ALAN WILSON
ATTORNEY GENERAL

June 26, 2025

The Honorable William M. Hixon, Member
South Carolina House of Representatives
41 Blatt Building
Columbia, SC 29201

Dear Representative Hixon:

You have asked several questions regarding the naming of the Jefferson Davis Memorial Bridge. You note the following as background:

> [i]n 1931, the Jefferson Davis Memorial Bridge was completed, dedicated, and opened to vehicular and pedestrian traffic. It traverses the Savannah River from South Carolina to Georgia. After being used for several decades, it was closed to vehicular and pedestrian traffic in May, 2020.
>
> The Augusta Richmond County Government then undertook conversion of this bridge into a pedestrian mall after it was closed, and paid for 100% of this cost. According to media reports, the Augusta Richmond County Commission then undertook the renaming of this bridge to be known as the Freedom Bridge.
>
> My research of this situation has not shown any effort by our friends in Georgia to reach out and obtain authority, from the South Carolina General Assembly under South Carolina Code Section 10-1-165(A), to alter or rename the South Carolina portion of this bridge.
>
> As you are well aware, this code section provides in pertinent part:
>
> "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." Id.

You ask several questions. These are:

> 1. In your opinion, has the name of the South Carolina portion of this bridge been changed through the actions of this Georgia local government ordinance?

2. In your opinion, must an appropriate entity obtain the permission of the South Carolina General Assembly before renaming the South Carolina portion of this bridge?
3. In your opinion, even though our SCOOT does not list this bridge in its inventory (please refer to the enclosed letters and email), in order to avoid any confusion about the correct name of the South Carolina portion of this bridge, can it place appropriate signage showing this name of this portion continuing to be the Jefferson Davis Memorial Bridge?
4. In your opinion, may the General Assembly require SCOOT to place this signage in the absence of its willingness to place such signage on it?
5. In your opinion, is the Augusta Richmond County Commission required to petition the General Assembly of South Carolina for permission to rename or otherwise alter any portion of the Jefferson Davis Memorial Bridge?
6. If they are required to do so, what entity do you recognize as the one to enforce the continued designation of the South Carolina portion as the Jefferson Davis Memorial Bridge, as it has been so known since 1931?

By way of further background, we note that the Sons of Confederate Veterans filed a lawsuit in 2022 alleging that the renaming of the Bridge by Georgia on its side of the River violated Georgia law. As we understand it, the lawsuit remains ongoing. Of course, we possess no authority to comment on Georgia law herein.

Your letter references several decisions of the United States Supreme Court regarding the boundary between South Carolina and Georgia in the Savannah River region. You ask that we consider these decisions, which include State of Georgia v. State of South Carolina, 497 U.S. 376 (1990); State of Georgia v. State of South Carolina, 257 U.S. 516 (1922); and State of South Carolina v. State of Georgia, 93 U.S. 4 (1876). As you indicate, these decisions concern "the sovereignty of our state borders and the authority our state has over matters contained within our boundaries." You also include with your request "materials showing past correspondence with Georgia officials about this bridge. . . ." We will consider all of these in this opinion.

Law/Analysis

We start with a discussion of the Heritage Act, codified at S.C. Code. Ann. § 10-1-165. The Heritage Act was enacted in 2000 as part of Act 292. Passage of the Act followed "decades of public controversy centered on attempts to remove the Confederate flag from atop the dome of the South Carolina State House in Columbia." Pinckney v. Peeler, 434 S.C. 272, 278, 862 S.E.2d 906, 909 (2021).

The Act addresses the requirement of preservation of historic monuments, markers and landmarks. The pertinent portion of the Act is found in § 10-1-165(A), which states that "[n]o street, bridge, structure, park, preserve, reserve, or other public area of the State or any of its political subdivisions may be renamed or rededicated." As we have concluded in Op. S.C. Atty. Gen., 2020 WL 3619620 (June 25, 2020), "[i]f a particular monument or memorial is

encompassed within the Act's protections – a fact specific inquiry – there can be no removal or alteration of it except by the Legislature." We stand by that conclusion.

In the 1990 Georgia v. South Carolina decision, the United States Supreme Court reviewed its two previous decisions regarding the Georgia-South Carolina boundary. The Court's language in Georgia v. South Carolina is as follows:

> [t]he first case is South Carolina v. Georgia, 93 U.S. 4, 23L.Ed. 782 (1876). South Carolina filed a bill in equity for an injunction restraining Georgia and certain federal officials from "obstructing or interrupting" navigation on the Savannah River. This Court dismissed the bill. It ruled that the 1787 treaty [of Beaufort between Georgia and South Carolina] had no effect on the power of Congress to regulate commerce among several states. Congress' power aver the river was the same as it possessed over other navigable waters. Thus, Congress could close one of the several channels in the river if in its judgment navigation thereby would be improved.
>
> The second case is Georgia v. South Carolina, 257 U.S. 516, 42 S.Ct. 173, 66 L.Ed. 347, decided in 1922. There, the Treaty of Beaufort [which decided the boundary between Georgia and South Carolina] was central to the controversy. The Court held, among other things, that (1) where there is no island in the Savannah River, the boundary is midway between the banks when the water is at ordinary stage, (2) where an island is present, the boundary is midway between the island bank and the South Carolina shore, when the water is at ordinary stage, (3) where a navigable or non-navigable river is the boundary between the two states, and the navigable channel is not involved, then in the absence of contrary agreement, each state takes to the middle of the stream, and (4) the location of the boundary under the Treaty was unaffected by the thalweg doctrine because of the Treaty's provision that each State shall have equal rights of navigation. . . .

497 U.S. 376, at 383-84. The 1990 decision did not alter these conclusions, but expanded upon them in the context of the facts.

Next, we address the jurisdiction of a state to act beyond its territory. As the United States Supreme Court advised long ago,

> [l]aws have no force of themselves beyond the jurisdiction of the state which enacts them, and can have no extraterritorial effect only by the commity of other states.

Huntington v. Attrill, 146 U.S. 657, 669 (1892). As was said in Bonapart v. Tax Court, 104 U.S. 592, 594 (1881), "[n]o state can legislate except with reference to its own jurisdiction . . . Each state is independent of all others in this particular."

More recently, in Bigelow v. Virginia, 421 U.S. 809, 824 (1975), the Supreme Court noted that "[a] State does not acquire power or supervision over the internal affairs of another State merely because the welfare and health of its own citizens may be affected when they travel

to the State." See also New York Life Ins. Co. v. Head, 234 U.S. 149, 161 (1914) ["(i)t would be impossible to permit the statutes of Missouri to operate beyond the jurisdiction of that State. . . Without throwing down the constitutional barriers by which all the states are restricted within the orbits of their lawful authority and upon the preservation of which the Government under the Constitution depends. This is so obviously the necessary result of the Constitution that it has rarely been called into question and hence authorities dealing with it do not abound."]. In a somewhat different context, the Court has stated that ". . . a statute that directly controls commerce occurring wholly outside the boundaries of a stat exceeds the inherent limits of the enacting State's authority and is invalid regardless of whether the statute's extra territorial reach was intended by the legislature." Healy v. Beer Institute, 491 U.S. 324, 336 (1989).

Moreover, where a stream or river constitutes the boundary between two states, and each state possesses jurisdiction to the middle of the river, the general rule is that neither state can extend its laws all the way across the river except through Congress or by agreement. For example in State of Wis. v. State of Mich., 295 U.S. 455, 461-62 (1935), the United States Supreme Court explained that "[b]y principles of international law, that apply also to boundaries between states constituting this country, it is well established that when a navigable stream is a boundary between States. . . [such] limits the jurisdiction of each unless otherwise fixed by agreement or understanding between the parties."

Further, in Smoot v. Fischer, 248 S.W.2d 38, 41 (Mo. App. 1952), the Court stated:

> [i]n situations where a watercourse forms a common boundary between two states, the question of jurisdiction over such watercourses and things transpiring upon it has always been a matter of considerable concern. Generally speaking, the jurisdiction of a state is merely coextensive with its boundaries, so that where a stream forms the boundary between two states, neither would have jurisdiction beyond the center of the stream, or beyond whatever may constitute the actual dividing line, in the absence of same lawful agreement or provision extending each state's jurisdiction over the entire stream. But because of the practical difficulty to be encountered in determining whether a particular thing in controversy occurred on one side or the other of the exact dividing line between the two states, it has been found expedient to extend each state's jurisdiction over the whole of such stream; and out of all this has evolved the concept of concurrent jurisdiction on the part of the adjoining states with respect to a stream or watercourse which forms the common boundary between them.

And, in Kinnane v. State, 153 S.W. 262, 263-64 (Ark. 1913), the Court stated as follows:

> [t]he reasons for having a fixed, certain, and visible line, such as the middle of the channel as measured from the respective banks of the river, we think, greatly outweigh those advanced in support of the decision of the case of Iowa v. Illinois . . . But the question has been settled by the duly constituted authorities of Tennessee and Arkansas by judicial decisions, legislation, and other authorized official actions, long acquiescence, the exercise of jurisdiction unchallenged, and other acts amounting to an agreement or convention. The highest court of Arkansas, in a case to which the

> state was a party, and at its instance, in the assertion of its sovereignty and jurisdiction, has defined the limit between the two states to be the line midway between the visible banks of the river, and enforced the criminal laws of the state up to that line. . . .

(emphasis added).

