

CHILDS & HALLIGAN

A PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

Kenneth L. Childs
William F. Halligan
Kathryn Long Mahoney
Allen D. Smith†
Shirley M. Fawley*
John M. Reagle**
Vernie L. Williams

The Tower at 1301 Gervais Street, Suite 900, Columbia, SC 29201
Post Office Box 11367, Columbia, SC 29211-1367

Telephone (803) 254-4035
Facsimile (803) 771-4422

Thomas K. Barlow**
Allison Aiken Hanna
Keith R. Powell***
Connie P. Jackson
Kimberly Kelley Blackburn
Jasmine S. Rogers**

May 22, 2009

†Certified Specialist in Employment
and Labor Law
*Also admitted in District of Columbia
**Also admitted in North Carolina
***Also admitted in Missouri
**Also admitted in Georgia

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk of the Supreme Court
Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201

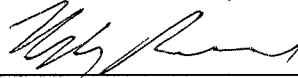
Re: South Carolina Association of School Administrators, Petitioner, v. The Honorable Mark Sanford, in his official capacity as the Governor of the State of South Carolina, and The Honorable Jim Rex, in his official capacity as the State Superintendent of Education of South Carolina, Respondents.

Dear Mr. Shearouse:

Enclosed for filing pursuant to Rule 229(c), SCACR, is a Notice of Petition for Original Jurisdiction, a Petition for Original Jurisdiction, a Complaint, and Proof of Service on the Respondents.

Sincerely yours,

CHILDS & HALLIGAN, P.A.



Kenneth L. Childs
William F. Halligan
John M. Reagle
Keith R. Powell

P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Petitioner

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

South Carolina Association of School Administrators,

Petitioner,

v.

The Honorable Mark Sanford, in his official capacity as
the Governor of the State of South Carolina, and
The Honorable Jim Rex, in his official capacity as the
State Superintendent of Education of South Carolina,

Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that he/she has served the foregoing **PETITION FOR ORIGINAL JURISDICTION, COMPLAINT, and NOTICE** pursuant to Rule 229, SCACR, and Rule 4(d)(5), SCRCP, upon:

Governor Mark Sanford
Office of the Governor
State Capitol Building
1100 Gervais Street
Columbia, SC 29201

as shown in the attached affidavit, with copy via certified mail to:

The Honorable Henry McMaster
Attorney General, State of South Carolina
1000 Assembly Street, Room 319
Columbia, SC 29201

This 22 day of May, 2009.

Sheri L. Wainwright
CHILDS & HALLIGAN, P.A.
The Tower at 1301 Gervais Street, Suite 900
Columbia, SC 29211
(803) 254-4035

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

South Carolina Association of School Administrators,

Petitioner,

v.

The Honorable Mark Sanford, in his official capacity as
the Governor of the State of South Carolina, and
The Honorable Jim Rex, in his official capacity as the
State Superintendent of Education of South Carolina,

Respondents.

AFFIDAVIT OF SERVICE

Personally appeared before me Sheri L. Wainscott, who being first duly sworn, deposes
and says as follows:

1. I am employed with the law firm of Childs & Halligan, P.A.
2. I attest that I served by hand delivery the **PETITION FOR ORIGINAL JURISDICTION, COMPLAINT, and NOTICE** in the above-captioned lawsuit to Judy Nance in the Governor's Office at 3:27 p.m. on Friday, May 22, 2009, at 1100 Gervais Street, Columbia, South Carolina.

AFFIANT FURTHER SAYETH NAUGHT.

Sheri L. Wainscott
Sheri L. Wainscott

SWORN TO BEFORE ME THIS 22nd
DAY OF May, 2009

Deanne A. Davis

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: 01-23-12

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

South Carolina Association of School Administrators,

Petitioner,

v.

The Honorable Mark Sanford, in his official capacity as
the Governor of the State of South Carolina, and
The Honorable Jim Rex, in his official capacity as the
State Superintendent of Education of South Carolina,

Respondents.

PROOF OF SERVICE

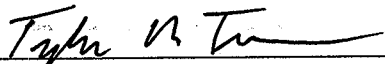
The undersigned hereby certifies that he/she has served the foregoing **PETITION FOR ORIGINAL JURISDICTION, COMPLAINT, and NOTICE** pursuant to Rule 229, SCACR and Rule 4(d)(5), SCRCP, upon:

The Honorable Jim Rex
State Superintendent of Education
1429 Senate Street, Suite 1006
Columbia, SC 29201

as shown in the attached affidavit, with copy via certified mail to:

The Honorable Henry McMaster
Attorney General, State of South Carolina
1000 Assembly Street, Room 319
Columbia, SC 29201

This 22 day of May, 2009.



CHILDS & HALLIGAN, P.A.
The Tower at 1301 Gervais Street, Suite 900
Columbia, SC 29211
(803) 254-4035

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

South Carolina Association of School Administrators,

Petitioner,

v.

The Honorable Mark Sanford, in his official capacity as
the Governor of the State of South Carolina, and
The Honorable Jim Rex, in his official capacity as the
State Superintendent of Education of South Carolina,

Respondents.

AFFIDAVIT OF SERVICE

Personally appeared before me Tyler Turner, who being first duly sworn, deposes and
says as follows:

1. I am employed with the law firm of Childs & Halligan, P.A.
2. I attest that I served by hand delivery the **PETITION FOR ORIGINAL
JURISDICTION, COMPLAINT, and NOTICE** in the above-captioned lawsuit to
Noelle P. Redd in the State Superintendent of Education's Office at
3:30 p.m. on Friday, May 22, 2009, at 1429 Senate Street, Columbia, South Carolina.

AFFIANT FURTHER SAYETH NAUGHT.

Tyler M. Turner
Tyler Turner

SWORN TO BEFORE ME THIS 22nd
DAY OF May, 2009

Deanne L. Davis
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: 01-23-12

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

South Carolina Association of School Administrators,

Petitioner,

v.

The Honorable Mark Sanford, in his official capacity
as the Governor of the State of South Carolina, and
The Honorable Jim Rex, in his official capacity as the
State Superintendent of Education of South Carolina,

Respondents.

