THE STATE OF SOUTH CAROLINA
In the Supreme Court
In its Original Jurisdiction

Appellate Case No. 2020-000970

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S.C. SUPREME COURT

Jennifer Pinckney, Howard Duvall, and Kay Patterson,..... Petitioners,

v.

Harvey Peeler, in his official capacity as President of the South Carolina Senate; James H. Lucas, in his official capacity as Speaker of the South Carolina House of Representatives; and Henry D. McMaster, in his official capacity as Governor of South Carolina,..... Respondents.

BRIEF OF SPEAKER JAMES H. LUCAS

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INTRODUCTION

Our Constitution establishes three coequal branches of government with separate and distinct functions. In this system, "courts exercise the limited constitutional function of the 'judicial power.'" *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 81, 753 S.E.2d 846, 853 (2014) (quoting S.C. Const. art. V, § 1). In other words, courts resolve concrete,

particularized disputes. They "are not bodies for the resolution of public policy and generalized grievances." *Id.*

Yet that is what Petitioners bring here: a generalized complaint about a legislative policy decision. They do not like the Heritage Act. But that does not make the Heritage Act unconstitutional. And its constitutionality is the only question before the Court. *See id.* (courts are limited to "resolving cases" between the parties).

From a legal perspective, this case is straightforward. The Constitution vests plenary legislative power in the General Assembly. Nothing in that social compact precludes the General Assembly from retaining the authority to limit changes to memorials, monuments, streets, bridges, or other public locations. In exercising its legislative power to limit such changes, the General Assembly enacted a law that applies generally to all local governments, thereby complying with the prohibition on special legislation under Article III and Home Rule under Article VIII. The Heritage Act is therefore constitutional.

This case is made difficult only if the Court goes beyond its constitutional role and considers this case from something other than a legal perspective. Neither COVID nor the social unrest Petitioners invoke in their brief has anything to do with the legal analysis here. To give such things any import would be to let "some accident of immediate overwhelming interest" function as "a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend." *N. Sec. Co. v. United States*, 193 U.S. 197, 364 (1904) (Holmes, J., dissenting). There is no need to bend the well-settled legal principles

raised by this case. Rather, the Court should apply these principles faithfully and affirm the constitutionality of the Heritage Act. Then, any debate about the Heritage Act can take place where it constitutionally belongs: among the people and their elected representatives.

STATEMENT OF THE CASE

In 2000, the General Assembly passed the Heritage Act. *See* 2000 S.C. Acts No. 292. The Act represented a "legislative compromise to remove the Confederate battle flag from atop the Statehouse Dome." Letter to the Hon. Mike Burns, 2020 WL 3619620, at *2 (S.C.A.G. June 25, 2020).

The Act provides:

> (A) No Revolutionary War, War of 1812, Mexican War, War Between the States, Spanish–American War, World War I, World War II, Korean War, Vietnam War, Persian Gulf War, Native American, or African–American History monuments or memorials erected on public property of the State or any of its political subdivisions may be relocated, removed, disturbed, or altered. No street, bridge, structure, park, preserve, reserve, or other public area of the State or any of its political subdivisions dedicated in memory of or named for any historic figure or historic event may be renamed or rededicated. No person may prevent the public body responsible for the monument or memorial from taking proper measures and exercising proper means for the protection, preservation, and care of these monuments, memorials, or nameplates.
>
> (B) The provisions of this section may only be amended or repealed upon passage of an act which has received a two-thirds vote on the third reading of the bill in each branch of the General Assembly.

2000 S.C. Acts No. 292, § 3 (codified at S.C. Code Ann. § 10-1-165). The Act also includes a severability clause:

> If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words thereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Id. § 4.

Petitioners now bring a facial challenge to the constitutionality of the Heritage Act.

