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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE SUPREME COURT'S ORIGINAL JURISDICTION

Appellate Case No. 2025-002436

The University of South Carolina and The Gamecock Club ..... Petitioners,

v.

George M. Lee, III, ... Respondent.

REPLY IN SUPPORT OF PETITION FOR ORIGINAL JURISDICTION

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INTRODUCTION

This case does not involve a hypothetical problem or a concern that exists only in the imagination of the University and the Gamecock Club. The Petitioners collectively engaged this Court in its original jurisdiction to resolve an issue of extreme importance that involves a massive publicly financed construction project ***because Mr. Lee threatened to sue on this exact issue***.

Mr. Lee's opposition to this Court's involvement is based on a false premise. On Page 6 of his response, Mr. Lee writes: "He [*i.e.*, Mr. Lee] never threatened litigation." Using this hook, Mr. Lee argues that the Court should deny the Petition and dismiss this case as moot, and he suggests that the University and the Gamecock Club have frivolously targeted him for unknown reasons.

This is simply untrue. The Court has already seen Mr. Lee's written correspondence to the Petitioners where he took exactly the opposition position than that which he asserts in his return brief. (App. 5, 7.) And attached to this reply are additional voicemails (both the actual audio and the transcripts of those voicemails) where Mr. Lee claims to speak for a batch of Lifetime Members who view themselves as being entitled to suites and premium seating products at Williams-Brice Stadium without paying the requisite fees because of this Court's ruling in *Lee v. University of South Carolina*; he indicates that he and they are retaining counsel to sue the Petitioners; and he concludes with an overt threat of litigating the very issue he now attempts to dodge:

> And I don't care if it costs me $200,000 to litigate it. I'll do it. . . . I've done it before and I think the [*Lee v. University of South Carolina*] decision is pretty clear. . . . And then I'm going to enforce my rights.

(Ex. B.)

This issue is not moot. A party cannot brandish the sword of litigation, provoke a response, but then sheathe that sword and deny the existence of a live controversy. This case involves a concrete, live dispute of substantial public importance that deserves this Court's consideration.

BACKGROUND

As detailed in their Petition, the University of South Carolina and the Gamecock Club are engaged in a significant stadium renovation and reseating process requiring the timely development and implementation of rules governing seat selection, eligibility for suites and other premium hospitality products, and the administration of Lifetime Membership agreements.[1]

These determinations must be made on a compressed timeline and applied consistently to similarly situated Lifetime Members. The legal uncertainty created by disputed interpretations of Lifetime Membership rights is not theoretical; it affects present decision-making and the ability to administer the renovation and reseating process fairly and predictably. And as described in the Petition, the specter of having Lifetime Members claim access to one of the newly-built suites without paying the capital contributions associated with such access threatens to undo the entire renovation project.

Mr. Lee is the self-proclaimed "lead dog in the pack" for litigating these exact issues. (App. 7.) Yet, after raising these issues on behalf of himself and other Lifetime Members, Mr. Lee seeks to evade judicial review by portraying his communications as mere requests for "open and honest communication." (Return Br. at 6.) The contemporaneous record—Mr. Lee's own words, which are attached for the Court to both read and hear—tells a different story altogether.

On November 4, 2025, Mr. Lee sent Clay Grayson, counsel for the Gamecock Club, email correspondence indicating that "several" Lifetime Members believe they are entitled to access the to-be-built suites at Williams-Brice Stadium without making the corresponding capital

[1] Mr. Lee twice characterizes the Gamecock Club as the "alter ego" of the University. That characterization is incorrect. The Gamecock Club is a separate, nonprofit organization organized under Section 501(c)(3) of the Internal Revenue Code and operates independently of the University pursuant to its own governance structure.

contribution based on "the ruling in *Lee v. University of South Carolina*." (App. 5.) Mr. Lee copied his counsel, Mr. Hardee, on that correspondence.

