating in beautification projects, like spreading mulch and picking up trash. S.C. Code Ann. § 25-1-1840. In short, the deployment is a far cry from the extraordinary circumstances that must ordinarily accompany *any* deployment of military forces, must less an extraterritorial deployment like this one.

It is incumbent on the judiciary to interpret and apply the legal limits on executive authority. When the President exceeds his power to federalize the National Guard, the U.S. Supreme Court intervenes. *E.g.*, *Trump v. Illinois*, 146 S. Ct. 432 (2025). And when the Governor exceeds his deployment authority under state law, this Court intervenes. *E.g.*, *Hearon v. Calus*, 178 S.C. 381, 183 S.E. 13, 20–21 (1935). “Any other construction of the law would lead to anarchy and revolution.” *Id.* at 20.

Here, Governor McMaster’s D.C. deployments of the SCNG exceeded his legal authority. Thus, as in *Hearon*, the Court must declare that the deployment is unlawful.

STATEMENT OF THE CASE

I. The National Guard

The National Guard is a reserve component of the military that is generally under state control. But as a hybrid force, it is subject to activation and deployment under specific, enumerated provisions of both state and federal law.

A. *Historical Roots*

America’s militia—now known as the National Guard—has a history that dates back to the country’s founding. As our nation created a federal system of government with two layers of sovereigns, it envisioned the militia reflecting that structure: separate militias established and controlled by each state, but able to be called into federal service by the President in exceptional circumstances to address acute domestic emergencies.

In the wake of the war for American independence, the framers of the Constitution faced competing pressures in structuring our new nation’s armed forces. “On the one hand, there was a widespread fear that a national standing Army posed an intolerable threat to individual liberty and to the sovereignty of the separate States, while, on the other hand, there was a recognition of the danger of relying on inadequately trained soldiers as the primary means of providing for the common defense.” *Perpich v. Dep’t of Defense*, 496 U.S. 334, 340 (1990) (footnote omitted); *see also Abbott v. Biden*, 70 F.4th 817, 835–42 (5th Cir. 2023) (summarizing the historical roots of the National Guard and the development of its hybrid structure).

George Mason was one of those who voiced fears about broad federal authority to deploy state militias. “[U]nless there be some restrictions on the power of calling forth the militia, to execute the laws of the Union,” Mason told the Virginia Ratifying Convention in 1788, “we may very easily see that it will produce dreadful oppressions.” 3 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 378 (Jonathan Elliot ed., 2d ed. 1836) (“3 Elliot”). Mason argued that the Constitution should forbid “march[ing]” any state’s militia “beyond the limits of the adjoining state; and if it be necessary to draw them from one end of the continent to the other, I wish such a check, as the consent of the state legislature, to be provided.” *Id.* at 378–79.

Others could not imagine such abuses of a domestic militia. Alexander Hamilton dismissed Mason’s fears as “exaggerated and improbable.” The Federalist No. 29 (Alexander Hamilton) (1788), *available at* <https://perma.cc/Z7M7-SAC2> (archived Jan. 5, 2026). Hamilton believed any militia wrongly-deployed outside their state would be “irritated by being called upon to undertake a distant and hopeless expedition” against “their countrymen,” and could not conceive that a “usurper[]” of American power could possibly use the militia to “stride to dominion

over a numerous and enlightened nation.” *Id.* Or, as James Madison railed, “Can we believe that a government of a federal nature, consisting of many coequal sovereignties and particularly having one branch chosen from the people, would drag the militia unnecessarily to an immense distance? This, sir, would be unworthy the most arbitrary despot.” 3 Elliot at 357.

The solution the Founders crafted was to create two parallel systems for American armed forces. The Constitution authorizes Congress to raise, support, and regulate a standing federal army and navy, U.S. Const. art. I, § 8, cls. 12–14, while also providing for the continued existence of state militias. *Id.*, cls. 15–16. Congress has the power to “call[] for the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions,” *id.*, cl. 15, to “organiz[e], arm[], and disciplin[e]” the Militia, and to “govern[] such Part of them as may be employed in the Service of the United States.” *Id.*, cl. 16. But the Militia are also maintained as creatures of the various states, with the Constitution “reserving to the States, respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.” *Id.*

Thus was born a hybrid system for control of state militias:

Even when the militia is under state authority, militiamen directly execute some federal commands. For instance, the militia is organized pursuant to federal law, and the militia must train according to the discipline prescribed by Congress. When called into actual service, the militia is part of the national military leadership under the ultimate command of the president. When they are not in federal service, however, the militia reports to its respective states.

Robert Leider, *Federalism and the Military Power of the United States*, 73 Vand. L. Rev. 989, 1013–14 (2020). In 1903, federal law formally clarified that the term “National Guard” refers to the “organized militia” of each “State, Territory, or District of Columbia.” Militia Act of 1903, Pub. L. No. 57-33 § 1, 32 Stat. 775 (1903).

B. Duty Statuses

When called into active service, the National Guard may serve in one of “three different active operational statuses ... state active duty, federal active duty under Title 10 of the U.S. Code, and full-time duty under Title 32 of the U.S. Code.” *District of Columbia II*, 2025 WL 3673674, at *3. The dual sovereignty the Founders built into the militia system is preserved in these three duty statuses. When National Guard troops are called into active federal service (*i.e.*, “federalized”), command and control comes from the President. But when operating under Title 32 or state active duty, states retain “exclusive power” to “govern the non-federalized militia.” *Abbott*, 70 F.4th, at 829.

1. Title 10

Title 10 of the United States Code operationalizes the first of the Constitution’s Militia Clauses, U.S. Const. art. I, § 8, cl. 15. In it, Congress “prescribe[d] the limited and extraordinary circumstances under which the President can call the National Guard into active duty for the United States.” *District of Columbia II*, 2025 WL 3673674, at *3. In a Title 10 deployment, the President “call[s] into Federal service members and units of the National Guard of any State” to repel an invasion, quell a rebellion, or correct a breakdown in federal laws. 10 U.S.C. § 12406; *see also id.* §§ 251–254 (Insurrection Act). Some provisions of Title 10 permit the President to federalize members of the National Guard without the consent or request of state officials. *See, e.g., id.* § 251.

Because Title 10 provides the President with such a dangerously powerful tool, Congress imposed correspondingly strong constraints on its use. For example, as the Supreme Court recently emphasized, presidential authority to deploy troops domestically applies only in “exceptional” circumstances. *Trump v. Illinois*, 146 S. Ct. 432, 434 (2025). To deploy federalized National Guard troops to execute the laws,

the President must show both that those exceptional circumstances exist *and* that “regular forces” were “unable” to perform an authorized function. *Id.* (holding that “regular forces” means “*the regular military*” and that “the Government has failed to identify a source of authority that would allow the military to execute the laws in Illinois.”).

