

THE STATE OF SOUTH CAROLINA
In Supreme Court

IN THE ORIGINAL JURISDICTION

Appellate Case No. _____

Curtis M. Loftis, Jr., State Treasurer.....Petitioner,

v.

Thomas C. Alexander, President of the South Carolina Senate.....Respondent.

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STATEMENT OF ISSUES

ARE STATEWIDE ELECTED CONSTITUTIONAL OFFICIALS SUCH AS THE STATE TREASURER SUBJECT TO REMOVAL VIA ARTICLE XV, SECTION 3 OF THE STATE CONSTITUTION?

STATEMENT OF THE CASE

THE STATE TREASURER, AS AN OFFICAL ELECTED ON A STATEWIDE BASIS, IS NOT SUBJECT TO REMOVAL VIA ARTICLE XV, SECTION 3 OF THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA. RATHER, THE ONLY MEANS OF REMOVING A STATEWIDE ELECTED OFFICAL OR STATE JUDGE UNDER ARTICLE XV IS BY MEANS OF IMPEACHMENT AS SET FORTH IN ARTICLE XV, SECTION 1.

STANDARD OF REVIEW

This matter is brought before the Court in its original jurisdiction pursuant to Article V, Section 5 of the South Carolina Constitution and Rule 245(a) S.C.A.C.R., as this is a matter of great public interest involving the interpretation of Article XV of the South Carolina Constitution. Specifically, this matter pertains to an effort initiated by the Senate to remove a constitutional official that is elected on a statewide basis by means of Article XV, Section 3, instead of impeachment by the House of Representatives via Article XV, Sections 1-2. There is no known instance in state history of any such undertaking. The Court, acting under its original jurisdiction, should decide and address all questions of law and fact *de novo*.

STATEMENT OF FACTS

On April 2, 2025, the Senate issued and served upon Petitioner a “Sense of the Senate” (attached hereto as Exhibit A) invoking Article XV, Section 3 of the State Constitution for the purpose of removing Petitioner from office based on the causes for removal contained in the Final Report of the Constitutional Budget Subcommittee (“Subcommittee”) of the Senate Finance Committee dated March 25, 2025. The “Sense of the Senate” informed Petitioner that he would be afforded an opportunity to present a defense to the allegations of the Final Report on April 21, 2025, prior to the Senate’s vote on a Concurrent Resolution to remove Petitioner as State Treasurer. However, the Senate proposes to afford Petitioner none of the due process that he

would be entitled to if he were to be impeached. The Senate will expressly prohibit Petitioner from calling any witnesses to testify on his behalf. It will limit his response to three hours and will not allow Petitioner or his representative to cross-examine his accusers. He is not permitted to conduct any discovery. In short, by seeking removal under Article XV, Section 3 rather than impeachment under Sections 1 and 2, the Senate intends to deny Petitioner any of the rights normally associated with an impeachment trial.

On April 2, 2025, Senate Bill 534, entitled “*A Concurrent Resolution Regarding the Removal of an Executive Officer on the Address of Two Thirds of Each House of the General Assembly Pursuant to Article XV, Section 3 of the South Carolina Constitution,*” was also introduced in the Senate. Bill 534 directs the removal of Petitioner as State Treasurer by the Governor upon its passage by the Senate and the House of Representatives.

In response to the aforementioned actions of the Senate, Petitioner Treasurer Loftis instituted the present action in the Court’s original jurisdiction of the Court.

The remaining facts stated in Petitioner’s *Motion For Preliminary Injunction And Complaint For Declaratory And Injunctive Relief* in paragraphs 4-23 are incorporated herein by reference for the purpose of factual background, though they do not directly bear upon the legal issue before the Court regarding the interpretation of Article XV of the Constitution.

ARGUMENT

Article XV of the South Carolina Constitution, entitled “IMPEACHMENT,” sets forth the following regarding impeachment and removal from office:

SECTION 1. Power of impeachment; vote required; suspension of officer impeached. The House of Representatives alone shall have the power of impeachment in cases of serious crimes or serious misconduct in office by officials elected on a statewide basis, state judges, and such other state officers as may be designated by law. The affirmative vote of two thirds of all members elected shall be required for an impeachment. Any officer impeached shall thereby be suspended from office until judgment in the case shall have been pronounced, and the office shall be filled during the trial in such manner as may be provided by law.

