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**IN THE STATE OF SOUTH CAROLINA
In The Supreme Court**

S.C. SUPREME COURT

Allendale County School District. Petitioner,

v.

James H. "Jay" Lucas, Speaker of the South Carolina House of Representatives; Kevin L. Bryant, as President of the South Carolina Senate; Molly Spearman, Superintendent of Education; and the State of South Carolina Respondents.

**MEMORANDUM IN SUPPORT OF PETITION FOR ORIGINAL JURISDICTION
AND MOTION FOR TEMPORARY INJUNCTION**

Petitioner Allendale County School District is a political subdivision organized and existing under the laws of the State of South Carolina and whose sole purpose is that of providing free school education in Allendale County.

Respondents James H. "Jay" Lucas and Kevin L. Bryant are officers of the SC General Assembly, and they are named as Respondents in their official capacities. Respondent Molly Spearman is the Superintendent of Education for the State of South Carolina, and she is named as Respondent in her official capacity.

BACKGROUND

The Appropriations Act of 2017-2018 was passed by the South Carolina General Assembly with Proviso 1A.12. Proviso 1A.12 of the General Appropriations act of 2017-2018, (hereinafter Proviso 1A.12), was not vetoed by Governor Henry McMaster and is therefore in effect. Part IA of the General Appropriations Act of 2017-2018 provides for the funding of various agencies and entities in South Carolina. Part IB of the General Appropriations Act of 2017-2018 enumerates a number of Provisos that serve as temporary provisions of law for the

2017-2018 fiscal year. The Part 1B provisions are ostensibly, reasonably, and inherently related to the raising and spending of tax monies. Proviso 1A.12 is one of a number of Provisos relating to the expenditure of monies by the South Carolina Department of Education. Proviso 1A.12 consists of seven unnumbered paragraphs. Unnumbered paragraphs one through four of Proviso 1A.12 relate to the expenditure of funds by the Department to provide technical assistance to school Districts. Unnumbered Paragraphs five through seven of Proviso 1A.12 includes the following language:

Reconstitution means the redesign or reorganization of the school, which may include the declaration that all positions in the school are considered vacant. Certified staff currently employed in priority schools must undergo an evaluation in the spring following the school's identification as a priority school and must meet determined goals to be rehired and continue their employment at that school. Educators who were employed at a school that is being reconstituted prior to July 2009 and to whom the employment and dismissal laws apply will not lose their rights in the reconstitution. If they are not rehired or are not assigned to another school in the school district they have the opportunity for a hearing. However, employment and dismissal laws shall not apply to educators who are employed in the district and assigned to the priority schools July 1, 2009, in the event of a reconstitution of the school in which the educator is employed. Those rights are only suspended in the event of a reconstitution of the entire school staff. Additionally, the rights and requirements of the employment and dismissal laws do not apply to educators who on July 1, 2009 were on an induction or annual contract, that subsequently were offered continuing contract status after the effective date of this proviso, and are employed at a school that is subject to reconstitution under this proviso.

The reconstitution of a school could take place if the school has been identified as a priority school that has failed to improve satisfactorily. The decision to reconstitute a school shall be made by the State Superintendent of Education in consultation with the principal the school board of trustees, and the district superintendent. The decision to reconstitute a school shall be made by April first, at which time notice shall be given to all employees of the school. The department, in consultation with the district superintendent, shall develop a staffing plan and a budget for each reconstituted school.

The State Superintendent of Education may declare a state of emergency in a district if the accreditation status is probation or denied, if a majority of the schools fail to show improvement, if the district is classified as being in "high risk" status financially, or for financial mismanagement resulting in a deficit. The

State Superintendent of Education may declare a state of emergency in a school if the accreditation status is probation or denied, or if the school fails to show improvement. Upon declaration of a state of emergency, the Superintendent may take over management of the school or district. Management of the school or district may include direct management, consolidation with another district, charter management, public/private management, or contracting with an educational management organization or another school district.

LEGAL ARGUMENT

1. The General Assembly improperly added issues not reasonably and inherently related to the raising and spending of tax monies.

