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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COURT OF COMMON PLEAS

Honorable Daniel Coble

Appellate Case No. 2024-001296

George S. Glassmeyer…………………………………………………………. Appellant,

v.

South Carolina Lottery Commission…………..………...........................Respondent.

PETITION FOR REHEARING AND REQUEST FOR EN BANC REVIEW

Pursuant to Rules 221 and 219, SCACR, Appellant George S. Glassmeyer respectfully petitions this Court for rehearing of its opinion filed July 29, 2026 (the "Opinion"), and, in the alternative, suggests rehearing en banc. This petition is timely because it has been actually received by the Court within fifteen days of the filing of the Opinion. *See* Rule 221(a), SCACR.

Rehearing is warranted because the Court overlooked or misapprehended discrete points of law and fact that are material to the disposition of each of the three issues decided. Glassmeyer states those points with particularity below and does not reargue matters the panel fully considered. *See* Rule 221(a), SCACR (a petition "shall state with particularity the points supposed to have been overlooked or misapprehended by the court").

INTRODUCTION

The Opinion affirmed summary judgment for the South Carolina Lottery Commission (the "Lottery") on three issues: (1) the withholding of lottery winners' names sought in Request 1; (2) the redaction of the check drawers' signatures sought in Request 4; and (3) the grant of relief from Requests 5, 12, and 18 as overly broad and unduly burdensome. (Op. at 1–2.) Each holding rests on a premise the Court either overlooked or misapprehended:

1. On the names, the Court fixed the operative date as July 5, 2023—the date of the Lottery's FOIA determination—and overlooked that the parties' settlement agreement keyed the Lottery's contractual duty to the receipt of a qualifying FOIA request, which occurred on June 21, 2023, before Proviso 3.5 took effect. Because performance was lawful when the contractual duty arose, the doctrine of impossibility does not fit.

2. On the signatures, the Court expressly reserved the question whether a "different calculation" applies when the individual is "a public official signing a document in her official capacity," yet struck the privacy balance as though that reserved factor were absent. The drawers are the Lottery's chief financial officers signing to disburse public funds—the very circumstance the Court set aside.

3. On overbreadth, the Court adopted a Pennsylvania specificity test drawn from a statute that contains an express specificity requirement, and overlooked that the South Carolina Freedom of Information Act ("FOIA") contains no analogous requirement—engrafting onto the Act a requester-tailoring duty the General Assembly did not enact.

ARGUMENT

I. The Court misapprehended the trigger of the Lottery's contractual duty under the settlement agreement.

The Court held that the Lottery neither violated FOIA nor breached the settlement agreement because Proviso 3.5 "was in effect on the date the Lottery Commission issued its determination," reasoning that "the Lottery Commission was required to act in accordance with the law as it existed on the date it issued its determination"—July 5, 2023. (Op. § I.A.) On the contract claim, the Court assumed without deciding that an independent contractual duty existed and held performance excused by impossibility. (Op. § I.B.)

The Court overlooked the distinct trigger the settlement agreement fixed for the contractual duty. The agreement provides that, if the General Assembly did not legislate by May 31, 2023, the Lottery "will provide the full names, cities, and states of lottery prize claimants in response to FOIA requests after that date." (Op. at 2; R. p. 78.) The duty is keyed to a qualifying event—a FOIA request received after May 31, 2023—not to the date the Lottery later chose to issue a determination. Glassmeyer preserved precisely this point, arguing the Lottery had "an immediate duty" upon receipt of the request. (Appellant's Br. at 7–9; Reply Br. at 1.) The Lottery received the qualifying request on June 21, 2023. (Op. at 4.) Proviso 3.5 did not take effect until July 1, 2023. (Op. at 3.) The contractual duty therefore arose while disclosure was still lawful.

That distinction is dispositive and was misapprehended. The Court borrowed FOIA's ten-day determination window—a statutory mechanism governing the timing of the agency's response—and treated it as the moment the contractual duty accrued. (Op. § I.A.) But the settlement agreement did not condition the Lottery's promise on the date it elected to answer; it conditioned the promise on the arrival of a post–May 31, 2023 request. Nothing in the agreement incorporates § 30-4-30(C)'s response window as the accrual date of the contractual obligation.

Because performance was lawful when the duty arose, impossibility cannot excuse it. The Court's own statement of the doctrine excuses performance only where "the thing to be done cannot by any means be accomplished." (Op. § I.B.) Disclosure of the names could have been accomplished—lawfully—when the Lottery received the request on June 21, 2023. Supervening illegality excuses a duty only where the change in law precedes performance of an existing obligation; it does not retroactively excuse a duty that became due, and could have been satisfied, before the law changed. The Court overlooked that the obligation here matured during the lawful window and that the Lottery's own delay in responding, not any legal impossibility, is what carried performance past July 1. Rehearing should be granted to address whether the contractual duty accrued on receipt (June 21) rather than on determination (July 5).

