

**THE STATE OF SOUTH CAROLINA  
In the Supreme Court**

**IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT**

---

Glenn F. McConnell, President  
*Pro Tempore* of the South Carolina  
Senate, ..... Petitioner,

v.

Nikki R. Haley, Governor of the  
State of South Carolina, ..... Respondent.

---

**PETITION FOR ORIGINAL JURISDICTION**

---

Petitioner McConnell in his official capacity as President *Pro Tempore* of the South Carolina Senate, respectfully requests that the South Carolina Supreme Court entertain this action in the Court’s Original Jurisdiction. Pursuant to Rule 245, SCACR, Petitioner asserts that a matter of great public importance affecting the public interest is involved, and as a result the Court should exercise its original jurisdiction over the matter. *See also* S.C. Const. art. V, § 5; S.C. Code Ann. § 14-3-210 (Supp. 2010).

**I. BACKGROUND**

This matter arises over the constitutionality of Respondent Haley’s issuance of Executive Order 2011-13 calling the General Assembly into extra session at 10:00 a.m. on Tuesday, June 7, 2011 pursuant to Article IV, Section 19 of the South Carolina Constitution. Exhibit 4 (Executive Order). In the executive order, Respondent indicates that she is calling the General Assembly

into extra session to consider four pieces of legislation, H. 3066, H. 3267, H. 3070, and H. 3152.<sup>1</sup> These four pieces of legislation are all in some manner related to restructuring state government.

H. 3066 would create the Department of Administration. H. 3267 would merge the Department of Probation, Parole and Pardon Services with the Department of Corrections. H. 3070 would propose an amendment to the state constitution to provide that the Superintendent of Education would be an appointed rather than an elected position. H. 3152 would propose an amendment to the constitution to require the Governor and the Lt. Governor to run on a joint ticket. The executive order fails to explain how these measures are of any greater importance than the numerous other matters currently pending in the General Assembly.

On June 1, 2011, the House of Representatives concurred with the Senate amendment to H. 4195, which is commonly referred to as the sine die resolution. Exhibit 2 (Sine Die Resolution). This resolution was adopted unanimously which exceeds a two-thirds majority of the membership of each house of the General Assembly pursuant to Article III, Section 9 of the South Carolina Constitution and Section 2-1-180 of the 1976 Code which is commonly referred to as the sine die statute.<sup>2</sup> *Journal of the South Carolina House of Representatives*, June 1, 2011, p. 75 and *Journal of the South Carolina Senate*, May 31, 2011, p. 29. The sine die resolution provides for the extension of the regular 2011 annual session, the dates and times that the respective houses are to meet, and the matters that may be considered during the extended annual

---

<sup>1</sup> Due to the length of these bills, they were not included as exhibits to these pleadings, however, the text of these bills can be found at [www.scstatehouse.gov](http://www.scstatehouse.gov).

<sup>2</sup> Section 2-1-180 provides: The regular annual session of the General Assembly shall adjourn sine die each year not later than 5:00 p.m. on the first Thursday in June. In any year that the House of Representatives fails to give third reading to the annual General Appropriation Bill by March thirty-first, the date of sine die adjournment is extended by one statewide day for each statewide day after March thirty-first that the House of Representatives fails to give the bill third reading. The session may also be extended by concurrent resolution adopted by a two-thirds vote of both the Senate and House of Representatives. During the time between 5:00 p.m. on the first Thursday in June and the extended sine die adjournment date, as set forth herein, no legislation or other business may be considered except the General Appropriation Bill and any matters approved for consideration by a concurrent resolution adopted by two-thirds vote in both houses.

session, all as provided by Section 2-1-180. The sine die resolution provides that as of 5:00 p.m. June 2, 2011 each house would stand adjourned to meet at noon on Tuesday, June 14, 2011 and continue in session until no later than July 1, 2011. The four bills contained in the Respondent's executive order are not contained in the sine die resolution and are not included in the matters that may be considered when each house of the General Assembly returns on June 14<sup>th</sup>. The resolution further provides that after July 1<sup>st</sup>, the Speaker of the House and the President *Pro Tempore* of the Senate may call their respective houses into session to consider a more limited number of matters. Again, the four bills included in Respondent's executive order are not included in the more limited number of matters that may be considered after July 1<sup>st</sup>. However, both prior to and after July 1<sup>st</sup>, each house has provided that it may consider concurrent resolutions affecting sine die adjournment.

