RECEIVED
Mar 24 2026
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE ORIGINAL JURISDICTION

Appellate Case No. 2026-000032

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

v.

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

AMICUS CURIAE BRIEF SUPPORTING DEFENDANTS BY THOMAS C. ALEXANDER, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE SENATE, AND G. MURRELL SMITH, JR., IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE HOUSE OF REPRESENTATIVES

Vordman Carlisle Traywick, III (102123)
Sarah C. Frierson (104643)
ROBINSON GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ltraywick@robinsongray.com
sfrierson@robinsongray.com

Counsel for Amicus Curiae
President Alexander and Speaker Smith

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutions and Rules

Secondary Sources

INTRODUCTION

Standing "is a fundamental requirement to instituting an action." *Adams v. McMaster*, 432 S.C. 225, 234, 851 S.E.2d 703, 708 (2020) (quoting *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999)). A plaintiff therefore must have "a personal stake in the subject matter" and "be a real party in interest." *Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001) (*Sea Pines*).

Absent a statute conferring standing, a plaintiff must have "an injury-in-fact" that is "a concrete, particularized, and actual or imminent invasion of a legally protected interest." *Carnival Corp. v. Hist. Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 75, 753 S.E.2d 846, 850 (2014). He "must, in other words, be able to answer a basic question: 'What's it to you?'" *Bost v. Ill. State Bd. of Elections*, 146 S. Ct. 513, 519 (2026) (quoting Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U. L. REV. 881, 882 (1983)).

The standing requirement ensures "courts decide litigants' legal rights in specific cases" and "do not opine on legal issues in response to citizens who might 'roam the country in search of governmental wrongdoing.'" *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 379 (2024) (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State*, 454 U.S. 464, 487 (1982)). Nor are its elements "mere pleading requirements"—they are "indispensable" and "must be supported in the same way as any other matter on which the plaintiff bears the burden of proof" in "successive stages of the litigation." *Beaufort Cnty. v. Trask*, 349 S.C. 522, 529 n.14, 563 S.E.2d 660, 664 n.14 (Ct. App. 2002) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)).

But sometimes, that's not so. In certain cases, "a party is not required to show he has suffered a concrete or particularized injury." *S.C. Pub. Int. Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 118, 804 S.E.2d 854, 858 (2017). He can sidestep that otherwise fatal flaw when the

issue is of "public importance" and requires "future guidance." *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 198, 669 S.E.2d 337, 341 (2008). This is known as the "public importance exception" to standing. *Adams*, 432 S.C. at 234, 851 S.E.2d at 708.

Unfortunately, the exception has been "swallow[ing] the rule," *Jowers v. S.C. Dep't of Health & Envtl. Control*, 423 S.C. 343, 360, 815 S.E.2d 446, 455 (2018) (quoting *S.C. Pub. Int. Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 646, 744 S.E.2d 521, 524 (2013)), enabling litigants to file lawsuits over policies with which they disagree. *Cf. Carolina All. for Fair Emp't v. S.C. Dep't of Lab., Licensing, & Regul.*, 337 S.C. 476, 487, 523 S.E.2d 795, 800 (Ct. App. 1999) ("a mere interest in a problem is not enough"); *Diamond v. Charles*, 476 U.S. 54, 62 (1986) ("[t]he presence of a disagreement, however sharp and acrimonious it may be, is insufficient").

To be sure, "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). But "[t]he province of the court is, solely, to decide on the rights of individuals." *Id.* at 170. "Except when necessary in the execution of that function, courts have no charter to review and revise legislative and executive action." *Summers v. Earth Island Inst.*, 555 U.S. 488, 492 (2009). As the Supreme Court of the United States has recognized, "[v]indicating the public interest . . . is the function of" the political branches. *Lujan*, 504 U.S. at 576.

Standing was "founded in concern about the proper—and properly limited—role of the courts in a democratic society." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Rooted in the constitution, it limits courts to deciding real cases and controversies, protects judicial resources, upholds the separation of powers, and prevents frivolous lawsuits. Because "public importance standing," *S.C. Pub. Int. Found.*, 421 S.C. at 118, 804 S.E.2d at 858, contravenes these tenets, President Alexander and Speaker Smith respectfully ask the Court to revisit the doctrine.

