

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Charles H. Williams, II,

Plaintiff,

C/A NO.: 2019CP4003805

v.

ACCEPTANCE OF SERVICE

Board of Trustees of the University of South
Carolina, a body corporate and politic, in
deed and in law under the name of the
University of South Carolina,

Defendant.

I, Terry Parham, General Counsel for the University of South Carolina, do hereby accept service of the Summons, Petition for an *Ex Parte* Temporary Restraining Order, Motion for a Preliminary Injunction, and Complaint for Declaratory and Injunctive Relief in the above captioned matter, received via e-mail on this ____ day of July, 2019.

Columbia, South Carolina
this ____ day of July, 2019.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NO.: _____

Charles H. Williams, II,

Plaintiff,

v.

Board of Trustees of the University of South
Carolina, a body corporate and politic, in
deed and in law under the name of the
University of South Carolina,

Defendant.

SUMMONS

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

By: s/ Joseph M. McCulloch (SC Bar #3760)
s/ Kathy R. Schillaci (SC Bar #17248)
McCulloch & Schillaci, Attorneys at Law
1116 Blanding Street
P.O. Box 11623 (29211)
Columbia, South Carolina 29201
Telephone: 803.779.0005
Facsimile: 803.779.0666

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina
this 11th day of July, 2019.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Charles H. Williams, II,

Plaintiff,

v.

Board of Trustees of the University of South
Carolina, a body corporate and politic, in
deed and in law under the name of the
University of South Carolina,

Defendant.

C/A NO.: _____

**PETITION FOR AN *EX PARTE*
TEMPORARY RESTRAINING ORDER,
MOTION FOR A PRELIMINARY
INJUNCTION, AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff Charles H. Williams, II hereby files this petition for a temporary restraining order, motion for a preliminary injunction, and complaint for declaratory and injunctive relief. Plaintiff would respectfully show unto the Court as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Charles H. Williams, II is a resident of Orangeburg County, South Carolina and a duly elected member of the Board of Trustees of the University of South Carolina.
2. Defendant Board of Trustees of the University of South Carolina (Board) is a body corporate and politic, in deed and in law under the name of the University of South Carolina (USC or University) as provided by South Carolina Code § 59-117-40.
3. The Court has jurisdiction over the subject matter of any action filed in this dispute pursuant to Article V, Section 11 of the South Carolina Constitution and the Uniform Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10 et seq.

4. Venue is proper in Richland County pursuant to South Carolina Code § 15-7-30(C), because the most substantial part of the acts and omissions giving rise to the allegations here occurred in Richland County, South Carolina.

FACTUAL BACKGROUND

5. On Tuesday, July 9, 2019, the Secretary of the Board sent electronic mail notice (**Exhibit A**) of a meeting of the Board to be held in Richland County the morning of Friday, July 12, 2019.

6. The purpose of the meeting is to consider the application of General Robert L. Caslen, Jr., U.S. Army (Ret.) to be hired as the next President of USC.

7. South Carolina Code § 59-117-50 provides, in relevant part, that “[n]otice of the time and place of all meetings, both regular and special meetings, of the board of trustees of the University of South Carolina shall be mailed by the secretary or his assistant to each trustee not less than five days before each meeting thereof.”

8. Notice of the July 12 meeting was not “mailed” to Plaintiff and the electronic notice received on July 9 is untimely.

PETITION FOR A TEMPORARY RESTRAINING ORDER AND MOTION FOR A PRELIMINARY INJUNCTION (Rule 65(b), SCRPC)

9. Each of the foregoing paragraphs are incorporated herein.

10. Rule 65 of the civil rules provides that an *ex parte* temporary restraining order (TRO) may not issue “unless it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon.” Rule 65(b), SCRPC.

11. A TRO should issue here to prevent the Board from conducting an illegally noticed meeting and taking *ultra vires* action.

12. Were such a meeting to occur and were official action taken in contravention of state law, Plaintiff, as a fiduciary of the University, and the University itself would be irreparably harmed by casting doubt on the legitimacy of such action and subjecting Plaintiff and the University to potential legal action. See, e.g., Baird v. Charleston Cty., 333 S.C. 519, 511 S.E.2d 69 (1999) (county subject to suit for *ultra vires* issuance of bonds).