SECTION 2. Trial of impeachments; judgment; proceedings no bar to criminal prosecution; impeachment of Governor. All impeachments shall be

tried by the Senate, and when sitting for that purpose Senators shall be under oath or affirmation. No person shall be convicted except by a vote of two thirds of all members elected. Judgment in such case shall be limited to removal from office. Impeachment proceedings, whether or not resulting in conviction, shall not be a bar to criminal prosecution and punishment according to law. . . .

SECTION 3. Removal of officers by Governor on address of General Assembly. For any willful neglect of duty, or other reasonable cause, which shall not be sufficient ground of impeachment, the Governor shall remove any executive or judicial officer on the address of two thirds of each house of the General Assembly: Provided, that the cause or causes for which said removal may be required shall be stated at length in such address, and entered on the Journals of each house: And, provided, further, that the officer intended to be removed shall be notified of such cause or causes, and shall be admitted to a hearing in his own defense, or by his counsel, or by both, before any vote for such address; and in all cases the vote shall be taken by yeas and nays, and be entered on the Journal of each house respectively.

Two methods for removal are set forth in this Article: (a) impeachment by the House of Representatives with trial in the Senate (Sections 1 and 2) (hereinafter “Impeachment”); and (b) removal by the Governor “on the address” of both houses of the General Assembly (hereinafter “Removal on Address”). A careful analysis of Article XV leads to the clear conclusion that Section 3 does not apply to constitutional officials elected on a statewide basis; those elected officials can be removed only by impeachment.

“[K]eeping in mind that amendments to our Constitution become effective largely through the legislative process . . . the Court applies rules of construction similar to those used to construe statutes.” *State v. Long*, 406 S.C. 511, 514, 753 S.E.2d 425, 426 (2014). The “interpretation of a statute is a question of law for the Court.” *See Hopper v. Terry Hunt Constr.*, 383 S.C. 310, 314, 680 S.E.2d 1, 3 (2009).

“The primary rule of statutory construction is to ascertain and effectuate the intent of the Legislature.” *Gilstrap v. South Carolina Budget and Control Bd.*, 310 S.C. 210, 213, 423 S.E.2d 101 (1992); *accord Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.”). “If the statute is ambiguous, . . . courts must construe the terms of the statute.” *Town of Mt. Pleasant v.*

Roberts, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose." *Id.* (citation omitted).

In construing a statute, the Court must read it as a whole to give it effect:

[A] statute "must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." *CFRE, L.L.C. v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)). As such, "we read the statute as a whole and in a manner consonant and in harmony with its purpose." *Id.* "We therefore should not concentrate on isolated phrases within the statute." *Id.* In addition, "we must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,' for '[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.'" *Id.* (quoting *State v. Sweat*, 379 S.C. 367, 382, 665 S.E.2d 645, 654 (Ct. App. 2008), *aff'd*, 386 S.C. 339, 688 S.E.2d 569 (2010)).

Senate by & through Leatherman v. McMaster, 425 S.C. 315, 322, 821 S.E.2d 908, 911-12 (2018).

This case presents a truly unique issue to the Court. There is no reported instance of any statewide elected official, state judge, or executive or judicial branch officer being expelled from office or commission by Article XV Impeachment or Removal on Address. This is so under either the current version of Article XV enacted in the 1971 amendments to the Constitution¹ or the preceding version of Article XV contained in the Constitution of 1895. For the reasons set forth below, the Court should conclude that the only proper procedure for the removal of a statewide elected constitutional official, such as the Treasurer, is by formal Impeachment under Sections 1-2 of Article XV.

A. **Article XV, Sections 1-2 Impeachment Is the Proper Vehicle for the Removal of Statewide Elected Officials.**

¹ Act 65 of 1971.

Article VI, Section 7 of the South Carolina Constitution establishes the office of the Treasurer of the State of South Carolina, to be “elected by the qualified voters of the State.” South Carolina State Treasurer Curtis Loftis was popularly elected by the people of South Carolina, for a third term. In fact, he was ***overwhelmingly*** chosen by 79.67% of voters, receiving 1,129,961 of 1,418,286 votes cast. (See <https://www.enr-scvotes.org/SC/115412/Web02-state.307150/#/?undefined> (visited April 9, 2025)). Now, a small faction in the Senate is seeking to unravel this vote and disregard the clear will of the people of this State. Petitioner has filed this action to ensure that political action cannot undo what the people have so decisively chosen without fully complying with constitutional obligations.