NOTICE OF PETITION FOR ORIGINAL JURISDICTION

TO: The Honorable Mark Sanford, in his official capacity as the Governor of the State of South Carolina, and The Honorable Jim Rex, in his official capacity as the State Superintendent of Education of South Carolina:

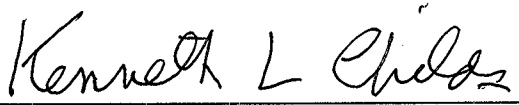
YOU ARE HEREBY NOTIFIED that South Carolina Association of School Administrators ("Petitioner") has filed a Petition for Original Jurisdiction in the South Carolina Supreme Court. A copy of that Petition with attached exhibits and an accompanying Complaint are hereby served upon you.

YOU ARE FURTHER NOTIFIED that, pursuant to Rule 229 of the South Carolina Appellate Court Rules, "[a]ny party opposing the petition shall have twenty (20) days from the date of service to serve and file an original and six (6) copies of his return with the Clerk of the

Supreme Court and serve on all parties a copy of the return. Failure of a party to timely file a return may be deemed a consent by that party to the matter being heard in the original jurisdiction" of the Supreme Court. If you fail to file a Return within the specified time, Petitioner will apply to the Supreme Court for the relief demanded in its Petition and Complaint. You are directed to serve any Return to the Petition on the undersigned counsel for Petitioners at their respective offices.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: 

Kenneth L. Childs, S.C. Bar No. 1217
William F. Halligan, S.C. Bar No. 2607
John M. Reagle, S.C. Bar No. 14185
Keith R. Powell, S.C. Bar No. 69292

P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Petitioner

May 22, 2009

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

South Carolina Association of School Administrators,

Petitioner,

v.

The Honorable Mark Sanford, in his official capacity
as the Governor of the State of South Carolina, and
The Honorable Jim Rex, in his official capacity as the
State Superintendent of Education of South Carolina,

Respondents.

PETITION FOR ORIGINAL JURISDICTION

South Carolina Association of School Administrators ("Petitioner"), brings this action against the Honorable Mark Sanford, in his official capacity as the Governor of the State of South Carolina, and The Honorable Jim Rex, in his official capacity as the State Superintendent of Education of South Carolina, ("Respondents"). Petitioner seeks declaratory and injunctive relief pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 to -140 (2005) and Rule 57, SCRCR, as well as a writ of mandamus, S.C. Code Ann. § 14-3-310 (Supreme Court has power to issue remedial and original writs). Petitioner further seeks to bring this action in the original jurisdiction of the Supreme Court pursuant to Article V, § 5 of the South Carolina Constitution, South Carolina Code Ann. § 14-3-310 (1976) and Rule 229, SCACR. Petitioner has filed this Petition for Original Jurisdiction in the Supreme Court, along with the Notice and Complaint.

Introduction

This is an action of significant public interest, and time is of the essence. Petitioner seeks appropriate orders from this Court requiring the Defendants to comply with South Carolina law that requires them to complete an application for "Stabilization Funds" available from the United States government, which funds have been appropriated by the General Assembly for the 2009-2010 fiscal year ("FY 2010").

Not only does the State (and Petitioner's) FY 2010 begin on July 1, 2009, but also that date has also become the watershed date with regard to South Carolina either accessing the Stabilization Funds, or seeing them pass to other states instead. On May 13, 2009, the United States Secretary of Education published a notice in the Federal Register stating:

Under the State Fiscal Stabilization Fund (Stabilization) program, authorized in Title XIV of the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111-5, the U.S. Department of Education (Department) awards grants on a formula

basis to Governors to help stabilize State and local government budgets in order to minimize and avoid reductions in education and other essential public services. ... In this notice, we establish the deadline by which a Governor must submit the State's application for Phase 1 funding under the Stabilization program.

Application Deadline: July 1, 2009, 4:30:00 p.m. Washington, DC time. Governors must submit an application electronically by the deadline in this notice. If a Governor fails to submit the State's application by this deadline, the State will not receive any Phase 1 or Phase 2 Stabilization funds.

...
If a Governor does not submit the State's application for Phase 1 funding by the deadline in this notice, the Department will allocate the funds that were reserved for the State to those States that have submitted timely applications. A State that fails to submit an application by the deadline in this notice will not receive any Phase 1 or Phase 2 Stabilization funds.

74 Fed. Reg. 22530 (May 13, 2009).

Parties

Petitioner South Carolina Association of School Administrators (or "SCASA") is a South Carolina Nonprofit Corporation. SCASA's membership consists of school district superintendents, principals of schools, directors of career and technology centers, directors of adult education programs, school personnel administrators and allied school administrators employed in diverse school districts across the State of South Carolina. Its members have direct knowledge of the laws and regulations impacting the public school system and their implementation, as well as the funding provided by the State to support and maintain its public schools. SCASA's mission statement is: "The mission of SCASA, a united alliance of diverse school leaders and the leading force for public education in our state, is to advocate for a superior education for the citizens of South Carolina by influencing education legislation and policy,

stimulating and fostering support, building successful coalitions, ensuring a cadre of effective leaders, and providing programs and services for members."¹

Petitioner well represents the interests of its members, as well as all South Carolina school districts existing pursuant to S.C. Code Ann. §§ 59-1-160 and 59-17-10 (2004) (the "School Districts"). Each School District is governed by a Board of Trustees pursuant to the School Code and various special acts of the General Assembly. School Districts operate "public schools" as defined in S.C. Code Ann. § 59-1-120 (2004), and employs "teachers" as defined in S.C. Code Ann. § 59-1-130 (2004), including Petitioner's members. School Districts, through the professional efforts of Petitioner's members and other staff, must provide educational programs that comply with, inter alia, the requirements of the State Board of Education per S.C. Code Ann. §§ 59-5-60, -65 (2004 and Supp. 2008), and the "performance-based accountability system for public education" implemented by the General Assembly in the Education Accountability Act, S.C. Code Ann. §§ 59-18-100 et seq. (2004 and Supp. 2008). Each School District is funded, in part, by appropriations in the State Budget, including Education Finance Act ("EFA") funds.