2. Title 32

Title 32 operationalizes the second of the Militia Clauses by, among other things, detailing federal coordination of “[r]equired drills and field exercises.” *See, e.g.*, 32 U.S.C. § 502; *see* U.S. Const. art. I, § 8, cl. 16 (“Congress shall . . . provide for organizing, arming, and disciplining, the Militia.”). Title 32 also allows the President or Secretary of Defense to “request” the deployment of a state’s national guard. 32 U.S.C. § 502(f)(2)(A). If so requested, “[t]he Governor of a State . . . may order” the National Guard to undertake “Active Guard and Reserve duty” pursuant to a request under § 502(f). *Id.* § 328(a).

In Title 32 status, Guards members “are funded by the federal government, but they remain state National Guard members under state control.” *District of Columbia II*, 2025 WL 3673674, at *3 (citation modified). Put another way, deployments under Title 32 status are “directed by the Governor” but “paid for with federal funds.” *Kise v. Dep’t of Military*, 832 A.2d 987, 991 (Pa. 2003); *see also Satcher v. United States*, 101 F. Supp. 919, 920 (W.D.S.C. 1952) (until a National Guard unit “is ordered by the President into the regular armed forces of the United States, the National Guard Unit remains a component part of the State Militia and not of the Federal armed forces”).

Critically, Title 32 is a duty status rather than a freestanding legal authority for deployments. A “mission under” Title 32 is only lawful if the “requested mission” is “authorized under state law.” *District of Columbia II*, 2025 WL 3673674, at *9. In

other words, “to accept the mission, the state governor must exercise authorities *that already exist* under state law.” *Id.* (quoting *District of Columbia v. Trump*, -- F. Supp. 3d --, 2025 WL 3240331, at *24 (D.D.C. Nov. 20, 2025) (*District of Columbia D*)).

3. State Active Duty (SAD)

Finally, National Guard troops can be called from reserve duty into active duty by their Governor. The basis for any such activation is established by state law and the missions or training conducted under State Active Duty status are paid for by that state.

* * *

In summary, the hybrid structure of the National Guard looks like this:

<i>Duty status</i>	Title 10	Title 32	State Active Duty
<i>Who pays</i>	Federal government	Federal government	State government
<i>Who is in charge</i>	President	Governor	Governor
<i>Deployment authority</i>	Set by federal law	Set by state law	Set by state law

C. SCNG Activation and Deployment

The South Carolina Constitution vests the legislative power in the General Assembly. S.C. Const. art. III, § 1. The General Assembly “may by law direct” how the militia “shall be organized, officered, armed, equipped and disciplined.” *Id.* art. XIII, § 1. The Constitution designates the Governor the Commander-in-Chief of the militia, *id.* art. IV, § 13. The Governor may call out the militia “to execute the laws, repel invasions, suppress insurrections and preserve the public peace.” *Id.* art. XIII § 3. The organized militia—*i.e.*, the SCNG—was created by statute and may only be

activated and deployed according to its statutory limits. *See* S.C. Code Ann. §§ 25-1-1810, *et seq.*; *see also* *Hearon v. Calus*, 178 S.C. 381, 183 S.E. 13, 20 (1935) (applying Section 1390, Code 1932, to Governor’s deployment of the organized militia).

1. Activation

Before SCNG troops can be deployed on a mission, they must first be “activated”—*i.e.*, called from reserve duty into active duty. In enacting S.C. Code Ann. § 25-1-1820, the General Assembly set the limited circumstances that can “require[e] active duty.” That provision states:

The National Guard shall not be subject to active duty other than training duty, except (a) in case of war, (b) in event or danger of invasion by a foreign nation, (c) there is a rebellion or danger of rebellion against the authority of the government of the United States, (d) the President issues orders to execute the laws of the United States, ¹ (e) for preventing, repelling or suppressing invasion, insurrection or riot, (f) for aiding civil officers in the execution of the laws, in which cases the Governor or local commander as provided for in Sections 25-1-1840 to 25-1-1880 shall order out for active service, by draft or otherwise, as many of the National Guard as necessity demands, or (g) during natural disaster or local emergency whenever the lives and property of the State's citizens are threatened.

S.C. Code Ann. § 25-1-1820.

By treating “training duty” distinctly from other types of “active duty,” the General Assembly elected not to set specific limits on when the SCNG may be activated for training duty. *Id.*

¹ The General Assembly’s use of the word “orders” clarifies that this subsection refers to an *order* to federalize under Title 10, not a *request* under Title 32. *See* 10 U.S.C. § 12406 (“Orders for these purposes shall be issued through . . .”). And the language used by the General Assembly mirrors the President’s Title 10 authority. *See id.* at § 12406(3) (“[T]he President may call into Federal service . . . the National Guard . . . [w]henver the President is unable with the regular forces to execute the laws of the United States.”).

2. Deployments in South Carolina

Even once activated under Section 1820, the Governor still may only *deploy* SCNG troops under the circumstances set by the General Assembly in S.C. Code Ann. §§ 25-1-1840, -1850 (“rebellion against the authority of the government of this State”), -1860 (dispersal of rebellions under § 25-1-1850), -1870 (taking possession of utilities).

Most relevant here, Section 25-1-1840 permits deployment in the case of:

(a) war, insurrection, rebellion, invasion, tumult, riot or a mob, (b) a body of men acting together by force with intent to commit a felony, to offer violence to persons or property or by force and violence to break and resist the laws of this State or of the United States, (c) [] the imminent danger of the occurrence of any of such events or (d) in the event of public disaster.

S.C. Code Ann. § 25-1-1840. If such circumstances exist, “the Governor may order the National Guard of South Carolina or any part thereof into the active service of the State and cause them to perform such duty as he shall deem proper.” *Id.*

3. Extraterritorial Deployments Under Interstate Compacts

In addition to the general deployment provisions—which do not apply extraterritorially, *infra* Arg. I.A.2—South Carolina is also signatory to two interstate compacts that contemplate extraterritorial deployments: the Emergency Management Assistance Compact (EMAC), S.C. Code Ann. § 25-9-420, and the Counterdrug Activities Compact (CAC), S.C. Code Ann. § 1-3-490.

EMAC is an interstate agreement to “provide for mutual assistance between the states . . . in managing any emergency or disaster that is duly declared by the governor of the affected state[s].” S.C. Code Ann. § 25-9-420, art. I. Similarly, CAC is an interstate agreement to “provide for mutual assistance and support among the party states . . . in drug interdiction, counterdrug activities, and demand reduction activities[.]”. S.C. Code Ann. § 1-3-490. Each of those agreements permits

deployment of National Guard troops in response to certain conditions, *see* S.C. Code Ann. § 25-9-420, art. II–IV; S.C. Code Ann. § 1-3-490, art. III(B), but each also comes with corresponding limits on deployment activities, *see, e.g.*, S.C. Code Ann. § 25-9-420, art. XIII (“Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.”).

