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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Case No. _____

David Wesley Climer, and Carol Herring ..... Petitioners,

v.

Curtis M. Loftis, Jr., in his capacity as the State Treasurer of South Carolina, ...Respondent.

PETITION FOR A WRIT OF INJUNCTION
IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT
(Expedited Consideration Requested)

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INTRODUCTION

Pursuant to Rule 245(b) of the South Carolina Appellate Court Rules, Petitioners David Wesley Climer and Carol Herring hereby petition for a Writ of Injunction to issue in the original jurisdiction of the Supreme Court, prohibiting Curtis Loftis, in his capacity as State Treasurer of South Carolina, from disbursing any funds pursuant to Part 1B, Section 91.13 of the 2025–2026 Appropriations Act. Act No. 69, Part 1B, § 91.13, 2025 S.C. Acts (herein, the "Proviso"). The Proviso purports to increase compensation of members of the General Assembly by $1,500 per month, an increase of approximately $50 per day, starting in July 2025.

The basis for this Petition is that the South Carolina Constitution prohibits a General Assembly from increasing the compensation of its own members. S.C. Const. art. III, § 19. Any increase must take effect after the next General Assembly is seated in January 2027 following the next general election. *See id.* Because the Proviso only concerns expenditures in the July 2025 to June 2026 fiscal year, a period ending before the next general election, there are no circumstances in which the Proviso can comply with the Constitution and so it is unconstitutional on its face. There is an extraordinary public interest in preserving our constitutional prohibition on a legislature giving itself taxpayer money. Because the General Assembly ratified the Proviso on the very last day of its session, there is no time for ordinary trial and appellate proceedings to operate. This Court therefore should exercise its original jurisdiction to enjoin any executive action to give effect to the Proviso.

STATEMENT OF THE CASE

Members of the General Assembly receive a salary of $10,400, and additionally $1,000 per month in "in-district compensation," which is ordinary taxable personal income, for a total salary

of $22,400.[1] The "in-district compensation" is provided by a proviso to the annual budget. A proviso is a provision in a budget enactment that places conditions or requirements regarding the expenditure of budgeted funds; for example, a proviso might require a state agency to spend a certain amount of money on a special project or event in a member's legislative district, commonly known as an "earmark." The proviso at issue here, Proviso 91.13, is an earmark that instead requires the State to give taxpayer money directly to the members of the legislature. The amount of this earmark has been $1,000 per month per member since January 1, 1995.

On April 23, 2025, the Senate adopted an amendment to Proviso 91.13 within House Bill 4025, the annual state budget for the fiscal year beginning July 1, 2025. The amended Proviso increases "in-district compensation" for members to $2,500 per month, resulting in an annual salary of $40,400—an 80% pay raise. The House-Senate conference committee retained the amendment on May 21, 2025, sending the budget to the House and Senate for a final vote with no ability to remove the Proviso without disastrously rejecting the entire state budget at end of the legislative session. The Proviso was ratified with the rest of the budget on the last day of the session, May 28, 2025, and signed by the Governor on June 3, 2025.

This Petition follows. Petitioners are citizens and taxpayers of South Carolina. Any citizen has standing to prove that an expense appropriation by General Assembly is in fact an invalid increase in compensation to its members. *Scroggie v. Bates*, 213 S.C. 141, 149, 48 S.E.2d 634, 637 (1948).

LEGAL STANDARD

The Supreme Court may issue writs of injunction in its original jurisdiction. S.C. Const. art. V, § 5. This "express grant of original power to issue orders of injunction . . . necessarily

[1] Certain members in leadership positions receive additional compensation.

implies power to hear and determine whether the conditions exist which authorize relief by injunction." *Trs. of Univ. of S.C. v. Trs. of Acad. of Columbia*, 85 S.C. 546, 67 S.E. 951, 954 (1910). "An injunction is a drastic remedy issued . . . to prevent irreparable harm suffered by the plaintiff." *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). Although "[a]ctions for "injunctive relief are equitable in nature," *id.*, "where the decision turns on statutory interpretation . . . this presents a question of law," *Lambries v. Saluda Cnty. Council*, 409 S.C. 1, 8, 760 S.E.2d 785, 788 (2014).