EFA funds to School Districts are based on the amount of Education Finance Act funds appropriated by the General Assembly in the State Budget, the annual "base student cost" number established annually by the General Assembly, a School District's annually-calculated "index of taxpaying ability," and a School District's annual student enrollment count as weighted for various types of pupils. S.C. Code Ann. §§ 59-20-10 et seq. (2004 and Supp. 2008); see, Richland County v. Campbell, 294 S.C. 346, 364 S.E.2d 470 (1988). If the EFA Base Student

¹ <http://www.scasa.org/displaycommon.cfm?an=1&subarticlenbr=1> (visited May 22, 2009); see generally, <http://scasa.org/>

Cost² for FY 2010 is \$2,034, School Districts will be appropriated \$1,253,732,987 in EFA Funds pursuant to Part IA of the State Budget. However, if the Base Student Cost for FY 2010 is \$2,334, School District will be appropriated \$1,438,655,326 in EFA funds pursuant to Parts IA and III of the State Budget.

Respondent Sanford is the Governor of the State of South Carolina. S.C. Const., art. IV. The Governor "shall take care that the laws be faithfully executed." S.C. Const., art. IV, sec. 15.³

Respondent Rex is the current South Carolina State Superintendent of Education pursuant to South Carolina Constitution art. XI, sec. 2, which provides: "There shall be a State Superintendent of Education who shall be the chief administrative officer of the public education system of the State and shall have such qualifications as may be prescribed by law." Among the State Superintendent of Education's statutory powers and duties are: "Have general supervision over and management of all public school funds provided by the State and Federal Governments." S.C. Code Ann. § 59-3-30(2) (2004).⁴ The State Superintendent of Education is also the secretary and administrative officer to the State Board of Education. S.C. Code Ann. § 59-3-30(1) (2004). He must organize, staff and administer a State Department of Education;

² The EFA and "base student cost" are discussed *infra* in more detail.

³ South Carolina Constitution, art. I, sec. 23, provides that: "The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms."

⁴ Statutory powers and duties of the State Superintendent of Education are within the "South Carolina School Code" as defined in S.C. Code Ann. § 59-1-10 (2004) ("School Code"). The purpose of the School Code is "to provide for a State system of public education and for the establishment, organization, operation, and support of such State system." S.C. Code Ann. § 59-1-20 (2004). Any section of the School Code that is "ambiguous or otherwise subject to more than one interpretation ... shall be liberally construed to the extent that the general purpose of the entire [School] Code and of public education may be advanced." S.C. Code Ann. § 59-1-30 (2004).

keep the public informed as to the problems and needs of the public schools; provide for the professional improvement of teachers and for the cultivation of public sentiment for public education; administer, through the State Department of Education, all policies and procedures adopted by the State Board of Education; and assume such other responsibilities and perform such other duties as may be prescribed by law or as may be assigned by the State Board of Education. S.C. Code Ann. § 59-3-30(3)-(7) (2004).

Petitioners assert that Respondent Rex has been harmed, and will continue to be harmed, by the failure of the Governor to comply with the directives of the General Assembly in Part III of the State Budget, and is therefore a necessary party to this action. The Governor's failure to act impairs the dignity of the office of the State Superintendent of Education, and it impairs the State Superintendent's performance of his official powers and duties, including the power and duty to have general supervision over and management of all public school funds provided by the State and Federal Governments. The Governor's failure to act will, if not reversed, cause the Base Student Cost to be funded at a lower level than as appropriated by the General Assembly, and is therefore causing harm to the implementation of the educational program of the State as established by the General Assembly and the State Board of Education, and administered by the State Superintendent of Education.

ARRA Provisions

The American Recovery and Reinvestment Act of 2009, P.L. 111-5, 123 Stat. 115, as amended by P.L. 111-8, 123 Stat. 524 (hereafter the "ARRA") provides for a "State Fiscal Stabilization Fund." ARRA, Division A, Title XIV (§§ 14001 et seq.).⁵ To access the

⁵ The Congressional purposes of the ARRA are:

(1) To preserve and create jobs and promote economic recovery.

continued . . .

Stabilization Fund, the ARRA requires that the governor of a "State desiring to receive an allocation under section 14001" submit applications that include certain assurances, provide baseline data regarding each of the areas described in such assurances, and describe how States intend to use their allocations. ARRA § 14005.⁶

Such assurances shall include that the State will: in each of fiscal years 2009, 2010, and 2011, maintain State support for elementary, secondary, and public postsecondary education at least at the levels in fiscal year 2006, and address 4 key areas: (1) achieve equity in teacher distribution, (2) establish a longitudinal data system that includes the elements described in the America COMPETES Act, (3) enhance the quality of academic assessments relating to English language learners and students with disabilities, and improve State academic content standards and student academic achievement standards, and (4) ensure compliance with corrective actions required for low-performing schools. Once a state receives the money, it must use 81.8% of the funds to maintain support at fiscal year 2008 or 2009 levels (whichever is greater) for school districts and public institutions of higher education. The state must distribute money to school districts using existing state formulas. The funding is available for the 2009, 2010 and 2011 fiscal years. A state must use 18.2% of the funds to support "government services," such as public safety programs and modernization, renovation, and repair of public school facilities. See ARRA § 14002.

(2) To assist those most impacted by the recession.

(3) To provide investments needed to increase economic efficiency by spurring technological advances in science and health.

(4) To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.

(5) To stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.

ARRA, § 3.

⁶ The ARRA does not define "Governor."

As noted above, the Secretary of Education has imposed a July 1, 2009, deadline for Stabilization Fund applications. 74 Fed. Reg. 22530 (May 13, 2009). If South Carolina does not apply for Stabilization Fund money, the money will be allocated to other states that do apply. Id. The Governor has indicated both in public *fora* and now in a federal civil action, that unless the State Budget is changed, he will not make application pursuant to the ARRA.⁷

South Carolina Legislation

South Carolina Constitution, art. I, sec. 8, provides that: "In the government of this State, 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." The Constitution of the State grants the General Assembly special prerogatives and duties in the field of public education. The General Assembly's legislative authority may not be delegated. State ex rel. McLeod v. McInnis, 278 S.C. 307, 295 S.E.2d 633 (1982). The Constitution of the State further grants a portion of the executive powers of the State with regard to public education to the State Superintendent of Education. The Constitution gives no *legislative* powers with regard to public education to the Governor.