II. National Guard Deployment to D.C.

A. Federal Action

On August 11, 2025, President Trump issued an Executive Order titled “Declaring a Crime Emergency in the District of Columbia.” Exec. Order No. 14,333, 90 Fed. Reg. 39,301 (Aug. 11, 2025) (hereinafter the “D.C. Deployment Executive Order”). The Executive Order claimed that the District of Columbia was in the midst of a “violent crime crisis,” citing local rates of murders, robberies, and vehicle thefts. *Id.* § 1.

The same day, President Trump issued a Memorandum to the Secretary of Defense titled “Restoring Law and Order in the District of Columbia.” The White House, *Memorandum on Restoring Law and Order in the District of Columbia* (Aug. 11, 2025), <https://perma.cc/94FZ-2CP2> (hereinafter “D.C. Deployment Memorandum”). In it, President Trump decried “the destructive forces of criminal activity” and declared his intent to reduce citizens’ fears of “being subjected to violent, menacing street crime.” *Id.* § 1. President Trump directed the Secretary of Defense to “mobilize the District of Columbia National Guard . . . to address the epidemic of crime in our Nation’s capital,” and to “coordinate with State Governors

and authorize the orders of any additional members of the National Guard to active service . . . to augment this mission.” *Id.* § 2.

The same day, the Secretary of the Army approved the mobilization of the National Guard pursuant to the D.C. Deployment Memorandum. *See* Letter from Sec’y Dan Driscoll to Brigadier Gen. Leland Blanchard (Aug. 11, 2025), Ex. A.² And the Commanding General of the District of Columbia National Guard issued Permanent Orders 25-223, directing the National Guard “to protect federal property and functions in the District of Columbia and to support federal and District law enforcement.” D.C. Nat’l Guard, Permanent Orders (Aug. 11, 2025), Ex. B.³ Permanent Orders 25-223 explains that Guardsmen are being ordered to duty under 32 U.S.C. § 502(f)(2)(A). *Id.*

States participating in the National Guard operation in the District of Columbia (internally referred to as “Make D.C. Safe and Beautiful”) signed a memorandum of understanding with the D.C. National Guard, describing their mission as “national monument security, area beautification, traffic control points, and law enforcement patrols.” Mem. of Understanding D.C. Nat’l Guard and Supporting States, Commonwealths, and Territories, Ex. C at § 2.⁴ It noted that Guardsmen “will perform duties under 32 U.S.C. § 502(f)” that “may include law enforcement.” *Id.* at § 3.3.

The U.S. Department of Justice has subsequently explained that out-of-state national guard personnel “are not authorized to effect arrests or engage in other similar direct law enforcement activity.” Mem. from Floriano Whitwell to Deputy

² Exhibits A, B, C, and D were originally filed as Exhibits 37, 38, 6, and 1, respectively, in *District of Columbia v. Trump*, No. 25-cv-3005 (D.D.C. Oct. 17, 2025), Dkt. No. 70-1.

³ *See id.*

⁴ *Id.*

Att’y Gen. re: Special Deputation Request (Aug. 21, 2025), Ex. D at 1-2.⁵ Rather, the federal government has described the role of Guardsmen deployed to the District of Columbia as “crime deterrence and passive patrolling” but not “law enforcement.” *District of Columbia I*, 2025 WL 3240331, at *5 n. 7.

B. South Carolina Participation

On August 16, 2025, Governor McMaster announced that, in response to the Memorandum, he had “authorized the deployment of 200 South Carolina National Guardsmen to Washington, D.C.” in order to “support federal law enforcement activities under [the Memorandum].” S.C. Office of the Governor, *Gov. Henry McMaster Authorizes Deployment of National Guard to Washington, D.C.* (Aug. 16, 2025), <https://perma.cc/2TRK-SJXH>. That deployment ended one month later.

On November 26, 2025, Governor McMaster announced on social media that over 300 South Carolina Guardsmen would be returning to the District of Columbia. Although his announcement did not state the Guardsmen’s mission, he said the Guardsmen “relieve the [Georgia] Guardsmen who relieved them two months ago,” presumably to return to their initial role in the deployment to the District as part of Operation Make D.C. Safe and Beautiful. Gov. Henry McMaster (@henrymcmaster), X (Nov. 26, 2025), <https://perma.cc/R496-4DT4>.

Since the beginning of the deployment, “Guard units have patrolled on the National Mall, in Metro Transit stations, and across D.C. neighborhoods.” *District of Columbia I*, 2025 WL 3240331 at *1. They have “patrolled . . . busy public spaces like the H Street Corridor, Gallery Place, and Dupont Circle,” and “taken over patrolling some parks.” *Id.* at *5. “Many of the Guard units” have been “tasked with ‘beautification projects’ such as picking up trash and spreading mulch.” Letter from

⁵ *Id.*

Sen. Richard J. Durbin et al. to the Hon. Steven A. Stebbins, Acting Inspector Gen., U.S. Dep't of Defense (Oct. 17, 2025), <https://perma.cc/7NF2-23DF>.

STANDARD OF REVIEW

“Generally, judicial relief is available to one who has been injured by an act of a government official which is in excess of his express or implied powers.” *Harmon v. Brucker*, 355 U.S. 579, 581–82 (1958). To resolve such *ultra vires* claims, courts must “ascertain the scope of the acting officials’ statutory authority and determine whether the officials’ action conformed with their authority. Such authority may be broad or narrow depending upon the language employed in the empowering legislation.” *U.S., Dep’t of Interior v. 16.03 Acres of Land, More or Less, Located in Rutland Cnty., Vt.*, 26 F.3d 349, 355 (2d Cir. 1994).

Here, the ultimate question is whether Governor McMaster “acted in conformity with [his] legislative grant of authority.” *See id.* at 356. To answer, the Court need only interpret South Carolina law, which is “the cornerstone of judicial power” and “does not violate the separation of powers in any manner.” *Strickland v. Richland Cnty. Legislative Delegation*, 440 S.C. 438, 444, 892 S.E.2d 288, 291 (2023). This Court interprets South Carolina statutes *de novo*, without deference to any other court. *State v. Taylor*, 436 S.C. 28, 34, 820 S.E.2d 168, 171 (2022).

ARGUMENT

I. The Governor’s deployment of SCNG troops to Washington, D.C. was *ultra vires*.

At the Governor’s order and under the Governor’s command, three hundred SCNG troops are currently policing routine street crime outside the state. For two reasons, the Governor’s deployment was unlawful.

