IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

THE SOUTH CAROLINA STATE CONFERENCE OF THE NAACP, *et al.*, Plaintiffs, v. HENRY D. MCMASTER, *et al.*, Defendants.	Case No. 3:21-cv-03302-JMC-TJH-RMG

SENATE DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND INFORMATION REQUESTED FROM HOUSE DEFENDANTS

Thomas C. Alexander, in his official capacity as President of the Senate, and Luke A. Rankin, in his official capacity as Chairman of the Senate Judiciary Committee, (collectively, the "Senate Defendants") agree with the House Defendants that the Court should deny Plaintiffs' Motion to Compel Production of Documents and Information Requested from House Defendants (ECF No. 119). As explained below and in the House Defendants' forthcoming response, Plaintiffs have not narrowed their discovery requests or noticed a single deposition, and they failed to defeat the House Defendants' legislative privilege claims.[1]

Ten years ago during the last redistricting cycle, a three-judge panel of this Court held that South Carolina legislators and their agents enjoy an absolute legislative privilege against "questions concerning communications or deliberations involving legislators or their agents

[1] Plaintiffs' motion "addresses only House Defendants' objection . . . to produce documents and information on the basis of legislative privilege" and seeks a blanket and premature ruling overriding any and all of the House Defendants' legislative privilege objections to document discovery, interrogatories, and testimony. ECF No. 119 at 7 n.2, 17. Plaintiffs do not seek a ruling on defendants' overbreadth objection or on any other objection, including any objection based upon attorney-client privilege or the work product doctrine. *See id.* at 7 n.2, 16.

regarding their motives in enacting legislation." Order at 2, *Backus v. South Carolina*, No. 3:11-cv-03120 (D.S.C. Feb. 8, 2012) (Duffy, J.) ("Backus Order") (Ex. A); *see also* Def. McConnell's Mot. to Quash & for Limited Protective Order, *Backus v. South Carolina*, No. 3:11-cv-03120 (D.S.C. Jan. 23, 2012) (Ex. B). This Court so held in a case that—like this one—brought racial gerrymandering and intentional discrimination claims against a South Carolina redistricting plan. *See* Pls.' First Am. Compl., *Backus v. South Carolina*, No. 3:11-cv-03120 (D.S.C. Nov. 23, 2011) (Ex. C).

Judge Duffy's holding in *Backus* was correct and comports with the controlling law from the U.S. Supreme Court and the Fourth Circuit, which this Court is bound to follow. *See, e.g.*, *Ala. Leg. Black Caucus v. Ala.*, 988 F. Supp. 2d 1285, 1305–06 (D. Ala. 2013) (three-judge court) (collecting cases for the "well[-]settled" proposition that a "three-judge court" is "bound by" the precedent of the circuit in which it sits); *see also Jacobs v. Tawes*, 250 F.2d 611, 614 (4th Cir. 1957) ("The court of three judges is not a different court from the District Court, but is the District Court composed of two additional judges sitting with the single District Judge before whom the application for injunction has been made." (internal citation omitted)). Indeed, the Supreme Court and the Fourth Circuit have held that state legislators and their agents possess in civil cases a privilege against producing evidence or testimony on deliberations and communications regarding legislative activity. *See, e.g.*, *Tenney v. Brandhove*, 341 U.S. 367, 372–75 (1951); *EEOC v. Wash. Suburban Sanitary Comm'n*, 631 F.3d 174, 180–81 (4th Cir. 2011). In civil cases such as this one, the legislative privilege possessed by state legislators and their agents is co-extensive with the constitutionally rooted privilege that members of Congress enjoy under the Speech or Debate Clause, *see Sup. Ct. of Va. v. Consumers Union of the U.S., Inc.*, 446 U.S. 719, 733 (1980); *Wash. Suburban*, 631 F.3d at 180–81, which extends to protection against compelled production of

evidence or testimony, *see, e.g.*, *Gravel v. United States*, 408 U.S. 606, 616 (1972) ("We have no doubt that Senator Gravel may not be made to answer . . . for the events that occurred at the subcommittee hearing.").