This Court—consistent with precedent from the United States Supreme Court—has long recognized the critical importance in the integrity of public elections and the sanctity of the vote:

Although this case does not present a constitutional challenge, we begin with the unassailable proposition which all participants acknowledge: the right to vote is a cornerstone of our constitutional republic. See *Ill. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184, 99 S. Ct. 983, 990, 59 L. Ed. 2d 230, 241 (1979) (“[V]oting is of the most fundamental significance under our constitutional structure.”); *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S. Ct. 526, 535, 11 L. Ed. 2d 481, 492 (1964) (“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.”); see also S.C. Const. art. I, § 5 (“All elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for in this Constitution shall have an equal right to elect officers and be elected to fill public office.”); S.C. Const. art. II, § 1 (“The right of suffrage, as regulated in this Constitution, shall be protected by laws regulating elections and prohibiting, under adequate penalties, all undue influence from power, bribery, tumult, or improper conduct.”); S.C. Const. art. II, § 2 (“No power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage in this State.”); *Sojourner v. Town of St. George*, 383 S.C. 171, 176, 679 S.E.2d 182, 185 (2009) (“The right to vote is a fundamental right protected by heightened scrutiny under the Equal Protection Clause. Restrictions on the right to vote on grounds other than residence, age, and citizenship generally violate the Equal Protection Clause and cannot stand unless such restrictions promote a compelling state interest.” (internal citations omitted)); *City of Charleston v. Masi*, 362 S.C. 505, 509, 609 S.E.2d 301, 304 (2005) (noting the critical importance of ensuring voters are not improperly denied their right to vote in a particular election). As we stated in another election case in which this Court issued a declaratory judgment in its original jurisdiction,

"This is a matter of great public importance. Integrity in elections is foundational."
Anderson v. S.C. Election Comm'n, 397 S.C. 551, 556, 725 S.E.2d 704, 706 (2012).

See Bailey v. South Carolina State Election Comm'n, 430 S.C. 268, 271-272, 844 S.E.2d 390, 391-392 (2020) (emphasis added).

A consequence of the importance of the right to vote and the sanctity of elections is that it should be difficult for politicians to remove officials who have been popularly elected on a statewide basis, and if invoked, should also follow the core principles and procedures of due process. Article XV of the Constitution sets a rigorous standard for the removal of statewide elected officials: Impeachment. *See* S.C. Const. Art. XV, Sec. 1 (“The House of Representatives alone shall have the power of impeachment in cases of serious crimes or serious misconduct in office by officials elected on a statewide basis, state judges, and such other state officers as may be designated by law.”). Among other things, this strict quasi-judicial process requires that:

- The House of Representatives alone has the power of impeachment. This places the first action in the hands of the most representative house of the General Assembly, with 124 members (nearly three times the size of the Senate, with only 46 members).
- A statewide elected official may be impeached only for “serious crimes or serious misconduct in office.”² This limits the scenarios under which the will of the statewide electorate can be undone to only the most serious cases of malfeasance.
- Impeachment requires affirmative vote of two-thirds of all members elected to the House of Representatives.
- If the House of Representatives impeaches, the Constitution provides for a trial in the Senate requiring a conviction for removal from office, again by a vote of two-thirds of all members elected.
- For purposes of this trial, “Senators shall be under oath or affirmation.”

This formal Impeachment process accords the appropriate level of respect and dignity to the expressed will of the people, while allowing for the removal of statewide elected officials for truly egregious actions. This is not a mere technicality or procedural requirement of the

² Respondent cannot reasonably contend that the Treasurer engaged in “serious crimes or serious misconduct in office.”

Constitution. It is a substantive protection of the will of the people of this State, to ensure that political maneuverings do not undermine that will. The Sense of the Senate has not followed any of the requirements for a proper Impeachment—it even begins in the wrong house of the General Assembly.

Importantly, an Impeached official can only be removed after a full trial leading to a conviction. “A ‘trial’ is ‘[a] formal judicial examination of evidence and determination of legal claims in an adversary proceeding.’” *See United States v. Stitt*, 459 F.3d 483, 487 (4th Cir. 2006) (*quoting* Black's Law Dictionary 1543 (8th ed. 2004)).