INTEREST OF *AMICUS CURIAE*

President Alexander and Speaker Smith submit this *amicus curiae* brief in support of Defendants solely to address their interest in the public importance exception to standing.[1]

As the Court has long recognized, "[a] private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom." *Freemantle v. Preston*, 398 S.C. 186, 193, 728 S.E.2d 40, 43 (2012). Despite this bedrock principle, litigants with no injury frequently invoke the public importance exception to challenge legislative and executive policy decisions.

For nearly 30 years, the State of South Carolina has defended generalized grievances via the public importance exception. *E.g.*, *Eidson v. S.C. Dep't of Educ.*, 444 S.C. 166, 906 S.E.2d 345 (2024); *S.C. Pub. Int. Found. v. Wilson*, 437 S.C. 334, 878 S.E.2d 891 (2022); *Adams*, 432 S.C. at 225, 851 S.E.2d at 703; *Jowers*, 423 S.C. at 343, 815 S.E.2d at 446; *Bodman v. State*, 403 S.C. 60, 742 S.E.2d 363 (2013); *Sloan v. S.C. Dep't of Transp.*, 365 S.C. 299, 618 S.E.2d 876 (2005) (*DOT*); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Joytime Distribs. & Amusement Co.*, 338 S.C. at 634, 528 S.E.2d at 647. Where, as here, Plaintiffs challenge the Governor's decision to deploy the South Carolina National Guard to our Nation's capital, it seems time to give the doctrine a fresh look.

To be clear, President Alexander and Speaker Smith do not wish to limit access to the courts for anyone who "suffered a concrete or particularized injury." *S.C. Pub. Int. Found.*, 421 S.C. at 118, 804 S.E.2d at 858. They seek only "to prevent the judicial process from being used" by litigants "to usurp the powers of the political branches." *Clapper v. Amnesty Int'l USA*, 568

[1] President Alexander and Speaker Smith take no position on the merits. To the extent necessary, they defer to the remaining sections of Defendants' brief. *See* Rule 208(b)(6), SCACR.

U.S. 398, 408 (2013). As the branch with the "power of the purse," 1 JAMES LOWELL UNDERWOOD, THE CONSTITUTION OF SOUTH CAROLINA: THE RELATIONSHIP OF THE LEGISLATIVE, EXECUTIVE, AND JUDICIAL BRANCHES 8 (1986), often defending these cases, the General Assembly has an interest in curbing needless litigation against the State by individuals who suffered no harm.

President Alexander and Speaker Smith, as respective leaders of the Senate and House, therefore seek to protect that interest here. *See* S.C. Senate R. 17 ("The President may authorize or retain counsel to initiate, defend, intervene in, or otherwise participate in any suit on behalf of the Senate, a Senate committee, a Senator, or a Senate officer or employee."); S.C. House R. 1.13 ("[A]as the Chief Administrative Officer of the House of Representatives, . . . the Speaker is authorized to initiate or otherwise participate in litigation on behalf of the House.").

ARGUMENT

I. The Court should overrule the public importance exception to standing.

"Standing has been called one of 'the most amorphous [concepts] in the entire domain of public law.'' *Pres. Soc'y of Charleston v. S.C. Dep't of Health & Env't Control*, 430 S.C. 200, 209, 845 S.E.2d 481, 485 (2020) (quoting *Flast v. Cohen*, 392 U.S. 83, 99 (1968)).