S.C. Constitution Article III, § 17, states, "Every Act ... shall relate to but **one subject**, and that shall be **expressed** in the title" (emphasis added). Proviso 1A.12 relates to more than one subject and therefore violates S.C. Constitution Article III, § 17.

In construing Article III, Section 17, against a legal challenge to a proviso contained in the 2015-16 General Appropriation Act, the Supreme Court ruled that changing the Governor's appointment power over the Secretary of Transportation is not "reasonably and inherently related to the raising and spending of tax monies." South Carolina Public Interest Foundation v. Lucas, 416 S.C. 269, 277, 786 S.E.2d 124, 129 (2016). Similarly, unnumbered Paragraphs five through seven of Proviso 1A.12 (the General Appropriation Act for Fiscal year 2017-18) as illustrated below, are not "reasonably and inherently related to the raising and spending of tax monies" and therefore violate the "one subject rule" of South Carolina Constitution Article III § 17:

A. Reconstitution of Schools:

Reconstitution means the redesign or reorganization of the school, which may include the declaration that all positions in the school are considered vacant. Certified staff currently employed in priority schools must undergo an evaluation in the spring following the school's identification as a priority school and must

meet determined goals to be rehired and continue their employment at that school.

The reconstitution of a school could take place if the school has been identified as a priority school that has failed to improve satisfactorily. The decision to reconstitute a school shall be made by the State Superintendent of Education in consultation with the principal the school board of trustees, and the district superintendent. The decision to reconstitute a school shall be made by April first, at which time notice shall be given to all employees of the school. The department, in consultation with the district superintendent, shall develop a staffing plan and a budget for each reconstituted school.

The subjects addressed in the above portions of Proviso 1A.12 relate to the "management and administration" of public schools and are not reasonably and inherently related to the raising and spending of tax monies. Further, the subjects of this portion of the proviso address and modify administrative and management functions which are codified in S.C. Code § 59-17-10 et. seq.

B. Employment and Dismissal:

Educators who were employed at a school that is being reconstituted prior to July 2009 and to whom the employment and dismissal laws apply will not lose their rights in the reconstitution. If they are not rehired or are not assigned to another school in the school district they have the opportunity for a hearing. However, employment and dismissal laws shall not apply to educators who are employed in the district and assigned to the priority schools July 1, 2009, in the event of a reconstitution of the school in which the educator is employed. Those rights are only suspended in the event of a reconstitution of the entire school staff. Additionally, the rights and requirements of the employment and dismissal laws do not apply to educators who on July 1, 2009 were on an induction or annual contract, that subsequently were offered continuing contract status after the effective date of this proviso, and are employed at a school that is subject to reconstitution under this proviso.

The above portion of Proviso 1A.12 clearly addresses issues related to the management and administration of public schools and the rights of certified teachers in South Carolina. These subjects are not reasonably and inherently related to the raising

and spending of tax monies. Further, the subjects of this portion of the proviso address and modify administrative and management functions which are codified in S.C. Code § 59-17-10 et. seq., as well as teachers' rights codified in S.C. Code §59-25-410.

C. State of Emergency (Management of School(s) or District):

The State Superintendent of Education may declare a state of emergency in a district if the accreditation status is probation or denied, if a majority of the schools fail to show improvement, if the district is classified as being in "high risk" status financially, or for financial mismanagement resulting in a deficit. The State Superintendent of Education may declare a state of emergency in a school if the accreditation status is probation or denied, or if the school fails to show improvement. Upon declaration of a state of emergency, the Superintendent may take over management of the school or district. Management of the school or district may include direct management, consolidation with another district, charter management, public/private management, or contracting with an educational management organization or another school district.

Again, the issues identified in the above portion of Proviso 1A.12 clearly address matters related to the management and administration of public schools. This portion of the proviso permits the takeover of school(s), or an entire district, without any of the due process requirements set forth in the current statutory scheme addressing this subject. See, S.C. Code § 59-17-10 et. seq. Additionally, it also seeks to modify the subject of other statutes related to the authority and duties of duly elected school boards. See, S.C. Code § 59-19-10 and § 59-19-80. These subjects are not reasonably and inherently related to the raising and spending of tax monies.