First, the deployment was unlawful because it lacked authorization under EMAC or CAC. South Carolina law permits extraterritorial active-duty deployments

in only two circumstances: (1) when troops are federalized under Title 10 (and are thus subject to the command of the President), and (2) when a request for troops is made by a Governor or other elected leader under one of two codified interstate compacts. A federal request for deployment under Title 32 can help defray the cost of extraterritorial deployments authorized under EMAC or CAC, but it does not provide a standalone mechanism for deploying SCNG beyond South Carolina's borders. Thus, because no request was made under EMAC or CAC, Governor McMaster's deployment was unlawful.

Second, and alternatively, the conditions in the District of Columbia fail to satisfy the constitutional or statutory conditions necessary to justify SCNG deployment. Even if South Carolina law permits extraterritorial deployments outside of EMAC and CAC, the Governor may deploy active duty SCNG troops only, as potentially relevant here, in the event of a "tumult, riot or a mob," "a body of men acting together by force" to commit crimes, or an "imminent danger," S.C. Code Ann. § 25-1-1840; or to "execute the laws" or "preserve the public peace." S.C. Const. art. XIII, § 3. Here, because Governor McMaster did not show, has not shown, and *cannot* show that the current deployment satisfies any of the constitutional or statutory criteria, the deployment is unlawful.

A. The Governor cannot deploy SCNG troops to D.C. without authorization under an interstate compact.

Plaintiffs agree that "National Guard troops deployed to the District from the States are plainly deployed under Title 32 status," and that these deployments were undertaken "pursuant to their Governors' orders." Brief of Amici Curiae States, *District of Columbia II*, 2025 WL 3089667, at § II.B (D.D.C. Sep. 16, 2025). But Title 32 only provides only a "duty status, . . . not a mechanism for a deployment outside of the home state." *District of Columbia I*, 2025 WL 3240331, at *3 (citing *Duty Status*, EMAC, <https://perma.cc/J6F7-D5CW> (archived Nov. 10, 2025)). Rather than

establishing a standalone basis for deployment, Title 32 merely authorizes federal funding for missions “that are authorized under state law.” *Id.* at *21; *see also District of Columbia II*, 2025 WL 3673674 at *10 (the proper remedy for a governor’s “deployment to the District in violation of state law” would be “a suit against that governor for violating state law.”).

Thus, while SCNG troops in D.C. are serving in Title 32 *status*, they are nonetheless doing so unlawfully because, for the reasons below, their deployment was not authorized under state law. *Id.*

1. Interstate Compacts provide the only statutory authorizations for the Governor to deploy the SCNG across the border.

Two interstate compacts—EMAC and CAC—occupy the field when it comes to state-commanded deployments of SCNG to other states or territories.⁶ *See supra* SOC, § I.C.3. Under both compacts, South Carolina has entered mutual cooperation and aid agreements with the other states of the union. These compacts confer both benefits and obligations on South Carolina and set rules for when and how South Carolina and render and receive aid from other states and territories. *See* S.C. Code Ann. §§ 25-9-420 (EMAC) & 1-3-490 (CAC). “[T]he EMAC has not been invoked as the mechanism for” deploying South Carolina’s Guardsmen to the District of Columbia. *District of Columbia I*, 2025 WL 3240331, at *21. Nor was the deployment authorized by CAC, which narrowly concerns drug interdiction and counterdrug activities. *See* S.C. Code Ann. § 1-3-490(A). Thus, the deployment of troops to D.C. exceeded Governor McMaster’s authority over the SCNG and was *ultra vires*.

⁶ As discussed *supra*, Title 10 deployments (under which SCNG is under *federal* command) carry no geographical constraints, but are limited in other ways. *See Trump v. Illinois*, 146 S. Ct. 432, 434 (2025) (discussing limits on federalizing the National Guard under 10 U.S.C. § 12406(3)).

2. Other authorities only confer authority to deploy the SCNG within South Carolina.

Aside from those compacts, no other provision of South Carolina law discusses (much less, authorizes) the deployment of SCNG beyond our borders. As discussed *supra*, SOC § C, S.C. Const. art. XIII, § 3, describes general gubernatorial control over “the militia” and S.C. Code Ann. § 25-1-1840 provides more specific limitations on deployment of the SCNG. But under basic rules of statutory and constitutional interpretation, neither provision can be interpreted to authorize extraterritorial deployments.

Text. “It is axiomatic that statutory interpretation begins (and often ends) with the text of the statute in question.” *Smith v. Tiffany*, 419 S.C. 548, 555, 799 S.E.2d 479, 483 (2017). Here, unlike the interstate compacts, neither the Militia Clause nor Section 1840 make any mention of extraterritorial deployments. The question, then, is their texts should be read to authorize SCNG deployments to “execute the laws [of *any jurisdiction*],” S.C. Const. art. XIII, § 3, or to quell “tumults” *anywhere*, S.C. Code Ann. § 25-1-1840. They do not.

Corpus Juris. Words are known by the company they keep. *Gaud v. Walker*, 214 S.C. 451, 476, 53 S.E.2d 316, 327 (1949) (“All sections of the Constitution must be considered together.”); *see, e.g.*, Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts*, 167 (2012) (underscoring importance of reading the text as a whole). As the Court said in *Eidson*, “context is often the key to unlocking the meaning of the words used, and the context extends not only to the sentence or section the words inhabit, but to the entire design and structure of the Constitution of which they are a part.” *Eidson v. S.C. Dep’t of Educ.*, 444 S.C. 166, 182, 906 S.E.2d 345, 353 (2024), *reh’g denied* (Oct. 3, 2024).

Here, surrounding provisions of law reveal that neither Article XIII, § 3, nor the deployment statutes, S.C. Code Ann. §§ 25-1-1840, *et seq.*, were meant to

authorize extraterritorial deployments. *See State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (“All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used.”). Consider, for example, the Constitution’s command that “[t]he Governor shall take care that *the laws* be faithfully executed.” S.C. Const. art. IV, § 15. In that provision, the Constitution says, “the laws,” to mean, “the laws of *this State*.” *Accord* 1971 S.C. Op. Att’y Gen. 197 (1971) (opining that Article IV authorizes the Governor to investigate discrimination because “[t]he constitutional right to be free of such discrimination is certainly a part of the law of this State.”). So, too, with the constitutional and statutory texts at issue here. Just as the Constitution imposes no duty on Governor McMaster to ensure the “faithful[] execut[ion]” of election laws in Texas or hunting regulations in Kentucky, it equally confers no authority to deploy the organized or unorganized Militia to enforce the laws of the District of Columbia.

