

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Case No. 2025-001111

David Wesley Climer and Carol Herring Petitioners,

vs.

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

HOUSE SPEAKER G. MURRELL SMITH, JR.'S MOTION TO INTERVENE

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Smith, Jr., in his official capacity as Speaker of
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G. Murrell Smith, Jr., in his official capacity as the Speaker of the South Carolina House of Representatives (“Speaker Smith”), moves to intervene in this action to defend a South Carolina law that was appropriately passed by the South Carolina General Assembly. Pursuant to South Carolina Rule of Civil Procedure 11(a), counsel for Speaker Smith has conferred with Petitioners’ counsel as well as counsel for Respondent Loftis and both have confirmed that neither Petitioners nor Respondent oppose Speaker Smith’s intervention. Speaker Smith consents to this Court’s exercise of original jurisdiction pursuant to South Carolina Appellate Court Rule 245 because he believes such jurisdiction is appropriate in these circumstances. *See Key v. Currie*, 305 S.C. 115, 406 S.E.2d 356 (1991) (if an extraordinary reason exists, such as a question of significant public interest, the Supreme Court will hear a case in its original jurisdiction).

INTRODUCTION

The gravamen of Petitioners’ action is not policy, but rather an argument concerning the constitutional authority of the South Carolina General Assembly. The South Carolina Constitution makes clear that the General Assembly’s powers, particularly with respect to the appropriation of funds, are plenary. Thus, each year, the General Assembly must exercise its exclusive authority to pass an annual budget that appropriates funds and specifies conditions for the spending of those funds. On May 28, 2025, the General Assembly did just that by passing the 2025–2026 Appropriations Act (the “Appropriations Act”).

The Appropriations Act originated as House Bill H. 4025 in the House of Representatives Ways and Means Committee.¹ The version of H. 4025 that was reported out of the House Ways and Means Committee contained no proposed changes to legislator compensation or expense

¹ The legislative history and full text of the Appropriations Act is available at https://www.scstatehouse.gov/sess126_2025-2026/appropriations2025/gab4025.php.

stipends and maintained the amount of in-district stipend at \$1,000.00 per month. The House of Representatives, as a whole, passed H. 4025 on March 12, 2025, again with no changes to the in-district stipend for legislators. On April 23, 2025, the Senate passed its version of the bill, amending the figure for in district stipend to \$2,500.00 per month. The bill was then amended by the House of Representatives on May 6, 2025, reported out by the Conference Committee on May 21, 2025, and the conference report was adopted by the General Assembly on May 28, 2025. The Appropriations Act was ultimately ratified by the General Assembly the same day, and signed into law, excepting certain line-item vetoes not implicated here, by the Governor on June 3, 2025.

The budget proviso challenged in this action is found at Section 91.13 of the Appropriations Act, which provides, “All members of the General Assembly shall receive an in-district compensation of \$2,500 per month.” 2025 S.C. Acts No. 69, Part 1B, Section 91 – A990 § 91.13 (hereinafter, “Proviso 91.13”). This equates to a \$1,500.00-per-month increase in General Assembly members’ monthly stipend for in-district expenses. Proviso 91.13 *does not* implicate General Assembly members’ \$10,400.00 base salary, nor does it implicate General Assembly members’ per diem rates or mileage rates for traveling to the State House in Columbia. Legislators can reject the increase in their stipend for in-district expenses if they choose.

The General Assembly properly exercised its constitutional, lawmaking authority when drafting and passing the Appropriations Act, including what was ultimately enacted as Proviso 91.13. The House of Representatives is, therefore, an indispensable party to any challenge to the Appropriations Act’s constitutionality. As Speaker of the House of Representatives, Speaker Smith has a right to intervene in this action, or, at the very least, should be permitted to intervene.

LEGAL STANDARD

A court shall permit a party to intervene, as a matter of right, in an action “when a statute confers an unconditional right to intervene” or the party 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.” Rule 24(a), SCRCR. To intervene as a matter of right under Rule 24(a), an intervenor must either be authorized by statute or satisfy four conditions: (i) seek to intervene timely; (ii) have an interest in the subject of the action; (iii) have his interest impaired if the case is decided without him; and (iv) demonstrate that his interest is not sufficiently represented by the other litigants. *See Ex parte Builders Mut. Ins. Co.*, 431 S.C. 93, 99, 847 S.E.2d 87, 90 (2020).

If a party is not permitted to intervene as a matter of right, a court may allow intervention “when an applicant’s claim or defense and the main action have a question of law or fact in common.” Rule 24(b)(2), SCRCR. To intervene with permission under Rule 24(b), a party merely must (i) seek to intervene timely, (ii) assert a claim or defense that has a question of law or fact in common with the underlying action, and (iii) prove his intervention will not delay or prejudice the original parties. *See Ex parte Builders Mut. Ins. Co.*, 431 S.C. at 101, 847 S.E.2d at 91.