STANDARD OF REVIEW

The "Court has a very limited scope of review in cases involving a constitutional challenge to a statute." *S.C. Human Affairs Comm'n v. Zeyi Chen*, 430 S.C. 509, 528, 846 S.E.2d 861, 871 (2020). A statute is "presumed constitutional and will, if possible, be construed so as to render [it] valid." *Id.* Thus, a "legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt." *Id.* Finally, a "possible constitutional construction must prevail over an unconstitutional interpretation." *Id.* at 529, 846 S.E.2d at 871.

ARGUMENT

I. The two-thirds requirement is not a reason to strike down the Heritage Act.

A. This challenge is not ripe.

As a threshold matter, Petitioners' challenge to the two-thirds requirement is not ripe for this Court's consideration. Time and again, our courts have reminded

litigants that courts will not entertain claims that are "contingent, hypothetical, or abstract." *Jowers v. S.C. Dep't of Health & Envtl. Control*, 423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018). This includes declaratory judgment claims, like Petitioners bring here. *See Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 228 n.7, 467 S.E.2d 913, 918 n.7 (1996) ("Declaratory judgment actions must involve an actual, justiciable controversy that is ripe for determination."); *Power v. McNair*, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970) (dismissing an appeal for nonjusticiability and explaining that the "Declaratory Judgments Act does not require the court to give a purely advisory opinion").

The challenge to the two-thirds requirement is the exact type of hypothetical claim courts do not consider. There has never been a bill seeking to change something governed by the Heritage Act that obtained a majority in both houses but not a supermajority. There have been nine bills introduced to alter something protected claimed to be protected by the Heritage Act. Four have been passed, and five have not:

- **S.383 (121st Sess.)**: To alter the World War I and World War II memorial on Main Street in Greenwood. The bill was referred to the Senate Judiciary Committee, and no further action was taken.

- **S.897 (121st Sess.)**: To remove the Confederate flag from the State House grounds. The bill passed in the House by a vote of 94-20 and in the Senate by a vote of 37-3. It was signed by Governor Haley on July 9, 2015. *See* 2015 S.C. Acts No. 90.

- **H.3574 (121st Sess.)**: To alter the World War I and World War II memorial on Main Street in Greenwood. The bill was referred to the House Committee on Invitations and Resolutions, and no further action was taken.

- **H.4365 (121st Sess.)**: To remove the Confederate flag from the State House grounds. The bill was referred to the House Judiciary Committee, and no further action was taken.

- **H.4366 (121st Sess.)**: To remove the Confederate flag from the State House grounds. The bill was referred to the House Judiciary Committee, and no further action was taken.

- **H.4624 (121st Sess.)**: To allow The Citadel to remove the Confederate flag from Summerall Chapel. The bill was referred to the House Judiciary Committee, and no further action was taken.

- **S.501 (120th Sess.)**: To allow North Augusta to move its World War I and World War II monument to a new location where other war monuments would be placed. The bill passed both houses unanimously and was signed by Governor Haley. *See* 2013 S.C. Acts No. 120.

- **H.3428 (116th Sess.)**: To allow Spartanburg to move its statue of Daniel Morgan to the upgraded Daniel Morgan Square. The bill passed both houses unanimously and was signed by Governor Sanford. *See* 2005 S.C. Acts No. 210.

- **S.1173 (115th Sess.)**: To allow Spartanburg to move its statue of Daniel Morgan to the upgraded Daniel Morgan Square. The bill passed both houses unanimously and was signed by Governor Sanford. *See* 2004 S.C. Acts No. 395.

Because the two-thirds requirement has never been the reason a bill has failed, Petitioners' challenge is hypothetical. (It also raises a standing problem. *See Bodman v. State*, 403 S.C. 60, 67, 742 S.E.2d 363, 366 (2013) (a plaintiff must have a "concrete and particularized injury" (internal quotation mark omitted)). Until the two-thirds requirement is the reason a bill fails, the requirement's constitutionality is not ripe for judicial review.