The National Guard statutes provide another instructive data point. Section 25-1-90 explicitly addresses extraterritorial deployments of National Guard units—by *prohibiting* such deployments by other states into South Carolina “without the permission of the Governor, unless such force is acting under the authority of the United States Government.”⁷ S.C. Code Ann. § 25-1-90. Given that lawmakers were keenly aware of the potential for cross-state deployments, and chose to forbid such deployments “without permission,” it would be strange to construe Section 25-1-1840 as *silently* authorizing deployments to other states, especially without regard for the receiving state’s consent. Presumably, the legislature did not authorize the Governor to engage in the very action it condemned by others in Section 25-1-90. Thus, the

⁷ A force “acting under the authority of the U.S. Government” refers to guardsmen that are federalized under Title 10.

statutory mechanisms for deployment in Section 25-1-1840 are better construed as referring only to triggering conditions (tumult, mob, violence, etc.) *in South Carolina*.

Presumption Against Extraterritoriality. If the text leaves any question (it does not), the canon against extraterritoriality answers it. According to that canon, which well predates the American founding, “statutes are confined to their own territory and have no extraterritorial effect.” Scalia & Garner, *Reading Law* § 43 (quoting *Black’s Law Dictionary* (9th ed. 2009)). The canon recognizes that legislatures “need not qualify each law by saying within the territorial jurisdiction of this State” (citation modified) because it is “assumed that legislatures enact their laws with this territorial limitation in mind.” *Id.* This ancient, common sense canon is well rooted in this Court’s rulings, see *Ex parte First Pennsylvania Banking & Trust Co.*, 247 S.C. 506, 508, 148 S.E.2d 373, 374 (1966) (“[S]tatutes can have no extraterritorial effect.”), and aligns with South Carolina law, see S.C. Code Ann. § 1-1-10 (“The sovereignty and jurisdiction of this State extends to all places *within its bounds*.” (emphasis added)).

“The principle that state statutes generally have no extra-territorial effect [is] a foundation of the respect for individual sovereignty the states must share with one another.” *Doctors Hosp. of Augusta, LLC v. CompTrust AGC Workers’ Compensation Trust Fund*, 371 S.C. 5, 9, 636 S.E.2d 862, 864 (S.C. 2006) (“*DHA*”). Indeed, this Court has repeatedly refused to interpret South Carolina laws to extend to events outside the state. In *DHA*, this Court considered whether South Carolina’s Workers’ Compensation Commission could resolve a fee dispute against “an out of state medical provider who performs medical services outside of South Carolina relating to a workplace injury occurring in South Carolina.” *DHA*, 371 S.C. at 8, 636 S.E.2d at 863. The Court concluded that South Carolina’s statutory scheme could not reach so far, finding it “perplexing that a South Carolina court was ever involved in th[e]

case” at all. *Id.* at 9, at 864. Despite the fact that the underlying injury occurred in South Carolina, the South Carolina Commission did not have jurisdiction over the resulting fee disputes. *Id.*

This Court has also considered whether the South Carolina Business Opportunity Sales Act could apply to “a contract between a business located in Texas and a Texas resident, and performed in Texas and Washington.” *Robertson v. Bumper Man Franchising Co., Inc.*, 364 S.C. 155, 156, 612 S.E.2d 451, 452 (2005). This Court found it “unnecessary to conduct any in-depth analysis in order to conclude that the answer to this question is ‘no.’” *Id.* at 157, at 452 (citing *First Pennsylvania Banking*, 247 S.C. at 506, 148 S.E.2d at 373).

The same principles control here. Nowhere does the operative text of the South Carolina Militia Clause or Section 1840 empower the Governor to deploy the state’s National Guard to address conditions entirely outside the state. Reading such expansive authority into these provisions would be a contortion of their texts and would authorize actions by South Carolina that the State forbids of other states—uninvited military invasions of equally-sovereign territories.⁸ *Cf. Shelby Cnty. v. Holder*, 570 U.S. 529, 544 (2013) (“Not only do States retain sovereignty under the Constitution, there is also a fundamental principle of *equal* sovereignty among the States.”). Put simply, notwithstanding President Trump’s request, South Carolina law does not permit extraterritorial military intervention anytime “menacing street crime” rears its head *somewhere* in America. D.C. Deployment Memorandum § 1.

⁸ That the District of Columbia is differently positioned from the fifty states is of no consequence here. Because the text makes no distinction between D.C. and any other state or territory, the interpretive exercise must account for consequences another uninvited deployment (say, to Chicago) would have on state sovereignty and interstate comity.

B. Even if Article XIII or Section 25-1-1840 were construed to reach extraterritorial deployments, the current deployment is baseless.

Governor McMaster deployed the SCNG to Washington, D.C.—not to repel an invasion, suppress an insurrection, or restore peace in the face of extreme civil disorder, but to assist the President in routine law enforcement. Neither the South Carolina Constitution nor the National Guard statutes authorize this. Our framers understood that military power poses an inherent danger to liberty when deployed in peacetime. They—and the general assemblies that followed—limited the Governor’s deployment authority to a narrow set of emergency circumstances that bear no resemblance to the situation in D.C. Thus, even if this Court decides that S.C. Const. art. XIII, § 3 and/or S.C. Code Ann. § 25-1-1840 can be read to authorize extraterritorial deployments, neither permits this current deployment for “area beautification, traffic control points, and law enforcement patrols” in the District of Columbia. *See* Ex. C.

1. Article XIII does not confer unchecked authority to deploy the National Guard for routine law enforcement.

The primary goal of constitutional interpretation is to ascertain the intent of the framers. *Ansel v. Means*, 171 S.C. 432, 436, 172 S.E. 434, 436 (1934). When interpreting our Constitution, it is a “fundamental rule that all sections of the Constitution must be considered together and harmonized [as] possible.” *Knight v. Hollings*, 242 S.C. 1, 4, 129 S.E.2d 764, 747 (1963). The Court must also assume that the “framers of the constitution had some purpose in inserting every clause and every word contained in the document.” *Davenport v. City of Rock Hill*, 315 S.C. 114, 117, 432 S.E.2d 451, 452 (1993).

The Governor’s authority to deploy the militia is limited by Article XIII’s Militia Clause, which reads:

The Governor shall have the power to call out the volunteer and militia forces, either or both, to execute the laws, repel invasions, suppress insurrections and preserve the public peace. S.C. Const. art. XIII, § 3.

Here, the issue is whether the Governor deployed the SCNG to D.C. to “execute the law” or “preserve the public peace.” S.C. Const. art. XIII, § 3. As there is no ongoing invasion or insurrection, no other textual basis even *arguably* applies.

