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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN ITS 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.

DEFENDANTS' RESPONSE TO *AMICI CURIAE* BRIEF SUPPORTING PLAINTIFFS

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INTRODUCTION

Amici plead with this Court to save the public importance exception, not because it is constitutionally rooted, but because it is a "rare[ly]" invoked doctrine that's essential for courts to weigh in on important issues. Amici Br. 10. Amici are wrong on each point.

For starters, Amici underestimate the exception's prevalence. Even Plaintiffs disagree with them. The exception has become the door through which many challenges to controversial, high-profile laws get into state court. Its growing use warrants carefully considering the exception's basis, particularly given that the Court has never done so before.

Yet when it comes to that basis, Amici do not defend the exception on constitutional terms. They call constitutional (or "conventional") standing "unpredictable" and insist that public importance standing is a better "safety valve" for environmental litigation. *See id.* at 1–3, 8. But this Court has explained that Article V's "judicial power" is a real "limit[]" on the judiciary's authority. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 81, 753 S.E.2d 846, 853 (2014). The question this case asks for the first time is one Amici leave unaddressed: whether the public importance exception fits within this power.

It does not. The exception rests on a foundation of sand, not stone. It has never been rooted in the historical tradition informing the Constitution's textual grant of judicial power. That is why Amici can defend only the exception's usefulness, not its constitutionality—and why Plaintiffs' effort to supply the missing historical foundation fails. For centuries, this Court has generally required a plaintiff to have an interest in a case (that is, to have been harmed) to bring it. In fact, South Carolina courts have long rejected the idea that any private citizen can sue to enforce a public official's duty. Instead, only the State can enforce that public interest. *See, e.g.*, *State v. Gaillard*, 11 S.C. 309, 314 (1879); *Cleary v. Deliesseline*, 12 S.C.L. 35, 37 (S.C. Const. App.

1821). The rare exceptions come from the General Assembly in some citizen-suit statute—something the legislature knows how to do (it's done it before) and has the authority to do (as it sets state policy). Amici's policy arguments cannot overcome this constitutional limitation the framers of the South Carolina Constitution imposed when they confined the courts' jurisdiction to deciding "cases." The Court should therefore reject these arguments and hold that the public importance exception is unconstitutional.

ARGUMENT

I. The exception's recent repeated use warrants a closer look at its foundations.

Amici urge the Court not to take Defendants' argument too seriously because the public importance exception is "exceedingly rare." Amici Br. 10. After all, they say, Defendants' amici point to only eight cases, so the doctrine is not "common." *See id.* at 10 & n.3. But whether a doctrine is commonly invoked has nothing to do with whether that doctrine is constitutional.

At any rate, the public importance exception is more commonly invoked than Amici admit. Indeed, Amici's "rareness" argument is at odds with Plaintiffs' stance (which Amici are supposedly supporting). Plaintiffs insist that the public importance exception is "commonplace." Reply Br. 10. And at least on this front, Plaintiffs are right. There are far more than eight public importance cases. On top of the list from Speaker Smith and President Alexander, there is *Vicary v. Town of Awendaw*, 425 S.C. 350, 822 S.E.2d 600 (2018), *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007), and *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), from this Court. And there is *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), and *Carolina Alliance for Fair Employment v. S.C. Dep't of LLR*, 337 S.C. 476, 523 S.E.2d 795 (Ct. App. 1999), from the Court of Appeals, to name a few more. So the public importance exception

comes up more than on a "rare" occasion—something this Court knows well, given how often the day's most pressing issue appears on its original jurisdiction docket (often within just days after a law takes effect).

But although the exception has been invoked often in recent history, it does not enjoy the historical pedigree Plaintiffs claim. Plaintiffs point to this Court's later citation to *Ashmore v. Greater Greenville Sewer District*, 211 S.C. 77, 44 S.E.2d 88 (1947), to suggest that the public importance exception dates back to 1947. *See* Reply Br. 1 n.1. But *Ashmore* cannot bear that weight. First, *Ashmore* had a plaintiff who had (at least originally) a concrete, individualized injury. It didn't feature some random plaintiff who disliked a government action with no impact on him. That makes *Ashmore* unlike *Crews v. Beattie*, in which a plaintiff sued government officials regarding funds connected to the State Rural Electrification Authority. 197 S.C. 32, 14 S.E.2d 351 (1941). The Court refused to allow that case to proceed: "The mere fact that the issue is one of public importance does not confer upon any citizen or taxpayer the right to invoke per se a judicial determination of the issue." *Id.* at __, 14 S.E.2d at 358. The two justices who joined *Crews* and remained on the Court in *Ashmore* also joined *Ashmore* without suggesting *Crews* had been overruled. So it would be odd to read *Ashmore* as silently overruling *Crews* when *Ashmore* never cited *Crews* and never analyzed standing.