In fact, Petitioners' ripeness problem extends beyond the two-thirds requirement and afflicts their entire case. They do not identify any monument, memorial, street, bridge, or other location covered by the Heritage Act that they have

tried to have changed but without success. Instead, Petitioners allege only that certain historical markers or monuments are related to some of them. *See* Compl. ¶¶ 8, 10. But there is no controversy about these markers. It is therefore unclear what the controversy is, other than the "academic" question of whether the Heritage Act is constitutional. *See Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) ("If there is no actual controversy, this Court will not decide . . . academic questions.").

B. The two-thirds requirement is severable.

Even if the challenge to the two-thirds requirement is ripe, that does not mean the Heritage Act should be struck down in its entirety. Rather, a statute may be unconstitutional only "in part." *Curtis v. State*, 345 S.C. 557, 571, 549 S.E.2d 591, 598 (2001).

When a statute is only partially unconstitutional, this Court may sever the unconstitutional portion and leave the rest of the statute in place. "The test for severability is whether the constitutional portion of the statute remains complete in itself, wholly independent of that which is rejected, and is of such a character that it may fairly be presumed the legislature would have passed it independent of that which conflicts with the constitution." *Id.* A severability clause "evidences strong legislative intent that the several parts of [an act] be treated independently." *Joytime Distributors & Amusement Co. v. State*, 338 S.C. 634, 649, 528 S.E.2d 647, 654 (1999).

The Heritage Act has a robust severability clause.[1] *See* 2000 S.C. Acts 292, § 4. That clause speaks loudly and clearly to the General Assembly's intent that if one part of the Act is found unconstitutional, the rest of the Act should remain in effect, just as an identical clause did in *Joytime*. *See* 338 S.C. at 650, 528 S.E.2d at 655.

Moreover, the two-thirds requirement is not so essential to the Heritage Act that the rest of the Act cannot function without that requirement. *See Douglass v. Watson*, 186 S.C. 34, __, 195 S.E. 116, 121 (1938) (refusing to sever a provision that was "essential to [the act's] operation"). Severing this clause will simply mean that any change to something subject to the Act will require a majority rather than a supermajority vote of the General Assembly. In other words, an act will have to comport with the various requirements of Articles III and IV. *See* S.C. Const. art. III, §§ 1, 18; art. IV, § 21 (establishing procedures for enacting legislation, such as bicameralism, three readings, and presentment). Meanwhile, the substance of the Act remains the same.

II. The Heritage Act is not special legislation.

Petitioners attack the Heritage Act as special legislation in two ways. First, they say it violates Article III, section 34(I)'s prohibition on special legislation about changing the names of persons or places. Second, they contend the Act violates Article III, section 34(IX)'s catchall prohibition on special legislation when general legislation is an option. Neither assertion has merit.

[1] Curiously, Petitioners never even mention that the Heritage Act has this severability clause. *See* Pet'rs' Br. 9–14.

The distinction between general and special legislation is well established. "A general law is one that applies to the entire State." *Henry v. Horry Cty.*, 334 S.C. 461, 466, 514 S.E.2d 122, 125 (1999). In other words, a "law is general when it applies uniformly to all persons or things within a proper class, and special when it applies to only one or more individuals or things belonging to that same class." *Kizer v. Clark*, 360 S.C. 86, 92, 600 S.E.2d 529, 532 (2004).

Still, just because a law affects only some people or locations doesn't necessarily make it unconstitutional. *See id.* at 93, 600 S.E.2d at 532. Instead, "the essential inquiry is whether the legislation creates an unlawful classification" because the purpose of the prohibition on special legislation is to avoid an "unreasonable classification." *Id.*

A. The Act does not violate Article III, section 34(I).

Our Constitution forbids the General Assembly from passing special legislation "[t]o change the names of persons or places." S.C. Const. art. III, § 34(I). Petitioners' invocation of this provision has at least three problems, each of which shows how this provision is irrelevant to the Act.

First, section 10-1-165(A) does not actually *change* anything. To the contrary, this section prohibits changes. Thus, Petitioners' plain-language argument fails because—even reading these words in a vacuum as they do—the words do not apply to this subsection.