13. Once such a meeting occurs, there is no adequate remedy at law.

14. Accordingly, a TRO should issue mandating the Board cancel the July 12 meeting and cease and desist from holding it.

**FOR A FIRST CAUSE OF ACTION
(Declaratory Relief)**

15. Each of the foregoing paragraphs are incorporated herein.

16. Pursuant to South Carolina Code § 15-53-20, the Court should declare that:

- a. the Board's July 12 meeting violates or violated (whichever the case may be when the Court enters judgment) South Carolina Code § 59-117-50 and
- b. any action taken during the July 12 meeting was contrary to law and therefore null and void.

**FOR A SECOND CAUSE OF ACTION
(Injunctive Relief)**

17. Each of the foregoing paragraphs are incorporated herein.

18. Pursuant to South Carolina Code § 15-53-120, the Court should enter a temporary and, after a plenary merits hearing, permanent injunction enjoining the Board from any further

violation South Carolina Code § 59-117-40 and any such further relief necessary to conform the Board's conduct to the law and effectuate the orders and judgment of this Court.

PRAYER

WHEREFORE, Plaintiff Charles H. Williams, II requests that the Court grant his petition for a TRO and, after discovery, enter a final declaratory judgment and injunctive relief as set forth above, along with any further relief the Court deems just and proper.

Respectfully submitted,

/s/ Joseph M. McCulloch (SC Bar #3760)

/s/ Kathy R. Schillaci (SC Bar #17248)

McCulloch & Schillaci, Attorneys at Law

1116 Blanding Street

P.O. Box 11623 (29211)

Columbia, South Carolina 29201

Telephone: 803.779.0005

Facsimile: 803.779.0666

ATTORNEYS FOR THE PLAINTIFFS

ATTORNEY FOR PLAINTIFF

July 11, 2019
Columbia, South Carolina.

VERIFICATION

I have read the petition for a temporary restraining order and complaint for declaratory and injunctive relief and verify that its contents are true and correct to the best of my knowledge.


Plaintiff Charles H. Williams, II

Sworn before me on July 11, 2019,


(sign)

Rebekah F. Durr
(print)

Notary Public for South Carolina

My commission expires 5/14/2025

From: ALLEN, DEBRA DEBRAA [REDACTED]
Subject: Confidential: Called Full Board Meeting
Friday, July 12

Date: Jul 9, 2019 at 8:39:46 AM

To: VALTORTA, MARCO MG [REDACTED],
Luke.Rankin.Jr [REDACTED], Bubba Fennell
[REDACTED], C. Dorn
Smith, III [REDACTED], C.
Edward Floyd
[REDACTED], Charles
Williams [REDACTED],
Chuck Allen
[REDACTED], Dan
Adams [REDACTED],
Dick Jones [REDACTED],
Eugene P. Warr Jr. [REDACTED],
HEATH JR., CANTEY
[REDACTED], HUBBARD,
WILLIAM
[REDACTED],
Hubert F. (Hugh) Mobley
[REDACTED], J Egerton Burroughs
[REDACTED], John
C. von Lehe
[REDACTED], Leah
Moody [REDACTED], Mack I.
Whittle Jr. [REDACTED], Miles
Loadholt [REDACTED], Molly
Spearman [REDACTED], Robert
Fr. Dozier, Jr. [REDACTED], Rose
Buvck Newton

.....
rosebuycknewton [REDACTED],
WESTBROOK, THAD
[REDACTED],
Toney Lister [REDACTED]

On Behalf of Board Chairman John C. von Lehe, Jr.:

There will be a called meeting of the full Board of Trustees at 10 a.m. on Friday, July 12, 2019. The meeting will take place in the C. Edward Floyd Boardroom at the Pastides Alumni Center.

Please respond to this message with your attendance plans. If you need to join the meeting by telephone conference, please confirm with Debra Allen so she can provide you the access code.

The sole agenda item is the election of a new president. Please maintain confidentiality regarding this meeting. A public notice will be distributed later in the week.

Best,
John

STATE OF SOUTH CAROLINA)
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C/A NO.: 2019CP4003805

Charles H. Williams, II,

Plaintiff,

v.

Board of Trustees of the University of South
Carolina, a body corporate and politic, in
deed and in law under the name of the
University of South Carolina,

Defendant.

**ORDER GRANTING
TEMPORARY RESTRAINING ORDER
AND SETTING HEARING ON
PRELIMINARY INJUNCTION**

This matter is before the Court on a verified petition and motion for a temporary restraining order (TRO), a preliminary injunction, and complaint for declaratory and injunctive relief filed by Plaintiff Charles H. Williams, II against Defendant Board of Trustees of the University of South Carolina (Board). For the reasons that follow, Plaintiff's motion for a TRO is **GRANTED** and a hearing on the motion for a preliminary injunction is set for July 19, 2019 at 10⁰⁰ AM at the Richland County Courthouse located at 1701 Main Street, Columbia, South Carolina.