Second, *Ashmore*'s public interest language addressed mootness, not standing. After resolving the live claim remaining, the Court explained that "questions of public interest *originally* encompassed in an action should be decided for future guidance, however abstract or moot they may have become in the *immediate* contest." *Id.* at 96, 44 S.E.2d at 97 (emphasis added). Those limiting words matter: *Ashmore* concerned answering questions of public importance "originally encompassed" in a proper action that had become "moot." It did not say an important issue can

create standing where none otherwise existed.[*] *Cf. Sloan v. Dep't of Transp.*, 365 S.C. 299, 303–04, 618 S.E.2d 876, 878 (2005) (analyzing standing and mootness separately).

So the public importance exception to standing is a much more recent creation than Plaintiffs suggest. It does not date back to the 1940s. *See* Defs.' Br. 15. At most, it goes back to this Court's 1976 decision in *Thompson v. S.C. Commission on Alcohol & Drug Abuse*—which cited no authority for the idea that an injury is not required for a plaintiff to sue. *See* 267 S.C. 463, 467, 229 S.E.2d 718, 719 (1976). Still, the doctrine didn't really take off until the late 1990s or early 2000s—which is why Plaintiffs' Amici cite only cases from the past couple decades. *See* Amici Br. Table of Authorities (oldest case is from 2003). And during this time, the Court has never carefully analyzed the exception's foundations.

II. The Constitution requires an injury or a statute authorizing suit.

A. Amici do not answer the constitutional question.

Amici defend a policy exception, not a constitutional doctrine. The exception, Amici say, is a "necessary and predictable guardrail," a "vital safety valve," and a "doctrinal linchpin" in environmental cases. Amici Br. 2, 8. But even if those claims were right, they would not establish

[*] Alongside *Ashmore*, this Court has also cited *Berry v. Zahler*, 220 S.C. 86, 66 S.E.2d 459 (1951), to suggest the public importance exception's origins. *See Baird*, 333 S.C. at 531, 511 S.E.2d at 75. But like *Ashmore*, the only reference to public importance was in the context of mootness. *Berry*, 220 S.C. at 87, 89, 66 S.E.2d at 460–61. And that's why the Court just quoted *Ashmore* itself for the proposition. *Id.* at 89, 66 S.E.2d at 461.

The Public Interest Foundation has elsewhere strained to trace the exception back to 1873. *See State v. Hayne*, 4 S.C. 403, 411 (1873). But *Hayne* did not allow an uninjured party to invoke this Court's jurisdiction where it otherwise could not. The Court reversed a criminal conviction because the indictment was insufficient—a ground "sufficient to dispose of the whole case"—and then addressed, at the request of both the defendant and the State, the defendant's alternative constitutional challenge to the statute underlying the prosecution because "the question [wa]s of public importance." *Id.* Deciding an alternative merits issue in a live criminal case says nothing about whether public importance allows an uninjured private plaintiff to invoke judicial power in the first place.

judicial power. Standing is not a policy lever. It is a constitutional boundary. The question is not whether public importance standing would be useful, predictable, or desirable in certain cases. The question is whether the Constitution permits courts to exercise jurisdiction in the absence of a plaintiff with a personal, legally protected injury.

Amici's terminology shows the problem. They repeatedly reduce injury-based standing to "conventional standing." *E.g.*, Amici Br. 1–3, 8, 14. But the judicial power is fixed by the Constitution. It is not a menu of "conventional" rules plus discretionary exceptions. After all, this Court has described the injury requirement as a component of "constitutional standing," not merely "conventional" standing. *Freemantle v. Preston*, 398 S.C. 186, 192–93, 728 S.E.2d 40, 43 (2012). Yet public importance standing is designed to "provid[e] standing where the elements of constitutional standing are *not* met." *Youngblood v. S.C. Dep't of Soc. Servs.*, 402 S.C. 311, 317 n.5, 741 S.E.2d 515, 518 n.5 (2013) (emphasis added). That cannot be right. There cannot be an exception to a constitutional requirement unless the exception itself is rooted in the Constitution. By recasting ordinary standing as just one option among many that the Court on its own may provide, Amici strain to normalize what is an extraordinary departure from the requirement that a plaintiff assert a personal stake. And by failing to explain where that departure comes from, Amici ignore the central question: whether public importance standing is constitutional.

