

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

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

v.

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

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**MOTION FOR LEAVE TO FILE**  
**AMICUS CURIAE BRIEF**

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Appearing Pro Se

June 6, 2011

**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

The undersigned respectfully requests leave of the Court to file a brief as amicus curiae. The proposed brief is attached as an exhibit to this motion for the convenience of the Court and will not be refiled if the motion is granted unless ordered by the Court.

Movant Rep. Thad T. Viers is a member of the South Carolina House of Representatives and, as a legislator, is directly affected by this case. The undersigned submits that intervention as a party would be appropriate but does not desire to take up the Court's time beyond filing a short, straightforward brief.

The Respondent respectfully requests this motion be granted. Consultation with other parties in this action could not be timely held due to the intense time constraints associated with this matter.

Respectfully submitted,

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# Exhibit

Brief of Rep. Thad T. Viers,  
Amicus Curiae  
(Provisionally Filed)

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**BRIEF OF REP. THAD T. VIERS, AMICUS CURIAE**

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## **INTRODUCTION**

This brief will focus on the meaning of but two words: “convene” and “extra.” Assigning these words with their customary and intended meaning resolves this case in short order. The central issue here is the interpretation of language in the South Carolina Constitution, specifically one sentence in Article IV Section 19: “The Governor may on extraordinary occasions convene the General Assembly in extra session.” The fundamental question posed by the Petition and Complaint is whether this language is a nullity during times when the legislature is technically in session but not convened. The undersigned respectfully submits that the Governor retains the power to convene the legislature in extra session while the legislature is in regular session and not convened.

## **ARGUMENT**

First of all, the word “convene” is of primary importance to this dispute. There is no dispute that the Legislature is not presently convened, even if it is technically “in session.” The Governor’s power is first and foremost a power to convene, to call the Legislature together for a meeting. If the sentence in question ended there, and merely said “The Governor may on extraordinary occasions convene the General Assembly,” this case would have an obvious result: Whenever the Legislature is not convened—and it is presently not convened—the Governor may convene it.

The question therefore becomes how the last few words of the sentence, “in extra session,” modify the rest of the sentence and if so, how. The “in extra session” language absolutely modifies the rest of the sentence, and it does so in a way that favors the position put forward by the Governor and the Attorney General. This follows from a very basic analysis of the meaning of the word “extra.”

The argument against the Governor’s position boils down to this: The Governor cannot convene the Legislature in extra session because it is already in session. But it is no defense to the convening of an “extra” session that the Legislature is already in session. The word “extra” means “beyond what is usual” or “in addition to.” That the Legislature is already in one session in no way prevents it from being convened in an extra session. The word “extra” entirely resolves the argument.

The clear intent and language of Article IV Section 19 is to provide the Governor with the ability to convene the Legislature when it is not convened. And while the question might arise as to whether this power is available at times when the Legislature is in session but not convened, the “extra session” language conclusively resolves that issue in favor of gubernatorial authority. The status of the current Legislative session is irrelevant because the Governor’s power is one to convene a sui generis “extra session” unrelated to any session then in progress or which has otherwise concluded.

In fact, the “extra session” language was likely intended to resolve the exact question before the Court. There would be no need for the word “extra” if the power were only to call the Legislature into session when it was not in session. Given the presumption against surplusage is at its zenith when interpreting constitutional text, the inclusion of the word “extra” strongly supports the interpretation of Article IV Section 19 is that put forward by the Governor and the Attorney General.

### **CONCLUSION**

The Governor’s power to convene the Legislature in extra session arises whenever the Legislature is not convened. Whether the Legislature is technically in

session is irrelevant, because the gubernatorial power is one to call an “extra session” unrelated to any session then in progress or which has otherwise concluded.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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Upon information and belief, an order has been entered in this action allowing service by facsimile. Accordingly, the undersigned, has served the foregoing on all other parties to this action by facsimile on the date below.

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