While conventional standing can be "[c]onfusing," *id.*, the public importance exception exacerbates the problem. It allows "standing rules [to] be relaxed" in "a matter of wide public importance" when resolution "is needed for future guidance affecting the public interest." *Eidson*, 444 S.C. at 177, 906 S.E.2d at 350.[2] Given this sweeping and pliable test, it is difficult to discern when the exception might apply. Or better yet, when it wouldn't. Respectfully, Justice Pleicones was correct: "the mere fact that the issue is one of public importance does not confer upon any

[2] *But see Carnival Corp.*, 407 S.C. at 80, 753 S.E.2d at 853 ("the 'public interest' standard of Rule 245 is not synonymous with the public importance necessary for the" exception "to apply").

citizen or taxpayer the right to invoke per se a judicial determination of the issue." *DOT*, 365 S.C. at 308, 618 S.E.2d at 881 (Pleicones, J., dissenting) (quoting *Crews v. Beattie*, 197 S.C. 32, 49, 14 S.E.2d 351, 358 (1941)). For at least five reasons, the Court should thus revisit and overrule the public importance exception.

A. The exception has no textual footing.

Standing "may exist by statute, through the principles of constitutional standing, or through the public importance exception." *Youngblood v. S.C. Dep't of Soc. Servs.*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013). The exception, however, is not a type of standing. Nor does it owe its existence to constitutional or statutory text. Instead, it is judicially created.

"The principle of standing under the United States Constitution is 'an essential and unchanging part of the case-or-controversy requirement of Article III.'" *ATC S., Inc.*, 380 S.C. at 195, 669 S.E.2d at 339 (quoting *Lujan*, 504 U.S. at 560). And "the Constitution's central mechanism of separation of powers depends largely upon common understanding of what activities are appropriate to legislatures, to executives, and to courts." *Lujan*, 504 U.S. at 559–60; *accord* S.C. CONST. art. I, § 8 (separation of powers). Because "cases" and "controversies" can arise in the executive and legislative branches, as well, standing distinguishes those that "are appropriately resolved through the judicial process" from those that are not. *Lujan*, 504 U.S. at 560 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)).

When the Court adopted the *Lujan* test for constitutional standing, it explained this "irreducible constitutional minimum of standing." *Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291 (quoting *Lujan*, 504 U.S. at 559). After all, "[i]n our constitutional system of government with its separation of powers, courts exercise the limited constitutional function of the 'judicial power.'" *Carnival Corp.*, 407 S.C. at 81, 753 S.E.2d at 853 (quoting S.C. CONST. art. V, § 1). Courts are

thus "limited to resolving *cases* and the powers inherent in that function. Courts are not bodies for the resolution of public policy and generalized grievances. Harms suffered by the public at large . . . are to be remedied by the legislative and executive branches." *Id.* (emphasis added).[3]

Of course, "Article III standing as applied in the federal courts does not limit a state's ability to statutorily formulate standing criteria." *Pres. Soc'y of Charleston*, 430 S.C. at 210–11, 845 S.E.2d at 486. In South Carolina, "[s]tatutory standing exists" where "a statute confers a right to sue on a party." *Youngblood*, 402 S.C. at 317, 741 S.E.2d at 518.[4] "When no statute confers standing," "constitutional standing" is a must. *Id.*

Yet the public importance exception—with no citizen suit provision—essentially deputizes everyone as a private attorney general. Made popular through the test articulated in *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), the exception traces its roots to *Thompson v. S.C. Commission on Alcohol and Drug Abuse*, 267 S.C. 463, 229 S.E.2d 718 (1976).[5] The

[3] Our constitution refers only to "cases." *E.g.*, S.C. CONST. art. V, § 5 ("The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs. The Court shall have appellate jurisdiction only in *cases* of equity, and in such appeals they shall review the findings of fact as well as the law, except in *cases* where the facts are settled by a jury and the verdict not set aside. The Supreme Court shall constitute a court for the correction of errors at law under such regulations as the General Assembly may prescribe." (emphasis added)); S.C. CONST. art. V, § 11 ("The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal *cases*, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law." (emphasis added)). But that is no material distinction from Article III, for it is well-settled "an actual, justiciable controversy must exist" too. *Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983).

[4] *Contrast Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016) ("Congress' role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right.").

[5] While the Court cited two other cases for support, both considered the public importance exception to mootness, not standing. *See Berry v. Zahler*, 220 S.C. 86, 87, 66 S.E.2d 459, 460 (1951); *Ashmore v. Greater Greenville Sewer Dist.*, 211 S.C. 77, 96, 44 S.E.2d 88, 97 (1947).