“The decision to grant or deny a motion to . . . intervene in an action pursuant to Rule 24, SCRCR, lies within the sound discretion of the [] court.” *Ex parte Gov’t Emp.’s Ins. Co. v. Goethe*, 373 S.C. 132, 135, 644 S.E.2d 699, 701 (2007). “Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties.” *Id.* at 138, 644 S.E.2d at 702. “Accordingly, the Court should consider the practical implications of a decision denying or allowing intervention.” *Id.*

In addition, “a party must have standing to intervene in an action pursuant to Rule 24, SCRCP.” *Id.* “A party has standing if the party has a personal stake in the subject matter of a lawsuit and is a ‘real party in interest.’” *Id.* “A real party in interest . . . is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action.” *Id.* (quoting *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994)).

ARGUMENTS

I. Speaker Smith Has the Right to Intervene Pursuant to Rule 24(a).

A. Speaker Smith’s Intervention in This Action Is Authorized by Statute.

Pursuant to Rule 24(a)(1), Speaker Smith should be permitted to intervene in this action because he is authorized to do so by statute. The Appropriations Act expressly provides that “the Speaker of the House of Representatives, on behalf of the House of Representatives,” has “an *unconditional right to intervene* on behalf of” the House of Representatives “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 (emphasis added). Given that the instant state court action concerns a challenge to the constitutionality of a state law, the Appropriations Act authorizes Speaker Smith to intervene.

B. Speaker Smith Also Satisfies the Conditions of Rule 24(a)(2) to Intervene as a Matter of Right.

Even if Speaker Smith were not authorized by statute to intervene in this action pursuant to Rule 24(a)(1), Speaker Smith still satisfies the requirements of Rule 24(a)(2) to intervene as a matter of right. As noted above, Rule 24(a)(2) provides a right to intervene where a party (i) timely seeks to intervene; (ii) has an interest in the subject of the action; (iii) will have his interest impaired

if the case is decided without him; and (iv) demonstrates that his interest is not sufficiently represented by the other litigants. *See Ex parte Builders Mut. Ins. Co.*, 431 S.C. at 99, 847 S.E.2d at 90. Speaker Smith readily meets these four conditions, discussed in turn below.

i. Speaker Smith Has Timely Moved to Intervene.

Speaker Smith satisfies the first condition of Rule 24(a)(2), as he has timely moved to intervene. On Friday, June 6, 2025, the underlying Petition for a Writ of Injunction was filed in the original jurisdiction of this Court. Speaker Smith has filed the instant Motion within two business days, on Tuesday, June 10, 2025. As there was no undue delay in filing this Motion, Speaker Smith has certainly moved to intervene in a timely manner. *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 a motion to intervene filed within ten days was timely).

ii. As Speaker of the House of Representatives, Speaker Smith Has Important and Unique Interests in this Matter.

Next, Speaker Smith satisfies the second condition of Rule 24(a)(2) because he represents the important and unique interests of the House of Representatives. As one of two bodies comprising the General Assembly, the House of Representatives shares the General Assembly's exclusive authority to pass laws. *See S.C. Const. art. III, § 1.A.* ("The General Assembly ought frequently to assemble for the redress of grievances and for making new laws, as the common good may require."). With respect to the Appropriations Act, "the General Assembly is the sole entity with the power to appropriate funds." *Edwards v. State*, 383 S.C. 82, 91, 678 S.E.2d 412, 417 (2009). "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." *Id.* at 90, 678 S.E.2d at 416 (2009) (citing *State ex rel. Condon v. Hodges*, 349 S.C. 232, 244, 562 S.E.2d 623, 631 (2002)); *see also Clarke v. S.C.*

Pub. Serv. Auth., 177 S.C. 427, 437, 181 S.E. 481, 484 (1935) (noting that the General Assembly has full authority to make appropriations as it deems wise in absence of any specific constitutional prohibition against the appropriation). The General Assembly traditionally accomplishes this duty “by way of the annual State Appropriations Bill.” *State ex rel. McLeod v. McInnis*, 278 S.C. 307, 314, 295 S.E.2d 633, 637 (1982).

As one of the General Assembly’s primary leaders, Speaker Smith has a significant interest in upholding South Carolina’s constitutional structure and the State’s budget as passed. Moreover, Speaker Smith has an interest in ensuring that separation-of-powers standards and customs are properly preserved, given the drafting and passing of constitutional laws is within the legislative branch’s authority.

iii. The House of Representatives’ Interests Will Be Impaired Absent Speaker Smith’s Intervention.

In satisfaction of the third condition of Rule 24(a)(2), the House of Representatives’ legislative interests will be impaired if Speaker Smith does not intervene in this action. The House of Representatives cannot protect its aforementioned interests. In particular, there is no way for the House of Representatives to protect its policy judgments, which are an inherent aspect of the legislative process, if the Court accepts the Petitioners’ invitation to strike South Carolina law through litigation without Speaker Smith’s involvement. Nor will the House of Representatives be able to assert and protect its unique interests associated with the state budget process—namely, the General Assembly’s exclusive authority to draft and pass such laws as provided by the South Carolina Constitution. Thus, the House of Representatives’ unique, legislative interests will be impaired absent Speaker Smith’s intervention in this matter.

iv. No Other Party Adequately Represents the Interests of Speaker Smith.