Second, only part of section 10-1-165(A) could even be subject to any analysis under Article III, section 34(I). Monuments and memorials, as described in the first sentence of that subsection, are things, not people or places.

Third, Petitioners' argument ignores the original meaning of Article III, section 34(I). Before 1895, special legislation was often used to change the names of people or towns. *See, e.g.*, 1893 S.C. Acts No. 470 (changing the name of the town of Preuitts in Orangeburg County to Norway); 1891 S.C. Acts No. 791 (changing the name of the town of Graham in Barnwell County to Denmark); 1890 S.C. Acts No. 630 (changing the name of Mary Margaret Lockie to Mary Margaret Lockie Ford); 1888 S.C. Acts No. 157 (changing the name of the town of Black's in York County to Blacksburg); 1887 S.C. Acts No. 511 (changing the name of the town of Cartersville in Darlington County to Walters); 1885 S.C. Acts No. 9 (changing the name of Anna Morris to Louise Parrott); 1883 S.C. Acts No. 195 (changing the name of Ally E. Pye to Ally John Dent); 1883 S.C. Acts No. 294 (changing the name of the town of Graham in Williamsburg County to Lake City); 1879 S.C. Acts No. 34 (changing the name of Josephine Parker to Josephine Thomas); 1850 S.C. Acts No. 4032 (declaring the children of Atticus Tucker legitimate and changing their surnames); 1807 S.C. Acts at p. 50 (changing the name of John Cottingham to John Ridgel).

This practice was not limited to South Carolina. Similar provisions are therefore found in other state constitutions. *See, e.g.*, Ariz. Const. art. IV, Pt. 2 § 19; Miss. Const. art. IV, § 90; N.C. Const. art. II, § 24; S.D. Const. art. III, § 23; Tex. Const. art. III, § 56. These provisions were included in state constitutions to prevent

legislatures from passing such special legislation about individual people or towns. *See, e.g.*, *In re La Societe Francaise D'Epargnes et de Prevoyance Mutuelle*, 56 P. 458, 459 (Cal. 1899); *In re Reben*, 342 A.2d 688, 697 (Me. 1975); *In re Atwell's Estate*, 101 N.W. 946, 947 (Minn. 1904).

Given this history, Petitioners' reading of Article III, section 34(I) would make no sense to the South Carolinians who ratified the 1895 Constitution. *See State v. Long*, 406 S.C. 511, 514, 753 S.E.2d 425, 426 (2014) ("the Constitution is construed in light of the intent of the framers and the people who adopted it" (citing *Miller v. Farr*, 243 S.C. 342, 346, 133 S.E.2d 838, 841 (1963))); *see also Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1665 (2020) (adopting an interpretation of the Appointments Clause that "is more faithful to the Clause's original meaning" than other interpretations); *Crawford v. Washington*, 541 U.S. 36, 60 (2004) (interpreting the Confrontation Clause based on its original public meaning). Unlike the nineteenth-century practice of passing legislation to address the private concern of a single person or town, the Heritage Act involves no concerns about a one-off person or place. It instead lays down a general rule for any memorial, monument, street, bridge, structure, park, preserve, reserve, or other public area that falls within its scope.

The Heritage Act therefore is not the "evil . . . of special and local legislation" that Article III, section 34 sought to "remed[y]." Pet'rs' Br. 17 (quoting *Thomas v. Macklen*, 186 S.C. 290, __, 195 S.E. 539, 543 (1938)). Tellingly, this Court in *Thomas* looked at the "framers of this Constitution" in determining what the prohibition on

special legislation prevented the General Assembly from doing. *See* 186 S.C. at __, 195 S.E.2d at 542; *see also Long*, 406 S.C. at 514, 753 S.E.2d at 426. Those framers and the people who ratified the Constitution would never have thought Article III, section 34(I) was relevant to the Heritage Act.