The State Constitution requires that the "General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable." S.C. Const. art. XI, sec. 3. "[T]he constitutional duty to ensure the provision of a

⁷ The Governor has plead to the Federal District Court that he has "decided not to apply for [Stabilization Fund] funds from the [United States] Department of Education unless the General Assembly agrees to use an equivalent amount of state funds to pay down state debt." Complaint in Sanford v. McMaster, CA No. 3:09-1322-JFA (May 20, 2009) (D.S.C.) at ¶ 3.

minimally adequate education to each student in South Carolina rests on the *legislative branch* of government." Abbeville County School Dist. v. State, 335 S.C. 58, 69, 515 S.E.2d 535, 541 (1999) (emphasis added). The South Carolina Education Finance Act of 1977 (the "EFA") "base student cost shall be established annually by the General Assembly." S.C. Code Ann. § 59-20-40(1)(b) (2004).

Base Student Cost for FY 2010

Part IB of the State's Fiscal Year 2010 Budget (Act R.49 of 2009) (the "State Budget"), Proviso 1.3, provides that:

1.3. (SDE: EFA Formula/Base Student Cost Inflation Factor) To the extent possible within available funds, it is the intent of the General Assembly to provide for 100 percent of full implementation of the Education Finance Act to include an inflation factor projected by the Division of Budget and Analyses to match inflation wages of public school employees in the Southeast. The base student cost for the current fiscal year for Part IA has been determined to be \$2,034 and the base student cost for Part III has been determined to be \$300 for a total base student cost of \$2,334.

The State Budget Part IA appropriation for Education Finance Act is \$1,253,732,987. (Part IA, Section XIII). The State Budget Part III appropriation for Education Finance Act is \$184,922,339. (Part III, Section 2(A)(1)).⁸ As noted below, Part III of the State Budget is the appropriation by the General Assembly of the Stabilization Fund money, for which South Carolina's application must be received by the U.S. Department of Education no later than the afternoon of July 1, 2009.

Part III of the State Budget

Part III of the State Budget provides, in pertinent part:

⁸ Following the Governor's vetoes of Part I and Part III of the State Budget, the General Assembly overrode the vetoes on May 20, 2009.

SECTION 1. Pursuant to Title XVI of the American Recovery and Reinvestment Act of 2009 (ARRA), the Governor has certified that (1) the State will request and use funds provided by the ARRA, and (2) the funds will be used to create jobs and promote economic growth. As a result of the Governor's action, the General Assembly recognizes \$694,060,272 of federal funds pursuant to the State Fiscal Stabilization Fund established by Title XIV of the ARRA and that these funds are authorized for appropriation pursuant to the provisions of this Part. In order to fund the appropriations provided by this Part, the Governor and the State Superintendent of Education shall take all action necessary and required by the ARRA and the U.S. Secretary of Education in order to secure the receipt of the funds recognized and authorized for appropriation pursuant to this section. The action required by this Part includes but is not limited to: (1) within five days of the effective date of this Part, the Governor shall submit an application to the United State's Secretary of Education to obtain phase one State Fiscal Stabilization Funds, and (2) within thirty days of phase two State Fiscal Stabilization Funds becoming available or thirty days following the effective date of this act, whichever is later, the Governor shall submit an application to the United State's Secretary of Education to obtain phase two State Fiscal Stabilization Funds. The State Superintendent of Education shall take all action necessary and provide any information needed to assist the Governor in fulfilling his obligation to apply for State Fiscal Stabilization funds pursuant to this Section.

SECTION 2. (A) Upon the receipt of the funds in Section 1, the following sums must immediately be transferred to the following agencies to be expended for the specified purposes to supplement appropriations made for the expenses of state government in the annual general appropriation act for Fiscal Year 2009-10 and the Office of State Budget is directed to increase agency federal fund authorization for funds from the State Budget Stabilization Fund allocated herein:

(1) H63 - Department of Education
EFA Base Student Cost \$ 184,922,339

...

(F) For purposes of the expenditures authorized by this section, the funds must be used in a manner consistent with the provisions of the State Fiscal Stabilization Fund established by the American Recovery and Reinvestment Act of 2009 and the provisions of this act. ...

Nothing in the ARRA provides that a governor of any state must make his or her application for ARRA Stabilization Funds *willingly* or *voluntarily*.⁹ The General Assembly may require the Governor to take specific actions with regard to appropriated funds. State ex rel. Condon v. Hodges, 349 S.C. 232, 562 S.E.2d 623 (2002). This is exactly what Part III of the State Budget does. Yet, this does nothing to offend any part of the ARRA or other federal law. On the contrary, it would be a fundamental affront to states' dignity if Congress were able to rearrange any of the distribution of powers in a state government. An interpretation of ARRA as a federal statute whereby Congress gives the South Carolina Governor more power over appropriations *viz a viz* the South Carolina General Assembly, than the Governor has under the State Constitution, is clearly within the class of cases where Congress is forbidden to "commandeer" the machinery of the State executive functions of state government for federal ends. See, Printz v. United States, 521 U.S. 898 (1997). This is particularly acute in the field of public education, where our State Constitution and our Supreme Court are both uniquely explicit as to the extent of the General Assembly's authority and responsibility.

Petitioner believes that Dr. Rex will, to the extent possible without the cooperation of the Governor, take "all action necessary and provide any information needed to assist the Governor in fulfilling his obligation to apply for State Fiscal Stabilization funds pursuant to this Section," as required by Part III, section 1 of the State Budget. However, Petitioner also believes, particularly in light of the adjournment of the General Assembly, that the Governor will not (and by the time this cause is heard, will not have), "within five days of the effective date of this Part, ... submit[ed] an application to the United State's Secretary of Education to obtain phase one State Fiscal Stabilization Funds ..." as required by Part III.

⁹ The Governor's federal lawsuit against the State Attorney General founders on this point.

Relief Sought by Petitioner

Petitioner's Complaint therefore seeks a declaratory judgment declaring the rights, status and other legal relations between the parties with regard to Part III of the State Budget. It further request a declaration that the Respondents must take the actions prescribed and required by Title III of the State Budget. Petitioner requests equitable relief appropriate to the declarations and sufficient to cause the Respondents to perform the duties imposed upon the Governor by South Carolina law with regard to Part III of the State Budget.