II. The Court struck the signature-redaction balance on a premise it expressly reserved—the drawers' status as public officials acting in their official capacity.

The Court affirmed redaction of the check drawers' signatures after balancing a privacy interest it deemed "moderate" against a public interest it deemed "minimal" because the signatures would "just be confirmation of already-known information." (Op. § II.) In footnote 7, however, the Court expressly reserved a controlling variable:

> We acknowledge a different calculation may be needed for privacy interests depending on whether the individual is a public official signing a document in her official capacity, an elected official signing a document in her official capacity, or a private citizen signing a document in her personal capacity. However, given our analysis of the public interest discussed herein, we need not reach this issue.

(Op. n.7.)

The Court overlooked that the reserved factor is not hypothetical here—it is the undisputed fact. The drawers are the Lottery's current chief financial officer and his predecessor, and the signatures were affixed in their official capacity to disburse public lottery funds. (Op. § II.) The Court assigned a "moderate" privacy interest to those signatures without accounting for the very circumstance—official-capacity execution of a public financial instrument—that, by the Court's own acknowledgment, "may" require a "different calculation." (Op. n.7.) The balance was therefore struck on an incomplete premise.

The Court declined to reach the reserved factor only because it viewed the public interest as merely cumulative to the drawers' already-disclosed names. (Op. § II.) That reasoning misapprehends the public interest at stake. The signature on a government check is not cumulative to a typed name; it is the mark that authenticates the negotiation of public funds and shows whether the disbursement was executed by a person authorized to bind the agency. (Appellant's Br. at 25–26.) A typed name supplied by counsel confirms potential identity; the signature confirms suspected identity, authorization, and authenticity – a distinct public interest in verifying that public money is moved by proper authority. Because the Court's cumulativeness rationale is what allowed it to sidestep the official-capacity factor, and because that rationale overlooks the authentication interest, rehearing is warranted to complete the balance the Court began—particularly given that the Court itself held the claim was not moot and would have "a practical legal effect on the controversy." (Op. n.9.)

III. The Court overlooked that South Carolina's FOIA contains no specificity requirement analogous to the out-of-state statute on which the overbreadth holding rests.

Recognizing this as a question of first impression, the Court looked to federal and other-state authority to give content to the undefined terms "overly broad" and "unduly burdensome" in § 30-4-110(A). (Op. § III.) To find Requests 5, 12, and 18 overly broad, the Court adopted the Pennsylvania Commonwealth Court's multifactor specificity test. (Op. § III.)

The Court overlooked a material distinction in the source of that test. The Pennsylvania test construes a statute that, by its terms, requires specificity: a written request "should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested." (Op. § III (*quoting* 65 Pa. Stat. and Cons. Stat. § 67.703).) South Carolina's FOIA contains no such provision. The Pennsylvania multifactor test is an interpretation of statutory text that has no counterpart in the South Carolina Act, and importing it engrafts onto § 30-4-110(A) a requester-tailoring obligation the General Assembly never enacted. Glassmeyer preserved this precise objection, arguing that the Act imposes no specificity or narrowing requirement and that a requester "can submit a request that yields information as vast as that person desires." (Appellant's Br. at 17.)

The Court also overlooked the Act's controlling statement of purpose as it bears on the specificity holding. Section 30-4-15 directs that FOIA "be construed so as to make it possible for citizens . . . to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access." (Op. § III.) A judicially created specificity requirement—one the statutory text does not supply—shifts the burden of an agency's volume onto the requester and stands in tension with the express command to minimize "cost or delay" to the citizen. Because the overbreadth holding rests on an out-of-state statutory requirement absent from South Carolina law, and because the Court did not address why § 30-4-15 permits grafting that requirement onto § 30-4-110(A), rehearing should be granted on this point.

SUGGESTION FOR REHEARING EN BANC

Should the panel decline rehearing, Glassmeyer respectfully suggests rehearing en banc under Rule 219, SCACR. En banc consideration is warranted because the construction of "overly broad" and "unduly burdensome" in § 30-4-110(A) is a question of first impression that will govern every public body's response to FOIA requests statewide. The standard the Opinion adopts—including whether a requester must tailor a request to a stated purpose, and whether an agency that declines to charge statutory fees may nonetheless obtain relief from volume—presents "a question of exceptional importance" within the meaning of Rule 219(a)(2). Because the Opinion is the first to define these terms and will set the framework for FOIA enforcement across the State, full-court consideration is appropriate to secure uniformity and to resolve a matter of exceptional importance.

CONCLUSION

For the foregoing reasons, Glassmeyer respectfully requests that the Court grant rehearing, withdraw the Opinion, and reverse the circuit court's grant of summary judgment; or, in the alternative, grant rehearing en banc.

Respectfully submitted,

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PROOF OF SERVCE

I certify that I served the petition for rehearing and en banc review in this case by attaching all to email correspondence and sending on August 13, 2026, addressed as follows:

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