A party may seek issuance of an extraordinary writ in the original jurisdiction of the Court by petition. Rule 245(b), SCACR.

ARGUMENT

I. THE PROVISO IS FACIALLY UNCONSTITUTIONAL.

"A legislative enactment will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates a provision of the constitution." *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999). A legislative enactment is facially unconstitutional if it "is unconstitutional in all its applications." *State v. Legg*, 416 S.C. 9, 13-14, 785 S.E.2d 369, 371 (2016). Under this standard, the Proviso facially unconstitutional. As explained below, our constitution has always provided that the General Assembly may not increase the compensation of its members before an intervening general election. The Proviso raises legislators' compensation by 80% before any intervening general election. It even expires before any intervening general election, meaning it does not have any application after the next general election. It is, in all its applications, unconstitutional.

The General Assembly is given the exclusive power of the purse. S.C. Const. art. 10, § 8. For a General Assembly to vote to give its own members public money is akin to a judge presiding over his own trial, or to a police officer investigating his own alleged conduct. It is a violation of

the ancient principle that *nemo index in causa sua*—persons with a personal interest in a legal matter should not be the persons who decide that matter.

The question of who should decide the compensation of members of the legislature was a difficult question at the founding of our Republic. Under the Articles of Confederation, states provided for the compensation of their delegates to the Congress. At the Philadelphia Convention, James "Madison, like many other delegates, . . . argued that 'it would be improper to leave the members of the [national] legislature to be provided for by the State [legislatures]: because it would create an improper dependence.'" Adrian Vermeule, *Contra Nemo Iudex in Sua Causa: The Limits of Impartiality*, 122 Yale L.J. 384, 406 (2012) (quoting 1 Max Farrand, The Records of the Federal Convention of 1787, at 373–74 (1911)). But also "'Madison thought the members of the [legislature] too much interested to ascertain their own compensation. It [would] be indecent to put their hands into the public purse for the sake of their own pockets.'" *Id.* (quoting the same). Madison proposed a constitutionally fixed standard of compensation, but that was deemed infeasible. *Id.* at 407 n.73. Thus, as a Representative in the first session of the First Congress, Madison introduced what eventually became the Twenty-Seventh Amendment to the United States Constitution, the provision that no law changing the compensation of members of Congress shall take effect before the next election of Representatives. 1 Gales & Seaton, *The Debates and Proceedings of the Congress of the United States* 1, 451 (1834). The Madisonian solution to the problem of who should decide the compensation of members of the legislature was to allow the legislature to set the compensation for *future* legislatures, but not for itself.

South Carolina immediately adopted Madison's solution at both the state and federal levels. South Carolina ratified the Twenty-Seventh Amendment on January 19, 1790. Later that year, South Carolina ratified its own Constitution of 1790—its first constitution providing for

compensation of legislators—which provided that the compensation of members of the legislature "may be increased or diminished by law, if circumstances shall require; but no alterations shall be made by any legislature to take effect during the existence of the legislature which shall make such alteration." S.C. Const. art. I, § 18 (1790). That language was retained in the South Carolina Constitutions of 1861 and 1865. S.C. Const. art. I, § 26 (1861); S.C. Const. art. I, § 26 (1865). The Constitution of 1868 changed the language to provide the members "shall receive such compensation as shall be fixed by law; but no General Assembly shall have the power to increase the compensation of its own members." S.C. Const. art. II, § 23 (1868). The current Constitution of 1895 provides "no General Assembly shall have the power to increase the per diem of its own members." S.C. Const. art. III, § 19.[2]

