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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE 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.

MOTION FOR LEAVE FOR THOMAS C. ALEXANDER, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE SENATE, AND G. MURRELL SMITH, JR., IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE HOUSE OF REPRESENTATIVES, TO FILE BRIEF AS *AMICUS CURIAE* SUPPORTING DEFENDANTS

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Under Rule 213, SCACR, President Alexander and Speaker Smith respectfully move for leave to file the attached *amicus curiae* brief supporting Defendants on the question of standing.

INTEREST OF *AMICUS CURIAE*

President Alexander and Speaker Smith submit this *amicus curiae* brief solely to address their interest in the public importance exception to standing.

As the Court has long recognized, "[a] private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom." *Freemantle v. Preston*, 398 S.C. 186, 193, 728 S.E.2d 40, 43 (2012). Despite this bedrock principle, litigants with no injury frequently invoke the public importance exception to challenge legislative and executive policy decisions.

For nearly 30 years, the State of South Carolina has defended generalized grievances via the public importance exception. *E.g.*, *Eidson v. S.C. Dep't of Educ.*, 444 S.C. 166, 906 S.E.2d 345 (2024); *S.C. Pub. Interest Found. v. Wilson*, 437 S.C. 334, 878 S.E.2d 891 (2022); *Adams v. McMaster*, 432 S.C. 225, 851 S.E.2d 703 (2020); *Jowers v. S.C. Dep't of Health & Envtl. Control*, 423 S.C. 343, 815 S.E.2d 446 (2018); *Bodman v. State*, 403 S.C. 60, 742 S.E.2d 363 (2013); *Sloan v. S.C. Dep't of Transp.*, 365 S.C. 299, 618 S.E.2d 876 (2005) (*DOT*); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 528 S.E.2d 647 (1999). Where, as here, Plaintiffs challenge the Governor's past decision to deploy the South Carolina National Guard to our Nation's capital, it seems time to give the doctrine a fresh look.

To be clear, President Alexander and Speaker Smith do not wish to limit access to the courts for anyone who "suffered a concrete or particularized injury." *S.C. Pub. Interest Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 118, 804 S.E.2d 854, 858 (2017). They seek only "to prevent the judicial process from being used" by litigants "to usurp the powers of the political branches."

Clapper v. Amnesty Int'l USA, 568 U.S. 398, 408 (2013). As the branch with the "power of the purse," 1 JAMES LOWELL UNDERWOOD, THE CONSTITUTION OF SOUTH CAROLINA: THE RELATIONSHIP OF THE LEGISLATIVE, EXECUTIVE, AND JUDICIAL BRANCHES 8 (1986), often defending these cases, the General Assembly has an interest in curbing needless litigation against the State by individuals who have suffered no harm.

President Alexander and Speaker Smith, as respective leaders of the Senate and House, therefore seek to protect that interest here. *See* S.C. Senate R. 17 ("The President may authorize or retain counsel to initiate, defend, intervene in, or otherwise participate in any suit on behalf of the Senate, a Senate committee, a Senator, or a Senate officer or employee."); S.C. House R. 1.13 ("[A]as the Chief Administrative Officer of the House of Representatives, . . . the Speaker is authorized to initiate or otherwise participate in litigation on behalf of the House.").

DESIRABILITY OF *AMICUS CURIAE* BRIEF

Amici submit the attached proposed brief to explain why the Court should revisit and ultimately overrule the public importance exception to standing. Although Plaintiffs "presume" the Court has already decided they meet the requirements of the public importance exception, *see* Petr. Br. at 29, Governor McMaster and General Stilwell properly challenge their standing. *See* Resp. Br. at 9–20.

That said, this case raises more fundamental concerns about the continued validity of the doctrine. It is one of many cases in recent years in which a party has asked the Court to issue a declaratory judgment about the political issue of the day merely because it disagrees with the policy decision of a separate branch of government. President Alexander and Speaker Smith take no position on the Governor's authority or the merits of this case. Instead, the attached proposed *amicus curiae* brief addresses the shortcomings of the public importance exception.

Because legislative leaders are often named defendants in lawsuits invoking the exception, President Alexander and Speaker Smith believe they have a unique perspective to offer here. After all, most standing discussions arise in the context of requests "to review and revise legislative and executive action." *Summers v. Earth Island Inst.*, 555 U.S. 488, 492 (2009); *see also Freemantle*, 398 S.C. at 193, 728 S.E.2d at 43 (discussing when it is proper to "invoke the judicial power to determine the validity of executive or legislative action").

CONCLUSION

The Court should therefore grant President Alexander and Speaker Smith's motion and accept their conditionally filed *amicus curiae* brief for filing.

Respectfully submitted,

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