This robust protection is premised on the bedrock principle that "the exercise of legislative discretion should not be inhibited by judicial interference." *Bogan v. Scott-Harris*, 523 U.S. 44, 52 (1998). In fact, as the Fourth Circuit has observed, the "practical import" of legislative privilege "is difficult to overstate." *Wash. Suburban*, 631 F.3d at 181. Most importantly, the privilege enables legislators and those who assist them "to focus on their public duties by removing the costs and distractions attending those lawsuits." *Id.* Moreover, legislative privilege serves as a bulwark against "political wars of attrition in which [legislators'] opponents try to defeat them through litigation rather than at the ballot box." *Id.*

Accordingly, the privilege extends to protection "against compulsory evidentiary process." *Id.* (citing *MINPECO, S.A. v. Conticommodity Servs., Inc.*, 844 F.2d 856, 859 (D.C. Cir. 1988) ("Discovery procedures can be just as intrusive" as defending litigation)). "The existence of testimonial privilege is the prevailing law in this circuit." *Burtnick v. McLean*, 76 F.3d 611, 613 (4th Cir. 1996) ("[Plaintiff's] attempt to establish a prima facie case [of intentional discrimination] will have to be accomplished without the testimony of members of the Board as to their motives in abolishing [Plaintiff's] job and establishing the new job.").

Therefore, to the extent that the Court addresses the merits of Plaintiffs' Motion to Compel, it should hold that legislative privilege shields South Carolina legislators and their aides from compelled production of documents or of information or testimony "concerning communications or deliberations involving legislators or their agents regarding their motives in enacting

legislation." *Backus* Order at 2; *see also Sup. Ct. of Va.*, 446 U.S. at 733; *Tenney*, 341 U.S. at 372–75; *Wash. Suburban*, 631 F.3d at 180–81; *Burtnick*, 76 F.3d at 613.

Plaintiffs do not address the Court's prior holding in *Backus*, much less explain why the Court should now depart from it. Plaintiffs also do not address the controlling Supreme Court and Fourth Circuit precedent upholding an absolute legislative privilege. Instead, they cite a handful of cases in which district courts have deemed legislative privilege "qualified" and subject to a five-factor analysis in redistricting cases involving claims of intentional discrimination. *See* ECF No. 119, at 9–14. But neither the Supreme Court nor *any* circuit court has adopted that approach to date. Moreover, of course, nonbinding district court decisions do not overrule *Backus*, much less the Supreme Court and Fourth Circuit precedent that this Court is bound to follow. *See Ala. Leg. Black Caucus*, 988 F. Supp. 2d at 1305–06; *see also Jacobs*, 250 F.2d at 614.

In all events, those cases are wrongly decided—and the arguments Plaintiffs offer based upon them are fatally flawed. *First*, the five-factor analysis originated in a wholly inapposite context that had nothing to do with legislative privilege, redistricting, or even a legislative enactment. Instead, the first district court to apply that analysis did so in a case involving an assertion of "official information privilege" between two agencies of the federal government. *In re Franklin Nat. Bank Securities Litig.*, 478 F. Supp. 577, 583 (E.D.N.Y. 1979); *see also Rodriguez v. Pataki*, 280 F. Supp. 2d 89, 100 (S.D.N.Y. 2003) (magistrate judge opinion) (adopting *Franklin* factors) (cited at ECF No. 119, at 9). And even in that context, the court refused to compel disclosure of internal drafts or memoranda because they pertained to the agency's policymaking functions and deliberations. *See In Re Franklin Nat. Bank*, 478 F. Supp. at 587–89. Thus, even under *Franklin*, the Court should deny Plaintiffs' request for evidence of internal legislative

documents, communications, and deliberations related to the enactment of South Carolina's redistricting plans.