B. The Act does not violate Article III, section 34(IX).

Petitioners' second special-legislation argument relies on the catchall provision that generally prohibits special legislation "where a general law can be made applicable." S.C. Const. art. III, § 34(IX). They assert that both sentences of section 10-1-165(A) violate this constitutional provision. They are incorrect.[2]

1. The Act is general legislation.

As an initial matter, the Act does not violate section 34(IX) because it is general legislation. From a "territory" perspective, this question is easy: The Act applies across the entire State. *See McKiever v. City of Sumter*, 137 S.C. 266, __, 135 S.E. 60, 64 (1926) ("With respect to territory, a law is general when it applies to the whole state, and local when it applies to only a part of the state."). Petitioners do not contend otherwise.

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[2] At the end of this argument, Petitioners quickly say in a footnote that they "believe this argument provides the Court a basis to address equal protection through both the South Carolina and U.S. Constitutions." Pet'rs' Br. 20 n.13. They are mistaken. This Court has made clear that an argument raised only in "a cursory footnote in [a] brief" is not sufficient for a court to consider it. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 388 n.13, 759 S.E.2d 727, 736 n.13 (2014). Had Petitioners wanted to raise a separate equal protection claim, they could have done so. But they did not.

From a "thing" perspective, the Act applies "uniformly to . . . a proper class." *See id.* Petitioners attack the Act on this basis, suggesting that a class would be proper only if it included all monuments, memorials, streets, bridges, and other locations across the entire State. *See* Pet'rs' Br. 16, 19–20. Such a high level of what a "proper class" is has at least two problems. One, such a high level of generality would make it virtually impossible for the General Assembly to legislate and could invite lawsuits challenging countless State statutes. Two, this Court's cases do not require such a high level. For example, legislation that addressed commercial general liability policies was general, even though it did not apply to all insurance policies. *See Harleysville Mut. Ins. Co. v. State*, 401 S.C. 15, 27, 736 S.E.2d 651, 657 (2012). So too was legislation that treated annexation into and incorporation of municipalities differently, despite the fact both involve the boundaries of cities and towns. *See Cabiness v. Town of James Island*, 393 S.C. 176, 190–91, 712 S.E.2d 416, 423–24 (2011).

Here, the Act includes "proper classes." There are countless monuments and memorials across the State to myriad people, causes, and events. The Act focuses on those monuments and memorials to the most impactful wars and ethnicities on the State's history. The ten wars identified in the first sentence of section 10-1-165(A) are the most significant in the State's history. Although there have been other military conflicts (such as the Quasi War with France when John Adams was in the White House, the conflicts with the Barbary States during the Jefferson administration, and interventions in Latin America during the Cold War), the ten wars in section 10-1-

165(A) have seen many South Carolinians fight and die and should be remembered in different ways than other, smaller conflicts. *Cf. Powell v. Thomas*, 214 S.C. 376, 382, 52 S.E.2d 782, 784 (1949) ("It is generally recognized that the construction of memorial buildings, monuments, and other public ornaments designed merely to inspire sentiments of patriotism may properly be deemed public purposes . . . .").

The two ethnicities in the first sentence of section 10-1-165(A) are also a proper class. African American and Native American and the challenges they have faced have played a unique role in South Carolina history. *See, e.g.*, Walter Edgar, *South Carolina: A History* 69–72, 85–87, 97–103, 311–17, 390–94, 448–51, 521–29 (1998) (discussing examples of African American and Native American slavery, Native American warfare, and Jim Crow).

Likewise, the streets, bridges, and other locations named for historic figures and events that are covered by the second sentence of section 10-1-165(A) involve different concerns than streets, bridges, and other locations named for anything else, such as natural objects. Streets, bridges, and other locations named for historic figures and events tell our State's history. Streets, bridges, and other locations named for anything else do not.