B. South Carolina history shows injury is the rule, and uninjured private enforcement requires a statute or settled tradition.

Amici don't attempt to constitutionally ground the public importance exception. Nor do they even try to push back on the long history of requiring plaintiffs to show an injury. *See* Defs.' Br. 13–14 (listing cases from late 1800s and first half of 1900s requiring a plaintiff to be injured to sue). Presumably, that's because Amici can't. And that's fatal to their policy argument. This is, after all, a court of law, not a policymaking body. *Cf. Smith v. Tiffany*, 419 S.C. 548, 559, 799

S.E.2d 479, 485 (2017) ("absent a constitutional prohibition, where the General Assembly has spoken and established policy, separation of powers demands that courts honor the legislative policy determination"). The history points in one direction: South Carolina courts require a private plaintiff either to show a particularized injury or to proceed under a statute that expressly authorizes suit. Amici identify no third category allowing any citizen to sue over a public wrong merely because the issue is "important."

1. Courts have long required plaintiffs to show an injury. In fact, in those cases, this Court has rejected the concept of public importance standing. "The mere fact that the issue is one of public importance does not confer upon any citizen or taxpayer the right to invoke per se a judicial determination of the issue." *Crews*, 197 S.C. at __, 14 S.E.2d at 358. No public importance exception case has ever wrestled with, overruled, or explained away *Crews* on this point.

Beyond the long list of examples that Defendants have already cited, *see* Defs.' Br. 13–14, there are plenty of other early cases showing an injury requirement. One especially compelling example is *Cherry v. Fewell*, 48 S.C. 553, 26 S.E. 798 (1897), given its similarity to this case. There, a citizen in Rock Hill sued the mayor and city council, alleging that their decision to close Park Avenue was ultra vires. *Id.* at ___, 26 S.E. at 799. As this Court put it, the "gravamen" of the complaint was that the city officials, "without lawful authority, closed . . . one of the public streets of the city" in a way that forced the plaintiff "to take a more circuitous and difficult route" in going between his residence and place of business. *Id.* at ___, 26 S.E. at 800. He sought that the "city council be perpetually enjoined from closing" the street. *Id.*

But he wasn't personally harmed. The street wasn't closed in front of his house or his office; it was just rerouted to go around a school. *Id.* "It [wa]s clear, therefore, that the injury of which plaintiff complain[ed] [wa]s not that special or peculiar injury, differing in kind, and not

merely in degree, from that which the public generally sustain, which alone would entitle a private person to maintain an action either for damages or for an injunction in a case like this." *Id.* Without some allegation of a personalized harm, "it [wa]s obvious that the complaint fails to state facts sufficient to constitute a cause of action, either for an injunction or for damages." *Id.*

Three observations about this case: One, it was decided in 1897, just two years after this Court's jurisdiction took its current form in the 1895 Constitution. *See* S.C. Const. art. V, § 4 (1895); *see infra* Part II.B.3 (discussing the history of how the Constitution uses "case"). It therefore carries extra weight in the historical analysis. *See Williams v. Morris*, 320 S.C. 196, 205, 464 S.E.2d 97, 102 (1995).

Two, *Cherry* tracks the general rule in the nineteenth century. As Thomas Cooley put it in what was "the most influential treatise of constitutional law in the second half of the nineteenth century," Lawrence B. Solum, *Cooley's Constitutional Limitations and Constitutional Originalism*, 18 Geo. J.L. & Pub. Pol'y 49, 49 (2020), "[n]or will a court listen to an objection made to the constitutionality of an act by a party whose rights it does not affect," Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 196 (6th ed. 1890).

And three, *Cherry* is similar to this case. A plaintiff, who lacked a particularized injury, disagreed with government action and sought injunctive relief to stop that government action. There's no reason the outcome here should be different from *Cherry*, which shows how "case" was understood when it became a constitutional term. After all, the Constitution means the same thing today that it meant then.