Less than two weeks later, Mr. Lee left Mr. Grayson a voicemail, stating as follows:

> Good morning, Clay. George Lee. I hope you're doing well. Hey, I hadn't heard back from you in the last week or so. Just want to let you know that natives are all restless here, me included after that last email, so if we don't hear something shortly about a meeting for the lifetime members on how—how they plan on doing this, then ***we're going to go ahead and just retain counsel shortly after Thanksgiving***. Because ***that's what the majority wants to do*** despite my pushing back somewhat against that. But ***I tend to agree with 'em***. You've been great, but Gamecock Club has been—and the University, as usual—just not a lot of information in this thought of re-seating everyone, to be fair to all, is kind of sticking in a number of people's craws, including mine. So I'd really appreciate if you'd give me a call. I really would like to head this off at the pass, but I fear that I know where it's going. And, um, I don't think that'll be a pleasant situation. I know not for me or for anybody else so just please give me a call at your earliest convenience. Thank you.

(Ex. A, Lee to Grayson Voicemail (Nov. 17, 2025) (emphasis added).)

Mr. Lee further escalated matters on December 5, 2025—the Friday before this case was commenced—by confirming his intention to litigate these issues in both written correspondence (where he again copied Mr. Hardee) (App. 7) and in a second voicemail to Mr. Grayson. Mr. Lee's December 5th voicemail used the same "lead dog in the pack" descriptor, and promised litigation at a steep cost:

> Hey, Clay. George. Hope you're doing well and haven't come down with this crud that seems to be hitting everybody. Hey, I sent you a fairly strong email, but really I think you're a fine fella and doing a good job, but the Gamecock Club has just irritated us at this point so if there's not a meeting by next Friday then we're just going to retain counsel. You can see that my—my attorney that handled the first case for me, Mark Hardee, was copied on my email. But if we don't have this meeting and figure out at—at least get some answers then unfortunately, ***I am going to be the lead dog in the pack 'cause I've got a little irritated now***. Not at you, but I've emailed Lena Holt and asked for meetings on numerous occasions, and I don't hear anything back. And you know, I'll allow people—the Gamecock Club—to treat me poorly only to a certain extent. ***And then I'm gonna***

> ***enforce my rights. And I don't care if it costs me $200,000 to litigate it. I'll do it. Um, I've done it before, and I think the decision's pretty clear.*** And the way they're handling this and just the fact that they won't even give you information that we've been asking for for several months is just gotten to be unacceptable. And by the way, I didn't wake up on the wrong side of the bed. I think you're a fine fellow, but enough is enough.. So either they're interested in meeting with me, and if I want to bring other Gamecock members with me, I'm gonna bring 'em with me if they're Lifetime Members. It may be one or two, but none of them may attend, but you know, I just—uh—feel like we're getting pushed around. Not by you, but by the Gamecock Club, and they don't really give a damn about us.

(Ex. B, Lee to Grayson Voicemail (Dec. 5, 2025) (emphasis added).)

These voicemails and written correspondence are not mere requests for "transparency." They are overt threats to sue the Petitioners over interpretation of the Lifetime Member contract. When Mr. Lee declared himself the "lead dog in the pack" ready to sue over this contract, the Petitioners had every reason to take him at his word. He has repeatedly pursued similar disputes through litigation, with at least two prior matters advancing to this Court. *Rodarte v. Univ. of S.C.*, 419 S.C. 592, 799 S.E.2d 912 (2017); *Lee v. Univ. of S.C.*, 407 S.C. 512, 757 S.E.2d 394 (2014).

Mr. Lee now asks the Court to disregard his repeated and concrete threats of litigation—made on behalf of himself and in a representative capacity—deem a controversy of his own creation to be moot, and leave a significant public renovation project without judicial guidance, at least until he or another Lifetime Member elects to revive the dispute. The Court should reject this posturing and hear this case in its original jurisdiction.

ARGUMENT

The Petition undoubtedly presents a justiciable controversy for this Court's resolution, and Mr. Lee's suggestions otherwise fail as a matter of fact (as detailed above and as borne out by both his written and oral threats of litigation regarding interpretation of the Lifetime Member contract) and as a matter of law. It is worth noting that, had Mr. Lee followed through on his repeated threats

and filed suit himself to obtain a judicial construction of the Lifetime Membership agreement, there would be no serious question that the dispute presents a justiciable controversy; the procedural posture of the parties does not alter that reality.

