

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE ORIGINAL JURISDICTION

Dr. Thomasena Adams, Rhonda Polin,
Shaun Thacker, Orangeburg County School
District, Sherry East, and the South Carolina
Education Association, Petitioners,
v.

Governor Henry McMaster, Palmetto
Promise Institute, South Carolina
Office of the Treasurer, and South Carolina
Department of Administration Respondents.

Petition for Original Jurisdiction and Declaratory Relief

Petitioners request this Court entertain their complaint¹ for declaratory relief in the original jurisdiction pursuant to article V, section 5 of the South Carolina Constitution, section 14-3-310 of the South Carolina Code of Laws, and Rule 245 of the South Carolina Appellate Court Rules. Petitioners seek to invalidate Respondent Governor Henry McMaster’s allocation of certain one-time federal education funding, arguing it runs afoul of article XI, sections 3 and 4 of the South Carolina Constitution. These funds impact the coming school year scheduled to begin in a matter of weeks.² Parents, students, and

¹ The Complaint is filed contemporaneously with this petition.

² For instance, Petitioner Orangeburg County School District is scheduled to begin classes on August 24. See Orangeburg County School District 2020-2021 School Calendar, https://www.ocsdsc.org/wp-content/uploads/2020/07/OCSD_2020-21_School-Calendar_new.pdf

schools need clarity as to the availability or non-availability of these funds for the upcoming school year. The constitutional claims at issue simply cannot be timely resolved through the traditional litigation and appellate process before that immovable deadline. This urgent timeframe presents an emergency and good reason for the Court to decide this matter of public importance in its original jurisdiction.

All parties to this matter, as well as the State of South Carolina and the students of this State, benefit from expedited disposition of Petitioners' claims. Counsel for Petitioners has conferred with counsel for the Governor and Palmetto Promise Institute and has been informed that each consents to the exercise of original jurisdiction.³

Background

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and President Donald J. Trump signed it into law. The CARES Act established the Governors' Emergency Education Relief (GEER) Fund at the U.S. Department of Education. Under the Act, the Department awarded funding to governors for the purpose of providing local educational agencies, institutions of higher education, and other education-related services deemed essential by governors for carrying out emergency educational services. Governor McMaster applied for, and was awarded, a GEER fund grant of over \$48 million.

After properly following the State's procurement process to establish an online platform, Governor McMaster announced the creation of the Safe Access to Flexible Education (SAFE) Grants Program, which utilized \$32 million of the GEER fund grant.

³ Governor McMaster and PPI consent to the exercise of original jurisdiction but reserve all available defenses to the allegations set forth in the complaint.

To access SAFE Grant funding, applicants must meet certain need-based financial requirements. Once eligibility is established, payment of SAFE grant funds are electronically distributed. The act imposes a use-it-or-lose-it deadline for the Governor to allocate these educational funds.

Petitioners challenged Governor McMaster’s use of this \$32 million in GEER grant funds for the SAFE program. Petitioners initially sought injunctive and declaratory relief in the Court of Common Pleas in Orangeburg County. After a hearing on Wednesday, July 29, 2020, Petitioners notified the circuit court of petitioners’ intent to amend the initial complaint to refine the pleadings, include additional petitioners and new defendants. The parties acknowledged the inevitability of the amended complaint ending up before this Court, *see* S.C. Code Ann. § 14-3-330(4); Rule 203(d)(1)(A)(ii), SCACR, and recognized that the emergency nature of this action lent itself to the original jurisdiction of this Court. Rather than amend the initial complaint at the circuit court, Petitioners seek consideration of the matters that would have been included in the amended complaint as the complaint included with this request for original jurisdiction. The action before the circuit court has been dismissed. *See* Dismissal, *Adams v. State*, 2020-CP-38-00774 (S.C. Ct. Comm. Pl. filed Aug. 4, 2020).

Original Jurisdiction Request

Original jurisdiction is appropriate “[i]f the public interest is involved, or if special grounds of emergency or other good reasons exist why the original jurisdiction of the Supreme Court should be exercised.” Rule 245(a), SCACR; *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 80, 753 S.E.2d 846, 853 (2014) (recognizing “Rule 245 is concerned with whether a case should be resolved by this Court

in the first instance because of the public interest involved and the need for prompt resolution”).

This matter meets this test and warrants the grant of original jurisdiction. The complaint presents issues of public interest by challenging the constitutionality or legality of government action, namely the use of \$32 million in education funding provided by the federal government. Moreover, school starts imminently. Time is of the essence and all potential recipients would benefit from expedited disposition of the constitutional claims regarding the availability of these funds. Such clarity cannot be provided by allowing this matter to take the ordinary course because of this school start deadline and the expiration date imposed by the federal government on the GEER funds. Thus, this urgent timeframe presents an emergency and good reason for the Court to decide this matter of public interest in its original jurisdiction.

In short, this matter presents issues of public interest, constitutional challenges to government action, an emergency timeline, and the need for decision prior to the federal use-it-or-lose-it funding deadline. Each of these reasons satisfy the Rule 245, SCACR, test for this Court to exercise its original jurisdiction. Taken together, this matter presents the archetype matter that the rule exists to address.

Based on the extremely urgent nature of the action, the following schedule is suggested for disposition by the Court, if applicable:

1. Petitioners’ brief due 4 days after entry of the Court’s order.
2. Responsive pleadings from Respondents due 2 days after entry of the Court’s order.
3. Brief of each Respondent due 3 days after service of Petitioners’ brief.

4. Reply brief of Petitioner due the following day after service of Respondents' brief(s).

5. Argument/Disposition at the Court's pleasure.

This Court should grant the petition and address this matter in its original jurisdiction.

Respectfully submitted,

/s/Skyler Hutto

Skyler B. Hutto
SC Bar 102741
WILLIAMS & WILLIAMS
Post Office Box 1084
Orangeburg, South Carolina 29116
(803) 534-5218
skyler@williamsatty.com

/s/W. Allen Nickles, III

W. Allen Nickles, III, S.C. Bar #4226
4430 Ivy Hall Drive
Columbia, South Carolina 29206
(803) 466-0372
wanickles@nickleslaw.com

Counsel for Petitioners

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