

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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Aug 17 2021

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2021-000883

Case No. 2021-CP-40-03774

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Sheena Bannon, Shane Stencil, Tina Sullivan, and Brandon Beaty, ..... Appellants,

v.

Henry Dargan McMaster, in his official capacity as Governor of the State of South Carolina; and G. Daniel Ellzey, in his official capacity as Director of the South Carolina Department of Workforce and Employment, ..... Respondents.

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RESPONDENTS' RETURN TO  
APPELLANTS' MOTION FOR EMERGENCY REVIEW  
AND EXPEDITED CERTIFICATION

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Pursuant to Rule 240(e), SCACR, Respondents submit this Return to make two brief points in response to Appellants’ Motion for Emergency Review and Expedited Certification:

1. Appeals from circuit court may be taken directly to this Court in only limited instances, one of which is when a final judgment involves “a challenge on statute or federal grounds, to the constitutionality of a state law.” S.C. Code Ann. § 14-8-200(b)(3). Appellants filed their Notice of Appeal in the Court of Appeals, presumably because they do not believe this case involves a constitutional challenge to state law. They did, however, move to transfer the case under Rule 204(b), SCACR. The Court of Appeals transferred this case under Rules 203(d)(1)(A)(ii) and 204(a), SCACR, “because the order on appeal involves a challenge to the separation of powers.” Order. Respondents do not oppose this Court deciding this appeal in the first instance but will defer to this Court as to the proper procedural path for the appeal. If the Court does take this appeal, it should be clear at the outset that Appellants did not ask the circuit court—and thus cannot ask this Court—to hold any part of state law unconstitutional. Instead (and assuming Appellants even have a private right of action here), this case is about the interpretation of section 41-29-230 and raises to two questions: (1) whether three federal unemployment-benefits programs enacted as part of the CARES Act at the beginning of the COVID-19 pandemic are provisions of the Social Security Act and (2) if so, whether Governor McMaster or Director Ellzey has discretion to determine whether those voluntary programs and additional unemployment benefits are “advantages” to “this State and its citizens” amidst a significant labor shortage. S.C. Code Ann. § 41-29-230(1).\*

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\* To the extent Appellants’ Motion attempted to include a request for this Court to exercise its original jurisdiction, Respondents oppose any such request. Not only is such a request procedurally improper, *see* Rule 245(c), SCACR, original jurisdiction is inappropriate because this action could have been—and in fact was—“determined in a lower court in the first instance,” Rule 245(a), SCACR. Moreover, permitting Appellants to invoke the Court’s original jurisdiction to circumvent an unfavorable record and adverse ruling and serve as a substitute for a direct appeal would prejudice the rights of Respondents.

2. As for Appellants' request for expedited briefing, Respondents recognize that this appeal involves unusual timing considerations. Respondents take issue with some of Appellants' characterizations of the facts, issues, and law in their Motion. Nevertheless, Respondents, will save their merits arguments for the appropriate time. Should the Court determine that this appeal warrants the requested "emergency review," Respondents are willing to brief the issues and respond to Appellants' arguments on whatever schedule the Court deems necessary.

Respectfully submitted,

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August 17, 2021  
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