In South Carolina, a justiciable controversy exists when there is a "real and substantial" dispute appropriate for judicial determination, rather than one that is "contingent, hypothetical, or abstract." *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006). As set forth in the Petition, the controversy concerns how Lifetime Membership agreements must be interpreted and administered during an already-underway renovation and reseating project: whether the University and the Gamecock Club's interpretation is correct—allowing them to require capital contributions for access to suites—or whether Mr. Lee's competing interpretation controls, which could materially impair the project's viability.

Mr. Lee's post-filing posturing does not moot this litigation or otherwise render it nonjusticiable. A case becomes moot only when "a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." *Id.* When a judgment would have practical legal effect on an existing dispute, South Carolina courts do not deem a case nonjusticiable merely because a party attempts to retreat from its earlier position. *Id.*

Here, a judgment from this Court clarifying the interpretation of Lifetime Membership agreements would have an immediate and concrete legal effect on the Petitioners' ongoing renovation and reseating decisions, regardless of Mr. Lee's post-filing assertions. This Court's interpretation of the Lifetime Member contract is not academic; it directly affects the administration of standardized agreements and will avoid inconsistent treatment and serial disputes.

I. Mr. Lee's claimed retreat from his earlier position does not render this dispute moot or nonjusticiable.

Mr. Lee's return brief essentially asks the Court to treat his post-filing affidavit as an intervening event mooting the controversy that he created. But his affidavit does not satisfy South Carolina's mootness standard, in part because it does not render effectual relief impossible or deprive a judgment of practical effect. *Sloan*, 369 S.C. at 26, 630 S.E.2d at 477.

At most, Lee's filing represents a unilateral attempt to retreat from threatened conduct in order to avoid adjudication. South Carolina courts have rejected mootness arguments premised on just such a mid-dispute retreat where the underlying legal issue remains unresolved and is likely to recur. For instance, in *Holden v. Cribb*, 349 S.C. 132, 136, 561 S.E.2d 634, 637 (Ct. App. 2002), the Court of Appeals retained jurisdiction even though the plaintiff had withdrawn the challenged conduct, explaining that the issue was "capable of repetition, yet evading review," as a ruling would "affect the future conduct of these parties and others" similarly situated.

Mr. Lee's in-litigation disavowal of his prior position fits squarely within that framework. In substance, it is voluntary cessation: a post-filing change in asserted intent unaccompanied by any binding renunciation of the legal positions previously advanced. South Carolina law does not permit a party to defeat judicial review through such maneuvering where the legal uncertainty persists and continues to affect present rights and obligations. Although South Carolina cases more often frame this analysis in terms of whether an intervening event renders relief impossible or whether exceptions to mootness apply, the same practical principle applies here: a litigant cannot render a dispute nonjusticiable by unilateral, nonbinding retreat when the legal controversy (that the litigant created) remains live and a judgment would still have practical effect.

South Carolina's approach to mootness and justiciability aligns with the longstanding federal voluntary-cessation doctrine. As one leading analysis explains, voluntary cessation is "a

principle that prevents gamesmanship and preserves judicial resources by requiring defendants who change their conduct mid-litigation to prove that it is 'absolutely clear' they will not restart their conduct if the case is dismissed as moot." *The Point Isn't Moot: How Lower Courts Have Blessed Government Abuse of the Voluntary-Cessation Doctrine*, 129 Yale L.J. F. 325, 325 (2019). Federal courts applying that doctrine take a practical approach and hold that a defendant's voluntary cessation "ordinarily does not suffice to moot a case" unless it is "absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 174, 190 (2000).

This framework mirrors South Carolina's focus on whether a judgment would continue to have practical legal effect and whether post-filing events truly eliminate the controversy. Mr. Lee's affidavit falls far short of that standard: he disavows a present desire for a suite, but he does not renounce the legal theories he asserted, does not concede Petitioners' interpretation of the Lifetime Contract is correct, and offers no enforceable commitment that would prevent recurrence as the reseating process unfolds. In short, he offers nothing more than a momentary retreat from his earlier declaration that he would act as the "lead dog" in litigation on behalf of a group of Lifetime Members seeking a judicial construction of the relevant provisions of the Lifetime Membership contract as applied to the new seating arrangements at Williams-Brice Stadium.