Petitioner further and/or in the alterative seeks a writ of mandamus to compel the Governor to complete the tasks required of the Governor in Part III of the State Budget.¹⁰ The courts have jurisdiction to compel ministerial acts by the Governor. Fowler v. Beasley, 322 S.C. 463, 472 S.E.2d 630; Easler v. Maybank, 191 S.C. 511, 5 S.E.2d 288 (1939). A ministerial act is "an act that an official is required to perform upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed." 52 Am. Jur. 2d Mandamus § 52. To obtain a writ of mandamus requiring the performance of an act, the petitioner must show: (1) a duty of respondent to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy.

The State Budget establishes the Governor's duty to perform the act of executing the ARRA application which is a direct and positive command of the law, without the exercise of discretion by the Governor. The Governor's action is ministerial because all discretionary details

¹⁰ At present, Petitioners do not believe a writ of mandamus will be necessary to compel Respondent Rex to perform his legal duties.

of how ARRA funds will be used for the Article XI education system are the duty, under State law, of the State Superintendent of Education under § 59-3-30(2), except as otherwise directed by the General Assembly under current law or future legislation including state educational funding formulas and because the State Budget provides in Part III, sec. 2(F), "the funds must be used in a manner consistent with the provisions of the State Fiscal Stabilization Fund established by the American Recovery and Reinvestment Act of 2009 and the provisions of this act."

Petitioner, its members, and the School Districts for which they work and upon whom they depend for employment, all face immediate threat of harm from the failure of the Governor to comply with the directives of the General Assembly in Part III of the State Budget so as to obtain the funds appropriated by the General Assembly as necessary to fund the EFA Base Student Cost at \$2,334 instead of \$2,034. Failure to obtain such funds will directly impair the ability of the School Districts to implement mandatory components of the State educational program established by the General Assembly and the State Board of Education, and administered by the State Superintendent of Education. The threat of loss of such funds has already caused School Districts to fail to renew significant numbers of teaching contracts (including Petitioner's members), and has caused School Districts to plan to educate children in larger-sized classes with fewer teaching staff and assistants, thus impairing the delivery of instruction in the State. Effects of reduction in EFA funds also will impair the ability of the School Districts to maintain or implement their various locally-determined aspects of the education and extracurricular programs of the School Districts, which have been developed by the School Districts' Board of Trustees.

Finally, Petitioner requests a declaration that, as a matter of State law, the State Superintendent of Education has been empowered by the General Assembly to act in the name of

the Governor to make the application for ARRA Stabilization Fund money allocated to the State and to take all ancillary steps necessary to perfect the application and the receipt of ARRA Stabilization Funds by the State for use as appropriated in Part III of the State Budget. In other words, the General Assembly, as authorized by Article XI of the State Constitution, has given the State Superintendent of Education the legal authority and power to make the ARRA Stabilization Fund application on behalf of the State. As a matter of state law, the State Superintendent of Education and the General Assembly, together, have or can make all statements and assurances necessary for purposes of South Carolina's ARRA Stabilization Fund application, in the name of South Carolina as a "State desiring to receive an allocation under section 14001." ARRA § 14005(a).

Original Jurisdiction is Warranted

Special grounds of emergency and the public interest, as well as other good reasons, exist for the Supreme Court to hear this matter in its original jurisdiction. The time it would take for this matter to proceed through circuit court and the conventional appellate process would be detrimental to Petitioner's rights in any matter involving annual budgeting, but acutely so in light of the Secretary of Education's July 1, 2009, deadline. The School Districts need certainty in order to budget for the FY 2010 fiscal year. Depending on *that* process are the jobs of many South Carolinians, including Petitioner's members. The purposes of the ARRA, *supra* at n.4, are therefore served by a prompt decision.

Petitioner submits that the public importance of the issues presented in this case, as well as the need for a timely resolution of these issues, make this case appropriate for consideration in the Court's original jurisdiction. See e.g. Chem-Nuclear Systems, LLC v. S.C. Board of Health and Environmental Control, 374 S.C. 201, 648 S.E.2d 601 (2007); S.C. Dept. of

Mental Health v. McMaster, 372 S.C. 175, 642 S.E.2d 552 (2007); Layman v. State, 368 S.C. 631, 630 S.E.2d 265 (2006); Sloan v. Wilkins, 362 S.C. 430, 608 S.E.2d 579 (2005); City of Abbeville v. Aiken Elec. Coop., Inc., 287 S.C. 361, 338 S.E.2d 831 (1985).

CONCLUSION

Petitioner requests that the Court grant the petition to hear this case in its original jurisdiction and establish an expedited schedule for the parties to prepare a joint appendix and briefs.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: 

Kenneth L. Childs, S.C. Bar No. 1217
William F. Halligan, S.C. Bar No. 2607
John M. Reagle, S.C. Bar No. 14185
Keith R. Powell, S.C. Bar No. 69292

P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Petitioner

May 22, 2009
Columbia, South Carolina

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

South Carolina Association of School
Administrators
Plaintiff,

vs.

The Honorable Mark Sanford, in his
official capacity as the Governor of the
State of South Carolina, and The
Honorable Jim Rex, in his official
capacity as the State Superintendent of
Education of South Carolina,

Defendants.

COMPLAINT

Plaintiff, complaining of the Defendants, plead as follows:

General Allegations

1 Plaintiff South Carolina Association of School Administrators (or "SCASA") is a South Carolina Nonprofit Corporation. SCASA's membership consists of school district superintendents, principals of schools, directors of career and technology centers, directors of adult education programs, school personnel administrators and allied school administrators employed in diverse school districts across the State of South Carolina. Its members have direct knowledge of the laws and regulations impacting the public school system and their implementation, as well as the funding provided by the State to support and maintain its public schools. SCASA's mission statement is: "The mission of SCASA, a united alliance of

diverse school leaders and the leading force for public education in our state, is to advocate for a superior education for the citizens of South Carolina by influencing education legislation and policy, stimulating and fostering support, building successful coalitions, ensuring a cadre of effective leaders, and providing programs and services for members."