The Removal on Address procedure, on the other hand, is a decidedly political rather than judicial process. It is much less formal and lacks meaningful procedural protections. The differences between the procedures are striking. For example, the Removal on Address process can begin in either house of the General Assembly, unlike Impeachment, which must begin in the House of Representatives. Additionally, Removal on Address does not provide for a trial or a conviction.. The Court should require that, if Respondent wishes to remove Petitioner from office, Petitioner be granted the full procedural protection of an impeachment.

The only explicit procedure for the removal of the Treasurer under the Constitution is Impeachment under Article XV, Sections 1-2. Because Impeachment is the only explicit vehicle for the removal of statewide elected officials, Impeachment should be the *only* way to remove such an official from office. The Senate has chosen not to follow the procedures for an Impeachment, when doing so would lend legitimacy to its efforts to remove a popularly-elected constitutional officer. Instead, the Senate has chosen to use an informal political process to nullify the will of the voters.

Petitioner notes that the General Assembly has implicitly recognized that Section 3 of Article XV does not apply to statewide-elected constitutional officers, by enacting legislation subjecting certain officers—not popularly elected, but elected by the legislature—to Removal on Address. Section 27 of Article III and Section 9 of Article VI of the Constitution both provide, “Officers shall be removed for incapacity, misconduct or neglect of duty, in such manner as may

be provided by law, when no mode of trial or removal is provided in this Constitution.” Pursuant to this authorization, the General Assembly has enacted the following provision for removal of officers elected by the General Assembly:

The manner and method of removal of State officers elected by the General Assembly shall be according to Section 3 of Article XV of the Constitution of South Carolina of 1895; provided, however, that should any grand jury present or return a true bill against any such officer on account of his official conduct, then the Governor may suspend such officer until the next General Assembly.

S.C. Code Ann. §8-11-60. This statute is important for two reasons. First, it demonstrates that the General Assembly apparently believed that even officials that it had elected were not already subject to Removal on Address under Article XV; if that was the case, certainly *popularly elected* statewide officials would not be subject to that process. Second, it demonstrates that the General Assembly knows how to enact laws subjecting certain officers to Removal on Address if it wishes to do so. To date, the General Assembly has *never* enacted a law to subject statewide elected officials to this process.

The facts of this case illustrate why it is so important that statewide elected officials be subjected to removal only upon Impeachment. On April 9, 2025, counsel for Petitioner met with representatives of the Senate to discuss how it intended to administer this process. At that time, Petitioner was informed that, unlike an orderly Impeachment proceeding with ample procedural protections, the Senate intends to engage in a purely political proceeding:

First, in our meeting, you stressed that the Senate does not intend this hearing to be judicial or quasi-judicial in nature. Instead, as I understand it, the Senate’s intent is that this hearing will be conducted in largely the same manner as any other political process of the Senate.

(See Ex. B hereto). Petitioner has been informed that the Senate intends to use the following unabashedly political and fundamentally unfair procedures:

- Without explanation, the Senate denied the Treasurer’s request for additional time to prepare for the hearing.

- The Senate presenters have refused to participate in any discovery or respond to the Treasurer’s Requests to Admit, Interrogatories, and Requests for Production, served on April 8, 2025.
- Senate presenters have refused to provide the Treasurer any information, documents or materials collected in the course of their investigation, aside from materials they intend to use against the Treasurer in the hearing.
- Senate presenters (and those for Petitioner) will not be placed under oath when presenting their case.
- The Treasurer and his presenters will not be allowed to question the Senate presenters (or vice versa).
- The April 2, 2025 “Sense of the Senate” is the sole procedural standard for the hearing; the South Carolina Rules of Civil Procedure and/or South Carolina Rules of Evidence will not apply.
- No motions or objections will be allowed.
- There is no established standard for what constitutes a quorum of the “Committee of the Whole” of the Senate, before whom the removal hearing is to be held.

(*See id.*). Far from being a serious effort to ascertain the truth of the matter and allow Petitioner to present his case—and the case of the hundreds of thousands of South Carolinians who voted for him—this is a rushed bit of political theater.

In an effort to do an end-around on the Impeachment process (where the House has not undertaken any steps to begin that process), the Sense of the Senate instead was issued “[p]ursuant to the provisions of Section 3, Article XV of the South Carolina Constitution, 1895.” As mentioned above, Section 3 provides that “[f]or any willful neglect of duty, or other reasonable cause, which shall not be sufficient ground of impeachment, the Governor shall remove any executive or judicial officer on the address of two thirds of each house of the General Assembly.” *See S.C. Const. Art. XV, Sec. 3.* The Senate’s attempted use of Removal on Address violates the Constitution. Contrary to the “Sense of the Senate,” Removal on Address under Article XV, Section 3 simply does not apply to statewide elected constitutional officials. Therefore, the Court

should grant Petitioner relief as requested from the Sense of the Senate and the illegitimate procedure it seeks to invoke.