Mr. Lee's post-filing effort to soften the certainty of his prior threats to litigate this issue on behalf of himself and others does not address, and does not resolve, the legal dispute the Petition places before the Court. Instead, he attempts to collapse two distinct questions: (1) whether Mr. Lee currently intends to obtain a suite; and (2) whether the Lifetime Agreement supports the cohort-oriented legal positions he previously advanced regarding reseating, suite access, and capital contributions. The return addresses (1) only, but it does not resolve or even address (2).

That distinction matters. Declaratory controversies are resolved by legal resolution—not by a litigant's tactical narrowing of present intent while insisting the underlying legal dispute persists.

II. This case is ripe, as the contracts to renovate the stadium are in place and construction is underway.

Nor does Mr. Lee's attempt to disclaim the existence of a live controversy somehow render this dispute unripe. South Carolina applies a two-part test for ripeness: (1) whether the issue is fit for judicial decision, and (2) the hardship to the parties if the court withholds consideration. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996); *Tracy v. Tracy*, 384 S.C. 91, 682 S.E.2d 14 (Ct. App. 2009). As the Petition explains, the issue presented requires interpretation of a contract this Court has already construed twice, and withholding judicial review would force Petitioners to proceed with time-sensitive decisions involving millions of public dollars under a cloud of legal uncertainty created by Mr. Lee.

South Carolina courts do not decide abstract disputes, but they do decide disputes that are fit for review and that affect present rights and obligations. *Sloan*, 369 S.C. at 25–27, 630 S.E.2d at 477–78. Here, the dispute is fit for adjudication because it is fundamentally one of contract interpretation requiring resolution on an urgent timeline. The question presented is not speculative; it affects the Petitioners' implementation of their already-underway renovation and reseating plan.

Without authoritative guidance, the Petitioners risk facing inconsistent demands and assertions of rights, disruption of reseating and suite marketing, pressure for individualized exceptions that may conflict with contract obligations and fairness to other ticketholders, and serial litigation raising the same legal question in piecemeal fashion.

That is precisely the kind of hardship and uncertainty the ripeness doctrine—and Rule 245(a), SCACR in general—is designed to prevent. A wait-and-see approach here creates a substantial risk that Mr. Lee, or another Lifetime Member on whose behalf he claims to speak, will

defer reasserting the very issues he has already framed until after additional public funds have been expended. Rule 245 does not contemplate leaving parties materially prejudiced while a litigant holds the Sword of Damocles over a major public project. Where, as here, the issues are concrete, fully formed, and ready for judicial resolution, and where the risk of material prejudice to Petitioners is substantial, this case is ripe and presents "good reasons" for the Court to exercise its original jurisdiction notwithstanding Mr. Lee's mid-litigation retreat

.III. Traditional exemptions to mootness apply in any event.

Even if the Court credits Mr. Lee's change of position, this case is not moot. South Carolina courts take a practical approach to the mootness inquiry.

For one, they agree that a court can exercise jurisdiction, even in the face of perceived mootness, if the issue in dispute is capable of repetition but will evade review. *Sloan*, 369 S.C. at 27, 630 S.E.2d at 478. Likewise, South Carolina recognizes a public-interest exception where the issue involves "a question of imperative and manifest urgency requiring the establishment of a rule for future guidance in matters of important public interest." *Id.* (quotation omitted).

In fact, this Court has long exercised jurisdiction in cases that present issues of public and institutional importance requiring guidance beyond the immediate parties. As it has reasoned: "If this were an ordinary case, our opinion might well stop here. But the case is not an ordinary one; it is not a private controversy between individuals . . . . Questions of public interest originally encompassed in an action should be decided for future guidance, however abstract or moot they may have become in the immediate contest." *Ashmore v. Greater Greenville Sewer District*, 211 S.C. 77, 94–95, 44 S.E.2d 88, 96 (1947).