Plaintiff's petition and complaint alleges Plaintiff is a duly elected member of the Board and that Plaintiff received email notice on July 9, 2019 of a meeting of the Board the morning of July 12, 2019. A copy of the email notice is attached to the petition/complaint. Plaintiff alleges the meeting, if permitted to occur, violates South Carolina Code § 59-117-50, because of (a) the notice was not sent via mail and (b) the notice is untimely.

The Board is a body corporate and politic, in deed and in law under the name of the University of South Carolina (USC or University). S.C. Code Ann. § 59-117-40. The procedures

for its governance are established as a matter of state law. See generally S.C. Code Ann. §§ 59-117-10 et seq. The procedure for convening a meeting of the Board is provided by statute: “Notice of the time and place of all meetings, both regular and special meetings, of the board of trustees of the University of South Carolina *shall* be mailed by the secretary or his assistant to each trustee not less than five days before each meeting thereof.” S.C. Code Ann. § 59-117-50 (emphasis added). “Under the rules of statutory interpretation, use of words such as ‘shall’ or ‘must’ indicates the legislature’s intent to enact a mandatory requirement.” Collins v. Doe, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) (collecting cases).

Rule 65 of the civil rules provides that an *ex parte* temporary restraining order (TRO) may not issue “unless it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon.” Rule 65(b), SCRCP. Plaintiff argues that, absent a TRO, Plaintiff will be irreparably harmed by the conduct of an illegal convened meeting that could result in official but *ultra vires* University action. Specifically, Plaintiff cites the consideration of an applicant to become USC’s next president arguing that any such action with respect to the applicant would result in irreparable harm by subjecting the University, and Plaintiff as its fiduciary,¹ to legal uncertainty as to the legitimacy of its conduct and possibly suit. Further, Plaintiff argues that once such a meeting occurs, there is no adequate remedy at law, therefore a TRO should issue to require the Board to cancel the July 12 meeting and cease and desist from holding it.

¹ See USC Bylaws, art. III (“Each member of the Board of Trustees shall: A. Honor his/her fiduciary responsibility to the University System and the Board as a whole; ...”), available at: https://sc.edu/about/offices_and_divisions/board_of_trustees/documents/board_bylaws.pdf.

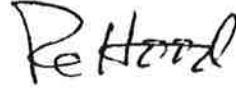
Rule 65 of the civil rules provides that an *ex parte* TRO may not issue “unless it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon.” Rule 65(b), SCRPC.

Having considered the verified petition and complaint and reviewed the applicable law, the Court concludes Plaintiff is likely to prevail on the merits and, absent a TRO, Plaintiff is likely to suffer an irreparable harm. USC is a creature of South Carolina law and a body politic and corporate. See S.C. Code Ann. § 59-117-40. As such, the Board and the exercise of its power is defined (and constrained) by state law. Here, the law at issue is not ambiguous. Nevertheless, based on the evidence contained in the verified petition and complaint, it appears the Board is prepared to meet in violation of South Carolina Code § 59-117-50 to take official action, specifically considering an applicant for the position of University president. See S.C. Code Ann. § 59-117-40(5) (granting the Board power “to appoint a University president”). Moreover, the Court of Appeals has explained that while “one may not generally enjoin a state agency from the performance of duties imposed by valid statutes, where one is threatened with irreparable damage and does not have an adequate remedy at law, she may enjoin state officials who are acting in an illegal manner.” Frady v. Student Loan Servicing Ctr., 313 S.C. 561, 564, 443 S.E.2d 580, 582 (Ct. App. 1994) (citation omitted). Due to the time constraints involved and what appears to be a patently illegal procedure, the Court finds it appropriate to issue this TRO.

Accordingly, the Board is hereby **RESTRAINED** from proceeding with the July 12 meeting and is **ORDERED** to cease and desist from conducting it. This TRO shall remain in effect for 10 day or until dissolved or modified by the Court. It is further **ORDERED** that Plaintiff serve a copy of this TRO along with the summons, and the verified petition and

complaint on the Board in accordance with Rule 4 of the civil rules. A hearing on the motion for a preliminary injunction shall be held at the date, time, and place set forth above.

AND IT IS SO ORDERED.



The Honorable Robert E. Hood
Circuit Court Judge, Fifth Judicial Circuit

Date: 7/11/19
Time: 3:19 pm
Columbia, South Carolina.