## A RESOLUTION REQUESTING THAT THE SOUTH CAROLINA GENERAL ASSEMBLY AUTHORIZE, BY ADEQUATE LEGAL AUTHORITY AND PROCEDURE, THE MOVING AND SAFE PRESERVATION OF THE BAMBERG COUNTY CONFEDERATE MONUMENT; AND OTHER MATTERS RELATED THERETO.

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WHEREAS, the Civil War monument in Bamberg County is generally known as the Bamberg County Confederate Monument (the "Monument"). The Monument is located on property adjacent to the Bamberg County Courthouse. The Monument was originally erected in 1911 by the Francis Marion Bamberg Chapter of the United Daughters of the Confederacy (the "UDC"). The monument was relocated to its present location in 1950; and

WHEREAS, some desire for the Monument to be moved from its current location to another more appropriate location, or simply to be removed, and have brought the matter to the governing body of Bamberg County, a body politic and corporate and a political subdivision of the State of South Carolina (the "County"), the Bamberg County Council (the "County Council"); and

WHEREAS, the County, acting by and through its County Council, desire to so relocate or remove the Monument, in accordance with South Carolina law and procedures; and

WHEREAS, the relevant statute in South Carolina regulating such relocation or removal is found in Sec. 10-1-165, South Carolina Code of Laws, 1976, as amended (the "Code"), which is the monument and memorial section (the "Monument and Memorial Section") of the "Heritage Act". The Monument and Memorial Section is explicit as to the preservation and protection of certain enumerated monuments erected on public property of the State or any of its political subdivisions. The enumerated monuments include monuments and memorials to the "War Between the States" (the "Civil War"); and

WHEREAS, in determining the application of the Heritage Act to this situation, the first question is whether or not the Monument is a Civil War memorial as opposed to a monument dedicated to the Confederate States of America. In other words, if the Monument is simply a monument to the Confederate States of America and not a Civil War memorial, then it could be reasonably argued that the Monument is not protected by the Monument and Memorial Section. This is a factual question that would turn on several factors. The fact that the Monument is topped with a statue of a "Confederate" soldier, however, is a strong indication that the Monument is a Civil War memorial; and

WHEREAS, The second question in such determination is whether the Monument is located on public property. Based on a review of the location of the monument, the Monument in question likely stands on property of Bamberg County or the City of Bamberg. Therefore, the monument would be subject to the Act; and

WHEREAS, the third question in the determination is whether the Monument itself is owned by a public body. The ownership of the Monument is unclear, but is possible that ownership has "transferred" to a public body at some point; and

WHEREAS, the fourth question is whether or not the public body that owns the Monument located on public property can, on its own, relocate or remove the Monument. To this question, the Monument and Memorial Section states "[n]o... monuments or memorials erected on public property of the State or any of its political subdivisions may be relocated, removed, disturbed, or altered." The Monument and Memorial Section allows for the repeal or amendment of the Monument and Memorial Section upon the passage of an "Act" receiving a two thirds vote of both branches of the General Assembly. Therefore, the plain language of the Monument and Memorial Section states that a political subdivision cannot act on its own without an Act of the General Assembly; and

WHEREAS, because neither the County nor the City of Bamberg can remove or relocate the monument on their own, Bamberg County Council desires to request both branches of the South Carolina General Assembly to authorize such relocation or removal of the Monument, in accordance with and pursuant to the Monument and Memorial Section, and pursuant to the terms, provisions, and procedures of the Monument and Memorial Section:

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BAMBERG COUNTY COUNCIL, IN MEETING, DULY ASSEMBLED, that Bamberg County, acting by and through its County Council, hereby requests the South Carolina General Assembly to authorize Bamberg County to relocate or remove, and adequately protect, the Monument, acting in full accordance with the terms, provisions, and procedures of the Monument and Memorial Section.

1. Should any portion of this Resolution be deemed unconstitutional or otherwise enforceable by any court of competent jurisdiction, such determination should not affect the remaining terms and provisions of this resolution, all of which are hereby deemed separable.

2. All orders, resolutions and enactments of Bamberg County Council inconsistent herewith are to the extent of such inconsistency only, hereby repealed, revoked and rescinded.

3. This Resolution shall take effect and be in full force and effect after enactment by Bamberg County Council.

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**RESOLVED IN MEETING DULY ASSEMBLED** this \_\_\_\_\_ day of July, 2020.

## BAMBERG COUNTY, SOUTH CAROLINA

By:\_\_\_\_\_\_Sharon Hammond, Council Chairwoman

**ATTEST:** 

By:

Rose R. Shepherd, Clerk to Council Bamberg County, South Carolina