Ultimately, when this Court has found generally written legislation to be unconstitutional special legislation, it has been because the effect of the statute was "so limited" that the statute was, for all practical purposes, targeted at only one location or one thing. *See Cabiness*, 393 S.C. at 190–91, 712 S.E.2d at 424 (discussing why the statute in *Kizer* was held to be special legislation); *Thomas*, 186 S.C. at __,

195 S.E. at 543 ("the act with its meticulous restrictions might as well have named Myrtle Beach"). That concern is not present here. The Act covers important classes of monuments, memorials, streets, bridges, and other locations across the State.

2. If it is special legislation, the Act's classifications are nevertheless reasonable and thus constitutional.

At the very least, even if the monuments, memorials, streets, bridges, and other locations covered by the Act are not a "proper class" to be general legislation, they are at least reasonable classifications that survive the test for whether special legislation is permissible.

It is important to keep in focus the standard applied to this claim: rational basis. *See Harleysville Mut. Ins. Co.*, 401 S.C. at 28, 736 S.E.2d at 657. Rational basis is a "low hurdle." *United States v. Carpio-Leon*, 701 F.3d 974, 982 (4th Cir. 2012). Under this standard, as long as there is a "plausible reason" for the classification, the classification is constitutional. *Armour v. City of Indianapolis, Ind.*, 566 U.S. 673, 681 (2012).

i. Nothing in the first sentence of section 10-1-165(A) is arbitrary.

One supposed problem is that the Heritage Act protects monuments and memorials to ten wars and two ethnic heritages, while not protecting monuments or memorials to other military conflicts or ethnicities. *See* Pet'rs' Br. 19–20. These two classifications are reasonable and therefore constitutional.

Starting with the ten wars identified in the first sentence, despite smaller conflicts that may have been fought, the General Assembly could reasonably conclude

that such smaller-scale conflicts had less impact on the State's history and therefore belong in a separate category of military conflicts than the major wars listed in section 10-1-165(A). Treating these major wars differently is therefore not arbitrary, so even if these wars are not a "proper class" to make the Act general legislation, they are a "reasonable" one to make the Act permissible special legislation.

Moreover, Petitioners' references to the War on Terror are illogical. The Heritage Act was enacted in 2000. *See* 2000 S.C. Acts No. 292. The War on Terror had not even begun when the Heritage Act was enacted. In fact, the September 11 attacks were still more than a year away. There is no requirement that a legislature constantly update a statute's classification to survive rational basis.

Turning to the ethnic heritages, there is a similarly reasonable basis for protecting monuments and memorials to African Americans and Native Americans. These two ethnicities have stories that differ in critical ways from other ethnicities and contribute significantly to the State's history. *See Edgar*, *supra* at 69–72, 85–87, 97–103, 311–17, 390–94, 448–51, 521–29. Thus, a classification of these two groups is reasonable and constitutionally permissible.

ii. Nothing in the second sentence of section 10-1-165(A) is arbitrary.

The other supposed problem Petitioners raise is with the second sentence of section 10-1-165(A): "No street, bridge, structure, park, preserve, reserve, or other public area of the State or any of its political subdivisions dedicated in memory of or named for any historic figure or historic event may be renamed or rededicated." *See* Pet'rs' Br. 19. Petitioners point to two things here. Petitioners insist that this

sentence "creates a classification of some but not all historical figures and events" and that this sentence "protects public streets, structures, and other places named only for historic figures and events." *Id.*

As for the first assertion about classifications, Petitioners are wrong that not all historical figures and events are covered. Nothing in this sentence limits what "historic figure or historic event" is covered. To the contrary, this sentence uses "any." That means it covers *every* historic figure or historic event. *See* I *Compact Edition of the Oxford English Dictionary* 95 (1971) (defining "any" to mean "whichever").