2. Petitioner well represents the interests of its members, as well as all South Carolina school districts existing pursuant to S.C. Code Ann. §§ 59-1-160 and 59-17-10 (2004) (the "School Districts"). Each School District is governed by a Board of Trustees pursuant to the School Code and various special acts of the General Assembly. School Districts operate "public schools" as defined in S.C. Code Ann. § 59-1-120 (2004), and employs "teachers" as defined in S.C. Code Ann. § 59-1-130 (2004), including Petitioner's members. School Districts, through the professional efforts of Petitioner's members and other staff, must provide educational programs that comply with, inter alia, the requirements of the State Board of Education per S.C. Code Ann. §§ 59-5-60, -65 (2004 and Supp. 2008), and the "performance-based accountability system for public education" implemented by the General Assembly in the Education Accountability Act, S.C. Code Ann. §§ 59-18-100 et seq. (2004 and Supp. 2008). Each School District is funded, in part, by appropriations in the State Budget, including Education Finance Act ("EFA") funds.

3. Defendant Sanford is the Governor of the State of South Carolina, and "[t]he Governor shall take care that the laws be faithfully executed." S.C. Const., art. IV, sec. 15.

4. Defendant Dr. Rex is the current South Carolina State Superintendent of Education pursuant to South Carolina Constitution art. XI, sec. 2, which provides: "There shall be a State Superintendent of Education who shall be the chief administrative officer of the public education system of the State and shall have such qualifications as may be prescribed by law."

(a) Statutory powers and duties of the State Superintendent of Education are within the "South Carolina School Code" as defined in S.C. Code Ann. § 59-1-10 (2004) ("School Code"). The purpose of the School Code is "to provide for a State system of public education and for the establishment, organization, operation, and support of such State system." S.C. Code Ann. § 59-1-20 (2004). Any section of the School Code that is "ambiguous or otherwise subject to more than one interpretation ... shall be liberally construed to the extent that the general purpose of the entire [School] Code and of public education may be advanced." S.C. Code Ann. § 59-1-30 (2004).

(b) Among the State Superintendent of Education's statutory powers and duties are: "Have general supervision over and management of all public school funds provided by the State and Federal Governments." S.C. Code Ann. § 59-3-30(2) (2004).

(c) The State Superintendent of Education is also the secretary and administrative officer to the State Board of Education. S.C. Code Ann. § 59-3-30(1) (2004). He must organize, staff and administer a State Department of Education; keep the public informed as to the problems and needs of the public schools; provide for the professional improvement of teachers and for the cultivation of public sentiment for public education; administer, through the State Department of Education, all policies and procedures adopted by the State Board of Education; and assume such other responsibilities and perform such other duties as may be prescribed by law or as may be assigned by the State Board of Education. S.C. Code Ann. § 59-3-30(3)-(7) (2004).

5. The State Constitution requires that the "*General Assembly* shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable." S.C. Const. art. XI, sec. 3 (emphasis added). "[T]he constitutional duty to ensure the provision of a minimally adequate education to each student in South Carolina rests on the

legislative branch of government." Abbeville County School Dist. v. State, 335 S.C. 58, 69, 515 S.E.2d 535, 541 (1999) (emphasis added). The South Carolina Education Finance Act of 1977 (the "EFA") "base student cost shall be established annually *by the General Assembly*." S.C. Code Ann. § 59-20-40(1)(b) (2004) (emphasis added).

6. School Districts are funded, in part, by appropriations in the State Budget, including EFA funds. EFA funds to the School Districts are based on the amount of Education Finance Act funds appropriated by the General Assembly in the State Budget, the annual "base student cost" number established annually by the General Assembly, each School District's annually-calculated "index of taxpaying ability," and each School District's annual student enrollment count as weighted for various types of pupils. S.C. Code Ann. §§ 59-20-10 *et seq.* (2004 and Supp. 2008).

7. South Carolina Constitution, art. I, sec. 8, provides that: "In the government of this State, 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." The Constitution of the State grants the General Assembly special prerogatives and duties in the field of public education. The Constitution of the State further grants a portion of the executive powers of the State with regard to public education to the State Superintendent of Education. However, the Constitution gives no legislative powers with regard to public education to the Governor. The General Assembly's legislative authority may not be delegated. State ex rel. McLeod v. McInnis, 278 S.C. 307, 295 S.E.2d 633 (1982).

8. South Carolina Constitution, art. I, sec. 23, provides that: "The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms."

9. Part IB of the State's Fiscal Year 2010 Budget (Act R.49 of 2009) (the "State Budget"), Proviso 1.3, provides that:

1.3. (SDE: EFA Formula/Base Student Cost Inflation Factor) To the extent possible within available funds, it is the intent of the General Assembly to provide for 100 percent of full implementation of the Education Finance Act to include an inflation factor projected by the Division of Budget and Analyses to match inflation wages of public school employees in the Southeast. The base student cost for the current fiscal year for Part IA has been determined to be \$2,034 and the base student cost for Part III has been determined to be \$300 for a total base student cost of \$2,334.

The State Budget Part IA appropriation for Education Finance Act is \$1,253,732,987. (Part IA, Section XIII). The State Budget Part III appropriation for Education Finance Act is \$184,922,339. (Part III, Section 2(A)(1)).

10. If the EFA Base Student Cost for FY 2010 is \$2,034, School Districts will be appropriated \$1,253,732,987 in EFA Funds pursuant to Part IA of the State Budget. However, if the Base Student Cost for FY 2010 is \$2,334, School District will be appropriated \$1,438,655,326 in EFA funds pursuant to Parts IA and III of the State Budget.