Second, in an effort to support extending the five-factor analysis to legislative privilege questions, Plaintiffs and the district courts point to *United States v. Gillock*, 445 U.S. 360 (1980), for the proposition that legislative privilege "yield[s] . . . where important federal interests are at stake." *See, e.g.*, *Benisek v. Lamone*, 241 F. Supp. 3d 566, 574 (D. Md. 2017); *Bethune-Hill v. Va. Bd. of Elecs.*, 114 F. Supp. 3d 323, 333 (E.D. Va. 2015); ECF No. 119, at 9. But Plaintiffs and those district courts do not tell the full story: *Gillock* was a criminal prosecution brought by the federal government, not a "civil action brought by a private plaintiff." *Gillock*, 445 U.S. at 372. As the Supreme Court recognized in *Gillock* and a later case, *Gillock* turned on the federal interest in federal "criminal actions" and did not erode the general rule that state legislators enjoy in civil suits the same legislative immunity and privilege "accorded to Congressmen under the Constitution." *Sup. Ct. of Va.*, 446 U.S. at 733; *see also Gillock*, 445 U.S. at 372.

Indeed, *no* Supreme Court or Fourth Circuit case has compelled a legislator to produce evidence or to provide testimony regarding her legislative actions in a civil case—and Plaintiffs have identified none. In fact, those courts have recognized that legislative privilege protects "against compulsory evidentiary process" in civil suits. *Wash. Suburban*, 631 F.3d at 181; *see also Gravel*, 408 U.S. at 616; *Burtnick*, 76 F.3d at 613. And even Plaintiffs suggest that "legislative independence" is "implicated in a 'civil action brought by a private plaintiff to vindicate private rights.'" ECF No. 119, at 13–14 (quoting *Gillock*, 445 U.S. at 372).

Third, Plaintiffs and those district courts assert that courts should override legislative privilege in redistricting cases where plaintiffs allege intentional discrimination. *See, e.g.*, *Benisek*, 241 F. Supp. 3d at 575; *Bethune-Hill*, 114 F. Supp. 3d at 337, 339; ECF No. 119, at 10–11. That

assertion, however, is impossible to square with this Court's holding in *Backus*. Moreover, the legislative privilege would be a dead letter if it were defeated in every case where a plaintiff alleges intentional discrimination or an unlawful motive. Plaintiffs attempt to cabin their proposed qualified privilege analysis to "redistricting" cases, but they offer no explanation as to why such cases are entitled to a special legislative privilege analysis different from the absolute immunity applicable in all other Equal Protection and intentional discrimination cases. *See* ECF No. 119, at 10.

In all events, Plaintiffs' and the district courts' suggestion that cases alleging intentional discrimination, in the redistricting context or otherwise, vitiate the well-established legislative privilege is impossible to reconcile with the governing law. "The claim of an unworthy purpose does not destroy the privilege." *Tenney*, 341 U.S. at 378. "The privilege would be of little value if [legislators] could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives." *Id.* Thus, in *Tenney*, the Supreme Court held that a legislator was immune from a civil suit even though the plaintiff alleged that the legislator had called the plaintiff to testify before a legislative committee with the intent "to intimidate and silence plaintiff and deter and prevent him from effectively exercising his constitutional rights of free speech and to petition the Legislature for redress of grievances, and also to deprive him of the equal protection of the laws, due process of law, and of the enjoyment of equal privileges and immunities as a citizen of the United States." *Id.* at 371; *see also Burtnick*, 76 F.3d at 613 ("The existence of testimonial privilege is the prevailing law in this circuit. . . . [Plaintiff's] attempt to establish a prima facie case [of intentional discrimination] will have to be accomplished without the testimony

of members of the Board as to their motives in abolishing [Plaintiff's] job and establishing the new job.").

Fourth, the district courts note that a board member performing a legislative function testified at trial in *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977). *See Benisek*, 241 F. Supp. 3d at 574 n.8; *Bethune-Hill*, 114 F. Supp. 3d at 337. But nothing in *Arlington Heights* suggests that the board member asserted legislative privilege. *Arlington Heights*, 429 U.S. at 268. Thus, because legislative privilege may be waived, that the board member testified in *Arlington Heights* says nothing about the scope of the privilege. In fact, to the extent that *Arlington Heights* addressed legislative privilege at all, it recognized that "[i]n extraordinary circumstances the members might be called to the stand at trial to testify concerning the purpose of the official action, although even then such testimony frequently will be barred by privilege." *Id.*; *see also id.* at 268 n.18.