2. The public interest will be served by grant of original jurisdiction.

Under Rule 245, SCACR, this Court may exercise original jurisdiction when: "the public interest is involved, or special grounds of emergency or other good reasons exist why the original jurisdiction of the Supreme Court should be exercised..." See also, S.C. Constitution art. V, § 5; Key v. Currie, 305 S.C. 115, 406 S.E.2d 356 (1991). As the State's highest judicial authority, it

is respectfully submitted that this Court alone can act with finality to declare whether or not the challenged provisions of unnumbered paragraphs five through seven of Proviso 1A.12 are enforceable.

This matter cannot be determined in a lower court in the first instance without material prejudice to the rights of the parties. This is primarily due to the fact that an appeal of a lower court's decision would be likely, and therefore delay the ultimate decision. See, Daniel v. Conestee Mills, 183 S.C. 337, 191 S.E. 76 (1937), citing, King v. Aetna Ins. Co., 168 S.C. 84, 167 S.E.12 (1932).

If these provisions are not enforceable, as the plain language of our Constitution and the precedents of this Court indicate, any delay in the issuance of a final determination would both prolong the constitutional violations, as well as harm and injure the people of this State. Consequently, Petitioner will be materially prejudiced if the Court does not grant original jurisdiction. For the foregoing reasons, Petitioner moves for the Court to take original jurisdiction in this matter.

3. Motion for temporary injunction.

Pursuant to the authority of this Court in its original jurisdiction, as set forth in the Complaint and Petition for Original Jurisdiction herein, and Rule 65(a) of the South Carolina Rules of Civil Procedure, Petitioner respectfully requests that this Court issue a temporary injunction enjoining Respondents from enforcing the challenged portions of Proviso 1A.12 until a final order is issued by this Court concerning the constitutionality of the Act.

Authority of this court to grant a preliminary injunction is permitted when a petitioner establishes, "(1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." Scratch

Golf Co. v. Dunes W. Residential Golf Props., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

Here, Petitioner would suffer irreparable harm if Respondents were permitted to enforce the reconstitution and take-over portions of Proviso 1A.12 prior to full consideration of the constitutionality of those portions; which will effectively divest Petitioner of its statutory authority and obligation to govern the operations of the Allendale County School District. Petitioner will likely succeed on the merits of its constitutional challenge under Article III, § 17, of the S.C. Constitution in light of this Court's recent decision in S.C. Pub. Interest Found. v. Lucas, 416 S.C. 269, 271, 786 S.E.2d 124, 125-26 (2016) (holding that "where the general appropriations act contains a section that is not germane to the purpose of that act, i.e., one that does not "reasonably and inherently relate to the raising and spending of tax monies," that section may be excised by a court."). Lastly, there is no adequate remedy at law for the allegations in the Complaint; as the injuries described therein are not monetary in nature, and thus, cannot be remedied without injunctive relief.

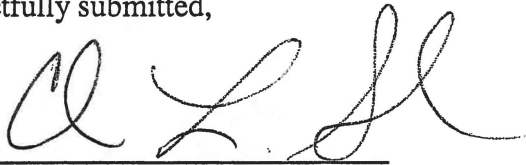
Accordingly, Petitioner requests that this Court enjoin Respondents from enforcing the challenged portions of Proviso 1A.12 until the Court resolves the constitutionality of those portions.

CONCLUSION

For the reasons stated above, Petitioner is entitled to an order declaring unnumbered paragraphs five through seven of Proviso 1A.12 to be unconstitutional and void, and enjoining the use of same until a final decision is rendered in this matter.

[Signature Page Attached]

Respectfully submitted,

By: 

Carl L. Solomon (SC Bar No.: 7306)

Daryl L. Bush (SC Bar No.: 78895)

Solomon Law Group, LLC

3501 North Main Street

Columbia SC 29203

Telephone: 803-391-3120

Telefax: 803-509-7033

Attorneys for Petitioner

Allendale County School District

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