

STATE OF SOUTH CAROLINA
IN ORIGINAL JURISDICTION

IN THE SUPREME COURT
OF SOUTH CAROLINA

JENNIFER PINCKNEY, HOWARD
DUVALL, and KAY PATTERSON,

Plaintiffs,

vs.

HARVEY PEELER, in his official
capacity as President of the South
Carolina Senate;
JAY LUCAS, in his official capacity as
Speaker of the South Carolina House of
Representatives; and
HENRY MCMASTER, in his official
capacity as Governor of the State of
South Carolina;

Defendants.

DECLARATORY JUDGMENT
COMPLAINT

Plaintiffs Jennifer Pinckney, Howard Duvall, and Kay Patterson bring this declaratory judgment complaint in the original jurisdiction of the Supreme Court due to its great public importance and pursuant to Article V, section 5 of the South Carolina Constitution, section 14-3-310 of the South Carolina Code, and Rule 245 of the South Carolina Appellate Court Rules.

1. This suit seeks a declaration that the South Carolina Heritage Act, S.C. Code Ann. § 10-1-165 (the “Act”), violates the South Carolina Constitution and an injunction protecting Plaintiffs and others from having the Act enforced.
2. 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(B) The provisions of this section may only be amended or repealed upon passage of an act which has received a two-thirds vote on the third reading of the bill in each branch of the General Assembly.

S.C. Code Ann. § 10-1-165.

3. The Act violates the South Carolina Constitution by improperly restricting the General Assembly's lawmaking function by placing limits on the ability to amend or repeal the law; ignoring two separate constitutional prohibitions against special laws, including the equal protection guarantee; and disregarding Home Rule for local government control over local matters.

4. The Act seeks to freeze the display of monuments and memorials for some, but not all, past military engagements and for two, but not all, ethnic heritages.

5. In addition, the Act seeks to prohibit any change or renaming of public streets, structures, and other public places named for any historic person or event.

6. Moreover, the Act tries to prevent future legislatures from changing the Act or granting exceptions to its prohibitions without at least a two-thirds vote in both houses of the General Assembly. However, at the time of passage, the Act itself received only 60.5% percent of the House members voting and 82% of the Senators

voting.¹ See Legis. history of 2000 S.C. Act 292 (found at <https://www.scstatehouse.gov/billsearch.php?billnumbers=1266&session=113&summary=B>).

7. Since enactment, citizens, public institutions, and local governments have demanded action purportedly prohibited by the Act's limitations on future sessions of the General Assembly and on the inability of local governing bodies to relocate or modify monuments or memorials and to change the names of public streets, structures, and places.

8. Plaintiff Jennifer Pinckney is a citizen and resident of Lexington County. She is the widow of the late Reverend and Senator Clementa Pinckney, who was murdered along with eight parishioners participating in Bible study at Mother Emanuel African Methodist Episcopal Church in Charleston on June 17, 2015. Monuments, markers, and places memorializing Senator Pinckney and others are in Charleston at the Mother Emanuel Church, and in Marion and Jasper Counties.

9. Plaintiff Howard Duvall is a citizen and resident of the City of Columbia, Richland County. In 2015, Mr. Duvall was elected at-large to Columbia City Council serves as a member of its Arts & Historic Preservation Committee.

¹ The House is composed of 124 members, and the Senate comprises 46 members. S.C. Const. art. III, §§ 3, 6 (establishing the numbers of both Houses). Based on this Court's prior ruling on quorum, the percentages were calculated by dividing the number of yeas by the number of members present. See *Bd. of Trustees of Sch. Dist. of Fairfield County v. State*, 395 S.C. 276, 284, 718 S.E.2d 210, 214 (2011) (noting that, absent a more specific method mandated for a particular vote, the calculation is based on quorum present and not total membership).

10. Plaintiff Senator Kay Patterson was a long-time educator before being elected to the South Carolina House of Representatives in 1974 and then to the Senate in 1985. A historical marker about his birthplace and his impact was unveiled in 2018 by the South Carolina African-American Heritage Commission.
11. Defendant Harvey Peeler is the elected President of the South Carolina Senate and is sued in his official capacity as the representative of that legislative body.
12. Defendant James H. Lucas is the elected Speaker of the South Carolina House of Representatives and is sued in his official capacity as the representative of that legislative body.
13. Defendant Henry D. McMaster is the Chief Magistrate, head of the executive branch as the Governor of the State of South Carolina, and is sued in his official capacity and charged with enforcing the laws of the State of South Carolina.
14. The Supreme Court may exercise original jurisdiction when necessary in the public interest or for another compelling reason. Rule 245, SCACR.
15. Plaintiffs bring this action for their own personally affected interests and on behalf of the great public importance of the constitutionality of the Act, which affects the citizens and local governments of this State. Plaintiffs have personal stakes and interests in this litigation over the Act and have suffered and will continue to suffer from its continued enforcement preventing changes to monuments, markers, and public streets and places. A favorable decision on the constitutionality of the Heritage Act will avoid Plaintiffs' injuries from continued enforcement of the Act.

16. Defendants are responsible for the Act and have enforced it to deprive citizens, local governments, political subdivisions, and other entities of control over their decisions and property in changing names and removing monuments and places.

17. With every passing day, the rights of Plaintiffs and others continue to be violated without adequate remedy.

18. Plaintiffs respectfully request this Court declare that the Heritage Act:

- (1) improperly restricts the General Assembly's lawmaking function by placing limits on the ability to amend or repeal the law, in violation of S.C. Const. art. I, § 1, and other laws of this State;
- (2) violates an enumerated prohibition against special laws about changing the name of persons or places, pursuant to S.C. Const. art. III, § 34(I);
- (3) is unconstitutional special legislation because it violates the constitutional guarantee of equal protection prohibiting unreasonable and arbitrary classifications and without any rational basis, pursuant to S.C. Const. art III, § 34(IX);
- (4) violates the Constitution by invading the province of local governing bodies in direct violation of Home Rule for regulatory control of local matters based on S.C. Const. art. VIII, §§ 1, 7, 9 & 17, and the enabling statutes for local governments, S.C. Code Ann. § 4-9-25; S.C. Code Ann § 5-7-30.

WHEREFORE plaintiffs pray for the following relief:

- a. A declaration that S.C. Code § 10-1-165 is unconstitutional in its entirety;

- b. A declaration that Plaintiffs' rights will be irreparably harmed without injunctive or declaratory relief from this Court;
- c. A permanent injunction barring enforcement of the law;
- d. Any other appropriate relief, including costs and attorney fees.

Respectfully submitted,



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