

THE STATE OF SOUTH CAROLINA
In the Supreme Court
In the Original Jurisdiction of the Supreme Court

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SC SUPREME COURT

Appellate Case No. 2015-001443

South Carolina Public Interest Foundation and Edward D. Sloan, Jr. individually and on behalf of all other similarly situated Petitioner,

v.

James H. "Jay" Lucas, as Speaker of the S.C. House of Representatives, Henry D. McMaster, as President of the S.C. Senate, and the State of South Carolina Respondents.

**MEMORANDUM OF LAW IN SUPPORT
OF SENATOR HUGH K. LEATHERMAN, SR.'S
MOTION FOR LEAVE TO INTERVENE**

Rule 24 of the South Carolina Rules of Civil Procedure permits intervention in an existing action as a matter of right or upon permission granted by the Court. In this matter, Senator Hugh K. Leatherman, Sr., in his capacity as President Pro Tempore ("President Pro Tempore Leatherman") of the South Carolina Senate ("the Senate"), respectively requests that the Court grant this motion pursuant to Rule 24(a)(2), or, in the alternative, pursuant to Rule 24(b)(2). Specifically, President Pro Tempore Leatherman requests he be granted this intervention as a Respondent.

ARGUMENT

I. This Court Should Find That President Pro Tempore Leatherman Is Allowed to Intervene as a Matter of Right Pursuant to Rule 24(A)(2).

Pursuant to Rule 24(a)(2) of the South Carolina Rules of Civil Procedure, a party is permitted to intervene in an action as a matter of right if the party: (1) establishes timely

application; (2) asserts an interest relating to the property or transaction that is the subject of the action; (3) demonstrates it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrates its interest is inadequately represented by other parties. In re Horry County State Bank, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004). The rules for intervention are to be interpreted to permit liberal intervention, particularly in cases where judicial economy will be promoted by the declaration of rights of all parties who may be affected. Berkeley Electric Co-op., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 190, 394 S.E.2d 712, 715 (1990). Failure to satisfy any one of the four requirements precludes intervention. Ex parte Reichlyn, 310 S.C. 495, 427 S.E.2d 661 (1993). President Pro Tempore Leatherman asserts all elements of intervention by right are satisfied and respectfully requests this Court grant his motion for intervention.

A. President Pro Tempore Leatherman's Application Is Timely.

President Pro Tempore Leatherman's request to intervene is timely made. Petitioners South Carolina Public Interest Foundation and Edward D. Sloan filed with this Court a Petition for Original Jurisdiction on July 6, 2015. No other pleadings have been filed in this case. Because President Pro Tempore Leatherman's request for intervention is made prior to this Court making a determination concerning the Petition for Original Jurisdiction, intervention would not disrupt or delay the proceedings in this matter.

If the Court grants intervention, President Pro Tempore Leatherman respectfully requests that this Court permit him to file his return to the Petition for Original Jurisdiction five days after intervention is granted, or July 27, 2015, whichever is later.

B. President Pro Tempore Leatherman Satisfies the Requirement of an Interest in This Action.

President Pro Tempore Leatherman, in his capacity as the representative leader of the Senate, possesses a significant interest in the issues presented in this matter. The question of an intervenor's interest is determined in relation to the overall subject matter of the action and not in relation to particular issues before the Court. Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 394 S.E.2d 712 (1990) (citing Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525 (9th Cir. 1983)).

The subject matter at issue in this case concerns the legislative actions taken by the General Assembly in relation to Act 91 of 2015, the General Appropriations Act for Fiscal Year 2015-16. As one of the two distinct branches of the General Assembly, the Senate played an indispensable role in the enactment of Act 91 of 2015. Specifically, the Petitioners are asking this court to declare that Proviso 84.14 is not germane to Act 91 of 2015 and further declare that Act 91 of 2015 violates Article III, Section 17 of the South Carolina Constitution. Petitioners' claim that Proviso 84.14 was not germane to Act 91 of 2015 calls into question the rules, precedents, decisions, and internal operating procedures of the South Carolina Senate, and its authority to determine the germaneness of amendments to a bill, or sections thereof. Furthermore, the Petitioners' claim that Act 91 of 2015 violates Article III, Section 17 of the South Carolina Constitution requires a constitutional interpretation of an act of the General Assembly that may affect the budget process prospectively and may have a direct impact on the appropriations contained in Act 91 of 2015. Accordingly, President Pro Tempore Leatherman, in his capacity as the representative leader of the Senate, has a significant interest in the subject matter of this case.

C. Without Intervention, This Court's Decision Might Impair President Pro Tempore Leatherman's Ability to Protect the Interest of the South Carolina Senate.