## **II. RELIEF REQUESTED**

Through this Petition and the attached complaint, Petitioner seeks a declaration by this Court that the issuance of Respondent's executive order calling the General Assembly into extra session violates the Separation of Powers Doctrine found in Article I, Section 8 of the South Carolina Constitution. The basis of this violation is that calling the General Assembly into extra session to consider matters specifically not included in the sine die resolution usurps the General Assembly's authority to limit those matters it will consider in extended annual session, with such authority specifically expressed in Section 2-1-180 of the 1976 Code, and violates the exclusive authority of each house to determine its own rules of procedure pursuant to Article III, Section 12 of the South Carolina Constitution and to recede from the other house pursuant to Article IV, Section 9 of the South Carolina Constitution.

Further, the Petitioner seeks and Order from this Court that: (1) declares Respondent's executive order unconstitutional because it violates the separation of powers; (2) enjoins on a temporary and permanent basis, and staying the immediate implementation and effects and any attempt at enforcement of the executive order; (3) grants such other and further declaratory or injunctive relief, both temporary and permanent, as may be just and appropriate.

### **III. ORIGINAL JURISDICTION IS JUSTIFIED**

This Court should exercise its original jurisdiction and grant this petition because clearly an urgent matter affecting the public interest is involved. *See* Rule 245(a), SCACR (original jurisdiction is appropriate if “the public interest is involved, or if special grounds of emergency or other good reasons exist”); *see also* S.C. Const. art. V, § 5. “Only when there is an extraordinary reason such as a question of significant public interest or an emergency will this Court exercise its original jurisdiction.” *Key v. Currie*, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991).

Urgent questions of significant public interest are presented by this petition. The allegations are that the Governor has exceeded her authority to call the General Assembly into extra session and by doing so has intruded upon the legislative powers of the General Assembly. The issues presented are of particular and extraordinary constitutional importance that must be decided immediately in order to maintain our constitutional framework of government. Accordingly, the Court should accept this matter in its original jurisdiction and address these issues of significant constitutional importance on an expedited and immediate basis.

#### **IV. PETITIONER IS ENTITLED TO A DECLARATORY JUDGMENT AND TEMPORARY AND PERMANENT INJUNCTIVE RELIEF**

The Petitioner is entitled to a declaratory judgment and temporary and permanent injunctive relief because the executive order calling the General Assembly into extra session pursuant to Article IV, Section 19 of the South Carolina Constitution at a time when each house has agreed to extend the regular session and to limit each house to the consideration of certain matters pursuant to a sine die resolution, violates the separation of powers.<sup>3</sup>

Article I, Section 8 of the South Carolina Constitution provides that “the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.” In the present case, the Governor’s actions encroach upon powers and responsibilities solely within the legislative domain: (1) the power and obligation to determine the times and the matters that will be considered in an extended annual session pursuant to Section 2-1-180, and (2) the authority of each house to determine its own rules procedure and govern its proceedings pursuant to Article III, Section 12 of the South Carolina Constitution and the authority of each house to recede from the other pursuant to Article IV, Section 9 of the South Carolina Constitution.

(1) The Governor cannot interfere with the General Assembly’s authority to determine the matters that will be considered in extended session.

There is no doubt that the Governor is given a great deal of discretion to determine what constitutes an extraordinary occasion for purposes of calling an extra session pursuant to Article IV, Section 19 of the South Carolina Constitution. 1984 S.C. Op. Atty. Gen. No. 85-73. Neither

---

<sup>3</sup> The constitutional questions presented in this Petition do not address the myriad of practical problems that would arise during an extended and extra session running concurrently and does not address the legal implications of any legislation passed during these concurrent sessions.

the 1984 Attorney General's Opinion, the Attorney's General's Opinion issued June 3, 2011, or the case law provide a definition of what constitutes an extraordinary occasion for purposes of Article IV, Section 19. Exhibit 3 (Attorney General's Opinions).

