In the Supreme Court of South Carolina

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

South Carolina Public Interest Foundation; **James Weninger**; *Plaintiffs*, v. **Henry McMaster**, in his official capacity as Governor of the State of South Carolina; **Major General Robin B. Stilwell**, in his official capacity as Adjutant General of the South Carolina National Guard; *Defendants*.	)	CASE NO.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff South Carolina Public Interest Foundation, a nonpartisan private operating foundation, and James Weninger, a Navy veteran and current taxpaying resident of South Carolina, respectfully bring forth this Complaint for declaratory and injunctive relief and ask that it be entertained in the Court's original jurisdiction. *See* Rule 245, SCACR.

INTRODUCTION

1. In 1935, after Governor Olin Johnston called out the militia to address a state of "rebellion, insurrection, resistance and insurgency" in the control of the state highway department, this Court met its duty to address the legality of the deployment. *Hearon v. Calus*, 178 S.C. 381, 183 S.E. 13, 24 (S.C. 1935). The Court concluded that it was incumbent to scrutinize the Governor's actions, because "[a]ny other construction of the law would lead to anarchy and revolution." *Id.* at 20.

2. The Court characterized the "substitution of military for the civil law in any community" as "deplorable and calamitous," justifiable only upon "the failure of the civil law fully to operate and function" because of "actual warfare." *Id.* at 24.

3. The current Governor of this State, Henry McMaster, has now twice deployed the military of this State—the South Carolina National Guard—to serve as police in Washington, D.C.

4. Governor McMaster's deployment of the National Guard to Washington is unlawful.

5. Under the Constitution of this State, "[t]he military power of the State shall always be held in subordination to the civil authority." S.C. Const. art. I, § 20.

6. The Legislature, accordingly, has limited the authority of the Governor to deploy the National Guard through Section 25-1-1840 of the South Carolina Code. Governor McMaster's decision to deploy the National Guard to Washington, D.C., exceeds that authority.

7. South Carolina's National Guard troops are a vital state resource reserved for the limited purposes prescribed by law.

8. The deployment of the South Carolina National Guard to Washington, D.C., is "open to the inquiry and control of the judicial arm of the state." *Hearon*, 178 S.C. 381, 183 S.E. at 20.

9. In this case, the deployment exceeds the Governor's legal authority.

10. This Court should enter declaratory and injunctive relief against the Governor's unlawful deployment order.

PARTIES

11. Plaintiff South Carolina Public Interest Foundation ("SCPIF") is an independent, non-partisan private foundation dedicated to ensuring that South Carolina governments, agencies, and officials act in strict compliance with the state Constitution and statutes. SCPIF does not take a position on the wisdom of any specific law, individual legislator or government official; nor does it attempt either to aid or hinder the passage of legislation. SCPIF brings this case exclusively under state law and disclaims any federal rights or causes of action. Discussions of federal law within this Complaint are offered strictly to frame SCPIF's right to relief under state law.

12. Plaintiff James Weninger is a resident of Berkeley County, South Carolina, a state taxpayer, and a Navy veteran. Mr. Weninger served in the Navy for sixteen years—fourteen years on active duty, and another two years as a reservist—before being medically discharged in 2023. He served in Naval law enforcement, and his time in the Navy included three tours of duty abroad, twice in Bahrain and once in Japan. As an experienced Naval law enforcement officer, he was called upon to train more junior officers, including about the relationship of the military to civil law enforcement functions. Mr. Weninger's service experience has

taught him the value of a clear separation of military and civilian law enforcement: the military exists and is trained to protect our country from its enemies, and it should not be put in a position where the enemies are the American people. Mr. Weninger seeks to ensure that South Carolina's military is not being misused for political reasons, and to ensure that South Carolina's Guardsmen are not being asked to undertake a deployment that is not authorized by law. He brings this case exclusively under state law and disclaims any federal rights or causes of action. Discussions of federal law within this Complaint are offered strictly to frame his right to relief under state law.