Of course, two states may reach agreement with respect to jurisdiction on a river by a compact between them with the consent of Congress. At the time of the Constitutional Convention in 1787, "there were existing controversies between eleven states respecting their boundaries. . . ." Frankfurter and Landis, "The Compact Clause of the Constitution – A Study In Interstate Adjustments," 34 Yale L.J. 685, 694 (1925). Thus, Art. I, § 10 specifies that a State may "enter into any Agreement or Compact with another State" with "the consent of Congress." Often, a compact may give concurrent jurisdiction to each State over a boundary river. Such has not occurred here.

Indeed, there is no question that the power of Congress over an interstate bridge and the commerce it facilitates is supreme. In Covington & C. Bridge Co. v. Commonwealth of Ky., 154 U.S. 204, 208 (1894), the United States Supreme Court long ago addressed the question of "the power of a state (Kentucky) to regulate tolls upon a bridge connecting it with another state (Ohio) without the assent of Congress, and without the concurrence of such other state in the proposed tariff." The Court emphasized that "even in the matter of building a bridge, if Congress chooses to act, its action necessarily supersedes the action of the state." Id. at 212. The Court thus concluded as follows:

> [i]t is clear that the State of Kentucky, by the statute in question, attempts to reach out and secure for itself a right to prescribe a rate of toll applicable, not only to persons crossing from Kentucky to Ohio, but from Ohio to Kentucky; a right which practically nullifies the corresponding right of Ohio to fix tolls from her own state.... It follows that, if the State of Kentucky has the right to regulate the travel on such bridge and fix the tolls, the State of Ohio has the same right, and so long as their action is harmonious, there may be no room for friction between the states; but it would scarcely be consonant with good sense to say that separate regulations and separate tariffs may be adopted by each state . . . and made applicable and made applicable to that portion of the bridge within its own territory.

Id. at 220-21. The same dilemma faces the two states here. While we strongly support the Heritage Act, from a legal standpoint, the policy issues governing an interstate bridge lie with Congress under the Constitution.

Conclusion

With these authorities in mind, we turn now to your specific questions. The United States Supreme Court has made it clear that the boundary between South Carolina and Georgia

in the Savannah River (where there are no islands) is "midway between the banks when the water is at ordinary stage. . . ." 397 U.S. at 383-84. Except by agreement or compact, neither South Carolina nor Georgia possesses the power to impose its laws relating to the moving or renaming of monuments or markers beyond its own jurisdiction. Thus, Georgia may not impose its laws renaming the Jefferson Davis Memorial Bridge or its part of the Bridge on the South Carolina side of the River. Those laws may only affect matters within the territorial limits of Georgia. While Georgia apparently possesses a statute similar to the Heritage Act, we cannot interpret that Act; nevertheless, whatever Georgia law may be, it cannot impose that law on the South Carolina side.

Further, only the General Assembly may rename a bridge or monument under the State's Heritage Act. Thus, on the South Carolina side of the River, under South Carolina's Heritage Act, only the Geneal Assembly possesses the power to rename the Jefferson Davis Memorial Bridge. Georgia possesses no authority to rename the Bridge in South Carolina's jurisdiction without the consent of the South Carolina General Assembly.

With respect to SCDOT, while it is a decision of that agency as to placement of signage, certainly, it may place appropriate signage indicating the name of the Bridge on the South Carolina side. And clearly, the General Assembly, which possesses the ultimate jurisdiction over the Heritage Act, and is the supreme legislative power in South Carolina, may so require SCDOT to do so.

With respect to the Augusta Richmond County Commission, as we have noted, Georgia officials possess no authority to legislate with respect to the South Carolina side of the River. Thus, the only mechanism to change the name of the Jefferson Davis Memorial Bridge on the South Carolina side would be to petition the South Carolina General Assembly for such change.

The remedy for enforcement of the Heritage Act, other than negotiation between the two States, or being content to have the Bridge possess different names, depending on which side of the River one is on, is judicial. As we have stated previously, "[e]nforcement of violations of the Heritage Act (which is applicable on the South Carolina side of the River) would have to be through the courts. A party with legal standing . . . would have to seek relief in the form of an injunction or a declaratory judgment action to enforce the provisions of the Heritage Act." Unless a court rules otherwise, should Georgia decide to rename the Bridge on its side of the River, the Bridge will have different names depending on which side of the River one is on. Our ultimate conclusion is that, pursuant to the Heritage Act, only the South Carolina General Assembly may rename the Bridge on the South Carolina side of the River.

An additional word of advice is in order. Of course, the ultimate authority over an interstate bridge lies with Congress. While we strongly support the Heritage Act, and stand by our opinions that, under that Act, only the General Assembly may rename a monument or marker, the two states may wish to resolve this issue with finality, by contacting their congressional delegations.

Sincerely,

Robert D. Cook
Solicitor General