For all of these reasons, the Court should decline to adopt the five-factor analysis here. But even if the Court were to do so, it still should deny Plaintiffs' motion—particularly where Plaintiffs have not narrowed their overbroad requests, meaningfully engaged in the meet-and-confer process required by the local rules, sent a single Rule 30(b)(6) notice with proposed topics, or noticed a single deposition. Indeed, each of the five factors underscores that the Court should uphold the legislative privilege against Plaintiffs' discovery demands in this case.

1. Relevance: Plaintiffs' discovery requests seek to pierce the House Defendants' private internal deliberations regarding the new House Plan in an attempt to discover their motivations for enacting it. *See* ECF No. 119, at 10–12. But the individual motivations of the House Defendants or any other legislator are wholly irrelevant even to Plaintiffs' claims of intentional discrimination. Indeed, "no case in [the Supreme] Court has held that a legislative act

may violate equal protection solely because of the motivations of the men who voted for it." *Palmer v. Thompson*, 403 U.S. 217, 224 (1971). And with good reason: "what motivates one legislator" to vote for a statute "is not necessarily what motivates scores of others to enact it." *Hunter v. Underwood*, 471 U.S. 222, 228 (1985).

Moreover, much of the evidence Plaintiffs seek—including technical information and data, as well as drafts of redistricting maps, correspondence, and legislation from as far back as the 1990s—would not even begin to bear on the intent of any legislator, let alone the South Carolina General Assembly as a whole, in enacting the House Plan in 2022. *See, e.g.*, *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018) ("Past discrimination cannot, in the manner of original sin, condemn government action that is not itself unlawful,"). This factor favors upholding legislative privilege.

2. Availability of other evidence: Plaintiffs acknowledge that vast amounts of evidence relevant to this case is publicly available and has been produced to them. *See* ECF No. 119, at 12. But they fail to appreciate that these maps; papers; data; letters; videos of public hearings and debates in subcommittee, committee, and on the House floor; and written public testimony *are* "what was in the contemporaneous record in the redistricting process." *Bethune-Hill*, 114 F. Supp. 3d at 341. At a minimum, Plaintiffs should explain why the available evidence is insufficient to prove their claims before they ask the Court to "intru[de] into the workings" of the South Carolina General Assembly, *Arlington Heights*, 429 U.S. at 268 n.18, and to distract legislators from their important public duties by compelling them to respond to discovery requests or to provide testimony, *see Wash. Suburban*, 631 F.3d at 181.

Plaintiffs, however, have not even attempted to offer such an explanation. The best they can muster is the assertion that piercing legislative privilege is necessary because "'government officials seldom, if ever, announce on the record that they are pursuing a particular course of action

because of [a] desire to discriminate.'" ECF No. 119, at 12 (quoting *Smith v. Town of Clarkton*, 682 F.2d 1055, 1064 (4th Cir. 1982)). Plaintiffs identify no basis to support their outrageous implication that, if the Court grants their motion, they will uncover evidence that the House Defendants—or other individuals involved in South Carolina's recent redistricting process—announced *off the record* a desire to discriminate against anyone. *See id.* And, if anything, Plaintiffs' position implicitly concedes that their claims fail if they do not uncover some secret "announce[ment]" that the General Assembly adopted redistricting plans "because of a desire to discriminate." *Id.* This factor also weighs in favor of upholding legislative privilege.

3. Seriousness of the litigation and issues involved: Redistricting cases undoubtedly present serious issues. Indeed, because redistricting "is primarily the duty and responsibility of the State," federal-court "review of districting legislation represents a serious intrusion on the most vital local functions." *Abbott*, 138 S. Ct. at 2324. This Court, therefore, must "presume[]" the General Assembly's "good faith." *Id.*; *see also Miller v. Johnson*, 515 U.S. 900, 915 (1995). Thus, particularly at this juncture of the case, this factor weighs in favor of upholding legislative privilege.