In response to this Petition, the Governor may argue that her determination of what constitutes an extraordinary occasion constitutes a political question that is not subject to review by this Court. However, although this Court recognized in *Segars-Andrews v. Judicial Merit Selection Commission*, 387 S.C. 109, 691 S.E.2d 453 (2010), that the wisdom and expediency of an act committed to a separate branch of government is not subject to review under the political question doctrine, it will consider whether the action gives rise to a violation of the separation of powers. In the present case, the Petitioner does not seek a declaration that the Governor's determination of what constitutes an extraordinary circumstance is unconstitutional, but rather that her attempt to shoehorn the four bills listed in her executive order into the definition of extraordinary occasion is a thinly veiled attempt to amend the sine die resolution and results in a separation of powers violation.

In *Arnold v. McKellar*, this Court provides some guidance as to when the calling of an extra session is appropriate:

The extra session of the Legislature is meant to occur only on "extraordinary occasions," and, obviously, the attention of that body, and of the Governor who convened it, **should be devoted to the unexpected causes** which had necessitated such a measure. **The extra session is, by its nature, a rare contingency, is unforeseen, has no connection with the ordinary course of legislation . . .**  
[emphasis added]

9 S.C. 335, 343 (1878).

Granted, the circumstances giving rise to *Arnold* were different than the ones presented here, but the wisdom provided by the Court is sound and applicable.

In the present case, the Senate and the House each adopted the sine die resolution in full knowledge that the matters contained in the executive order may not be completed prior to 5:00 p.m., June 2, 2011. A unanimous vote of both houses adopted the sine die resolution without those matters included. On June 2, 2011, there were seventy-nine statewide bills pending on the second and third reading Senate calendar, including the four the Governor listed in her executive order.<sup>4</sup> Some of these bills may be of more or less importance to the Governor, but they all represent the desire of some constituency.

The fact that legislative business is left uncompleted after the first year of a two year legislative session is the quintessential definition of an ordinary occurrence and in no rational way may be construed as an extraordinary occasion. The fact that items remaining on a Governor's legislative agenda are not included in a sine die resolution is also an ordinary occurrence and one that most Governors are willing to abide out of respect for our constitutional framework. There is nothing unforeseen regarding the present circumstances and, in fact the circumstances are completely and wholly connected with the ordinary course of legislation. *Arnold v. McKellar, supra.*

There is little doubt that each house of the General Assembly has the authority to agree with the other to extend the annual session of the General Assembly and to limit the matters it will consider during the extended session. This power is not only inherent pursuant to the explicit constitutional authority of each house to govern its own proceedings as discussed below, but also explicitly expressed in the sine die statute. S.C. Code Ann. § 2-1-180 (Supp. 2010).

There is no involvement by the Governor in the adoption of the sine die resolution pursuant to Section 2-1-180. It is adopted by concurrent resolution and is not presented to her for approval. As the Court is aware, when the Governor calls the General Assembly into extra

---

<sup>4</sup> Please visit <http://www.scstatehouse.gov/scal/sctoday.htm> to see the June 2, 2011 calendar.

session the matters it may consider are not limited to those matters recited in the executive order. *see* 73 Am. Jur. 2d *Statutes* § 20 (“In the absence of a constitutional provisions limiting the power of the legislature to pass laws at a special session, its legislative power, when convened in special session, is as broad as a regular session.”) In the present case, this would have the effect of undoing the limitations provided in the sine die resolution which were imposed by unanimous vote in each house.

This intrusion could have a devastating effect on the General Assembly’s ability to orderly wind up its affairs at the conclusion of the legislative session. The sine die resolution is adopted in full confidence by the membership that the matters included in the resolution are the only ones that will be considered in extended session. If this confidence is undermined by the Governor’s ability to call the General Assembly into session to consider matters fully contemplated and pending at the time the sine die resolution is adopted, it is unlikely the members will ever be able to agree to an orderly winding down of their business. Surely the framers never intended this gubernatorial power to be exercised in a manner to render the votes of at least two-thirds of each house meaningless.

Also, the Governor is not foreclosed from calling the General Assembly into special session to address matters that were truly unforeseen at the time the sine die resolution was adopted. For example, an intervening natural disaster or wholly unanticipated drop in state revenues due to a national “double-dip” recession would be “unforeseen” and would have “no connection with the ordinary course of legislation”. *Arnold v. McKellar*, S.C. 335, 343 (1878).

