STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF GREENWOOD	)	CASE NO. 2015-CP-24-00514
	)	
THOMAS WALLER, LARRY JACKSON, P. DALE KITTLES, CHARLES L. MAUS, and TERRY C. WEEKS	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
STATE OF SOUTH CAROLINA, HENRY MCMASTER, Lt. Governor and President of the South Carolina Senate, JAY LUCAS, Speaker of the South Carolina House of Representatives, and ALAN WILSON, Attorney General of South Carolina,	)	
	)	
Defendants.	)	
	)	

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS FOR RECONSIDERATION

In response to this court's excellent Order of May 8, 2018, both sets of defendants have filed motions seeking relief. Because the two motions are similar or overlapping, plaintiffs will address them together.

Standing

Defendants argue that plaintiffs lack standing because the Monument in question is owned by American Legion Post 20, not them personally, and they cannot assert third party standing on behalf of the Post.

But plaintiffs are not trying to assert anyone else's standing but their own. Plaintiffs made it plain in endless deposition testimony how they are hurt directly by the Monument. Defendants' argument turns the concept of organizational standing upside-down. The cases have repeatedly held that injury to live persons is the heart of standing, and when organizations have standing, it is usually because their members have been injured. *NAACP v. Alabama,* 357 U.S. 449 (1958)*; Friends of the Earth v. Laidlaw Envir. Serv.*, 528 U.S. 167 (2000). Here the plaintiffs testified at length about the ways in which the Monument hurts them personally, so their standing does not depend on the standing of any other person or organization.

Defendants also challenge this Court's sound ruling that plaintiffs have standing under South Carolina's doctrine of "public importance standing." Yet the defendants' filing of these motions, which they say are "vitally important" (State Motion, page 2), because the decision affects 170 or 200 other monuments in the State, attests to the "public importance" of the issue and therefore the availability of "public importance standing."

Grounds of Decision

Both sets of defendants argue that the Court ruled on an argument not made, which it was not entitled to do. This argument is wrong on several grounds.

First, the private ownership of the Monument was always front and center in the case. The Complaint alleged that because the Monument was privately owned, the Heritage Act was taking private property without due process of law, in violation of the South Carolina Constitution. Ownership of the Monument was closely examined by defendants in their depositions of plaintiffs, and plaintiffs' Memorandum in Support of Summary Judgment emphasized repeatedly that the Monument was privately owned. That the Monument is privately owned was not disputed by the defendants at that time and does not appear to be disputed now.

More fundamentally, this Court simply chose to find a narrower ground of decision in order to avoid reaching and deciding a significant constitutional question. That is what courts do and what courts are commanded to do whenever feasible. The U.S. Supreme Court has said so, *Ashwander v. TVA*, 297 U.S. 288 (1936); *S.C. Public Interest Foundation v. Lucas,* 416 S.C. 269, 786 S.E.2d 124 (2016). Here, this Court took that route, finding a statutory basis for its decision so it did not have to reach a constitutional question. *See also N.W. Austin Municipal Utility District v. Holder*, 557 U.S. 193 (2009).

Narrower Grounds

Both sets of defendants argue that this Court's decision overlooked or misapprehended the importance of the Heritage Act in protecting private monuments, the number of such monuments potentially affected by its ruling, the legislative compromise reflected in the Heritage Act, and any number of other factors, most of which arguments were strenuously presented in the briefing and several oral arguments that have taken place.[1] The Court's careful discussion makes clear that it was well aware of all these matters, but was also well aware of the serious First Amendment issues it would have to address if it read the statute as the defendants would now like it read.

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[1] In particular, defendant Lucas seeks to reargue the issue of "government speech." That was thoroughly aired in previous briefs and arguments, where plaintiffs explained that whether or not this Monument is "government speech," plaintiffs wish to petition their government in precisely the ways left open by the Supreme Court, and it is this right of petition that the Heritage Act abridges in violation of the South Carolina Constitution. See plaintiffs' summary judgment memorandum at pages 15-17.

To the extent that defendants wish the ruling had been even narrower, and fear that it will "open the door" to challenges to other monuments they would like to protect, they are quarreling with this Court's Opinion, not its Judgment. Nothing prevents them from arguing in some future case that this case should be read as narrowly as they wish it had been written.

Conclusion

For all the above reasons, the defendants' motions to reconsider or alter and amend this Court's Judgment should be denied.

Respectfully submitted,

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