2. When courts have heard cases from plaintiffs without an injury, those cases come with statutory authorization and historical tradition. These statutes give plaintiffs a legal injury.

Consider qui tam actions. They trace back to the 1300s in England, when Parliament enacted statutes "that allowed informers to obtain a portion of the penalty as a bounty for their information, even if they had not suffered an injury themselves." *Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 775 (2000). These types of cases were "as prevalent in America as in England, at least in the period immediately before and after the framing of the Constitution," as legislatures continued to enact such statutes. *Id.* at 776. Qui tam actions were therefore understood as "cases" at the Founding. *Id.* at 777–78.

That national pattern was present in South Carolina. One example is the Statute of Anne, which allows "any other person" than whoever lost money gambling to sue for treble damages regarding gambling. S.C. Code Ann. § 32-1-20. South Carolina first adopted that law in 1712. *See* An Act for the Better Preventing of Excessive and Deceitful Gaming, § 2 (Dec. 11, 1712), in 2 *Statutes at Large of South Carolina* 566 (1837). And it allows a "stranger, who ha[s] no privity with the defendants," to sue in an action that "did not exist at common law, but only in the statute." *Trumbo v. Finley*, 18 S.C. 305, 311 (1882). Strangers still bring such claims. *See, e.g.*, *S.C. Gambling Recovery, LLC v. Underdog Sports Holdings, Inc.*, No. 2025-CP-37-520 (S.C. Comm. Pls.).

Another South Carolina example is section 15-63-60. That section permits the attorney general or "a private party interested" to bring certain cases against public officials. S.C. Code Ann. § 15-63-60. The statute authorizes the lawsuit. And even then, it requires a party be "interested" or, as this Court once put it, have "standing." *Gold v. S.C. Bd. of Chiropractic Examiners*, 271 S.C. 74, 78, 245 S.E.2d 117, 119 (1978). So when Plaintiffs cite *State v. Tollison*, 95 S.C. 58, __, 78 S.E. 521, 522 (1913), for the idea that anyone can bring a quo warranto action, *see* Reply Br. 5, Plaintiffs ignore the context of the quote it relies on and seemingly misreads the

statute that *Tollison* quotes.

Or look at FOIA. It allows a citizen to sue for declaratory or injunctive relief. S.C. Code Ann. § 30-4-100(A). So "any citizen" may "apply to the circuit court for" the authorized relief. *Fowler v. Beasley*, 322 S.C. 463, 466, 472 S.E.2d 630, 632 (1996).

Specific to environmental litigation, federal law includes some express citizen-suit provisions. *See, e.g.*, 33 U.S.C. § 1365(a) (Clean Water Act). Legislatures thus know how to authorize suits—even for Amici's area of interest—when they want to do so.

3. South Carolina's constitutional text and history confirm that neither Plaintiffs' modern definition of "case" nor its generalized discussion of mandamus and quo warranto justifies the exception. *See* Reply Br. 4–6.

For starters, Plaintiffs' textual analysis of the Constitution is flawed. Plaintiffs merely grab a modern dictionary for the definition of "case." *See id.* at 4 (citing *Black's Law Dictionary* (12th ed. 2024)). But the People didn't put "case" in the Constitution last year. That word in its current usage dates to the 1895 Constitution. *See* S.C. Const. art. V, § 4 (1895) (supreme court jurisdiction); *id.* art. V, § 15 (common pleas); *id.* art. V, § 18 (general sessions). In the late 1960s, the jurisdiction that this Court had was "a good one and should be continued" because the Court "functioned well under this jurisdiction." *Final Report of the Committee to Make a Study of the South Carolina Constitution of 1895* 63 (1969). The West Committee thus decided that "no change [be] proposed" to that jurisdiction. *Id.* So too with the circuit court. The West Committee kept the circuit court's jurisdiction the same, just consolidating the provisions for civil and criminal cases into a single constitutional provision. *See id.* at 63, 65. And the General Assembly did not propose any jurisdictional changes. *See* 1972 S.C. Acts No. 1629, § 1 (proposing amended article V with the same jurisdiction as the 1895 constitution); 1973 S.C. Acts No. 132 (ratifying amended article

V). A modern dictionary is therefore of little use because "the Constitution is construed in light of the intent of its framers and the people who adopted it," *State v. Long*, 406 S.C. 511, 514, 753 S.E.2d 425, 426 (2014), and "case" means today what it meant in the 1890s. That timing matters. Before the West Committee preserved Article V's jurisdiction, this Court had never tied public importance to an exception from standing. It had instead expressly rejected public importance as enough. *See Crews*, 197 S.C. at __, 14 S.E.2d at 358; *supra* Part I (public importance standing didn't arise until after the West Committee).