Failure to grant President Pro Tempore Leatherman leave to intervene in this action might impair or impede the Senate's ability to protect its interests. As previously described, the Senate played an indispensable role in the enactment of Act 91 of 2015, and this case challenges the constitutionality of that Act. If this case proceeds without Senate intervention, the Senate's role in the in the enactment of Act 91 of 2015 could be construed by this Court without an opportunity for the Senate to defend its interests. Furthermore, the legislative process through which future appropriations are made for the operation of state government could be altered without an opportunity for input by the Senate. The Senate has a significant interest in preserving its role in the legislative process, which requires intervention in this case.

D. The Senate's Interests Are Not Adequately Represented by Existing Parties.

The Senate is not adequately represented in this matter by the existing parties. The Senate and the House of Representatives, represented by Respondent Speaker James H. "Jay" Lucas have aligned interests in this proceeding. Each body however, is independent with varying interests and constituencies preventing one from adequately representing the other. In this case, the House of Representatives has a duly elected officer and member of its body as a named Respondent, the Senate does not. Like the Speaker of the House in the House of Representatives, Senator Leatherman as President Pro Tempore of the Senate, was elected by the members to represent the interests of the Senate. The Senate should also have an elected member of its body to act as a Respondent in this action to have its interests adequately represented before this Court.

While the Lieutenant Governor serves as the President of the Senate, and presides over the Senate while in session, he is not an elected member of the body, and instead is a member of the Executive Department. *See* S.C. Const. Art. IV, Section 8; S.C. Code Ann. Section 1-1-110 (Supp. 2014). Also, unlike the Speaker of the House of Representatives, the Lieutenant Governor's service in the Senate is *ex officio*, he votes only when there is a tie vote among the Senate membership. S.C. Const. Art. IV, Section 10. Finally, the Lieutenant Governor's duties in the Senate are different from those of the membership. During the debate on Act 91 of 2015, the Lieutenant Governor could not participate in debate on the bill, could not submit any amendments, and had no vote on the bill. Because the Lieutenant Governor's role in the Senate differs from the Senators, he is unable to adequately represent the interests of the Senate in this matter.

The Attorney General represents the State of South Carolina in this matter. Furthermore, the Attorney General is not an elected member of the Senate. Given his representation of an existing Respondent and his lack of membership in the Senate, the Attorney General is unable to adequately represent the Senate in this case.

For the reasons stated above, none of the parties currently involved in this proceeding can adequately represent the interests of the South Carolina Senate in this action and the President Pro Tempore Leatherman respectfully requests this Court grant him leave to intervene as a matter of right.

II. Alternatively, President Pro Tempore Leatherman Should Be Granted Permissive Intervention Pursuant to Rule 24(B)(2).

If the Court denies President Pro Tempore Leatherman's motion to intervene pursuant to Rule 24(a)(2), he respectfully requests leave for permissive intervention pursuant to Rule 24(b)(2). According to Rule 24(b)(2) a party seeking to intervene must

file a timely application and the applicant's claim or defense must have a question of law or fact in common with the main action. Rule 24(b), SCRPC. Additionally, this Court must consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. Id. President Pro Tempore Leatherman asserts that he meets all of these requirements.

In this case, Petitioner asserted legislative actions taken by the General Assembly in relation to Act 91 of 2015 are unconstitutional. President Pro Tempore Leatherman, as leader and on behalf of the Senate, will assert that these actions are constitutional. Accordingly, the constitutionality of the legislative action is a question of law that President Pro Tempore Leatherman's claim has in common with the underlying action.

Further, as explained above, President Pro Tempore Leatherman's application to intervene is timely and will not unduly delay or prejudice the adjudication of the rights of the original parties. Petitioners South Carolina Public Interest Foundation and Edward D. Sloan filed with this Court a Petition for Original Jurisdiction on July 6, 2015. No other pleadings have been filed in this case. Because President Pro Tempore Leatherman's request for intervention is made prior to this court Court making a determination concerning the Petition for Original Jurisdiction, intervention would not disrupt or delay the proceedings in this matter.

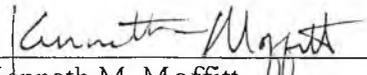
If the Court grants intervention, President Pro Tempore Leatherman respectfully requests that this Court permit him to file his return to the Petition for Original Jurisdiction five days after intervention is granted, or July 27, 2015, whichever is later.

CONCLUSION

For the foregoing reasons, this Court should find that President Pro Tempore Leatherman is entitled to intervene pursuant to Rule 24(a)(2), or, in the alternative, pursuant to Rule 24(b)(2). President Pro Tempore Leatherman respectfully requests that this Court grant his motion to intervene in this case as a respondent.

Respectfully submitted,

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July 20, 2015