4. Role of government: To be sure, the General Assembly enacted the House Plan that Plaintiffs now challenge. But *every* constitutional challenge necessarily involves the government. Moreover, the House Defendants and the Senate Defendants are involuntary defendants that have been thrust into this litigation and have not filed suit against any party. The legislative privilege would be meaningless if it were defeated merely because a plaintiff brought suit against a legislator or legislative body for official legislative acts. That, of course, is not the law. *See, e.g.*, *Sup. Ct. of Va.*, 446 U.S. at 733; *Tenney*, 341 U.S. at 372–75; *Wash. Suburban*, 631 F.3d at 180–81; *Burtnick*, 76 F.3d at 613. This factor favors upholding legislative privilege.

5. Purpose of the privilege: All of the purposes animating the legislative privilege underscore that the Court should uphold it here. After all, the privilege enables legislators and those who assist them "to focus on their public duties by removing the costs and distractions attending" lawsuits and discovery demands. *Wash. Suburban*, 631 F.3d at 181. It also serves as a bulwark against "political wars of attrition in which [legislators'] opponents try to defeat them through litigation rather than at the ballot box." *Id.* The "practical import" of these purposes "is difficult to overstate." *Id.* And, as explained, neither the Supreme Court, the Fourth Circuit, nor this Court has ever compelled a legislator to produce evidence or to testify on an official legislative action in a civil case: quite to the contrary, all of those courts have upheld legislative immunity and privilege claims in all such cases. *See Backus* Order at 2; *see also Sup. Ct. of Va.*, 446 U.S. at 733; *Tenney*, 341 U.S. at 372–75; *Wash. Suburban*, 631 F.3d at 180–81. This Court should adhere to this controlling precedent and uphold legislative privilege in this case.

CONCLUSION

The Court should deny Plaintiffs' motion.

February 4, 2022

Respectfully submitted,

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CA No.: 3:21-cv-03302-JMC-TJH-RMG

EXHIBIT A

Senate Defendants' Response to Plaintiffs' Motion to Compel Production of Documents and Information Requested from House Defendants

Order on Motion to Quash and for Protective Order (ECF 103)

Backus, et al v. South Carolina, et al

CA No.: 3:11-cv-03120-HFF-MBS-PMD

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

VANDROTH BACKUS, **WILLIE HARRISON BROWN**, **CHARLESANN BUTTONE**, **BOOKER MANIGAULT**, **EDWARD MCKNIGHT**, **MOSES MIMS, JR, ROOSEVELT WALLACE**, and **WILLIAM G. WILDER**, on behalf of themselves and all other similarly situated persons, Plaintiffs, **SENATOR DICK ELLIOTT** Intervener-Plaintiff, v. **THE STATE OF SOUTH CAROLINA**, **NIKKI R. HALEY**, in her capacity as Governor**, KEN ARD**, in his capacity as Lieutenant Governor**, GLENN F. MCCONNELL**, in his capacity as President Pro Tempore of the Senate and Chairman of the Senate Judiciary Committee**, ROBERT W. HARRELL, JR**, in his capacity as Speaker of the House of Representatives, **JAMES H. HARRISON,** in his capacity as Chairman of the House of Representatives' Judiciary Committee, **ALAN D. CLEMMONS**, in his capacity as Chairman of the House of Representatives' Elections Law Subcommittee, **MARCI ANDINO**, in her capacity as Executive Director of the Election Commission, **JOHN H. HUDGENS, III**, Chairman, **NICOLE S. WHITE**, **MARILYN BOWERS**, **MARK BENSON**, and **THOMAS WARING**, in their capacity as Commissioners of the Elections Commission, Defendants.	**Case No.: 3:11-cv-03120-HFF-MBS-PMD** **Order**

For the reasons set forth in Defendant McConnell's Motion to Quash and for a Limited Protective Order and Accompanying Memorandum of Points and Authorities, this Court hereby **GRANTS** Defendants McConnell and Harrell's motions. Deposition topics 5, 12, and 14, which relate to the drafting of the redistricting plans, are quashed. Deposition topic 13, which concerns communications involving legislators and their legislative agents, is also quashed. Additionally, deposition topics 7 and 16 are quashed to the extent the questions involve communications between the Senate or the House and "private consultants or experts."