So how was "case" originally understood? As a dispute between parties with a personal stake in the outcome. *See supra* Part II.B.1; Defs.' Br. 13–14. Unable to ground its modern definition in South Carolina constitutional history, Plaintiffs try to supplement it with one-off references to general mandamus and quo warranto practice. But nothing Plaintiffs say about this Court's power to issue writs compels a different conclusion. In fact, Plaintiffs' own sources confirm Defendants' answer. Plaintiffs cite a *Stanford Law Review* article to note the "English practice" of "'standingless' suits against illegal government action." Reply Br. 6 (quoting Steven L. Winter, *The Metaphor of Standing and the Problem of Self-Governance*, 40 Stan. L. Rev. 1371, 1396 (1988)). But had Plaintiffs studied that article more closely, it would have realized that "[s]tate practice was far from uniform." Winter, *supra*, at 1403. In some States, "in cases involving public rights, only state officers such as the attorney general or district attorney could sue." *Id.*

One of those States was South Carolina. *See id.* n.164 (citing two South Carolina cases). As our State's Constitutional Court of Appeals put it in a case seeking a writ of quo warranto, "[i]f then the wrong complained of be of a public nature, and the remedy also, it follows that the relator ought not to be at liberty to usurp it to serve his individual purposes." *Cleary*, 12 S.C.L. at 37. "The state have selected from among its citizens men distinguished for their learning and integrity,

to whom alone is intrusted the conduct of all public prosecutions," the Court continued, "and the constitution itself provides, that they shall be carried on in the name, and by the authority of the State." *Id.*

South Carolina held to this rule in the following decades. In a lawsuit about an obstruction to a navigable stream, the court affirmed the case's dismissal because "common nuisances against the public are only punishable by indictment." *Carey v. Brooks*, 19 S.C.L. 365, 367 (S.C. App. L. & Eq. 1833). Only if the plaintiff "suffer[s] a particular damage, as if by stopping up a highway with logs, &c. his horse throws him, by which he is wounded or hurt," could he sue. *Id.* (In fact, this Court clarified almost two centuries later that the injury had to be to "real or personal property." *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 575, 614 S.E.2d 619, 622 (2005).) The court again rejected a "private action for a public nuisance" about two decades later in a case about a street obstruction. *McLauchlin v. Charlotte & S.C.R. Co.*, 39 S.C.L. 583, 591 (S.C. Err. 1850). These public nuisance cases carry particular weight here, given the types of cases that environmental groups like Amici typically bring.

Similarly, with mandamus, South Carolina courts consistently discussed the relator's need to have some interest or right. As this Court put it in one case, "[t]o be entitled to the writ, the relators must show that the respondent is bound to the performance of some specified duty imposed by law, of a ministerial character, and *in the performance of which the relators have a legal interest*." *Morton, Bliss & Co. v. Comptroller Gen.*, 4 S.C. 430, 472 (1873) (emphasis added), *overruled on other grounds by Weaver v. Recreation Dist.*, 328 S.C. 83, 492 S.E.2d 79 (1997). In the same way, this Court said a few years later that to obtain the writ, "the relator has a clear right to the performance of the thing demanded and that a corresponding duty rests upon the officer to perform that particular thing." *Ex parte Barnwell*, 8 S.C. 264, 269 (1876).