B. The Sense of the Senate’s Attempt to Apply Section 3 Removal on Address to a Statewide Elected Official Would Create an Absurd Result and Render the Impeachment Provisions of Article XV Superfluous.

“This Court will construe a constitutional amendment in a similar manner as it does a statute. [Citation omitted.] When construing a statute, this Court will reject a meaning when it would lead to a result so plainly absurd that it could not have possibly have been (sic) intended by the General Assembly or would defeat the plain legislative intention.” *State v. Long*, 406 S.C. 511, 515 n.5, 753 S.E.2d 425, 427 (2014); accord *State v. Hackett*, 363 S.C. 177, 182, 609 S.E.2d 553, 555 (Ct. App. 2005) (“The courts will reject a meaning when to accept such would lead to a result so plainly absurd that the Legislature could not possibly have intended it.”). “This Court will not construe a statute in a way which leads to an absurd result or renders it meaningless.” See *Ranucci v. Crain*, 409 S.C. 493, 500, 763 S.E.2d 189, 192-93 (2014). Additionally, “[a] statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.” See *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citation omitted)). See *Lightner v. Hampton Hall Club*, 419 S.C. 357, 364, 798 S.E.2d 555, 558 (2017).

For the reasons that follow, Respondent’s invocation of Section 3 Removal on Address creates a patently absurd result and renders much of Article XV of the Constitution superfluous.

As set forth above, Impeachment under Sections 1 and 2 is very limited in its substantive scope, allowing removal only for a serious crime or serious misconduct in office. Impeachment cannot be used to remove a statewide elected official for mere neglect of his duties or error; it cannot be used to remove such an official for misconduct in his private life outside of his office. In those rare cases where impeachment is appropriate, Impeachment can only begin in the House of Representatives and requires a two-thirds vote in that house. Once that occurs, the subject of the impeachment must be “tried” and “convicted” in the Senate (with the Senators placed under

oath). Only then can an “official[] elected on a statewide basis” be removed from office. In other words, Section 1-2 Impeachment requires the most serious malfeasance and provides the most procedural protections.

On the other hand, Section 3 Removal on Address, which the Petitioner invokes through the Sense of the Senate, allows for removal for much lower levels of malfeasance: “willful neglect of duty, or other reasonable cause, which shall not be sufficient ground of impeachment.” *See* S.C. Const. Art. XV, Sec. 3. Additionally, it provides fewer procedural safeguards than Impeachment: (a) the process does not have to originate in the House of Representative; (b) it does not require a trial, only a “hearing” to which the subject shall be admitted; (c) unlike Impeachment, Removal on Address does not require a “convict[ion]”; (d) there is no requirement that the members of the General Assembly be sworn in; and (e) a vote is only required of “each house,” not of “all members elected” as required for Impeachment.

Respondent’s construction of the Constitution would create an absurd result and would essentially do away with any reason to use the procedure of Impeachment. Specifically, it would allow a statewide-elected official to be removed from office more easily for a lesser offense than for an impeachable offense. It would be far easier for political enemies to Remove on Address a constitutional officer for making an error than it would be to Impeach one for a serious felony. More broadly, it would be easier to remove a constitutional officer on address for a nebulous claim vaguely packaged as “other reasonable cause” per the Removal clause that is in fact only a heated difference in policy, priorities, or constituencies. Why would the Constitution make it easier to remove a statewide elected official on address than to remove him by Impeachment? Under these circumstances, the General Assembly would have the perverse motivation to proceed by Removal on Address—even if the Impeachment process would seem to be more relevant—to attack a political rival without having to follow the formality of Impeachment. This cannot be how the General Assembly intended for Article XV to operate.

This is emphasized by the fact that, in contrast to federal law, South Carolina law does not decree that persons expelled from office by Impeachment are barred from holding any future

state office.³ Thus, the end result of Impeachment and Removal on Address—setting aside for a moment the question of to whom those procedures apply—is exactly the same. In simple terms, if Section 3 Removal on Address applies to statewide elected officials, and the outcome of a Section 3 removal is the same as a Section 1 Impeachment, there would never be a practical need to employ Impeachment with its higher threshold degree of offense and more robust procedural protections. In other words, Respondent’s approach all but does away with the need or motivation to ever proceed by Impeachment rather than Removal on Address.