11. The American Recovery and Reinvestment Act of 2009, P.L. 111-5, 123 Stat. 115, as amended by P.L. 111-8, 123 Stat. 524 (hereafter the "ARRA") provides for a "State Fiscal Stabilization Fund." ARRA, Division A, Title XIV (§§ 14001 *et seq.*). To access the Stabilization Fund, the ARRA requires that state governors submit applications that include certain assurances, provide baseline data regarding each of the areas described in such assurances, and describe how States intend to use their allocations. ARRA § 14005. Such assurances shall include that the State will: in each of fiscal years 2009, 2010, and 2011, maintain State support for elementary, secondary, and public postsecondary education at least at the levels in fiscal year 2006, and address four key areas: (1) achieve equity in teacher distribution, (2) establish a longitudinal data system that includes the elements described in the

America COMPETES Act, (3) enhance the quality of academic assessments relating to English language learners and students with disabilities, and improve State academic content standards and student academic achievement standards, and (4) ensure compliance with corrective actions required for low-performing schools. Once a state receives the money, it must use 81.8% of the funds to maintain support at fiscal year 2008 or 2009 levels (whichever is greater) for school districts and public institutions of higher education. The state must distribute money to school districts using existing state formulas. The funding is available for the 2009, 2010 and 2011 fiscal years. A state must use 18.2% of the funds to support "government services," such as public safety programs and modernization, renovation, and repair of public school facilities. See ARRA § 14002. The ARRA does not define "Governor."

12. The Congressional purposes of the ARRA are:

- (1) To preserve and create jobs and promote economic recovery.
- (2) To assist those most impacted by the recession.
- (3) To provide investments needed to increase economic efficiency by spurring technological advances in science and health.
- (4) To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.
- (5) To stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.

ARRA, § 3.

13. Part III of the State Budget provides:

SECTION 1. Pursuant to Title XVI of the American Recovery and Reinvestment Act of 2009 (ARRA), the Governor has certified that (1) the State will request and use funds provided by the ARRA, and (2) the funds will be used to create jobs and promote economic growth. As a result of the Governor's action, the General Assembly recognizes \$694,060,272 of federal funds pursuant to the State Fiscal Stabilization Fund established by Title XIV of the ARRA and that these funds are authorized for appropriation pursuant to the provisions of this Part. In order to fund the appropriations provided by this Part, the Governor and the State Superintendent of Education shall take all action necessary and required by the ARRA and the U.S. Secretary of Education in

order to secure the receipt of the funds recognized and authorized for appropriation pursuant to this section. The action required by this Part includes but is not limited to: (1) within five days of the effective date of this Part, the Governor shall submit an application to the United State's Secretary of Education to obtain phase one State Fiscal Stabilization Funds, and (2) within thirty days of phase two State Fiscal Stabilization Funds becoming available or thirty days following the effective date of this act, whichever is later, the Governor shall submit an application to the United State's Secretary of Education to obtain phase two State Fiscal Stabilization Funds. The State Superintendent of Education shall take all action necessary and provide any information needed to assist the Governor in fulfilling his obligation to apply for State Fiscal Stabilization funds pursuant to this Section.

SECTION 2. (A) Upon the receipt of the funds in Section 1, the following sums must immediately be transferred to the following agencies to be expended for the specified purposes to supplement appropriations made for the expenses of state government in the annual general appropriation act for Fiscal Year 2009-10 and the Office of State Budget is directed to increase agency federal fund authorization for funds from the State Budget Stabilization Fund allocated herein:

(1) H63 - Department of Education
EFA Base Student Cost \$ 184,922,339
...

(F) For purposes of the expenditures authorized by this section, the funds must be used in a manner consistent with the provisions of the State Fiscal Stabilization Fund established by the American Recovery and Reinvestment Act of 2009 and the provisions of this act. ...

14. Following the delivery of the Governor's vetoes of Part I and Part III of the State Budget, the General Assembly overrode the vetoes on May 20, 2009. Thus, Parts I and III of the State Budget took effect on that date.

15. Defendant State Superintendent has, to the extent possible without the cooperation of the Governor, taken "all action necessary and provide any information needed to assist the Governor in fulfilling his obligation to apply for State Fiscal Stabilization funds pursuant to this Section," as required by Part III, section 1 of the State Budget.

16. Defendant Governor asserts in the case encaptioned Governor Mark Sanford v. Henry McMaster, in his official capacity as Attorney General of the State of South Carolina, in the United States District Court for the District of South Carolina, Civil Action 3:09-1322-JFA, Summons dated May 21, 2009, that he will not, "within five days of the effective date of this Part, ... submit an application to the United State's Secretary of Education to obtain phase one State Fiscal Stabilization Funds ..." as required by Part III, section 1.

17. On May 13, 2009, the United States Secretary of Education published a notice in the Federal Register establishing an application deadline of July 1, 2009, and further stating that, "a State that fails to submit an application by the deadline in this notice will not receive any Phase I or Phase II Stabilization funds."

FOR A FIRST CLAIM
Declaratory Judgment and Appropriate Relief

18. All allegations of this Complaint are reiterated herein as if set forth verbatim.

19. Defendant State Superintendent has been harmed, and will continue to be harmed, by the failure of the Governor to comply with the directives of the General Assembly in Part III of the State Budget. The Governor's failure to act impairs the State Superintendent's performance of his official powers and duties, including the power and duty to have general supervision over and management of all public school funds provided by the State and Federal Governments. The Governor's failure to act will, if not reversed, cause the Base Student Cost to be funded at a lower level than as appropriated by the General Assembly, and is therefore causing harm to the implementation of the educational program of the State as established by the General Assembly and the State Board of Education, and administered by the State Superintendent of Education.

20. Plaintiff and the School Districts face immediate threat of harm from the failure of the Governor to comply with the directives of the General Assembly in Part III of the State Budget so as to obtain the funds appropriated by the General Assembly as necessary to fund the EFA Base Student Cost at \$2,334 instead of \$2,034. School Districts' failure to obtain ARRA funds appropriated by the General Assembly will directly impair the ability of the School Districts to implement mandatory components of the State educational program established by the General Assembly and the State Board of Education, and administered by the State Superintendent of Education. The threat of loss of such funds has already caused School District to fail to renew significant numbers of teaching contracts, and has caused School District to plan to educate children in larger classrooms with fewer teaching staff and assistants. Effects of reduction in EFA funds also will impair the ability of the School Districts to maintain or implement various locally-determined aspects of the education and extracurricular programs of the School Districts, which have been developed pursuant to sound pedagogical policies by the School Districts' Board of Trustees.