Given this history, it should be no surprise that this Court rejected in 1879 any idea that private plaintiffs could sue to require public officials to perform public duties. "[T]he state has an exclusive right to compel specifically the performance of public duties on the part of public officers, or persons exercising public powers, in the interest of good government." *Gaillard*, 11 S.C. at 314. That is because mandamus was originally exercised by the king as a prerogative writ, and "the state stands in the relation in which the king formerly stood." *Id.* So although a relator may use the State's "right as a means of more effectually enforcing his individual rights," a relator does not have "an absolute and unqualified right" to seek the writ whenever the State could. *Id.* That would "deny the principles on which *mandamus* is founded" and "contradict the authority of all the cases in which the nature of the writ has been carefully considered." *Id.*

The attorney general, as "the State's chief law officer," therefore must check other state officials and "protect the public's interests." *Condon v. State*, 354 S.C. 634, 641, 583 S.E.2d 430, 433 (2003). And the legislature and the governor must check the attorney general. *Cf. Federalist No. 51*, p. 319 (Madison) (C. Rossiter & C. Kesler eds. 2003) ("Ambition must be made to counteract ambition."). And ultimately, the public must check them all at the ballot box. *Cf. Carnival Corp.*, 407 S.C. at 81, 753 S.E.2d at 853 ("it is incumbent upon the public to seek reform through their elected officials or failing that, at the ballot box").

South Carolina has never treated mandamus as a vehicle for private plaintiffs to evade the injury requirement. Plaintiffs' only answer is to point to the U.S. Supreme Court's observation that "a decided preponderance of American authority" allowed "private persons" to seek "mandamus to enforce a public duty, not due to the government as such, without the intervention of the government law-officer." *Union Pac. R. Co. v. Hall*, 91 U.S. 343, 355 (1875). But that observation about other jurisdictions cannot overcome *South Carolina's* own history, which went the other

way. *See* Reply Br. 6.

* * *

History confirms that South Carolina courts have long required a plaintiff to have a particularized harm or statutory authorization to sue. Whatever other jurisdictions have allowed, South Carolina has consistently charged public officials with upholding the public interest.

III. Amici's practical objections do not justify abandoning the injury requirement.

Without constitutional ground to stand on, Amici focus on practical objections. But at the outset, no policy argument can obviate a constitutional requirement. And anyway, these arguments fail on their own terms.

A. The injury requirement is more workable than the public importance exception.

1. Amici complain that constitutional-standing law is "unpredictable" and based on an "individual judge's interpretation." Amici Br. 1–2. The "inconsistent and unpredictable application of traditional standing principles," they claim, makes that doctrine unworkable. *Id.* at 3; *see also* Reply Br. 9 (making similar claims).

This is no more than an attack on our common-law system. "Broadly worded constitutional . . . provisions necessarily have been given concrete meaning and application by a process of case-by-case judicial decision in the common-law tradition." *Nw. Airlines, Inc. v. Transp. Workers Union of Am., AFL-CIO*, 451 U.S. 77, 95 (1981). Courts have always decided one case at a time and reasoned by analogy. There's no "implicit manipulation" in that reasoning. Amici Br. 14. Rather, it's the bread and butter of judicial work.

And in any event, Amici's criticism falls flat. This Court regularly addresses standing arguments without great struggles or shifts in the law. *See, e.g.*, *Nat'l Tr. for Historic Pres. in U.S. v. City of N. Charleston*, 447 S.C. 287, 294, 926 S.E.2d 230, 234 (2026) (litigant had standing to

challenge proposed annexation based on "the language the municipality uses in its annexation ordinance"); *Gulfstream Cafe, Inc. v. Georgetown Cnty.*, 447 S.C. 1, 21, 923 S.E.2d 632, 642 (2025) (litigant lacked "standing to challenge any deficiencies in notices provided to *other* property owners"); *Wilson v. Gandis*, 430 S.C. 282, 311, 844 S.E.2d 631, 647 (2020) (litigants did not have standing to bring claims that should have been brought derivatively on behalf of an LLC); *S.C. Dep't of Soc. Servs. v. Smith*, 423 S.C. 60, 89, 814 S.E.2d 148, 163 (2018) (an earlier decision "compels a simple analysis in the instant case" that foster parents had standing). That an area of law (such as environmental law) may have more standing disputes doesn't mean that traditional standing rules do not work. It simply reflects that this is an area in which plaintiffs are more aggressive in bringing claims. But no matter the area of law, courts can administer rules about injuries in fact.

