

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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IN THE ORIGINAL JURISDICTION

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Appellate Case No. 2025-001111

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David Wesley Climer, and Carol Herring..... Petitioners,

v.

Curtis M. Loftis, Jr., in his capacity  
as the State Treasurer of South Carolina..... Respondent,

and

Thomas C. Alexander, President  
of the South Carolina Senate, on behalf of  
the South Carolina Senate ..... Intervenor Respondent.

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**Motion to Intervene**

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Pursuant to Rule 24, SCRCP, Thomas C. Alexander, in his official capacity as President of the Senate (“Intervenor” or “President Alexander”), respectfully moves the Court for leave to intervene as a respondent in this matter on behalf of the South Carolina Senate, both as a matter of right and permissively. Petitioners are asking this court to issue an injunction against Curtis Loftis, South Carolina State Treasurer, to prohibit him from disbursing certain funds to members of the General Assembly pursuant to Proviso 91.13. As such, Petitioners are challenging the constitutionality and legality of legislation enacted by the General Assembly and

taking effect on July 1, 2025, and the Senate seeks to intervene in this action for defending the validity and constitutionality of that legislation. Additionally, counsel for Petitioners and Respondent have consented to President Alexander's motion. For the reasons that follow, the Senate is entitled to intervene both as a right under Rule 24(a) and permissively under Rule 24(b) and President Alexander's motion should be granted

### **Standard of Review**

Rule 24(a) provides the following standards for intervening as a matter of right:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The Supreme Court has interpreted this rule to "permit liberal intervention," especially when "judicial economy will be promoted by the declaration of the rights of all parties who may be affected. *Berkeley Elec. Coop., Inc. v. Mount Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990).

Rule 24(b) further allows permissive intervention:

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

President Alexander’s motion should be granted because, as explained below, he satisfies the factors for intervention as of right and permissively, and because counsel for Petitioners and Respondent each have consented to President Alexander’s intervention.

### **Argument**

#### **1. President Alexander’s motion is timely.**

Motions to intervene must be timely. Rule 24(a), (b) (“Upon timely application . . .”). The Supreme Court has established four factors to consider when evaluating the timeliness of intervention:

(1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; (2) the reason for the delay; (3) the stage to which the litigation has progressed; and (4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial.

*Davis v. Jennings*, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991).

President Alexander’s motion is timely. This Motion was filed within two business days after the Petition was filed on Friday, June 6, 2025. President Alexander could hardly have filed sooner and is timely under the prevailing precedent. *See, e.g., S.C. Coastal Conservation League v. Ross*, No. 2:18-CV-03326-RMG, 2019 WL 5872423, at \*2 (D.S.C. Feb. 8, 2019) (finding timely a motion to intervene filed ten days after the complaint was filed). Additionally, this matter has not substantially progressed beyond the filing of the Petition. On the same day the Petition was filed, the Court established Monday, June 16, 2025, as the due date for returns to the Petition—with which President Alexander will comply. Furthermore,

the original parties will suffer no prejudice as a result of granting this motion—illustrated by the fact that counsel for Petitioners and Respondent have consented to this motion—whereas the Senate will suffer substantial prejudice from the denial of intervention as a result of not being able to defend the validity of a legislative enactment.

For these reasons, President Alexander’s motion to intervene on behalf of the Senate is timely under Rules 24(a) and (b).

**2. President Alexander has an unconditional statutory right to intervene on behalf of the South Carolina Senate pursuant to Rule 24(a)(1) and therefore meets the Rule 24(a)(1) requirement for intervention as of right.**

In the current Appropriations Act, just as it has for each of the last several years, the General Assembly has vested its leadership with “an unconditional right” to intervene in state court litigation challenging actions of the Legislature:

The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives have an unconditional right to intervene on behalf of their respective bodies in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges:

- (a) the constitutionality of a state statute;
- (b) the validity of legislation; or
- (c) any action of the Legislature.

Proviso § 91.25, 2024-25 Appropriations Act, Part 1.B; *see also SCE&G v. Whitfield*, Case No. 3:18-cv-1795-JMC, 2018 U.S. Dist. LEXIS 120174, at \*11 (D.S.C. July 18, 2018) (“Additionally, if a state statute or legislative act gives legislative leaders authority to defend legislative enactments, then the legislative leaders are able to

intervene as a matter of right.”).<sup>1</sup> Because President Alexander’s intervention is as a matter of statutory right, the Court should grant this motion.