The second assertion about which Petitioners complain is of no more merit. In essence, they object to the fact that local governments can change the name of a street, bridge, structure, park, preserve, reserve, or other public area named for something other than historic figures or events, but are prevented from changing names that are for historic figures or events. This classification about streets, bridges, and other locations easily clears the rational-basis threshold. Treating streets, bridges, and other locations named for historic figures and events differently than streets, bridges, and other locations named for anything else makes sense for at least two reasons. *First*, other types of names, such as descriptive names like Pine Street or the Black River Bridge, are unlikely to provoke strong reactions. But streets, bridges, and other locations named for historic figures and events may provoke strong reactions, as this very lawsuit shows. By not allowing repeated, local changes to streets, bridges, and other locations named for historic figures and events, the Heritage Act promotes consistency, stability, and more deliberate decisionmaking.

Second, streets, bridges, and other locations named for historic figures and events tell our State's history. Ensuring stability in that telling is important. To be sure, there is the need for robust and thoughtful debate about our State's history. But constantly renaming of streets, bridges, and other locations does not produce the type of debate that is beneficial to society.

III. The Heritage Act complies with Home Rule.

Petitioners' Home Rule argument hinges on their assertion that Home Rule requires any decision about something in a locality to be made by that local government. But that misconstrues this Court's Home Rule jurisprudence. That doctrine simply requires that the General Assembly pass general laws about the authority of local governments. The Heritage Act is just that: a law that applies equally to all local governments.

Between the ratification of the 1895 Constitution and the adoption of what is now Article VIII in 1973, legislative delegations dominated how counties were governed. The General Assembly "enact[ed] many local laws," which "meant, of course, that the county delegation to the General Assembly was the governing body of the respective counties." *Duncan v. York Cty.*, 267 S.C. 327, 333–34, 228 S.E.2d 92, 95 (1976); *see also id.* ("members of the Senate and of the House were effectually the county legislature and governing board"). But in the late 1960s, the State "was forced to abandon the one county-one senator concept" in light of the U.S. Supreme Court's reapportionment decisions. *Id.* at 334, 228 S.E.2d at 95; *see also Reynolds v. Sims*, 377 U.S. 533 (1964). This led to the "demise of the legislative delegation" and "brought

about a clamor for what is commonly referred to as 'home rule.'" *Duncan*, 267 S.C. at 335, 228 S.E.2d at 95. Home Rule came in 1973, after voters approved and the General Assembly ratified Article VIII. *Id.*

As this Court has recognized, Home Rule was "a serious effort upon the part of the electorate and the General Assembly to restore local government to the county level." *Knight v. Salisbury*, 262 S.C. 565, 569, 206 S.E.2d 875, 876 (1974). But that does not mean local governments now have total power over anything that happens within their borders. Rather, "[u]nder Home Rule, the General Assembly is charged with passing general laws regarding the powers of local government." *Town of Hilton Head Island v. Morris*, 324 S.C. 30, 34, 484 S.E.2d 104, 106 (1997) (citing S.C. Const. art. VIII, § 7 (counties); § 9 (municipalities)). This Court went on to explain that the "authority of a local government is subject to the general laws passed by the General Assembly," and the "General Assembly can therefore pass legislation specifically limiting the authority of local government." *Id.* (citing S.C. Code Ann. § 5-7-30 (municipalities); § 4-9-30 (counties)).

On this point, *Town of Hilton Head Island* is instructive. There, the plaintiff challenged section 6-1-70, which prohibits any county, municipality, school district, or special purpose district from imposing certain fees or taxes on the transfer of real property. *Id.* at 33, 484 S.E.2d at 106. The limitation applied to all local governments, so it complied with Home Rule and Article VIII. *See id.* at 34, 484 S.E.2d at 34. And so here. The Heritage Act applies to all local governments, so it likewise suffers from no Home Rule problem.