Thompson Court considered law enforcement officers' constitutional challenge to a law directing municipalities to encourage voluntary alcohol-addiction treatment programs rather than pursuing disorderly-conduct prosecutions. *Id.* at 467, 229 S.E.2d at 720. Recognizing the "general rule" that public officials lack standing to challenge a statute's validity, the Court said "the rule is not an inflexible one," and "the questions involved are of such wide concern, both to law enforcement personnel and to the public, that the court should determine the issues in this declaratory judgment action." *Id.* at 467, 229 S.E.2d at 719. The Court, however, cited no authority for this proposition.

B. The Court lacks jurisdiction to issue advisory opinions.

"It is elementary that the courts of this State have no jurisdiction to issue advisory opinions." *Booth v. Grissom*, 265 S.C. 190, 192, 217 S.E.2d 223, 224 (1975).

The Declaratory Judgments Act "does not require the court to give a purely advisory opinion[,] which the parties might, so to speak, put on ice to be used if and when occasion might arise . . . or license litigants to fish in judicial ponds for legal advice." *Richards v. Spicer*, 445 S.C. 514, 522, 915 S.E.2d 486, 490 (2025) (cleaned up) (quoting *Tourism Expenditure Rev. Comm. v. City of Myrtle Beach*, 403 S.C. 76, 81–82, 742 S.E.2d 371, 374 (2013) (plurality)). It did not "alter the character of the controversies which are the subject of the judicial power under the Constitution." *Poe v. Ullman*, 367 U.S. 497, 506 (1961) (citation omitted).

"Put another way, a declaration is not a get-out-of-standing-free card." *Wells v. Johnson*, 150 F.4th 289, 301 (4th Cir. 2025). One "cannot by consent or agreement confer jurisdiction on the court to render a declaratory judgment in the absence of an actual justiciable controversy." *Power v. McNair*, 255 S.C. 150, 153, 177 S.E.2d 551, 552 (1970); *see also Tourism Expenditure Rev. Comm.*, 403 S.C. at 81, 742 S.E.2d at 374 (the Act "is not an independent grant of jurisdiction" (citation omitted)). "The test" isn't whether a party "is entitled to a declaration of rights in

accordance with his theory, but whether he is entitled to" one "at all." *Richards*, 445 S.C. at 521–22, 915 S.E.2d at 490 (alteration in original) (quoting *Dantzler v. Callison*, 227 S.C. 317, 321–22, 88 S.E.2d 64, 66 (1955)). Indeed, parties cannot invoke the judicial power to "vindicate their own value preferences." *Sierra Club v. Morton*, 405 U.S. 727, 740 (1972).[6]

Under the public importance exception, courts do not "filter the truly afflicted from the abstractly distressed." *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 154 (4th Cir. 2000). Issuing future guidance in a case with no injury, though, is just an "advisory opinion[]" that courts "have no jurisdiction to issue." *Booth*, 265 S.C. at 92, 217 S.E.2d at 224.

C. The framework is inconsistent and unclear.

The Court has "applied the doctrine in a wide range of cases." *Jowers*, 423 S.C. at 369, 815 S.E.2d at 460 (Hearn, J. dissenting). But it is unclear what the tax-exempt bonds MUSC used to purchase St. Francis Hospital, *Baird*, 333 S.C. at 531, 511 S.E.2d at 75, "[t]he eligibility of South Carolina's governor," *Sanford*, 357 S.C. at 434, 593 S.E.2d at 472, a preservation society's property conveyance, *Evins v. Richland Cnty. Hist. Pres. Comm'n*, 341 S.C. 15, 21, 532 S.E.2d 876, 879 (2000), wage notification requirements for temporary employees, *Carolina All. for Fair Emp't*, 337 S.C. at 489, 523 S.E.2d at 801–02, and federal emergency education funding during a pandemic, *Adams*, 432 S.C. at 235, 851 S.E.2d at 708, have in common.