**3. President Alexander has a right to intervene on behalf of the South Carolina Senate pursuant to Rule 24(a)(2) because the Senate has an interest in the subject matter of this case that would be impaired if not permitted to intervene.**

Alternatively, President Alexander should be permitted to intervene as a matter of right under Rule 24(a)(2). In addition to timeliness, Rule 24(a)(2) intervention requires the proposed intervenor to have an “interest relating to the property or transaction which is the subject of the action,” and resolution of the case without the Intervenor’s involvement “may as a practical matter impair or impede his ability to protect that interest.” Rule 24(a)(2), SCRCF.

President Alexander’s motion meets the predicate requirements of Rule 24(a)(2). First, the “General Assembly has the duty and authority to appropriate money as necessary for the operation of the agencies of government and has the right to specify the conditions under which the appropriated monies shall be spent.” *Edwards v. State*, 383 S.C. 82, 90, 678 S.E.2d 412, 416 (2009). Petitioners seek to pry open the Fiscal Year 2025-26 Annual Appropriations Act and invalidate as unconstitutional Proviso 91.13, which provides members of the General Assembly with funds to offset expenses incurred in their respective districts as a result of their

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<sup>1</sup> The United States Supreme Court reinforced the principle that state legislative bodies are authorized as a matter of right to intervene under Federal Rule of Civil Procedure 24 in challenges to state statutes, particularly when state law authorizes such intervention. *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 193-94 (2022); *see also* Rule 24(a), SCRCF, Note (Rule 24(a), SCRCF, “is the same as Federal Rule 24(a)”).

service. Because enacting the annual appropriations act is within the exclusive constitutional purview of the General Assembly, President Alexander, in his capacity as the elected leader of the Senate, has a significant interest in the “property or transaction which is the subject of the action.”

Second, Respondent cannot “adequately represent” the Senate’s interests. While an intervenor bears the burden of demonstrating the inadequacy of representation, “[t]his burden is minimal and the applicant need only show that the representation of his interests ‘may be’ inadequate.” *Berkeley Electric*, 302 S.C. at 191, 394 S.E.2d at 715. Treasurer Loftis cannot represent legislative interests in this litigation because he bears no responsibility in the appropriations process aside from preparing checks to be drawn on the State’s funds when instructed to do so by the Comptroller General. The Treasurer is a member of the executive branch of government and cannot speak from the perspective of protecting and defending the work of the General Assembly and its policy judgments. Additionally, in Proviso § 91.25, the General Assembly has recognized that its own leadership can best represent the Legislature’s interests where a state law—another proviso in this instance—is challenged.

Therefore, in addition to its unqualified statutory right to intervene, the Senate also has the absolute right to intervene because the existing parties may not adequately represent its interests in defending the constitutionality of the statutes challenged by Petitioners.

**4. President Alexander also meets the Rule 24(b) standards for permissive intervention on behalf of the South Carolina Senate.**

Alternatively, the Court should permit President Alexander to intervene permissively in this litigation. Rule 24(b) allows for permissive intervention when “a statute confers an unconditional right to intervene” or “an applicant’s claim or defense and the main action have a question of law or fact in common. Because Proviso § 91.25 confers an unconditional right to intervene on the President of the Senate, that statute necessarily meets the Rule 24(b) requirement of a statute conferring a “conditional right to intervene.” And for the reasons generally discussed, President Alexander’s defense of the constitutionality and validity of the Proviso challenged by Petitioners necessarily has “a question of law or fact in common” with Petitioners’ claims. Accordingly, in the alternative, President Alexander should be granted permissive intervention.

**5. Rule 24(c) Statement.**

President Alexander seeks to intervene in this action on behalf of the Senate to defend the constitutionality of the statutes challenged by Petitioners, and does so for the reasons set forth above. *See* Rule 24(c). As explained above, Proviso § 91.25 grants President Alexander an unconditional right to intervene in this action. President Alexander states that intends to defend the challenged proviso, and that he will file a return to the Petitioners’ petition within the time instructed by the Court. As further required by Rule 24(c), this motion has been served on the Attorney General.

### **Statement of Consultation**

Prior to the filing of this motion, counsel for President Alexander consulted with counsel for Petitioners and Respondent, both of whom consented to President Alexander's intervention in this lawsuit.

### **Conclusion**

President Alexander should be allowed to intervene as a respondent in this matter as of right or, alternatively, permissively pursuant to Rule 24. The motion is timely; a State law grants an unconditional right to intervene; the Senate's interests in this matter may not be adequately represented by the existing parties; and President Alexander meets the requirements for permissive intervention.

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Respectfully submitted,

**South Carolina Senate**

s/Kenneth M. Moffitt

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Columbia, South Carolina