21. The Governor "shall take care that the laws be faithfully executed." S.C. Const., art. IV, sec. 15. State Budget Part III is the law of the State with which the Governor must comply.

22. Nothing in the ARRA provides that a governor of any state must make his or her application for ARRA Stabilization Funds as a matter of personal choice as a matter of the applicant's state's own law. Further, a federal statute cannot change the constitution of a state. In other words, the ARRA does not change South Carolina law – it instead simply does not address South Carolina law. The General Assembly may require the Governor to take specific actions with regard to appropriated funds. State ex rel. Condon v. Hodges, 349 S.C. 232, 562 S.E.2d 623 (2002). This is exactly what Part III of the State Budget does. Yet, this does nothing to offend any part of the ARRA or other federal law. On the contrary, it would be a fundamental affront to

states' dignity if Congress were able to rearrange the distribution of powers in a state government. An interpretation of ARRA as a federal statute whereby Congress gives the South Carolina Governor *more* power over revenue and appropriations *viz a viz* the South Carolina General Assembly, than the Governor has under the State Constitution, is clearly within the class of cases where Congress is forbidden to "commandeer" the machinery of the State *executive* functions of state government for federal ends. See, Printz v. United States, 521 U.S. 898 (1997). This is particularly acute in the field of public education, where our State Constitution and our Supreme Court are both uniquely explicit as to the extent of the General Assembly's authority and responsibility.

23. The court has power to declare rights, status and other legal relations whether or not further relief is or could be claimed. S.C. Code Ann. § 15-53-20 (2005). Any person whose rights, status or other legal relations are affected by a statute may have determined any question of construction or validity arising under the statute and obtain a declaration of rights, status or other legal relations thereunder. S.C. Code Ann. § 15-53-30 (2005). Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. S.C. Code Ann. § 15-53-120 (2005).

24. Plaintiff therefore seeks a declaratory judgment declaring the rights, status and other legal relations between the parties with regard to Part III of the State Budget. It further requests a declaration that the Governor must take the actions prescribed and required by Title III of the State Budget. It requests equitable relief appropriate to the declarations and sufficient to cause the Governor to perform the duties imposed upon the Governor by South Carolina law with regard to Part III of the State Budget.

FOR A SECOND CLAIM
Writ of Mandamus

25. All allegations of this Complaint are reiterated herein as if set forth verbatim.

26. Plaintiff further and/or in the alternative seeks a writ of mandamus to compel the Governor to complete the tasks required of the Governor in Part III of the State Budget. The courts have jurisdiction to compel ministerial acts by the Governor; a ministerial act is: "an act that an official is required to perform upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed." 52 Am. Jur. 2d Mandamus § 52. E.g., Fowler v. Beasley, 322 S.C. 463, 472 S.E.2d 630 (1996).

27. To obtain a writ of mandamus requiring the performance of an act, the petitioner must show: (1) a duty of respondent to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy.

28. The State Budget establishes the Governor's duty to perform the act of executing the ARRA application which is a direct and positive command of the law, without the exercise of discretion by the Governor.

29. The Governor's action is ministerial because all discretionary details of how ARRA funds will be used for the Article XI education system are the duty, under State law, of the State Superintendent of Education under § 59-3-30(2), except as otherwise directed by the General Assembly under current law or future legislation including state educational funding formulas and because the State Budget provides in Part III, sec. 2(F), "the funds must be used in a manner consistent with the provisions of the State Fiscal Stabilization Fund established by the American Recovery and Reinvestment Act of 2009 and the provisions of this act."

30. The State Superintendent of Education has "general supervision over and management of all public school funds provided by the State and Federal Governments." S.C. Code Ann. § 59-3-30(2) (2004). Defendant State Superintendent has done, and is willing to do all things yet to be done, that are prescribed for the State Superintendent of Education in order to carry out Part III of the State Budget, and to "take all action necessary and provide any information needed to assist the Governor in fulfilling his obligation to apply for State Fiscal Stabilization funds pursuant to this Section," as provided in Part III.

31. As hereinabove alleged, and with reference to the law of the State generally, Plaintiff has legal rights that are impaired by the lack of compliance of the Governor with his ministerial duties in Part III of the State Budget.

32. To the extent the Court does not enter effectual and appropriate declaratory and equitable relief, the Plaintiff has no other remedy at law for the failure of the Governor to perform the legal duties required of him in Part III of the State Budget.

33. The Court should issue its writ of mandamus to compel the Governor immediately to submit an application to the United State's Secretary of Education to obtain phase one State Fiscal Stabilization Funds in accordance with Part III of the State Budget.

FOR A THIRD CLAIM
Further Declaratory Relief

34. All allegations of this Complaint are reiterated herein as if set forth verbatim.

35. Plaintiff requests a declaration that, as a matter of State law, the State Superintendent of Education has been empowered by the General Assembly to act in the name of the Governor to make the application for ARRA Stabilization Fund money allocated to the State and to take all ancillary steps necessary to perfect the application and the receipt of ARRA Stabilization Funds by the State for use as appropriated in Part III of the State Budget. In other

words, the General Assembly, as authorized by Article XI of the State Constitution, has given the State Superintendent of Education the legal authority and power to make the ARRA Stabilization Fund application on behalf of the State. As a matter of state law, the State Superintendent of Education and the General Assembly, together, have or can make all statements and assurances necessary for purposes of South Carolina's ARRA Stabilization Fund application, in the name of South Carolina as a "State desiring to receive an allocation under section 14001." ARRA § 14005(a).

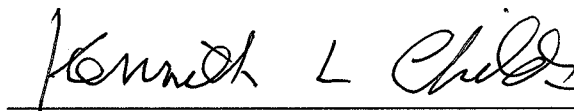
36. Plaintiff further requests such equitable relief as is necessary and proper in light of such declaratory relief as is requested herein.

WHEREFORE, the Plaintiff requests the Court to issue the relief prayed for above in the individual causes of action, with such other and further relief as is just.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By:



Kenneth L. Childs, S.C. Bar No. 1217
William F. Halligan, S.C. Bar No. 2607
John M. Reagle, S.C. Bar No. 14185
Keith R. Powell, S.C. Bar No. 69292

P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Plaintiff

May 22, 2009

Columbia, South Carolina