With respect to the remaining topics in Plaintiffs' Notice of Deposition, this Order prohibits Plaintiffs from inquiring into any matters protected by legislative privilege. That means Plaintiffs are prohibited from asking any questions concerning communications or deliberations involving legislators or their agents regarding their motives in enacting legislation. *See Alexander v. Holden*, 66 F3d. 62, 68 n.4 (4th Cir. 1995) ("In *Berkley*, we suggested that council members may be privileged from testifying in federal district court regarding their motives in enacting legislation . . . .") (citing *Berkley v. Common Council of City of Charleston*, 63 F.3d 295, 303 n. 9 (4th Cir. 1995).

In their response, Plaintiffs argue that Defendants have waived any objection based on attorney client privilege or work product doctrine. The Court disagrees that those privileges have been waived.

Subsequent to their response, the Court received a letter from Plaintiffs' counsel explaining that Plaintiffs anticipate opposing counsel may object to some or all of the questions put to the witnesses they are deposing on February 9, 2012 by asserting attorney-client privilege or work product doctrine. Plaintiffs' request that the Court designate a member of the panel to

be available to speak via telephone to rule on any objection that may arise. The Court denies that request. This Order is sufficient guidance for the depositions. Any other disputes will be resolved by motion after the depositions.

It is SO ORDERED.

PATRICK MICHAEL DUFFY
United States District Judge

February 8, 2011
Charleston, SC

SC NAACP v. McMaster, et al

CA No.: 3:21-cv-03302-JMC-TJH-RMG

EXHIBIT B

Senate Defendants' Response to Plaintiffs' Motion to Compel Production of Documents and Information Requested from House Defendants

McConnell's Motion to Quash and for Protective Order (ECF 79)

Backus, et al v. South Carolina, et al

CA No.: 3:11-cv-03120-HFF-MBS-PMD

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

VANDROTH BACKUS, WILLIE HARRISON BROWN, CHARLESANN BUTTONE, BOOKER MANIGAULT, EDWARD MCKNIGHT, MOSES MIMS, JR, ROOSEVELT WALLACE, and WILLIAM G. WILDER, on behalf of themselves and all other similarly situated persons,	)	
Plaintiffs,	)	Civil Action No.
v.	)	3:11-cv-03120-PMD-HFF-MBS
THE STATE OF SOUTH CAROLINA, NIKKI R. HALEY, in her capacity as Governor, KEN ARD, in his capacity as Lieutenant Governor, GLENN F. MCCONNELL, in his capacity as President Pro Tempore of the Senate and Chairman of the Senate Judiciary Committee, ROBERT W. HARRELL, Jr., in his capacity as Speaker of the House of Representatives, JAMES H. HARRISON, in his capacity as Chairman of the House of Representatives' Judiciary Committee, ALAN D. CLEMMONS, in his capacity as Chairman of the House of Representatives' Elections Law Subcommittee, MARCI ANDINO, in her capacity as Executive Director of the Election Commission, JOHN H. HUDGENS, III, Chairman, CYNTHIA M. BENSCH, MARILYN BOWERS, PAMELLA B. PINSON, and THOMAS WARING, in their capacity as Commissioners of the Elections Commission,	)	
Defendants.	)	

DEFENDANT GLENN F. MCCONNELL'S MOTION TO QUASH AND FOR A LIMITED PROTECTIVE ORDER AND ACCOMPANYING MEMORANDUM OF POINTS AND AUTHORITIES

As shown below, it is well-established that state legislators and their legislative agents possess an absolute privilege against being questioned on their communications or deliberations concerning legislative activity. Plaintiffs have served a deposition notice that infringes on this privilege with respect to certain topics. Accordingly, Defendant Glenn F. McConnell moves to quash Plaintiffs' Rule 30(b)(6) Notice of Deposition of the South Carolina Senate ("Deposition Notice") (attached as Exhibit A), as to those topics, as well as for a protective order on all topics.