The Governor may have broad discretion to determine what constitutes an extraordinary occasion, but that authority cannot be exercised in a manner that second guesses the judgment of an independent and coequal branch of government. There is nothing extraordinary about the



circumstances of the present case.<sup>5</sup> The Governor simply disagrees with the sine die resolution and attempts to amend it by her executive order. Even though the present situation cannot by any rational determination be construed as unforeseen, the Governor is not without redress. The sine die resolution provides that a subsequent sine die resolution may be adopted that could include additional matters. *see* Exhibit 2 (H. 4195 subsection (B)(3)). If the Governor would like these matters to be considered, she simply has to convince enough members of each house to adopt a new resolution. This option may not be expedient enough for her liking, but it would demonstrate the appropriate degree of respect for our constitutional balance of powers.

(2) Further, the Governor's actions also intrude on the authority of each house to set its own rules of procedure and govern its proceedings pursuant to Article III, Section 12 of the South Carolina Constitution and the authority of each house to recede from the other pursuant to Article IV, Section 9 of the South Carolina Constitution. In the sine die resolution, each house agreed to recede from the other during the time from June 2<sup>nd</sup> until June 14<sup>th</sup> and specifically agreed to limit itself to the matters listed in the resolution.

The wording of the resolution is quite clear. In Section (B), the resolution provides that “[e]ach house agrees to limit itself to consideration of the following matters and subject to the following conditions.” Exhibit 2. The inclusion of this language and the ensuing list of matters

---

<sup>5</sup> By her own statements the Governor indicates that the circumstances precipitating her issuing the executive order are not extraordinary. At a press conference immediately following the release of her executive order she indicated: “If we can come out with two restructuring bills...they can pick any two. But let’s say we dealt with restructuring.” and “I want to be able to have all summer to get it going. I want to be able to start in January; go back to the legislature; show them what the Department of Administration looks like, and continue the ball rolling. If they go and pass it in January, trying to get a Department of Administration up and running during a legislative session is harder. To be able to do it during the summer means I’ll be using most of my time to get what they need done using the work of the Legislative session.” *see* <http://www.youtube.com/user/nikkihaley?blend=17&ob=5>. If this were truly an extraordinary occasion then all four bills would be necessary and her call would be more than simply scheduling the consideration of these matters for a convenient time.

to be considered are tantamount to each house adopting a rule of procedure governing itself during the extended session.

The adoption of rules of procedure is within the sole province of each house. This Court has held:

The Constitution empowers each house to determine its rules and proceedings. Neither house by its rules may ignore constitutional restraints or violate fundamental rights . . . but within these limitations all matters of method are open to determination of the House, and it is no impeachment of the rule to say that some other way would be better, more accurate, or even more just.

*State ex rel. Coleman v. Lewis*, 181 S.C. 10, 186 S.E. 625, 630 (1936).

Certainly, the adoption of a sine die resolution limiting the matters each house will consider in extended session is consistent with each house's constitutional power to govern its proceedings. Although the Governor may disagree with the matters that were included, she is without power to determine that the inclusion of the matters she deems important would have been better.

The constitutional implications of allowing the Governor to so interfere with the ability of each house to govern its proceeding are obvious. The dangers of allowing the Governor's actions to stand would provide her with a foray into the internal workings of each house the effects of which are clearly and easily demonstrated. Rule 1 of the Senate provides that the Senate meets in statewide session on Tuesday through Thursday. Pursuant to the Governor's reasoning, if she did not feel that the Senate had completed its business to her satisfaction in a given week then she could call it into session on Friday through Monday to consider the matters she deems important. Rule 32 establishes the Senate's order of business. Following the

Governor's logic, if the Senate did not reach a bill on a particular day because it was on the contested calendar, then she could call the Senate into extra session later that day to consider it.<sup>6</sup>

In the present case, the Governor's executive order calling the House and the Senate into extra session has the same effect of overriding each house's rules as the above examples demonstrate. The House and the Senate receding from June 2<sup>nd</sup> until June 14<sup>th</sup> pursuant to the sine die resolution is the exercise of the same power that allows the Senate to determine which days it will meet in statewide session pursuant to Rule 1. It is also an exercise of the additional and concurrently exclusive power to recede from the House pursuant to Article III, Section 9. Also, determining the matters that the Senate will agree to consider during the extended session pursuant to the sine die resolution is the exercise of the same power that allows the Senate to determine its order of business pursuant to Rule 32. There is no doubt that this intrusion into each house's ability to govern itself reaches too far into the legislative domain.