13. Plaintiffs have public importance standing to bring this action because the "issues are of significant public importance" and because the case "ensure[s] accountability and the . . . integrity of government action." *S.C. Pub. Int. Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 118, 804 S.E. 2d 854, 858–59 (2017). In South Carolina, "a court may confer standing upon a party when an issue is of such public importance as to require its resolution for future guidance." *Baird v. Charleston Cnty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999). Case of public importance may proceed "even without an allegation of particularized injury." *S.C. Pub. Int. Found. v. Wilson*, 437 S.C. 334, 341, 878 S.E.2d 891, 895 (2022); *see also S.C. Pub. Int. Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 645–46, 744 S.E.2d 521, 524 (2013) ("Sloan has not asserted he has suffered a particularized harm or injury as a result of section 11-43-140, but we find this case fits within the public importance exception."). Plaintiff SCPIF (like its predecessor, Mr. Sloan) has routinely invoked public importance standing to challenge unconstitutional and *ultra vires* acts by South Carolina officials. *See, e.g.*, *S.C. Pub. Int. Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 119, 804 S.E.2d 854, 859 (2017) (granting public importance standing to address spending public money for private purposes); *S.C. Transp. Infrastructure Bank*, 403 S.C. at 645–46, 511 S.E.2d at 75 (granting public

importance standing to address claims that DOT Commissioners were serving successive terms in violation of the authorizing statute); *Sloan v. Wilkins*, 362 S.C. 430, 437, 608 S.E.2d 579, 583 (2005).

14. This case easily satisfies the Court's "public importance standing" analysis.

a. Petitioners' argument – that Governor McMaster's deployment of the National Guard to the District of Columbia exceeds his lawful authority – raises fundamental questions of executive authority and the separation of powers.

b. The public importance of this case is further sharpened by the effect the Governor's extraterritorial deployment has on interstate comity within the United States' federalist structure.

c. This case's issue also cries out for future guidance. *See ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008) ("The key to the public importance analysis is whether a resolution is needed for future guidance."). The National Guard deployment at issue in this case is Governor McMaster's second such deployment, showing a likelihood that he will continue sending National Guard personnel to participate in the ongoing Title 32 deployment in Washington, D.C., unless this Court intervenes.

d. In practical terms, Governor McMaster's deployment of the National Guard raises further issues of importance by undermining the force's readiness to respond to emergencies in South Carolina, such as extreme weather events.

15. Defendant Henry McMaster is sued in his official capacity as Governor of South Carolina. In that role, on or about November 26, 2025, Governor McMaster ordered the deployment of South Carolina National Guard personnel to

Washington, D.C. At all times relevant to this Complaint, he has acted in his role as Governor.

16. Defendant Major General Robin B. Stilwell is sued in his official capacity as the Adjutant General of the South Carolina National Guard. In that capacity, he is commander of all military forces within the South Carolina Military Department, including the South Carolina National Guard. He is responsible to the Governor in the latter's role as Commander in Chief, and he is responsible for the implementation of the Governor's deployment order. At all times relevant to this Complaint, he has acted in his role at Adjutant General.

JURISDICTION

17. The Supreme Court may exercise original jurisdiction over this matter under Article V, Section 5, of the South Carolina Constitution as applied through Rule 245 of the South Carolina Appellate Court Rules.

18. Original jurisdiction is appropriate under Rule 245, SCACR, because of "the public interest involved and the need for prompt resolution." *Carnival Corp. v. Hist. Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 80, 753 S.E.2d 846, 853 (2014).

FACTS & BACKGROUND

I. Historical Backdrop

19. This nation's Founders understood the risks of using the military to police civil society. Some, like George Mason, feared broad federal authority to deploy state militias.

20. "[U]nless there be some restrictions on the power of calling forth the militia, to execute the laws of the Union," Mason told the Virginia Ratifying

Convention in 1788, "we may very easily see that it will produce dreadful oppressions."[1]

21. "It would be to use the militia to a very bad purpose, if any disturbance happened in New Hampshire, to call them from Georgia," Mason continued.[2]

22. With that fear in mind, Mason argued that the Constitution should forbid "march[ing]" any state's militia "beyond the limits of the adjoining state; and if it be necessary to draw them from one end of the continent to the other, I wish such a check, as the consent of the state legislature, to be provided."[3]