As an initial matter, as discussed above, *supra* § I.A.2, the phrase “execute the law” refers to *South Carolina’s* laws, not local laws of the District of Columbia. And given the language of 10 U.S.C. § 12406(3), any extraterritorial mission to “execute the laws” would be expected to arise under Title 10, not Title 32.

But even if the South Carolina Constitution authorized the Governor to execute the laws of the District of Columbia, read as a whole, the Constitution compels a narrow reading of what it means to deploy the militia to “preserve the public peace” or to “execute the law.” Article I, § 20, for example, states that “in times of peace, armies are dangerous to liberty.” S.C. Const. art. I, § 20. This is not merely an observation, but a statement of intent that governs the interpretation of every provision touching military power. Against this backdrop, any provision that authorizes such deployment must be construed narrowly.

a. The Governor may only call out the Militia to “execute the laws” in narrow, extraordinary circumstances.

“Execute the laws” cannot mean routine law enforcement because that is inherently a peacetime government function. *Cf., e.g., Illinois*, 146 S. Ct. at 434 (a mission merely to “protect federal personnel and property ... does not constitute executing the laws.”) (cleaned up). Deploying the militia to “execute the laws” is an act of last resort—not a tool for ordinary governance. To read it as including routine law enforcement would flout our Constitution’s inherent suspicion of military

deployment during peacetime. It takes one phrase out of context, to empower the Governor despite the framer's intent. Such an interpretation cannot stand.

The provisions that surround “execute the law” demonstrate that deploying the militia is an act of last resort. The other situations that authorize activating the militia are extreme—*e.g.*, suppressing insurrections and repelling invasions—describe *emergency* situations that warrant an extreme response. If “execute the laws” authorizes the Governor to deploy the militia whenever any law needs enforcing, then the remaining justifications—“repel invasions,” “suppress insurrections,” and “preserve the public peace”—become mere surplusage. *See In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (“[N]o word, clause, sentence, provision or part shall be rendered surplusage, or superfluous”). Every invasion already requires law enforcement. Every insurrection involves violations of law. And every breach of the peace is a failure to maintain legal order. The framers would not have enumerated these specific emergencies if the “execute the laws” covered them all. Thus, “execute the laws” must describe situations that are as severe as the others, one in which ordinary civil authority has broken down and military intervention is the last remaining option.

The State Militia Clause's federal forbear, the Calling Forth Clause, adds further support. Our State Constitution borrows many provisions from its federal counterpart, with this Court frequently interpreting such provisions as coextensive with their federal equivalents. *E.g.*, *G-H Ins. Agency, Inc. v. Cont'l Ins. Co.*, 278 S.C. 241, 246, 294 S.E.2d 336, 339 (1982) (finding the protections of the mandate of the state and federal constitutions' contract clauses to be “basically the same”); *Steinle v. Lollis*, 279 S.C. 375, 376, 307 S.E.2d 230, 231 (1983) (applying federal First Amendment standards when construing South Carolina's “virtually identical” constitutional provision); *S.C. Dep't of Soc. Servs. v. Father & Mother*, 294 S.C. 518, 522, 366 S.E.2d 40, 42 (Ct. App. 1988) (“The guarantees of religious liberty contained

in the [federal and state] Constitutions have been treated as coextensive.”). This approach makes sense because “[t]he polestar in the construction of Constitutions . . . is the intention of the makers and adopters.” *Ansel*, 171 S.C. at 436, 172 S.E., at 436. And the fact that our State Constitution’s framers chose to emulate the federal Constitution showcases their intent to adopt similar standards.

The South Carolina Militia Clause closely mirrors the federal Constitution’s Calling Forth Clause:

The Calling Forth Clause: “The Congress shall have Power . . . To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions.” U.S. Const., art. I, § 8, cl. 15.

Governor May Call Out Clause: “The Governor shall have the power to call out the volunteer and militia forces, either or both, to execute the laws, repel invasions, suppress insurrections and preserve the public peace.” S.C. Const. art. XIII, § 3.

This resemblance is no accident. And, while they differ in *who* they authorize to mobilize the militia, they do not differ in *what* they authorize. Congress may only activate the militia to “execute the laws,” “repel invasions,” and “suppress insurrections.” The Governor is similarly limited, except that he may also use the militia to “preserve the public peace.” *Id.*; *see infra*. Otherwise, these clauses limit activation of the SCNG to a virtually identical set of circumstances.

Instructively, courts and legal scholars have interpreted the federal Calling Forth Clause narrowly, as applying only to “extraordinary situations when treasonous actions equivalent to waging war on the United States are occurring.” *See, e.g.,* William C. Banks, *Providing “Supplemental Security”—The Insurrection Act and the Military Role in Responding to Domestic Crises*, 3 J. Nat’l. Sec. L. & Pol’y 39, 88 (2009). The ratification debates strongly support this reading. *See, e.g.,* 3 Elliot at 410–12 (recording James Madison’s view that the militia can only be

deployed when local law enforcement is incapable). Indeed, the Framers of the U.S. Constitution expressed concerns that the Calling Forth Clause would open the door federal troops engaging in domestic law enforcement. *Illinois v. Trump*, No. 25-cv-12174, 2025 WL 2886645, at *7 (N.D. Ill. Oct. 10, 2025).

The earliest legislation related to the Calling Forth Clause further evidences that the Framers intended “execute the laws” to be narrowly construed. In that legislation, Congress delegated its power to call on the militia to the President. But it was careful to specify that the President could use the militia to “enforce the laws” only as “an act of last resort . . . after other systems had failed.” *Id.*

b. The Governor may only use the Militia to “preserve the peace” in response to extreme acts of terrorism or rebellion.

The South Carolina criminal code contains an entire chapter outlining “offenses against the peace.” S.C. Code §§ 16-7-10, *et seq.* But given the constitutional and historical context, *see supra*, one cannot read Article XIII to countenance military deployment anytime someone wears a mask, S.C. Code § 16-7-110, publishes a slanderous statement, *id.* at -150, or “throw[s] a stink bomb,” *id.* at -160. Rather, as the Fifth Circuit explained recently, “at the time of the Founding, that notion [of a threat to ‘the public peace’] referred specifically to violence or rebellion, not generalized public harm.” *United States v. Daniels*, 77 F.4th 337, 354 (5th Cir. 2023) *cert. granted, judgment vacated on other grounds*, 144 S. Ct. 2707 (2024). Far from the petty conduct modernly thought of as ‘breaching the peace,’ the founding era’s view of the term more closely resembles our notion of ‘terrorism.’ *See, e.g.,* Joseph Blocher, *When Guns Threaten the Public Sphere: A New Account of Public Safety Regulation Under Heller*, 116 Nw. U. L. Rev. 139, 165 (2021) (explaining that disturbing the peace was thought to occur “where a Man arms himself with dangerous and unusual Weapons, in such a Manner as will naturally

cause a Terror to the People.” (citing 1 William Hawkins, *A Treatise of the Pleas of the Crown* 135 (1716)).