In light of the foregoing, it is not reasonable for Respondent to argue that a statewide elected official can be removed either by Impeachment or by Removal on Address. To do so would create absurd results that make it easier to remove a Treasurer for mere neglect than for committing a serious crime. Respondent can cite to no authority supporting this constrained and absurd reading of Article XV underlying the Sense of the Senate. The only reasonable construction of Article XV is that it only allows for the Impeachment of statewide elected constitutional officials. The Court should not allow Respondent to misconstrue Article XV to allow for this political attack on Petitioner.

C. A Historical Analysis of Article XV Confirms That It Does Not Authorize the General Assembly to Remove on Address Statewide Elected Constitutional Officers.

Petitioner’s contention that he may not be removed from office by Removal on Address is bolstered and confirmed by comparison of the prior language of Article XV (as it existed before the current version was enacted through Act 65 of 1971) to the current language of Article XV. Specifically, under the South Carolina Constitution of 1895, Article XV stated:

SECTION 1. The House of Representatives shall have the sole power of impeachment. A vote of two-thirds of all the members elected shall be required

³ “Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.” U.S. Const. art. I, §3, cl. 7. South Carolina law is silent on this issue, unless there is a conviction of a felony or specific election-related offenses involved as referenced in Article VI, Section 1 of the Constitution. S.C. Const. Art. VI §1

for an impeachment. Any officer impeached shall thereby be suspended from office until judgment in the case shall have been pronounced; and the office be filled in such manner as may be provided by law.

SECTION 2. All impeachments shall be tried by the Senate, and when sitting for that purpose, they shall be under oath or affirmation. No person shall be convicted except by vote of two-thirds of all the members elected. When the Governor is impeached, the Chief Justice of the Supreme Court, or the senior Judge, shall preside, with a casting vote in all preliminary questions.

SECTION 3. The Governor and all other executive and judicial officers, shall be liable to impeachment; but judgment in such case shall not extend further than removal from office. The persons convicted, shall nevertheless, be liable to indictment, trial and punishment according to law.

SECTION 4. For any wilful neglect of duty, or other reasonable cause, which shall not be sufficient ground of impeachment, the Governor shall remove any executive or judicial officer on the address of two-thirds of each House of the General-Assembly. Provided, that the cause, or causes for which said removal may be required, shall be stated at length in such address, and entered on the journals of each House: And provided, further, That the officer intended to be removed shall be notified of such cause or causes, and shall be admitted to a hearing in his own defense, or by his counsel, or by both, before any vote for such address; and in all cases, the vote shall be taken by yeas and nays, and be entered on the journals of each House respectively.

S.C. Const. art. XV (1895). Under the pre-1971 language of Article XV, Impeachment was governed by Sections 1-3 (rather than 1-2), while Removal on Address was governed by Section 4 (rather than 3).

Section 3 of Article XV of the 1895 Constitution provided that “[t]he Governor and all other executive and judicial officers, shall be liable to impeachment.” The 1895 version of Article XV did not use the current language (in current Section 1) making impeachment applicable to “officials elected on a statewide basis, state judges, and such other state officers as may be designated by law.”⁴ This is a critical distinction. The current Article XV, Section 1 narrowed the scope of persons subject to Impeachment, while simultaneously limiting Impeachment to only serious crimes and misconduct. Under the current Article XV, “all . . . executive and judicial

⁴ Prior to 1971, Impeachment was not expressly limited to “cases of serious crimes or serious misconduct in office.”

officers” are no longer liable to Impeachment. Only statewide elected officials and state judges—those who hold the highest offices—are now subject to Impeachment.

The 1895 version of Article XV, Section 4 subjected “any executive or judicial officer” other than the Governor to Removal on Address. Notably, this is the same language used in the 1895 Constitution to describe those subject to Impeachment. In other words, arguably, under the pre-1971 language of the 1895 Constitution, the Treasurer and other officers could be subject to ***both*** Impeachment and Removal on Address, as both Sections 3 and 4 of the 1895 Constitution used the same words: “executive or judicial officer.”