Further, the adoption of the sine die resolution constitutes an agreement between the members of each house, and also between the two houses, that only certain matters will be addressed at certain times during the extended session. The negotiations in developing the sine die resolution are not unlike the negotiations between parties to a traditional contract. In most cases, members who desire to extend the session to address certain uncompleted matters negotiate with members who are opposed to certain other matters being addressed.

Pursuant to a bargained for exchange, the consideration given by one group of members for extending the session is the assurance that the matters they are concerned with will not be addressed. The agreement is negotiated in good faith with the knowledge and belief that an outside third party will not be allowed to interfere. The ability to negotiate this agreement is a

---

<sup>6</sup> For a complete list and individual links to the Senate Rules please visit <http://www.scstatehouse.gov/senatepage/senrule.htm>.

natural outgrowth of the constitutional authority of each house to govern its proceedings. Just like this Court would not permit a third party to interfere with an agreement between the parties to a traditional contract, it should not permit the Governor to interfere with this agreement which was approved by a 108 to 0 vote in the House and by a 41 to 0 vote in the Senate. *Journal of the South Carolina House of Representatives*, June 1, 2011, p. 75 and *Journal of the South Carolina Senate*, May 31, 2011, p. 29.

The power that allows each house to govern its proceedings is exclusive to each house and is fundamental to the General Assembly being able to act as a coequal and independent branch of government. The Governor may take issue with the manner in which the House and the Senate have chosen to govern each house's proceedings during the extended session, but she lacks the constitutional authority to substitute her judgment for that of each house. Although she may believe that these bills are worthy of consideration during the extended session, the Governor must respect the independent power of each house to not include them in the sine die resolution.

Accordingly, the Petitioner requests that this Court declare the Governor's executive order an unconstitutional violation of the separation of powers.

## **CONCLUSION**

For the reasons stated above, Petitioner respectfully asks this Court to grant this Petition for original jurisdiction and to provide the declaratory and temporary and permanent injunctive relief requested. Given that certain members of both houses have indicated that they intend to return to Columbia for the extra session on Tuesday, June 7, 2011 at 10:00 a.m. pursuant to the Governor's call, the Petitioner respectfully requests that this Court act with all due haste to

temporarily enjoin the effect of the executive order until a final determination can be made on the declaratory and permanent injunctive relief requested.<sup>7</sup> For all the reasons stated above, Petitioner submits that the injury to his respective body by this separation of powers violation is irreparable, substantial, and will commence upon the convening of an extra session on Tuesday June 7<sup>th</sup> at 10:00 a.m. Petitioner respectfully requests that this Court issue a temporary injunction prior to that time to give the Court an opportunity to fully consider this matter.

Respectfully submitted,

June 6, 2011

BY: /s/ \_\_\_\_\_  
Michael R. Hitchcock  
John P. Hazzard, V  
Kenneth M. Moffitt  
South Carolina Senate  
P.O. Box 142  
Columbia, South Carolina 29202  
(803) 212-6300  
Attorneys for the Honorable  
Glenn F. McConnell, in his official  
capacity as President Pro Tempore of the  
S.C. Senate

---

<sup>7</sup> The following links contain statements issued by various groups of members that they intend to return on June 7<sup>th</sup> : <http://www.schousegop.com/pressreleases/77>; <http://www.scsenategop.com/2011/06/03/senators-say-they-will-return-to-columbia-on-tuesday/>; and <http://bobbyharrell.com/2011/06/03/release-house-to-return-tuesday-for-special-session/>.

**THE STATE OF SOUTH CAROLINA  
In the Supreme Court**

**IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT**

---

Glenn F. McConnell, President  
*Pro Tempore* of the South Carolina  
Senate, ..... Petitioner,

v.

Nikki R. Haley, Governor of the  
State of South Carolina, ..... Respondent.

---

**NOTICE OF PETITION**

---

**TO RESPONDENT AND COUNSEL FOR RESPONDENT:**

Petitioner Glenn F. McConnell, in his official capacity as President *Pro Tempore* of the Senate, files an action in the original jurisdiction of the Supreme Court of South Carolina. The Complaint may be found at Exhibit 1, attached to the Petition for Original Jurisdiction. Pursuant to Rule 245, SCACR, Respondent has twenty (20) days from the date of service to file a return to the Petition with the Clerk of the Supreme Court.