The topics identified in Plaintiffs' Deposition Notice either directly or potentially invade the legislative privilege. Specifically, deposition topics 5, 12, and 14, which relate to the drafting of redistricting plans, and deposition topics 7, 13, and 16, which concern communications involving legislators and/or their legislative agents, directly invade the privilege and are facially impermissible.[1] Defendant McConnell therefore respectfully moves this Court to quash Plaintiffs' Deposition Notice as to those topics. All other topics in Plaintiffs' Deposition Notice potentially involve legislative matters that are shielded for the same reasons. Thus, as to those topics, Defendant McConnell requests a protective order precluding any questions concerning deliberations and communications regarding legislative activity. (A Proposed Order is attached.)

Under clear Supreme Court and Fourth Circuit precedent, state legislators and their agents possess a privilege against being questioned on deliberations and communications regarding legislative activity. *See, e.g.*, *Tenney v. Brandhove*, 341 U.S. 367, 372-75 (1951);

[1] Deposition topic 5 seeks information on "[t]he drafting of S. 815 as originally proposed on June 8, 2011," and topics 12 and 14 seek exactly the same information for "'staff plans' originally proposed in the Senate Redistricting Subcommittee" and the Congressional Plan "ultimately passed into law by the General Assembly," respectively. *See* Exhibit A. Deposition topic 13, meanwhile, seeks information regarding "[a]ny and all communication, whether written or verbal, between the Senate and the South Carolina House of Representatives concerning the passage of" the Congressional Plan, and deposition topics 7 and 16 seek information about "communications between the Senate" and outside groups, consultants, and experts regarding the Senate and Congressional Plans. *Id.*

EEOC v. Wash. Suburban Sanitary Comm'n, 631 F.3d 174, 180-81 (4th Cir. 2011). This legislative privilege is firmly rooted in history and tradition, and is incorporated into federal law through Rule 501 of the Federal Rules of Evidence. *See, e.g.*, *Tenney*, 341 U.S. at 372; *Lake Country Estates v. Tahoe Planning Agency*, 440 U.S. 391, 403 (1979); *Sup. Ct. of Va. v. Consumers Union of the U.S., Inc.*, 446 U.S. 719, 732 (1980); *Bogan v. Scott-Harris*, 523 U.S. 44, 49 (1998); *Wash. Suburban*, 631 F.3d at 181 (citing *Burtnick v. McLean*, 76 F.3d 611, 613 (4th Cir. 1996)); Fed. R. Evid. 501 ("[T]he privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience."). And in civil cases, such as this one, the legislative privilege possessed by state legislators and their staff is co-extensive with the constitutionally-rooted privilege that members of Congress enjoy pursuant to the Speech or Debate Clause. *See S. Ct. of Va.*, 446 U.S. at 733; *Wash. Suburban*, 631 F.3d at 180-81 ("In recognition of the [Speech or Debate privilege's] historical pedigree and practical importance the Supreme Court has extended it to a wide range of legislative actors . . . , and it covers all those properly acting in a legislative capacity, not just actual officeholders."); U.S. Const. art. I, § 6, cl. 1.

This robust protection is premised on the bedrock principle that "the exercise of legislative discretion should not be inhibited by judicial interference." *Bogan*, 523 U.S. at 52. Indeed, the Fourth Circuit recently observed that the "practical import" of the legislative privilege "is difficult to overstate." *Wash. Suburban*, 631 F.3d at 181. Most importantly, the privilege enables legislators and those who assist them "to focus on their public duties by removing the costs and distractions attending lawsuits." *Id.* In addition, and of particular relevance here, legislative privilege serves as bulwark against "political wars of attrition in which