---

[6] *Cf.* S.C. CONST. art. I, § 8; *Fullbright v. Spinnaker Resorts, Inc.*, 420 S.C. 265, 271, 802 S.E.2d 794, 797 (2017) ("[d]eterminations of public policy . . . are chiefly within the province of the legislature"); *Perry v. Bullock*, 409 S.C. 137, 144, 761 S.E.2d 251, 254 (2014) ("Although there may be policy concerns militating against this result, that is a matter for the legislature and not for this Court."); *Hampton v. Haley*, 403 S.C. 395, 403, 743 S.E.2d 258, 262 (2013) ("At its simplest, the constitutional division of powers can be described as '[t]he legislative department makes the laws; the executive department carries the laws into effect, and the judicial department interprets and declares the laws.'" (quoting *State ex rel. McLeod v. Yonce*, 274 S.C. 81, 84, 261 S.E.2d 303, 305 (1979))); *Pelzer, Rodgers & Co. v. Campbell & Co.*, 15 S.C. 581, 601 (1881) ("It is not for this court to consider the wisdom or policy of the law. That is exclusively for the legislative branch of the government. Our duty is simply to announce what the law is—not what it should be.").

Less clear is the framework a court must employ. In fact, the Court has said "the very nature of the public importance exception to general standing requirements resists a formulaic approach." *ATC S., Inc.*, 380 S.C. at 199, 669 S.E.2d at 341. In the exception's early days, the Court said it "may confer standing upon a party when an issue is of such public importance as to require its resolution for future guidance." *Baird*, 333 S.C. at 531, 511 S.E.2d at 75. Years later, the Court announced a new component:

> An appropriate balance between the competing policy concerns underlying the issue of standing must be realized. Citizens must be afforded access to the judicial process to address alleged injustices. On the other hand, standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits.

Sanford, 357 S.C. at 434, 593 S.E.2d at 472; *but see Sloan v. Wilkins*, 362 S.C. 430, 437, 608 S.E.2d 579, 583 (2005) (applying the exception "[i]n light of the great public importance of this matter," without considering whether future guidance was needed).

But in 2022, the Court articulated a new balancing test, considering "the citizenry's need to hold public officials accountable for alleged injustices and 'the concomitant integrity of government action.'" *Wilson*, 437 S.C. at 341–42, 878 S.E.2d at 895 (quoting *S.C. Pub. Int. Found.*, 421 S.C. at 118, 804 S.E.2d at 858). Lately, the Court has jettisoned this framework, applying the public importance exception only because "the legality of the expenditure of public funds is at issue." *Eidson*, 444 S.C. at 177, 906 S.E.2d at 350.

It also remains unclear whether an injury is required. In 2017, the Court said one isn't. *See S.C. Pub. Int. Found.*, 421 S.C. at 118, 804 S.E.2d at 858 (one "is not required to show he has suffered a concrete or particularized injury" for "public importance standing."). A year later, the Court said one is. *See Jowers*, 423 S.C. at 367, 367, 815 S.E.2d at 458 ("The 'has not suffered a

particularized injury' language does not remove the injury in fact requirement" but "allows someone who has not personally suffered an injury to step into the shoes of someone who has."). The Court then returned to the former approach, saying it "consistently acknowledged that even without an allegation of particularized injury, 'standing may be conferred'" under the exception. *Wilson*, 437 S.C. at 341, 878 S.E.2d at 895 (quoting *Sanford*, 357 S.C. at 434, 593 S.E.2d at 472).

And on seemingly similar issues, the doctrine has cut different ways.[7] *E.g.*, *Vicary v. Town of Awendaw*, 425 S.C. 350, 360, 822 S.E.2d 600, 605 (2018) ("While this Court has previously declined to utilize the public importance exception in a zoning and annexation dispute, the unique facts present here compel a contrary decision."). Given this inconstancy, the Bench, the Bar, and litigants are left guessing when and how the public importance exception might apply. "[N]othing good can come from murky doctrine." Grant Majors, Note, *The Doctrine of Standing in South Carolina: A Survey and Critique*, 76 S.C. L. Rev. 663, 704 (2025).[8]

D. The exception conflicts with other precedents.

In *Sea Pines*, the Court adopted a "stringent standing test"—the "irreducible constitutional minimum of standing" from *Lujan*—requiring a plaintiff to meet three elements to establish constitutional standing. 345 S.C. at 601, 550 S.E.2d at 291 (quoting *Lujan*, 504 U.S. at 559–61).