In modern parlance, the Latin phrase "per diem" is often used as an idiom for a reimbursement for nonitemized expenses, like meals and lodging for one day of travel. Per Diem (def. 1), BLACK'S LAW DICTIONARY (12th ed. 2024). It may or may not be taxable income, depending upon the amount and on other factors. In the 1868 Constitution, the salary of members was expressed as a daily rate—six dollars per day (which could be increased by law for future General Assemblies)—and described as a "per diem" to distinguish the salary from the mileage reimbursement also described in the same section. S.C. Const. art. II, § 23 (1868). That terminology was retained in the current 1895 Constitution. The provisions that "Members of the General Assembly shall not receive any compensation for more than forty days of any one session," S.C. Const. art. III, § 9, and "members of the General Assembly when convened in extra

[2] At that time, the Senate was divided into two classes, so that one-half of the Senate would be elected every two years, analogous to the division of the United States Senate into three classes elected every two years. The division of the Senate into staggered classes was abolished in the reapportionments following *Reynolds v. Sims*, 377 U.S. 533 (1964).

session shall receive the same compensation as is fixed by law for the regular session," S.C. Const. art. III, § 19, prevent a General Assembly from increasing its own compensation by increasing the number of days for which it is compensated or by giving itself a bonus for extra sessions. *See Scroggie v. Scarborough*, 162 S.C. 218, 160 S.E. 596, 599 (1931) ("Section 9 of article 3 of the Constitution, considered with section 19 of the same article, clearly prohibits increasing the compensation of members of the Legislature during their term of office."). Thus, the current constitutional per diem is $22,400 per year. *See id.* (holding, in considering Section 19 of the Constitution, that "the term 'per diem,' as used in connection with compensation, wages, or salary, means pay for a day's services, and it here clearly refers to the compensation provided for in section 9"). The Proviso would increase that to $40,400 per year, which is forbidden. *See id.* ("[W]e find that the General Assembly is forbidden to increase the per diem of its own members.").

The only conceivable justification for the Proviso would be if it were a reimbursement for official expenses. *See Scroggie v. Bates*, 213 S.C. 141, 153, 48 S.E.2d 634, 639 (1948) (recognizing that the General Assembly may provide for the payment of expenses of its members in performing duties imposed upon them by statute). That argument necessarily fails for several reasons. Payment for "in-district compensation" is taxable personal income for members of the General Assembly with no restrictions on its use. Members claim the money as personal income in their filed tax returns—they represent that it is personal income. Members have a separate $231 daily "per diem" in the sense of a reimbursement for nonitemized daily travel expenses. Most importantly, there are no restrictions on how members may use this money—they may use it entirely for any personal purposes. Periodic payments of money, reported and taxed as personal income, with no restrictions on use for personal purposes, to which the recipient is entitled because of services provided to the entity paying the money, are compensation. *See id.* at 156, 48 S.E.2d

at 640 (holding that an appropriation act paying each member of the General Assembly $700 for official expenses which also stated it to be unnecessary to itemize the expenses, made "the conclusion inevitable without the aid of extrinsic facts and circumstances that the real intent and purpose of the appropriation here in question was to increase the compensation or per diem of the members of the General Assembly, in violation of the Constitution of this State, and the statute in question is therefore void").

Until now, this obvious fact was well understood and unchallenged. For example, when the General Assembly last increased the "in-district compensation," it provided the compensation would be the then-current $300 per month from July 1994 to December 1994, and only increase to $1,000 per month starting January 1995, when a new General Assembly would be seated. *See* H.B. 4600, Part 1B, § 3.28, 111th Gen. Assemb. (S.C. 1995) *available at* https://www.scstatehouse.gov/sess111_1995-1996/appropriations1996/ap1b.htm. In 2014, the General Assembly voted to increase "in-district compensation" by $1,000 effective January 2015, again after the seating of a new General Assembly. H.B. 4701, Part 1B, § 91.29, 120th Gen. Assemb. (S.C. 2014) *available at* https://www.scstatehouse.gov/sess120_2013-2014/appropriations2014/tap1b.htm#s91. The Governor vetoed that proviso and the veto was sustained.