23. Others saw Mason's fear of improperly deploying militiamen as preposterous.

24. Alexander Hamilton, for instance, dismissed George Mason's fear as "exaggerated and improbable."[4]

25. Similarly, James Madison retorted: "Can we believe that a government of a federal nature, consisting of many coequal sovereignties and particularly having one branch chosen from the people, would drag the militia unnecessarily to an immense distance? This, sir, would be unworthy the most arbitrary despot."[5]

26. After spirited debate, the two sides crafted a compromise, which is embodied today in the federal Constitution's Militia Clauses: that Congress shall

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[1] Madison, James, and United States Constitutional Convention, *The debates in the several state conventions on the adoption of the federal Constitution, as recommended by the general convention at Philadelphia, in. Together with the journal of the Federal convention, Luther Martin's letter, Yate's minutes, Congressional opinions, Virginia and Kentucky resolutions of '98-'99, and other illustrations of the Constitution*, at 378 (ed. by Elliot, Jonathan 1836), https://perma.cc/7B8G-XPZA.

[2] *Id.*

[3] *Id.* at 378–79.

[4] Federalist 29 (Alexander Hamilton) (1788), https://perma.cc/Z7M7-SAC2.

[5] *Supra,* note 1 at 381, https://perma.cc/7B8G-XPZA.

have the power "To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel invasions," U.S. Const., art. I, § 8, cl. 15; and that Congress also shall have the power "To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress." U.S. Const., art. I, § 8, cl. 16.

27. Pursuant to this system:

> Even when the militia is under state authority, militiamen directly execute some federal commands. For instance, the militia is organized pursuant to federal law, and the militia must train according to the discipline prescribed by Congress. When called into actual service, the militia is part of the national military leadership under the ultimate command of the president. When they are not in federal service, however, the militia reports to its respective states.[6]

28. Under this compromise, George Mason got his wish, partially: unless the President federalizes a state's National Guard, a state cannot agree to a National Guard deployment under 32 U.S.C. § 502(f) unless the decision to deploy conforms to state law.

29. But in this case, Governor McMaster has proven Alexander Hamilton and James Madison wrong: the fear of unlawfully deploying National Guard personnel to address a faraway concern was not "exaggerated and improbable."

II. Factual Background

30. On August 11, 2025, President Trump issued an Executive Order styled "Declaring a Crime Emergency in the District of Columbia" (hereinafter "the

[6] Robert Leider, *Federalism and the Military Power of the United States*, 73 Vand. L. Rev. 989, 1013–14 (2020).

Executive Order"). It claimed that "[c]rime is out of control in the District of Columbia;" that Washington, D.C. is suffering "an increase in violent crime;" and that "*rising* violence in the capital now urgently endangers public servants, citizens, and tourists, disrupts safe and secure transportation and the proper functioning of the Federal Government, and forces the diversion of critical public resources toward emergency response and security measures."[7]

31. At the time of President Trump's Executive Order, violent crime in Washington, D.C., was at a 30-year low.

32. Also on August 11, 2025, President Trump released to the Secretary of Defense a Memorandum styled "Restoring Law and Order in the District of Columbia."[8] The Memorandum mobilized the District of Columbia National Guard "to address the epidemic of crime in our Nation's capital."

33. Neither the Executive Order nor the Memorandum federalized National Guard personnel under Title 10. Instead, the Memorandum "direct[ed] the Secretary of Defense to coordinate with State Governors and authorize the orders of any additional members of the National Guard to active service, as he deems necessary and appropriate, to augment this mission."

34. The Mayor of Washington, D.C., Muriel Bowser, did not and has not requested assistance from any state in any way relevant to the Executive Order or the Memorandum.[9]

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[7] The White House, Exec. Order, *Declaring a Crime Emergency in the District of Columbia* (Aug. 11, 2025), https://perma.cc/9N5S-99N2 (emphasis added).

[8] The White House, Mem., *Restoring Law and Order in the District of Columbia* (Aug. 11, 2025), https://perma.cc/94FZ-2CP2 ("the Memorandum").

[9] *See*, *e.g.*, Brittany Shammas & Alex Horton, *As More National Guard United Deploy to D.C., Local Officials Question the Need*, Wash. Post (Aug. 18, 2025), https://perma.cc/SAX7-38ET (Mayor Muriel Bowser of Washington, D.C. said the deployment "doesn't make sense" and questioned "why the military would be deployed in an American city to police Americans.").