By its very name, the public importance exception allows litigants to get around this foundational requirement when an issue is important, even if they are not a "real party in interest." *Townsend v. Townsend*, 323 S.C. 309, 314, 474 S.E.2d 424, 427 (1996) ("A real party in interest is

[7] The precise name of the doctrine even seems in flux. Some call it "public importance standing," *S.C. Pub. Int. Found.*, 421 S.C. at 118, 804 S.E.2d at 859, or the "public importance exception," *ATC S., Inc.*, 380 S.C. at 199, 669 S.E.2d at 341, while others call it "public interest standing," *Sanford*, 357 S.C. at 434, 593 S.E.2d at 472, or the "public interest doctrine," *Nat'l Tr. v. City of N. Charleston*, 439 S.C. 222, 230, 886 S.E.2d 487, 491 (Ct. App. 2023).

[8] For a thorough compendium of the history of standing in South Carolina and a thoughtful critique of the public importance exception, *see* Majors, *supra*, at 663–709.

one who 'has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action.'" (quoting *Bailey v. Bailey*, 312 S.C. 454, 441 S.E.2d 325 (1994))).

The Court "unanimously closed the door to a litigant asserting standing simply by virtue of his status as a taxpayer," *Bodman*, 403 S.C. at 67, 742 S.E.2d at 366, because the "feature of commonality defeats the constitutional requirement of a concrete and particularized injury," *ATC S., Inc.*, 380 S.C. at 198, 669 S.E.2d at 341; *see also Sea Pines*, 345 S.C. at 600, 550 S.E.2d at 291 (finding the alleged injury must "be of a personal nature to the party laying claim to standing and not merely general interest common to all members of the public"). But the public importance exception allows just that. It is taxpayer standing dressed in different garb.

Similarly, the Court has held "[a] private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom," *Freemantle*, 398 S.C. at 193, 728 S.E.2d at 43 (quoting *Evins*, 341 S.C. at 21, 532 S.E.2d at 879), for "a mere interest in a problem is not enough," *Carolina All. for Fair Emp't*, 337 S.C. at 487, 523 S.E.2d at 800. "As opposed to the traditional conception of standing, which is concerned with the nature of the parties, the public importance exception is concerned with the nature of the *issue*—namely, issues of public importance which the court feels inclined to weigh in on." Grant, *supra*, at 678. Nowhere else in the law is that concept applied.

Moreover, standing is jurisdictional, not relegated to justiciability.[9] *See Wilson*, 437 S.C. at 340, 878 S.E.2d at 894 (correctly stating "[a] motion to dismiss for lack of standing challenges

[9] Elsewhere, the Court has said "[j]usticiability encompasses . . . ripeness, mootness, and standing." *James v. Anne's, Inc.*, 390 S.C. 188, 193, 701 S.E.2d 730, 732 (2010). And "when a party belatedly attempts to raise the issue of standing, our courts have applied error preservation principles." *Id.* at 188, 193, 701 S.E.2d 730, 732–33. But if it can "be waived, it cannot involve subject matter jurisdiction." *Bardoon Props., NV v. Eidolon Corp.*, 326 S.C. 166, 170, 485 S.E.2d 371, 373

the court's subject matter jurisdiction"). Yet the public importance exception allows litigants to seek judicial relief in cases over which a court lacks subject matter jurisdiction. *See State v. Gentry*, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005) ("subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong"); *Booth*, 265 S.C. at 192, 217 S.E.2d at 224 ("It is elementary that the courts of this State have no jurisdiction to issue advisory opinions.").

