

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

IN ITS ORIGINAL JURISDICTION

Appellate Case No. 2026-000032

SOUTH CAROLINA PUBLIC INTEREST FOUNDATION and JAMES WENINGER,.....Plaintiffs,

v.

HENRY DARGAN MCMASTER, in his official capacity as Governor of the State of South Carolina; MAJOR GENERAL ROBIN B. STILWELL, in his official capacity as Adjutant General of the South Carolina National Guard Defendants.

RETURN TO PETITION FOR ORIGINAL JURISDICTION

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Henry Dargan McMaster, in his official capacity as Governor of the State of South Carolina, and Major General Robin B. Stilwell, in his official capacity as Adjutant General of the South Carolina National Guard, submit this Return to the Petition for Original Jurisdiction under Rule 245(c), SCACR.

The Governor exercises the “supreme executive authority of this State,” S.C. Const. art. IV, § 1, and serves as the “Commander-in-Chief of the organized and unorganized militia of the State,” *id.* art. IV, § 13. In addition to his constitutional power, the Governor also enjoys broad statutory authority to activate the National Guard, *see, e.g.*, S.C. Code Ann. § 25-1-1840, and there is a long history of Governors deploying the Guard to perform duties both in and out of South Carolina.

Ordering the National Guard into active service is one of the most important decisions a Governor can make. When the President issued a memorandum to the Secretary of Defense in August 2025 directing the Secretary to mobilize the D.C. National Guard and “to coordinate with State Governors and authorize the orders of any additional members of the National Guard to active service” to bring law and order back to our Nation’s capital, Presidential Memorandum, *Restoring Law and Order in the District of Columbia* (Aug. 11, 2025), the Governor answered the call. Members of the South Carolina National Guard deployed to Washington, D.C. in August 2025 for 30 days, and more members deployed in December 2025 for a 90-day mission. Governor McMaster’s decision to deploy the Guard to Washington, D.C. in response to the federal government’s request represents a thoughtful yet decisive exercise of his constitutional and statutory authority.

The Governor welcomes the opportunity to defend his constitutional and statutory authority to deploy the National Guard, whether in this Court or in any other, depending on this Court’s

decision of how any challenge to the Governor's authority should proceed. Ultimately, no court may infringe on the Governor's commander-in-chief power to decide whether to order troops into active service, and the Governor is confident that any challenge to his authority will fail.

Respectfully submitted,

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January 20, 2026
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