35. Nevertheless, in the days following the Executive Order's issuance and the Memorandum's release, several states' governors volunteered personnel from their state National Guards to assist in President Trump's "law[] enforcement."

36. One of those governors was Governor McMaster. On August 16, 2025, Governor McMaster announced that, in response to the Memorandum, he had "authorized the deployment of 200 South Carolina National Guardsmen to Washington, D.C." in order to "support federal law enforcement activities under [the Memorandum]."[10]

37. Governor McMaster's announcement also said that South Carolina National Guard personnel would "stand with President Trump as he works to restore law and order to our nation's capital and ensure safety for all who live, work, and visit there." That deployment ended more than one month later.

38. On November 26, 2025, Governor McMaster used the social media network X (formerly Twitter) to announce a second deployment. He posted that: "Next week over 300 SC Guardsmen will be returning to Washington, DC – as previously scheduled . . . ."[11]

III. National Guard Deployments and South Carolina Law

39. Crime is not out of control in the District of Columbia; Washington, D.C., is not suffering an increase in violent crime; and Washington, D.C., is not experiencing rising violence. But ultimately, it is not these facts—but rather South Carolina law—that establishes the unlawfulness of Governor McMaster's deployment.

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[10] S.C. Office of the Governor, *Gov. Henry McMaster Authorizes Deployment of National Guard to Washington, D.C.* (Aug. 16, 2025), https://perma.cc/2TRK-SJXH.

[11] Gov. Henry McMaster (@henrymcmaster), X, "Next week over 300 SC Guardsmen will be returning to Washington, D.C." (Nov. 26, 2025), https://perma.cc/R496-4DT4

40. Every state's National Guard is a state agency, typically under state control. Generally speaking, the National Guard may be deployed in one of three ways.

41. First, the National Guard may be deployed within its own borders by order of the state's commander-in-chief. In this capacity, the National Guard fulfills familiar roles, such as supporting disaster relief.

42. Second, the National Guard may be "call[ed] into Federal service" by the President. 10 U.S.C. § 12406. This form of service is a "Title 10 deployment." In a Title 10 deployment, National Guard personnel are fully federalized; they become members of the United States Army Reserve or Air Force Reserve. Governors have no authority to refuse a Title 10 deployment.

43. Third, and chiefly relevant here, the National Guard may be deployed in a hybrid federal-state status known as a "Title 32 deployment." In a Title 32 deployment, the President or Secretary of Defense "request[s]" the National Guard's "[s]upport" of a federal operation. 32 U.S.C. § 502(f)(2)(A). If a state agrees to a Title 32 deployment request, the federal government pays for the cost of the deployment, but the National Guard personnel remain state actors.

44. Because a governor's agreement to a Title 32 request is not mandatory, it is constrained by state law. *See District of Columbia v. Trump*, No. 25-5418, 2025 WL 3673674, at *10 (D.C. Cir. Dec. 17, 2025) (remedy for a governor's unlawful assent to Title 32 deployment "would be a suit against that governor for violating state law").

45. South Carolina law thus restricts the current deployment of the South Carolina National Guard. *District of Columbia v. Trump*, No. 25-cv-3005 (JMC), 2025 WL 3240331, at *24 (D.D.C. Nov. 20, 2025) ("The power to deploy the National Guard comes from the governor's authorities under state law[.] . . . [T]o accept the mission, the state governor must exercise authorities *that already exist* under state

law.") (emphasis in original), injunction stayed pending appeal on other grounds, 2025 WL 3673674 (D.C. Cir. Dec. 17, 2025). South Carolina has already acknowledged the role of state law in governing the deployment to the District of Columbia in separate litigation. *See* Brief of Amici Curiae States (including South Carolina), *District of Columbia v. Trump*, 2025 WL 3089667, § II(b) (Sept. 16, 2025) ("The President requested assistance from the States . . . a request which the Governors of the States did not have to yield to . . . *Amici* States . . . are in the best position to speak to the actions and intentions behind the deployment; the troops were deployed pursuant to their Governors' orders under Title 32 status.").