Here, the renovation and reseating process is underway and is sequenced so that it will not interrupt the 2026 football schedule. Absent this Court's intervention, other individual disputes—

raised Mr. Lee himself, or by other Lifetime Members who he referenced throughout his pre-litigation communications—may arise that would jeopardize the renovation and reseating schedule. Continued uncertainty risks undermining the market for luxury suites, and it is the luxury suites that provide the economic means for the project to exist in the first place. Mr. Lee's own maneuver—threatening litigation and then seeking dismissal based on a milquetoast disavowal—illustrates why this critical question can evade review if parties can repeatedly change positions to avoid adjudication while leaving the legal issue unresolved.

At bottom, even if Mr. Lee's current posture were accepted with respect to the immediate dispute, the Petition details a controversy of significant public importance, involving millions of dollars, that is capable of repetition during the renovation process but risks evading orderly appellate review. The Court should accept jurisdiction accordingly.

IV. Mr. Lee's "wrong defendant" argument underscores the broader nature of the issue and confirms the need for the Court to exercise its original jurisdiction.

Finally, Mr. Lee suggests that, even if the dispute might exist as to others, it should not be litigated against him because he "does not now intend" to request a suite in the renovated Williams-Brice Stadium. (Return Br. at 8.) That argument ignores both Mr. Lee's pre-filing posture and the nature of the controversy.

Prior to the Petition, Mr. Lee positioned himself as a leader and organizer— "the lead dog in the pack"—of a cohort of Lifetime Members. In his pre-filing correspondence, Mr. Lee asserted that several Lifetime Members intended to obtain suites "without the payment of any donation or premium and based upon the ruling in *Lee v. University of South Carolina* they appear to be on firm ground." (App. 5.) He advanced that position as part of a broader claim about the scope of Lifetime Members' contractual rights. Mr. Lee presented the dispute not as a personal preference but as a cohort-wide legal issue and demanded that the University and the Gamecock Club accept

his interpretation or face litigation. Having invoked those collective legal theories and threatened enforcement on that basis, Mr. Lee cannot now fairly insist that Petitioners delay judicial resolution until some unidentified future member advances the same position under the same contract on a different timetable, thereby risking even greater disruption to the project. Moreover, the Lifetime Membership agreement held by Mr. Lee contains the broadest language governing Lifetime Member rights. A judicial construction of his contract would therefore resolve the outer limits of those rights and provide guidance to the University, the Gamecock Club, and Lifetime Members, avoiding the need for repetitive, piecemeal litigation.

The time-sensitive nature and vast expense of the renovation project is precisely the type of situation in which this Court should exercise its original jurisdiction to provide authoritative guidance. *See* Rule 245(a), SCACR (reserving the Court's original jurisdiction to cases involving "the public interest" or "special grounds of emergency").[2]

CONCLUSION

Mr. Lee's return brief does not eliminate the controversy between the parties; it confirms it. Mr. Lee threatened imminent litigation, asserted "rights," imposed deadlines, and vowed to serve as "lead dog" for coordinated action. His post-filing attempt to partially retreat by disavowing a present intent to obtain a suite—without renouncing the underlying legal positions he advanced—does not render this dispute nonjusticiable, moot, or unripe under South Carolina

[2] Mr. Lee concludes his return by seeking sanctions, arguing that the Petitioners knowingly sued someone with whom it had no true controversy. (Return Br. at 8.) The record belies that request. The Petitioners acted in good faith in response to Mr. Lee's threatened litigation and asserted "rights." A party who threatens that "I'm going to enforce my rights … I don't care if it costs me $200,000 to litigate it. I'll do it," cannot credibly claim that the Petitioners acted inappropriately by seeking declaratory guidance in response.

law. Exercising original jurisdiction here aligns squarely with Rule 245's emphasis on preventing material prejudice and addressing matters of public interest where immediate review is warranted.

Accordingly, the Petitioners respectfully request that the Court exercise original jurisdiction and adjudicate the issues presented in their Petition.

Respectfully submitted,

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