June 6, 2011

/s/ \_\_\_\_\_  
Michael R. Hitchcock  
John P. Hazzard, V  
Kenneth M. Moffitt  
South Carolina Senate  
P.O. Box 142  
Columbia, South Carolina 29202  
(803) 212-6300  
Attorneys for the Honorable  
Glenn F. McConnell, in his official  
capacity as President Pro Tempore of the  
S.C. Senate

**THE STATE OF SOUTH CAROLINA  
In the Supreme Court**

**IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT**

---

Glenn F. McConnell, President  
*Pro Tempore* of the South Carolina  
Senate, ..... Petitioner,

v.

Nikki R. Haley, Governor of the  
State of South Carolina, ..... Respondent.

---

**PROOF OF SERVICE**

---

I, the undersigned counsel, do certify that I have served the Respondent with the Notice of Petition for Original Jurisdiction and the Petition for Original Jurisdiction including the attached complaint by directing the Sergeant-At-Arms of the Senate to hand deliver a copy to her office located in the West Wing of the Statehouse.

June 6, 2011

/s/ \_\_\_\_\_  
Michael R. Hitchcock  
P.O. Box 142  
Columbia, South Carolina 29202  
(803) 212-6300  
Attorney for Respondent

**EXHIBIT 1**

**COMPLAINT**



**THE STATE OF SOUTH CAROLINA  
In the Supreme Court**

**IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT**

---

Glenn F. McConnell, President  
*Pro Tempore* of the South Carolina  
Senate, ..... Petitioner,

v.

Nikki R. Haley, Governor of the  
State of South Carolina, ..... Respondent.

---

**COMPLAINT**

---

Petitioner Glenn F. McConnell, in his official capacity as President *Pro Tempore* of the South Carolina Senate, by and through his undersigned counsel, respectfully complains of the Respondent herein and alleges as follows:

**PARTIES**

1. Petitioner Glenn F. McConnell, is a resident of South Carolina, an elected member of the South Carolina Senate and has been elected by the Senate as President *Pro Tempore*. This action is pursued by Senator McConnell in his official capacity as the elected leader of the Senate to complain of injuries to the constitutional power and authority of the Senate.

2. Respondent Nikki R. Haley is a resident of South Carolina, the Governor of the State of South Carolina, and is sued in her capacity as the Governor.

### **JURISDICTION**

3. This Court has jurisdiction over the parties and the causes of action asserted by Petitioner pursuant to its original jurisdiction under Rule 245, SCACR, S.C. Const. art. V, Sec. 5, and S.C. Code Ann. Sec 14-3-310 (Supp. 2010).

4. This Court also has jurisdiction of this action pursuant to the Declaratory Judgments Act, S.C. Code Ann. Section 15-53-10 *et seq.* (Supp. 2010), and its equitable powers.

### **GENERAL ALLEGATIONS**

5. On June 1, 2011, the South Carolina General Assembly passed concurrent resolution, H. 4195, (the sine die resolution) to extend the 2011 annual session of the General Assembly and to set the dates and times each house will meet and the matters that will be considered during this extended session.

6. Pursuant to the sine die resolution, that upon adjourning at 5:00 p.m. on Thursday June 2, 2011, each house agreed to stand in recess until noon Tuesday June 14, 2011 and upon reconvening agreed to limit each house to the consideration of certain matters enumerated in the sine die resolution.

7. On June 2, 2011, Governor Haley signed Executive Order Number 2011-13 (executive order) calling the General Assembly into extra session on Tuesday, June 7, 2011 at 10:00 a.m. pursuant

to the authority granted to her by Article IV, Section 19 of the South Carolina Constitution to convene the General Assembly into extra session on extraordinary occasions.

8. The executive order lists four matters the Governor requests the General Assembly to consider during the extra session. These matters all in some way deal with the restructuring of state government and are H. 3006, H. 3267, H. 3070, and H. 3152. H. 3066 would create the Department of Administration. H. 3267 would merge the Department of Probation, Parole and Pardon Services with the Department of Corrections. H. 3070 would propose an amendment to the constitution to provide that the Superintendent of Education would be an appointed rather than an elected position. H. 3152 would propose an amendment to the state constitution to require the Governor and the Lt. Governor to run on a joint ticket.

