

**THE STATE OF SOUTH CAROLINA**  
**In the Supreme Court**

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Appellate Case No. 2020-001069

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Dr. Thomasena Adams, Rhonda Polin, Shaun Thacker, Orangeburg  
County School District, Sherry East,  
and the South Carolina Education Association.....**Petitioners**

v.

Governor Henry McMaster, Palmetto Promise Institute,  
South Carolina Office of the Treasurer, and South Carolina  
Department of Administration.....**Respondents.**

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**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF THE  
SOUTH CAROLINA INDEPENDENT COLLEGES AND  
UNIVERSITIES, BOB JONES UNIVERSITY, AND CLINTON  
COLLEGE IN SUPPORT OF RESPONDENTS' REQUEST  
FOR REHEARING**

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The South Carolina Independent Colleges and Universities (hereinafter "SCICU"), Bob Jones University, and Clinton College (collectively "movants") respectfully move this Court for leave to appear as amicus curiae under Rule 213 of the South Carolina Appellate Court Rules. A copy of the proposed brief is attached hereto. As the United States correctly indicated in their brief, this suit concerns federal emergency education funding, and as such the United States has a strong interest in the proper administration of this federal program. Similarly,

the movants herein all have a significant interest in ensuring that grantees administer appropriated funds in accordance with federal law, such that United States Department of Education monies are expended for the purposes for which they are appropriated, returned to the Department when unused, and not handed over to and used at the discretion of state legislatures in violation of federal law. \* \* \*

The movants respectfully request that this Court grant its motion to file the attached amicus brief.

Respectfully submitted,

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October 30, 2020

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**BRIEF OF THE SOUTH CAROLINA INDEPENDENT  
COLLEGES AND UNIVERSITIES, BOB JONES UNIVERSITY,  
AND CLINTON COLLEGE AS AMICUS CURIAE IN SUPPORT  
OF RESPONDENTS' REQUEST FOR REHEARING**

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October 30, 2020



## ARGUMENT

The South Carolina Independent Colleges and Universities (SCICU<sup>1</sup>), Bob Jones University, and Clinton College (collectively “movants,”) have the utmost respect for this Court and its authority. Nevertheless, with all due respect and in the interest of not using the Court’s valuable time with duplicative arguments, the movants join the United States in all of the legal arguments contained in their brief submitted to the Court, and hereby adopt and incorporate by reference any and all such arguments and conclusions.

In addition, the movants respectfully request that the Court declare that Higher Education Emergency Relief (HEER) funds (*see* CARES Act Section 18001(b)) for South Carolina’s independent colleges and universities should also be recognized as exclusively federal funds, consistent with the other arguments incorporated by reference herein and as articulated by the United States. While the HEER funds were not at issue in the *Adams* case because the Petitioners’ challenge was limited to independent primary and secondary schools in the state, the

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<sup>1</sup> SCICU represents the following twenty colleges and universities in South Carolina: Allen University, Anderson University, Benedict College, Charleston Southern University, Claflin University, Coker University, Columbia College, Columbia International University, Converse College, Erskine College, Furman University, Limestone University, Morris College, Newberry College, North Greenville University, Presbyterian College, Southern Wesleyan University, Spartanburg Methodist College, Voorhees College, and Wofford College.

movants believe that the HEER funds at all times retained their character as federal funds.

Alternatively, movants respectfully request that the Court simply remove any and all references to the HEER funds because they were not at issue in this case. In the further alternative, it has come to movants' attention that some have interpreted the Court's prior holding to apply more broadly than the specific funds and program challenged in this case. Accordingly, movants respectfully request this Court grant the Motion for Reconsideration to bring clarity to the scope and application of its holding on this discreet issue.

### **CONCLUSION**

For the foregoing reasons, this Court should grant rehearing, or at a minimum amend and correct its opinion to clarify that any unused funds remain federal funds, strike the sentence regarding the lack of a separate account—or not draw any conclusions from the lack of existence of such an account—and amend its opinion to the extent that these facts had an impact on the Court's analysis and conclusions. Alternatively, any reference to HEER funds should be stricken from the opinion. Moreover, Movants respectfully request that should a rehearing be granted, any decision shall be rendered on or before November 15, 2020 so that any HEER funds that may ultimately be deemed federal in nature may be allocated to the Movants for future use.

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**PROOF OF SERVICE**

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I certify that I have served the MOTION FOR LEAVE TO FILE  
AMICUS BRIEF AND BRIEF OF THE SOUTH CAROLINA  
INDEPENDENT COLLEGES AND UNIVERSITIES, BOB JONES  
UNIVERSITY, AND CLINTON COLLEGE AS AMICUS CURIAE IN  
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