Put simply, there is no colorable argument that the Proviso is not intended to, and will not, increase the compensation of members of the General Assembly in its current term, in violation of the Constitution. The Proviso is therefore facially unconstitutional and void.

II. THE PUBLIC INTEREST WILL SUFFER IRREPARABLE HARM FROM THE GENERAL ASSEMBLY'S OPEN CONTEMPT OF THE CONSTITUTION WITHOUT EXPEDITED JUDICIAL ACTION ONLY AVAILABLE THROUGH AN EXTRAORDINARY WRIT FROM THIS COURT.

All citizens have a cognizable interest in preserving the constitutional prohibition against a General Assembly increasing its own compensation. *Scroggie v. Bates*, 213 S.C. 141, 149, 48 S.E.2d 634, 637 (1948). Without an extraordinary writ from this Court, that interest will suffer irreparable harm. The Proviso was enacted less than one week ago, and illegal payments will begin in less than four weeks. The Proviso expires in a year. The usual process of trial court litigation and appeals assigning error in such litigation is designed to methodically discover facts and resolve difficult legal issues. At this moment, this case however presents a question of pure law. *See id.* at 156, 48 S.E.2d at 640. There is no factfinding for a trial court to engage in; any legal rulings in a trial would be reviewed de novo in appellate proceedings. Once unconstitutional payments are made, however, it is unclear whether those payments could be clawed back months or years after legislators spent the money on their personal affairs. Any attempt to do so would confuse the clear constitutional issue now presented with hundreds of individual legislators' property rights and arguments that they were justified in relying on a statutory enactment when spending their own compensation for services rendered. These facts provide special grounds or emergency justifying the exercise of this Court's original jurisdiction to preserve the public interest in the enforcement of Article III, Section 19, of our Constitution. *See* Rule 245, SCACR.

The General Assembly's machinations to avoid public scrutiny of its self-dealing with taxpayer money are extraordinary. The General Assembly provides a salary of $10,400, but then uses a budgetary earmark to add another $12,000—which the Proviso would increase to $30,000—as "in-district compensation" that is just more taxable personal income. This unconstitutional attempt to increase members' income was enacted not only in violation of the Constitution—and

in violation of every constitution this State has had—but as a budgetary earmark enacted on the last day of the session to avoid all public hearings and legislative deliberation. For shame. The people of South Carolina cannot look over the shoulder of every member of the General Assembly every minute of every day. They enacted constitutional requirements to protect their money from this sort of furtive legislation, and they rely upon this Court to enforce those requirements.

A conclusive statement from this Court therefore is needed to vindicate our Constitution from the General Assembly's open contempt. The legal question is not close. The General Assembly intentionally did what the Constitution expressly says it cannot do. The General Assembly did so not for some worthy policy goal its members felt so desirable that they were willing to cut corners to achieve it, but merely to take money from the public treasury and put it in their personal bank accounts. It is not hyperbole to describe that action as a statement of open defiance and contempt for our Constitution, made in the expectation that our courts might not, for some reason, enforce the Constitution against the General Assembly. This insult to our Constitution requires an immediate response from this Court that our Constitution means what it says and that it will always be enforced.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request the Court to issue a Writ of Injunction in its original jurisdiction prohibiting the State Treasurer from any disbursing payments to members of the General Assembly pursuant to Part 1B, Section 91.13 of the 2025–2026 appropriations act.[3]

[3] Petitioners do not believe the Court has power to redraft the Proviso to substitute the number $1,000 for $2,500. Thus, it is necessary to enjoin payment of any "in-district compensation" under the Proviso. However, Petitioners do not dispute that the General Assembly has authority to enact further legislation restoring the $1,000 per month payment with immediate effect as this would not result in an increase in compensation for this General Assembly.

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