* * *

The framers of our State Constitution had the same concern as the framers of the U.S. Constitution: that the military could be used for domestic law enforcement. To address this concern, South Carolina adopted the same prophylactic measures: limiting deployment of the State Militia to a narrow set of extreme circumstances. Because those circumstances do not include routine law enforcement (or spreading mulch), Governor McMaster’s D.C. deployment exceeds his authority under Article XIII.

2. S.C. Code § 25-1-1840 does not authorize the Governor’s D.C. deployment.

The Governor’s deployment also fails on statutory grounds. The General Assembly exercised its constitutional authority by “organiz[ing]” the militia into the National Guard, *see* S.C. Const. art. XIII, § 1, and then defining limited circumstances under which the Governor may deploy those forces, *see* S.C. Code Ann. §§ 25-1-1810, *et seq.* None justify this deployment.

(a) The first situation that authorizes deployment is when there is “war, insurrection, rebellion, invasion, tumult, riot or mob.” S.C. Code Ann. § 25-1-1840(a). But there is no war, insurrection, rebellion, invasion, riot or mob, as those terms are commonly understood. And when the meaning of statutory language is clear, “it is not the court’s place to change the meaning of a clear and unambiguous statute.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

The term “tumult” is the only potential source of ambiguity in the statute. Unlike its neighbors—war, insurrection, rebellion, invasion, riot, and mob—“tumult” encompasses a range of meanings, from a “disorderly agitation or milling about of a crowd” to “a turbulent uprising.” *Tumult*, Merriam-Webster, <https://perma.cc/6KQW->

24FY (archived Mar. 1, 2026). But applying the rules of statutory construction resolves the ambiguity in favor of the narrower reading.

“Tumult” does not exist in isolation. Courts ascertain the “meaning of particular terms in a statute . . . by reference to words associated with them.” *Eagle Container Co., LLC v. Cnty. of Newberry*, 379 S.C. 564, 570, 666 S.E.2d 892, 895–96 (2008). Every term surrounding “tumult” implies violence: war, invasion, insurrection, riot, and mob. “Tumult” does not depart from this pattern. *Cf. State v. Albert*, 257 S.C. 131, 184 S.E.2d 605, 607 (1971) (“A riot is defined to be a tumultuous disturbance.”)

The broader reading fails for another reason: It would produce absurd—and unconstitutional—results. *Hodges*, 341 S.C. at 91, 533 S.E.2d at 584 (courts should interpret statutes to avoid absurd results). It would be absurd to interpret “tumult” in a way that violates the people’s constitutional rights. And reading it to mean anything less than a violent uprising *would* undermine the people’s right to peaceably assemble. S.C. Const. art. I, § 2. If Section 1840 is constitutional, it cannot authorize deploying the SCNG to deal with the “milling about of a crowd.” In this context, it implies a *violent* crowd.

(b) The second situation that authorizes SCNG deployment is when “there is a body of men acting together by force with intent to commit a felony, to offer violence to persons or property or by force and violence to break and resist the laws of this State or of the United States.” S.C. Code Ann. § 25-1-1840(b). There is no coordinated group acting with intent to commit violence against people or property, or to otherwise violate the law. Indeed, this second situation demands even more than “tumult.” It is not enough that there exists a violent group; the group must be coordinated and share an intent to violate the law. No such group has been identified as acting in D.C. At most, the President has asserted that D.C. is experiencing a

crime wave—not that the crime is attributable to the coordinated efforts of a “body of men acting together.”

(c) The third situation that would authorize deployment is if there were an “imminent danger” that either of the first two situations would occur. S.C. Code Ann. § 25-1-1840(c). This would require some reason to believe that a violent group was descending on Washington D.C. And no such basis exists.

(d) Finally, the fourth situation is “in the event of public disaster.” S.C. Code Ann. § 25-1-1840(d). Merriam-Webster defines ‘disaster’ as “a sudden calamitous event bringing great damage, loss, or destruction.” *Disaster*, Merriam-Webster, <https://perma.cc/H2AH-BSZN> (archived Mar. 1, 2026). Black’s Law Dictionary agrees. *Disaster*, *Black’s Law Dictionary* (12th ed. 2024) (“A calamity; a catastrophic emergency.”). As do other provisions of South Carolina law, which use “emergency” to include events like an “enemy attack, sabotage, conflagration, flood, storm, epidemic, earthquake, riot, or other public calamity.” S.C. Code Ann. § 25-1-430(b). No serious textualist can stretch “disaster” to include an *actual* urban crime wave, much less the demonstrably false one claimed by the President. *See, e.g.*, Ernesto Lopez & Bobby Boxerman, Council on Crim. Just., *Crime trends in U.S. cities: Year-end 2024 update* (Jan. 2025), § Changes in Violent Offenses: Homicide, at Fig. 4: Percent Change in Homicides in 29 Cities, *available at* <https://perma.cc/N955-SB4J> (showing that homicide rates in D.C. dropped 32% between 2023 to 2024).

* * *

The statute’s narrow enumeration reflects the same constitutional judgment embodied in Article I, § 20: military deployment is reserved for genuine emergencies, not performative shows of force against perceived political adversaries. Neither the Constitution nor the statute authorizes the Governor’s action here.

II. Plaintiffs' claims are justiciable.

A. *The public importance of this case relaxes the normal standing and mootness rules.*

Plaintiffs presume that the Court did not grant original jurisdiction only to then hold that it lacks jurisdiction over the case. But given that the public importance doctrine has bearing on Plaintiffs' standing and on any mootness issues that may arise if/when the SCNG deployment concludes, Plaintiffs will briefly address the doctrine.⁹

In South Carolina, “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 v. Charleston Cnty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999). Cases of public importance may proceed “even without an allegation of particularized injury.” *S.C. Pub. Int. Found. v. Wilson*, 437 S.C. 334, 341, 878 S.E.2d 891, 895 (2022); *see also S.C. Pub. Int. Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 646, 744 S.E.2d 521, 524 (2013). The doctrine “ensure[s] accountability and the . . . integrity of government action,” *S.C. Pub. Int. Found. v. S.C. Dep’t of Transp.*, 421 S.C. 110, 118, 804, S.E.2d 854, 858–59 (2017) (internal quotation marks omitted), by ensuring that abuses of power are swiftly heard and resolved by the judiciary. Generally, a challenge to an *ultra vires* act is likely to trigger the public importance standing. *See Evins v. Richland Cnty. Hist. Preserv. Comm’n*, 341 S.C. 15, 21, 532 S.E.2d 876, 879 (2000). The public importance doctrine also allows the judiciary to resolve an important issue, even if it becomes moot during litigation. *Sloan v. Dep’t of Transp.*, 365 S.C. 299, 305, 618 S.E.2d 876, 879 (2005) (holding, under the public importance

⁹ If the deployment ends or is recalled, the “capable of repetition yet evading review” exception to mootness would also likely apply. *See, e.g., Byrd v. Irmo H.S.*, 321 S.C. 426, 432, 468 S.E.2d 861, 864 (1996) (applying exception to short-term student suspensions that “by their very nature, are completed long before an appellate court can review the issues they implicate.”).

exception, that “*despite the mootness in the present case, we find Sloan has standing to raise this issue*” (alteration in original)).