2. Nothing in recent history demonstrates that public importance is a more workable standard than the injury requirement. Standing is often litigated, but when it's on the public importance exception, standing is litigated with less concrete issues. For instance, it's more predictable to have a rule about "how many jogging trips or how many wildlife viewings" give rise to an injury, Amici Br. 2, than to measure (if you can) how "important" one environmental dispute is compared to another. And courts are better equipped to determine the former than the latter. *See Warth v. Seldin*, 422 U.S. 490, 500 (1975) ("other governmental institutions may be more competent to address" "abstract questions of wide public significance"). When determining whether a plaintiff has an injury, courts are analyzing caselaw and facts. But with the public importance exception, courts are grappling with amorphous concepts of how significant some matter is to the public.

Amici's claim that the public importance exception is well understood by "practitioners,"

Amici Br. 11, is belied by the confusion that pervades their argument. For example, Amici protest that they have invoked the exception in "entirely plausible," "carefully considered" ways—only for the Court to reject those arguments. Amici Br. 12. And their attempts to smoke out a test fall short. So unless Amici implicitly ask for a rule that environmental cases always warrant standing under the public importance exception, there's no reason to think that the exception will involve fewer disputes over standing. *Cf. S.C. Pub. Int. Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 125, 804 S.E.2d 854, 862 (2017) (Kittredge, J., dissenting) (worrying that the exception threatens to "swallow[] the rule").

And even if the traditional injury-in-fact rule were harder to apply, that's still no license to abandon it. If the Constitution requires it, the Court must adhere to it . . . no matter how hard to administer.

B. The injury requirement is a constitutional feature—not a flaw.

Amici push one practical argument particularly hard: Without public importance standing, who will vindicate the public interest? *E.g.*, Amici Br. 1, 2, 9–10; *see also* Reply Br. 10 (accusing state officials of "prefer[ring] to operate without the check of judicial review").

The public, of course. The public just can't always use the courts to do so. After all, "[c]ourts are not bodies for the resolution of public policy and generalized grievances." *Carnival Corp.*, 407 S.C. at 81, 753 S.E.2d at 853. Without some statute or historical tradition, "[h]arms suffered by the public at large . . . are to be remedied by the legislative and executive branches." *Id.* The politically accountable branches pursue the public interest, as the public sees it.

Shifting this job to the judiciary actually harms the courts. As this Court has recognized, "[f]ew exercises of the judicial power are more likely to undermine public confidence in the neutrality and integrity of the Judiciary than one which casts the Court in the role of a Council of

Revision, conferring on itself the power to invalidate laws at the behest of anyone who disagrees with them." *Bodman v. State*, 403 S.C. 60, 68, 742 S.E.2d 363, 367 (2013). But that's the very essence of the public importance exception.

Plus, courts are not even well suited to vindicate the public interest. Because judges lack the political accountability that the other branches enjoy, they are "perfect for a body that is supposed to protect the individual against the people." Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 896 (1983). But they are "just terrible . . . for a group that is supposed to decide what is good for the people." *Id.* Without the ballot box to tie judges to the people, judges lack the direct connection to determine what the public interest is based on the people's preferences. Nor can they be held accountable in the same way when they get it wrong.

Of course, judges do not lack authority to decide whether political actors have exceeded their power. They do, however, lack authority to do so at anyone's request, untethered from a concrete case. Otherwise, courts would become standing monitors of the political branches, resolving generalized objections to government action without the discipline of a concrete dispute or the accountability that properly attends political oversight.

Yet, as Justice Scalia observed, courts are able to resolve concrete disputes between litigants. So if any litigant has a personalized harm (or a statutory right to sue), that person (or environmental group) can come into court and assert a claim—just as Amici have done. *See* Amici Br. 7 (admitting that Amici have had constitutional standing in cases). When they do, there is no need to fret about public resources "be[ing] destroyed" while standing is litigated. *Id.* at 2. Preliminary injunctions or other temporary relief can preserve the status quo if a plaintiff presents a credible enough argument on standing. That is, after all, "[t]he purpose of a preliminary

injunction." *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). When courts grant such relief and decide such cases, they are exercising the judicial power that the Constitution gives them. S.C. Const. art. V, § 1.

Judicial independence is indispensable precisely because courts are meant to judge, not govern. Their insulation from political accountability equips them to decide concrete cases neutrally, but it makes them poorly suited to determine, on the public's behalf, what the public interest requires. So while Amici invoke the public interest as a reason to expand standing, that rationale only confirms why such disputes belong to the politically accountable branches absent a concrete case.

CONCLUSION

For these reasons, the Court should hold that the public importance exception is unconstitutional.

Respectfully submitted,

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