46. The Legislature has limited the circumstances in which the Governor is permitted to deploy the National Guard.

47. Pursuant to Section 25-1-1820 of the South Carolina Code, the Governor can activate the South Carolina National Guard only:

> (a) in case of war, (b) in event or danger of invasion by a foreign nation, (c) there is a rebellion or danger of rebellion against the authority of the government of the United States, (d) the President issues orders to execute the laws of the United States, (e) for preventing, repelling or suppressing invasion, insurrection or riot, (f) for aiding civil officers in the execution of the laws, in which cases the Governor or local commander as provided for in Sections 25-1-1840 to 25-1-1880 shall order out for active service, by draft or otherwise, as many of the National Guard as necessity demands, or (g) during natural disaster or local emergency whenever the lives and property of the State's citizens are threatened.

S.C. Code Ann. § 25-1-1820

48. The Governor's authority to deploy those activated personnel is provided by Section 25-1-1840, which permits deployment only:

> [i]n the event of (a) war, insurrection, rebellion, invasion, tumult, riot or a mob, (b) a body of men acting together by force with intent to commit a felony, to offer violence to persons or property or by force and violence to break and resist the laws of this State

> or of the United States, (c) in case of the imminent danger of the occurrence of any such events, or (d) in the event of public disaster[.]

S.C. Code Ann. § 25-1-1840.

49. It is "an elementary principle[] that the laws of one State have no operation outside of its territory, except so far as is allowed by comity." *Pennoyer v. Neff*, 95 U.S. (5 Otto) 714, 722 (1877)). "[T]he jurisdiction of a state is restricted to its own territorial limits." *Drs. Hosp. of Augusta, L.L.C. v. CompTrust AGC Workers' Comp. Tr. Fund*, 371 S.C. 5, 8, 636 S.E.2d 862, 863 (2006) (quoting *Ex parte First Pa. Banking & Trust Co.*, 247 S.C. 506, 507–08, 148 S.E.2d 373, 374 (1966)). Such a rule is required by our Nation's federal system: "The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others." *Id.* 371 S.C. at 8-9, 636 S.E.2d at 863-64 (quoting *Pennoyer*, 95 U.S. (5 Otto) at 722); *see also Stevens v. Brown*, 20 W. Va. 450 (1882).

50. Section 24-1-1840 does not permit the Governor's ongoing Title 32 deployment of the South Carolina National Guard in Washington, D.C., nor did it permit him to agree to the deployment in the first place.

51. Finally, although the South Carolina National Guard is separately authorized to assist in disaster-relief efforts outside South Carolina through the Emergency Management Assistance Compact ("EMAC"), s*ee* S.C. Code Ann. § 25-9-420, the ongoing deployment in Washington, D.C., is a Title 32 deployment and not an EMAC deployment. *See*, *e.g.*, Brief of Amici Curiae States, *District of Columbia vs. Trump*, 2025 WL 3089667 at § II.B ("The National Guard troops deployed to the District from the States are plainly deployed under Title 32 status."); D.C. Code § 7-2332, art. IV(b). Therefore, EMAC is not relevant to this case.

CAUSES OF ACTION

First Cause of Action
Declaratory Judgment

52. The preceding paragraphs are incorporated by reference as if restated fully herein.

53. The Uniform Declaratory Judgments Act, S.C. Code § 15-53-10, *et seq.*, provides:

> Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

S.C. Code § 15-53-20.

54. Governor McMaster's agreement to the ongoing Title 32 deployment of National Guard personnel in Washington, D.C., exceeds his lawful authority under state law.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully prays that this Court will:

A. Issue a declaratory judgment that Governor McMaster's deployment of South Carolina National Guard personnel to Washington, D.C., announced on November 26, 2025, exceeds his legal authority and is therefore unlawful and *ultra vires*;

B. Issue a permanent injunction vacating Governor McMaster's agreement to the Title 32 deployment announced on November 26, 2025;

C. Issue a permanent injunction forbidding Governor McMaster from ordering further deployments of South Carolina National Guard personnel in response to either the Executive Order or the Memorandum;

D. Issue a permanent injunction forbidding Adjutant General Robin B. Stilwell from further implementation of Governor McMaster's deployment of South Carolina National Guard personnel announced on November 26, 2025;

E. Grant such other relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this Seventh day of January 2026.

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