Plaintiffs’ argument—that Governor McMaster’s deployment of the National Guard to the District of Columbia exceeds his lawful authority—raises fundamental questions of executive authority and the separation of powers. The public importance of this case is further sharpened by the effect that the Governor’s extraterritorial deployment might have on interstate comity within our nation’s federalist structure. This case’s issue also cries out for future guidance. *See ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008) (“The key to the public importance analysis is whether a resolution is needed for future guidance.”). The National Guard deployment at issue in this case is Governor McMaster’s second such deployment, showing a likelihood that he will continue sending National Guard personnel to participate in the ongoing Title 32 deployment in Washington, D.C., unless this Court intervenes.

Beyond those fundamental legal questions, Governor McMaster’s deployment of the South Carolina National Guard expends limited resources that are critical in responding to emergencies in the state. For example, in the aftermath of Hurricane Helene, the National Guard “support[ed] road clearing, traffic control assistance, transportation, damage assessment (ground), vehicle recovery, general purpose troops for support, and security (non-armed) general purpose troops” in counties across the state.¹⁰ Those efforts included distributing food and clean drinking water, logging more than 4,200 chainsaw hours, removing 2,525 trees, clearing 1,173 miles

¹⁰ SCEMD, *Update to Team SC Response and Recovery After Helene* (Oct. 1, 2024), <https://perma.cc/8N7D-5AXD>.

of roadways, and rescuing 57 people.¹¹ When deployed outside South Carolina, the National Guard does not retain its full capacity to address emergencies at home.

An amici brief filed by former U.S. Army and Navy Secretaries and Retired Four-Star Admirals and Generals further underscores the grave consequences of unlawful National Guard deployments. *See* Brief of Amici Curiae Former U.S. Army and Navy Secretaries and Retired Four-Star Admirals and Generals, *District of Columbia v. Trump*, No. 1:25-cv-03005, 2025 WL 4113195 (D.D.C. Sep. 15, 2025). Those leading military officials, who “served under each president from John F. Kennedy to Barack Obama,” warn that National Guard deployments like the SCNG deployment in D.C. “threaten the Guard’s core national security and disaster relief missions; place deployed personnel in fraught situations for which they lack specific training, thus posing safety concerns for servicemembers and the public alike; and risk inappropriately politicizing the military, creating additional risks to recruitment, retention, morale, and cohesion of the force.” *Id.* § Interest of Amici Curiae.

Given the stakes of Governor McMaster’s unlawful deployment of the SCNG to D.C. and the pressing need for future guidance, the Court is right to exercise jurisdiction under its “public importance” jurisprudence.

B. This case does not ask a political question or improvidently encroach upon the Governor’s delegated authority.

In the Governor’s Return, he asserts that “no court may infringe on the Governor’s commander-in-chief power to decide whether to order troops into active service.” Gov’r Return, at *2. But as both a legal and historical matter, that’s wrong.

¹¹ S.C. Nat’l Guard, *Hurricane Helene Response 2024*, YouTube (Nov. 26, 2024), <https://www.youtube.com/watch?v=pYTO-iyEJYw>.

In *Hearon v. Calus*, 178 S.C. 381, 183 S.E. 13 (1935), this Court addressed a challenge to Governor Johnston’s use of the militia in response to a declared state of insurrection. Like Governor McMaster, Defendants there argued that “none of the acts of the Governor, done after the proclamation which declares the existence of a state of insurrection, may be inquired into by the courts, or interfered with by them.” *Id.* at 20. The Court eviscerated that argument, explaining that:

[W]hen [the Governor’s] acts exceed the authority given him by the Constitution and Statutes and are injurious to the personal liberty and property rights of the citizens of the state, they are open to the inquiry and control of the judicial arm of the state. Any other construction of the law would lead to anarchy and revolution. If the power of the Governor, after his proclamation of the existence of a state of insurrection is uncontrolled by any deterrent power of the government and is subject only to his caprice and will, what shall restrain him from depriving a citizen of his property or his liberty? To hold that he has such unlimited power, unrestrained by any force of law, would be subversive of every principle of freedom and liberty, and be an invitation and provocation to the insurrection and rebellion which it is the province and duty of the law to suppress.

Id. at 20–21. As support, the *Hearon* Court quoted Chief Justice Hughes from *Sterling v. Constantine*, 287 U.S. 378, 401 (1932), who put it this way: “What are the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions.” *Hearon*, 178 S.C. at 404, 183 S.E. at 22.

Recent federal jurisprudence is in accord. The President’s authority to deploy federalized National Guard troops—like Governor McMaster’s authority to deploy the SCNG—is set by statute. *See, e.g.*, 10 U.S.C. § 12406. When President Trump invoked that authority to deploy federalized National Guard troops in California, Oregon, and Illinois, his administration (like Governor McMaster) argued that the President’s decisions were unreviewable political questions. *See, e.g., Newsom v. Trump*, 141 F.4th 1032, 1045–46 (9th Cir. 2025); *Illinois v. Trump*, 2025 WL

2886645, at *12–13. But those federal courts, like this Court in *Hearon*, held otherwise.

In sum: this case requires no more or less than quintessential judicial review. The Governor is not a warrior-king; specific provisions of South Carolina law constrain his authority to deploy armed military personnel—especially across state lines. As in *Hearon*, this case asks merely that the Court to perform its duty to “say what the law is” and “determin[e] the constitutionality of . . . the government’s actions pursuant to those laws.” *Abbeville Cnty. Sch. Dist. v. South Carolina*, 410 S.C. 619, 632, 767 S.E.2d 157, 163–64 (2014) (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 138 (1803)). Thus, the issue is justiciable.

CONCLUSION

WHEREFORE, the Court should declare that the Governor’s deployment of SCNG troops to Washington, D.C. was *ultra vires* and enjoin the same.

RESPECTFULLY SUBMITTED this second day of March 2026.

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