9. The matters listed in the executive order were all pending on the Senate Calendar at the time the General Assembly adopted the sine die resolution.

10. The matters listed in the executive order are not listed among the matters that may be considered in extended session pursuant to the sine die resolution.

### **CAUSE OF ACTION**

11. Each of the above allegations are re-alleged and are incorporated by reference into the cause of action.

12. The Petitioner seeks a declaration by this Court that the issuance of Respondent's executive order calling the General Assembly into extra session violates the Separation of Powers Doctrine found in Article I, Section 8 of the South Carolina Constitution. Accordingly, the Court should enjoin on a temporary and permanent basis the executive order including the implementation and the effect of the executive order.

13. Section 2-1-180 of the 1976 Code, as amended, provides that each house of the General Assembly, through the adoption of a concurrent resolution by two-thirds of the membership of each body, may extend the annual session of the General Assembly and limit the matters that will be considered during the extended session.

14. Article III, Section 12 of the South Carolina Constitution exclusively empowers each house of the General Assembly to adopt its own rules of procedure and govern its proceedings.

15. Article III, Section 9 of the South Carolina Constitution provides for the annual session of the General Assembly and further provides that each house is not limited from receding from the other house for a period of not less than thirty days upon the approval a majority vote of the house and for a period of more than thirty days upon the approval of two-thirds vote of the house.

16. The adoption of the sine die resolution is an exercise of the statutory authority pursuant to Section 2-1-180 of the 1976 Code, as amended, and an exercise of the constitutional authority granted to each house by Article III, Sections 9 and 12 of the South Carolina Constitution.

17. The members of each house were aware that the matters listed in the executive order were pending and might not be completed when each house adopted the sine die resolution.

18. That adopting the sine die resolution without including the matters listed in the executive order was an exercise of statutory and constitutional legislative authority.

19. The Respondent's issuance of the executive order intrudes upon the statutory and constitutional legislative authority of each house of the General Assembly to govern its proceedings in extended session and constitutes a violation of the separation of powers.

20. Because the executive order calls the General Assembly into session on Tuesday June 7, 2011 and that certain members of both houses have indicated that they intend to heed the call, an immediate injury to the separation of powers will occur.

21. The Court should enjoin, on a temporary and permanent basis, the implementation and the effect of Respondent's executive order and issue an order immediately enjoining its implementation and effect until such time as the Court determines the constitutionality of the order.

22. There is no likelihood of harm to the Respondent if the requested relief is granted during the pendency of this matter because there are no urgent circumstances that require the immediate consideration of the matters listed in the executive order. Further, the injury to the constitutional

balance of power outweighs any harm that could result to the Respondent and the Petitioner is likely to succeed on the merits.

23. The public interest in maintaining the constitutional balance of power amongst the three branches of state government supports the issuance of a temporary and permanent injunction to ensure the separation of powers.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that the Court issue an Order granting the following relief:

A. Declaring that the Respondent's issuance of Executive Order 2011-13 calling the General Assembly into extra session constitutes an unconstitutional violation of the separation of powers because it intrudes upon the statutory and constitutional authority of the each house of the General Assembly to govern its proceedings and threatens the power and independence of a coequal branch of government.

B. Enjoining on a temporary and permanent basis and staying the immediate and permanent implementation and effects of the executive order that are in any way inconsistent with the requested declaratory judgment until the Court may determine the constitutionality of the executive order.

C. Providing for such other and further declaratory or injunctive relief, both temporary and permanent, as may be just and proper.

[SIGNATURES ATTACHED]

June 6, 2011

BY: /s/ \_\_\_\_\_  
Michael R. Hitchcock  
John P. Hazzard, V  
Kenneth M. Moffitt  
South Carolina Senate  
P.O. Box 142  
Columbia, South Carolina 29202  
(803) 212-6300  
Attorneys for the Honorable  
Glenn F. McConnell, in his official  
capacity as President Pro Tempore of the  
S.C. Senate

## EXHIBIT 2

# SINE DIE RESOLUTION



EXHIBIT 3

ATTORNEY GENERAL'S  
OPINIONS

**EXHIBIT 4**

**EXECUTIVE ORDER**