However, this is no longer the case. As set forth above, the current version of Article XV, Section 1 now limits Impeachment to “officials elected on a statewide basis, state judges, and such other state officers as may be designated by law.” By contrast, the scope of officials subject to Removal on Address was not substantively altered by the 1971 amendments (which simply moved that provision to Article XV, Section 3). If, as Respondent and the Sense of the Senate seem to contend, Impeachment and Removal on Address still apply to the same officials, why did the 1971 amendments only change the scope of those subject to Impeachment?

Some light on this question can be shed by the West Committee’s⁵ November 14, 1967 Working Paper No. 10 on Impeachment (“West Committee Working Paper”), attached hereto as Exhibit A. The West Committee Working Paper discussed all four sections of Article XV to the 1895 Constitution. With regard to the 1895 Constitution’s language on Removal on Address, the West Committee Working Paper states, in relevant part:

The language of this section implies that impeachment shall be only for misdemeanor, high crimes, and treason. Removal of an officer for neglect of

⁵ This Court has previously relied upon the West Committee’s working papers to divine constitutional intent. *See Sloan v. Sanford*, 357 S.C. 431, 436, 593 S.E.2d 470, 473 (2004) (“[A] principal purpose of Article IV, Section 2 is to ensure the separation of powers of the three branches of government, that is, to keep the executive, judicial, and legislative branches of government separate. In 1969, a committee chaired by John C. West, presented a final report to then Governor McNair, after the committee analyzed each section of the State’s Constitution. The minutes of the West Commission Committee meetings confirm the dual-office holding purpose of the provision.”).

duties or other “reasonable” cause shall be by the Governor upon address of two-thirds of the membership of each house of the legislature, with provision for notification and hearing to the officer to be removed.

The problem created by this section is double-edged. **It is not absolutely clear as to whether a constitutional officer, popularly elected, could be removed from office by this method.** Presumably, the method is to be employed when removal shall be for a cause “which shall not be sufficient ground of impeachment.” Does the legislature have a choice? Is removal by the Governor mandatory on the address of the General Assembly? Further, can the section be employed to remove minor civil and judicial officers or are these officers subject to removal only as provided by law under Article III, Section 27? Court decisions imply that the plenary power of the legislature as to non-constitutional officers overlays and supplements the provisions of this section. The two are not in conflict. (*McDowell v. Burnett*, 90 S.C. 400; 73 S.E. 782.) There is no record of the provisions of Section 4 ever being used. Consequently, the questions of its scope and application have not been answered. **As a practical matter the section should be eliminated as a rather valueless appendage to the Impeachment Article. The General Assembly prescribes by law for removal of all officers other than constitutional officers. This latter group is subject to the impeachment provision which should be retained with only slight revision as suggested.**

(See Ex. A (emphasis added)).

This language from the West Committee Working Paper demonstrates that—prior to 1971—it was unclear whether statewide elected officials could be subject to Removal on Address. In 1971, the General Assembly answered the West Committee’s query with a resounding “NO.” By choosing to use *different* terminology in the current versions of Article XV, Sections 1 and 3, the legislature demonstrated that Impeachment was reserved for the officers – including statewide-elected officers – specifically identified in Section 1, and other officers could be removed pursuant to Section 3 Removal on Address.

D. McDowell v. Burnett Does Not Support Petitioner’s Efforts to Do an End-Around the Impeachment Provisions of the Constitution.

Petitioner anticipates that Respondent will rely on *McDowell v. Burnett*, 92 S.C. 469, 75 S.E. 873 (1912), for the proposition that Article XV, Section 3 permits a statewide elected official to be Removed on Address.⁶ However, in *McDowell*, a case decided long before the 1971

⁶ The current Article XV, Section 3 removal clause was Article XV, Section 4 at the time of *McDowell*, and subsequently re-ordered as Section 3 when Article 15 was amended by Act 65 of 1971. For ease of comprehension in reading, and because the language of the removal clause

amendments to the Article XV, that question was not before the Court. *McDowell* did not involve a statewide elected constitutional official, or any elected official for that matter: “[t]he important question presented in this case is whether the Governor of the state has the power, *at his discretion*, to remove from office a magistrate whose appointment has been confirmed by the Senate.” See *McDowell*, 92 S.C. at 469, 75 S.E. at 873 (emphasis added). *McDowell* did not involve proceedings for either Removal on Address or Impeachment. While *McDowell* discussed Article XV as part of a broad discussion of various scenarios for the removal or suspension of public officials, it did not rule on Article XV.⁷