Finally, the fourth condition of Rule 24(a)(2) is satisfied as no other party adequately

represents Speaker Smith’s interests. As a putative intervenor, Speaker Smith must meet only a “minimal” burden to demonstrate that his interest may not be adequately represented by the other litigants. *Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 191, 394 S.E.2d 712, 715 (1990). In assessing whether this low burden is met, the Court considers “(1) whether the existing parties will undoubtedly make all of the intervenor’s arguments; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent.” *Id.*

The only party named by Petitioners is State Treasurer Curtis Loftis. Respondent Loftis is not a member of the legislative branch and his role implicated by Proviso 91.13 is an administrative one—the release of state funds for state employee payrolls pursuant to a warrant issued by the state comptroller. Only the legislative branch is in a position to defend the constitutionality of the state budget or Proviso 91.13. As such, no other party but Speaker Smith will adequately represent the interests of the House of Representatives.

Given Speaker Smith satisfies all four conditions of Rule 24(a)(2), Speaker Smith has a right to intervene in this matter separate and apart from his right to intervene pursuant to the statutory provisions included in the Appropriations Act.

II. Alternatively, Speaker Smith Should Be Permitted to Intervene pursuant to Rule 24(b).

Should the Court decide that Speaker Smith does not have the right to intervene in this case pursuant to Rule 24(a), Speaker Smith should be permitted to intervene under Rule 24(b). As set forth above, to satisfy the lower threshold for permissive intervention under Rule 24(b), a party must (i) timely seek to intervene; (ii) assert a claim or defense that has a question of law or fact in

common with the underlying action; and (iii) prove his intervention will not delay or prejudice the original parties. *See Ex parte Builders Mut. Ins. Co.*, 431 S.C. at 101, 847 S.E.2d at 91.

Speaker Smith’s Motion is undoubtedly timely. *See supra* Part I.B.i. Moreover, Speaker Smith will assert a defense that has a common question of law or fact with the underlying action, given that Speaker Smith seeks to defend the constitutionality of the law that Petitioners challenge as unconstitutional. *See Middleton v. Andino*, 481 F. Supp. 3d 563, 571 (D.S.C. 2020) (finding that the Speaker of the South Carolina House of Representatives’ “interests in the constitutionality of the” challenged law “present[ed] questions of law or fact common to Plaintiffs’ Complaint” because “Plaintiffs seek declarative and injunctive relief that the Challenged Provisions are unconstitutional, while the Proposed Intervenors seek to prove the constitutionality of the Challenged Provisions”). Finally, allowing Speaker Smith to intervene in this matter would not delay the case or otherwise prejudice Petitioner. There are presently no deadlines set in this action aside from the standard deadline to file a return to the Petition for Original Jurisdiction and Response to Petition for Writ of Injunction. That deadline falls on June 16, 2025, and should Speaker Smith be permitted to intervene, he intends to file a timely Return to the Petition.² As such, no delay or prejudice will occur if Speaker Smith is permitted to intervene in this matter. *See Middleton*, 481 F. Supp. 3d at 568 (finding that the Speakers’ intervention “would not amount to prejudicial delay, even if it creates some additional work for Plaintiffs (and the court).”).

² Rule 240(e), SCACR, provides, “Any party opposing a motion or petition shall have ten (10) days from the date of service thereof to file a return with the clerk...” The Court has ordered that the deadline for returns be June 16, 2025 – ten (10) days from the date the Court received the Petition. In a June 9, 2025 press conference announcing the filing of this suit, Petitioners’ counsel suggested that the schedule set by the Court for a return here was somehow unprecedented and expedited. However, the only thing it appears that the Court changed here was a shortening of the time for Petitioner’s to file a reply to any return filed.

Accordingly, should the Court conclude that Speaker Smith does not have a right to intervene in this action under Rule 24(a), the Court should permit Speaker Smith to intervene under Rule 24(b). This Court has permitted parties, including the General Assembly, to intervene in similar cases within its original jurisdiction. *See, e.g., Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 882 S.E.2d 770, 773 (2023); *Sanford v. S.C. State Ethics Comm'n*, 385 S.C. 483, 489, 685 S.E.2d 600, 603, *opinion clarified*, 386 S.C. 274, 688 S.E.2d 120 (2009).

CONCLUSION

For the reasons stated above, the Court should grant Speaker Smith's Motion to Intervene in this case. Should the Court grant this Motion, Speaker Smith should be permitted to participate fully in all briefing, argument, and related proceedings. Speaker Smith will be prepared to file his Return on June 16, 2025, as ordered by the Court.

Respectfully submitted,

/s/ Mark C. Moore

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June 10, 2025
Columbia, South Carolina