E. The exception is being misused.

To its credit, the Court has cautioned that "[t]o avoid an overzealous use of this exception," *Bodman*, 403 S.C. at 68, 742 S.E.2d at 367, it "must be cautious with this exception, lest it swallow the rule," *Jowers*, 423 S.C. at 366, 815 S.E.2d at 458 (quoting *S.C. Transp. Infrastructure Bank*, 403 S.C. at 646, 744 S.E.2d at 524). Regrettably, the rule is not shaking out that way in practice.

Look no further than the complaint here. This case brings into sharp relief how litigants are using the exception to force a policy debate. *See Carnival Corp.*, 407 S.C. at 81, 753 S.E.2d at 853 ("Courts are not bodies for the resolution of public policy and generalized grievances."). With no injury to anyone, *but see Jowers*, 423 S.C. at 367, 367, 815 S.E.2d at 458, Plaintiffs ask the Court for a declaratory judgment. Nor is that unique. Cases of political disagreement have become a fixture—perhaps an unwelcome one—on our courts' dockets. *E.g.*, Pet'rs' Br. at 26, *Duggins v. Lucas*, App. No. 2020-001042 (S.C. Sup. Ct. Aug. 25, 2020) (asking the Court to

(1997). While the Court noted "a difference between the concepts of 'standing,' 'capacity to sue,' and 'real party in interest,'" it also acknowledged prior "cases essentially equate[d] the concepts of standing and real party in interest." *Id.* at 169 n.3, 485 S.E.2d at 373 n.3. In practice, parties collapse the inquiry into real-party-in-interest and treat standing as a justiciability query. Given the confusion among the Bench and Bar, the Court should clarify that standing implicates subject matter jurisdiction, "may be raised at any time," and cannot "be waived, even by consent of the parties, and should be taken notice of by this Court." *In re November 4, 2008, Bluffton Town Council Election*, 385 S.C. 632, 637, 686 S.E.2d 683, 686 (2009).

declare "current election procedures" (without identifying which ones) "violate articles I and II of the South Carolina Constitution" (without saying how or under what standard) and to order the State Election Commission "to implement all nine [policy] recommendations" from a letter).

Revisiting and ending the public importance exception, however, can alleviate this burden. *See Pres. Soc'y of Charleston*, 430 S.C. at 209, 845 S.E.2d at 486 ("This Court, of course, is well aware that '[a]s our society has become more complex, our numbers more vast, our lives more varied, and our resources more strained, citizens increasingly request the intervention of the courts on a greater variety of issues than at any period of our national development.' . . . For that reason, 'courts must be more careful to insist on the formal rules of standing, not less so.'" (quoting *United States v. Richardson*, 418 U.S. 166, 179 (1974))).

II. Stare decisis is important but not insurmountable.

While President Alexander and Speaker Smith respect the Court's general adherence to precedent, "stare decisis is not an inexorable command." *McLeod v. Starnes*, 396 S.C. 647, 654, 723 S.E.2d 198, 202 (2012). The Supreme Court of Ohio, for its part, recently corrected course on this same issue. *Ohio ex rel. Martens v. Findlay Mun. Ct.*, 262 N.E.3d 304, 310 (Ohio 2024) (overruling *Ohio ex rel. Ohio Acad. of Trial Lawyers v. Sheward*, 715 N.E.2d 1062 (Ohio 1999) and holding future litigants cannot rely on the public-right doctrine "to bypass our well-established standing requirement"). "What [the Court] can decide, [it] can undecide," *Kimble v. Marvel Entm't, LLC*, 576 U.S. 446, 465 (2015), particularly when the "doctrine is court-created," *Elam v. Elam*, 275 S.C. 132, 137, 268 S.E.2d 109, 111–12 (1980).

CONCLUSION

For these reasons, President Alexander and Speaker Smith respectfully support Governor McMaster and General Stilwell's request to overrule the public importance exception.

Respectfully submitted,

/s/Vordman Carlisle Traywick, III

Vordman Carlisle Traywick, III (102123)
Sarah C. Frierson (104643)
ROBINSON GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ltraywick@robinsongray.com
sfrierson@robinsongray.com

Counsel for Amicus Curiae
President Alexander and Speaker Smith

Columbia, South Carolina
March 24, 2026