McDowell’s observations concerning Impeachment and Removal on Address are inapplicable because that Court examined and contrasted the then-existing Impeachment and Removal on Address provisions in conjunction with one another and with Article III, Section 27:

Yet, even if sections 3 and 4 of article 15 stood alone, it would hardly be reasonable to suppose that the framers of the Constitution meant to use the words in such a broad sense that every petty officer of the state and county, except in case of conviction of embezzlement, should be subject to impeachment, and could be removed only by impeachment or address of two-thirds of the General Assembly. *But they do not stand alone*, and it must be that “all other executive and judicial officers” was meant in some limited sense, for section 27 of article 3 clearly contemplates the removal of officers of some kind in a manner other than by impeachment, address of the General Assembly, or conviction of embezzlement. *That section must have some meaning, and its meaning, if possible, must be reconciled with the article relating to impeachment.* In other words, if both provisions are to be given effect, there must be a line of distinction somewhere between impeachable executive and judicial officers and those smaller local officers subject to removal under the statutes of the state or the common law. The

itself has not changed, petitioner uses the term “Section 3 removal” in the discussion of *McDowell* in the place of “Section 4” as utilized in the opinion.

⁷ “But aside from all other considerations, section 982 of Civil Code is conclusive against the power of the Governor to remove a magistrate serving a full term, at his discretion, without the approval of the Senate. That section provides: “Such magistrates may be suspended by the Governor for incapacity, misconduct or neglect of duty; and the Governor shall report any suspension, with the cause thereof, to the Senate at its next session, for its approval or disapproval.” The difference between suspension and removal is evident to all men. The General Assembly, in conferring on the Governor the power to suspend, denied him the power to remove magistrates, except as such power was conferred conditionally by other statutes to which we have referred.” *Id.* at 878.

use of such general terms as “all executive and judicial officers,” “all civil officers,” and the like in the impeachment articles of Constitutions, where they must have been meant to have some limited meaning, is one of the most curious anomalies (sic) of legislation. However difficult the task, the court must try to find the line of distinction which the convention probably had in mind and mark that as the true line. [Emphasis added.]

McDowell, at 875. In sum, the Court holistically discussed three constitutional modes of possible removal from office existing at that time to generically state that “[e]very executive and judicial officer whose authority and jurisdiction extends over the entire state, in whose official conduct the entire state is concerned, and whose office was created by the Constitution, or created by statute and filled by election by the people at large, removable by impeachment or by the Governor on the address of the General Assembly or by conviction of embezzlement or of appropriation of trust funds and in these modes only.” *See id.*, at 876. However, since the substantial revision of Article XV through Act 65 of 1971, discussed in detail above, the impeachment provision discussed in *McDowell* analysis has been substantially altered. For that reason, the *McDowell* Court’s analysis, over 100 years old now, should not stand as a decisive ruling with regard to an impeachment provision that has been materially amended.

CONCLUSION

This Court should not lightly infer constitutional authorization for the General Assembly to nullify a statewide election when the Constitution does not expressly provide for it. Article XV, Section 1 of the Constitution explicitly applies Impeachment to “officials elected on a statewide basis, state judges, and such other state officers as may be designated by law.” By comparison Removal on Address under Section 3—which requires a lower threshold of conduct to justify removal and provides far fewer protections—applies to “any executive or judicial officer.” These distinctions suggest that statewide elected officials and state judges are set apart from other officials with regard to removal from office. To conclude that Section 3 Removal on Address applies to statewide elected officials and state judges neutralizes Article XV, Section 1 Impeachment. There would be no need to resort to Impeachment if Removal on Address provides an easier vehicle for politicians to remove their enemies. Either chamber could convene a 3

person subcommittee investigation, hear only from those persons they desire, question them without cross examination or authenticated evidence, obtain information from friendly agencies or persons via back channels, refuse to release documents to the accused, prohibit any discovery, sling false accusations without repercussion, and initiate Removal on Address proceedings in which the accused cannot have a trial or the ability to proffer testimony. Article XV, Section 3 Removal on Address should not be available against the State Treasurer, because Impeachment explicitly is available—and for important policy reasons. To hold otherwise is contrary to the language of Article XV. More fundamentally, Respondent’s apparent view of Article XV does not accord sufficient respect to the will of the people expressed in the election of constitutional officials. Instead, Respondent’s action threatens to expose statewide elected officials to flagrant power grabs by factions of the General Assembly.

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