Petitioners' argument to the contrary fails because they do not recognize the General Assembly's power to pass general legislation that limits the authority of all local government. They wrongly assert that all local decisions must be made by local government. *See* Pet'rs' Br. 21–25. Nothing in State law provides for that, and nothing they cite supports their assertion. For example, the general grants of power under sections 4-9-25 and 5-7-30 don't support that proposition because those general powers are limited by other, more specific laws, such as the Heritage Act. *See Dreher v. S.C. Dep't of Health & Envtl. Control*, 412 S.C. 244, 251, 772 S.E.2d 505, 509 (2015) (a "specific statutory provision prevails over a more general one"); *see also* Pet'rs' Br. 23. Nor does any provision in Article VIII prohibit the General Assembly from enacting the Heritage Act. *See* Pet'rs' Br. 21; *cf. Knight*, 262 S.C. at 570, 206 S.E.2d at 876–77 ("It is, of course, a well settled rule of law that State Constitutions are not grants of power to the General Assembly but are restrictions upon what would otherwise be plenary power."). Section 1 is about transitioning to Home Rule. *See* S.C. Const. art. VIII, § 1. The Heritage Act has nothing to do with that transition, which was accomplished decades ago. Sections 7 and 9 require the General Assembly to provide for various forms of local government by a "general law." *Id.* § 7 (counties); *id.* § 9 (municipalities). The General Assembly has done that. *See* S.C. Code Ann. § 4-9-10 *et seq.* (counties); *id.* § 5-5-10 *et seq.* (municipalities). Finally, section 17 merely requires that "laws concerning local government must be construed liberally in their favor." S.C. Const. art. VIII, § 17. But this rule of construction is not a license to

ignore the plain language of an act that limits local governments' power.[3] *See Smith v. Tiffany*, 419 S.C. 548, 555, 799 S.E.2d 479, 483 (2017) ("It is axiomatic that statutory construction begins (and often ends) with the text of the statute in question.").

Without any law to support their position, Petitioners assert—without citation to any legal authority—that Home Rule "vests local government with the power to decide the names of local places." Pet'rs' Br. 23. That is simply not true. Nothing in the Constitution requires local government have this authority. Nothing in the South Carolina Code gives this power to local governments. And nothing in this Court's fifty-year Home Rule jurisprudence requires local governments have this power.

To think about the issue here differently, someone must be the ultimate decisionmaker when it comes to whether to change something about memorials or monuments or the names of streets, bridges, or other public locations. The Constitution does not require that authority be given to any specific person or entity. Thus, the General Assembly could—as it has—constitutionally retain that authority.

Petitioners' arguments about health and safety during COVID-19 and understanding their communities are not legal arguments. *See* Pet'rs' Br. 24. They are policy arguments against the Heritage Act. Accepting those arguments would, of course, "exceed [the Court's] judicial role." *Fullbright v. Spinnaker Resorts, Inc.*, 420 S.C. 265, 276, 802 S.E.2d 794, 800 (2017).

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[3] Petitioners' invocation of Article VIII, section 15 in a footnote is of no more help. *See* Pet'rs' Br. 21 n.14. That provision has nothing to do with the *names* of streets. *See* S.C. Const. art. VIII, § 15.

Whatever policy arguments may exist, the law is clear: The Heritage Act is a general law enacted by the General Assembly that specifically and constitutionally limits the power of local government. *See Town of Hilton Head Island*, 324 S.C. at 34, 484 S.E.2d at 106.

CONCLUSION

The Court should deny Petitioners' requested relief.

Respectfully Submitted,

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THE STATE OF SOUTH CAROLINA
In the Supreme Court
In its Original Jurisdiction

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Dec 21 2020
S.C. SUPREME COURT

Appellate Case No. 2020-000970

Jennifer Pinckney, Howard Duvall, and
Kay Patterson,..... Petitioners,

v.

Harvey Peeler, in his official capacity as President of the South Carolina Senate; James H. Lucas, in his official capacity as Speaker of the South Carolina House of Representatives; and Henry D. McMaster, in his official capacity as Governor of South Carolina,..... Respondents.

CERTIFICATE OF COMPLIANCE

I certify that the this brief was filed and served according to the South Carolina Appellate Court Rules and that, to the extent it applies, this brief complies with Rule 211(b).

s/ Wm. Grayson Lambert