[legislators'] opponents try to defeat them through litigation rather than at the ballot box." *Id.* Accordingly, the privilege protects "against compulsory evidentiary process." *See id.* (citing *MINPECO, S.A. v. Conticommodity Servs., Inc.*, 844 F.2d 856, 859 (D.C. Cir. 1988) (holding that "[d]iscovery procedures can prove just as intrusive" as defending oneself against suit)); *Burtnick*, 76 F.3d at 613 ("The existence of testimonial privilege is the prevailing law in this circuit."). And the same privilege enjoyed by legislators extends to their "aides and assistants," who are "treated as one" with the legislators they serve. *Gravel v. United States*, 408 U.S. 606, 616 (1972) (internal quotation marks omitted).

Plaintiffs' Deposition Notice runs squarely up against these well-established protections because it purports to compel testimony on a number of categorically and conclusively privileged topics. In particular, all questions concerning "[t]he drafting of" the Senate Plan, Congressional Plan, and any "staff plans"—deposition topics 5, 12, and 14—and all questions concerning "communications" involving any Senator or any of his agents—deposition topics 7, 13, and 16—necessarily and solely concern legislative matters.

Indeed, any questioning on these topics would cut right to the heart of the Senate's "legislative activity." It is impossible for Plaintiffs to seek information on how the enacted plans and any staff plans were "drafted" without inquiring into the very fabric of the legislative redistricting process and thereby "interfer[ing]" with "the exercise of legislative discretion." *Bogan*, 523 U.S. at 52. Likewise, any inquiries about communications related to the proposed and enacted redistricting plans would unavoidably expose discussions among or between legislators and their staff regarding their legislative actions. Because these topics aim at core legislative activity, they are conclusively off-limits. Thus, this Court should quash Plaintiffs'

Deposition Notice as to these topics, prohibiting Plaintiffs from seeking any information on these topics in the future.

For all the same reasons, many of Plaintiffs' other deposition topics could potentially encroach on privileged material as well. As just one example, questions regarding the "legislative procedure for drawing election districts" for the Senate and Congressional Plans (deposition topics 1 and 8) could encompass information on the internal deliberative procedures in the Senate—an area of "legislative activity" clearly protected by the privilege. We do not seek to foreclose any and all inquiry into these topics, because they also encompass permissible topics such as the text of public hearings. Thus, Defendant McConnell requests a protective order precluding any questions regarding these topics that concern communications or deliberations among legislators or their agents regarding the redistricting legislative activity.

Finally, many of the topics in Plaintiffs' Deposition Notice also directly or potentially infringe on attorney-client privilege and work product privilege. For instance, deposition topics 7 and 16 seek information about "[a]ny and all communications between the Senate and . . . private consultants or experts" regarding the Senate and Congressional Plans. Exhibit A. Such questioning potentially encompasses communications between the Senate and its lawyers, which are protected by attorney-client privilege, or substantive materials prepared in anticipation of litigation, which are protected by work product privilege. Moreover, the potential for encroachment on these privileges is heightened here because the Senate's Rule 30(b)(6) witness will be Charles Terreni, the Chief Counsel to the Senate Judiciary Committee's Redistricting Subcommittee. Thus, Defendant McConnell reserves the right to assert attorney-client privilege and work product privilege in response to any deposition questioning.

* * *

For the foregoing reasons, Defendant McConnell's motion to quash and for a limited protective order should be granted.

Respectfully submitted,

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Attorneys for Defendant Glenn F. McConnell

January 23, 2012
Greenville, South Carolina

Exhibit A

(Notice of Deposition of the South Carolina Senate)

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

VANDROTH BACKUS, WILLIE HARRISON BROWN, CHARLESANN BUTTONE, BOOKER MANIGAULT, EDWARD MCKNIGHT, MOSES MIMS, Jr, ROOSEVELT WALLACE, and **WILLIAM G. WILDER**, on behalf of themselves and all other similarly situated persons, **Plaintiffs,** **v.** **THE STATE OF SOUTH CAROLINA, NIKKI R. HALEY**, in her capacity as Governor, **KEN ARD**, in his capacity as Lieutenant Governor, **GLENN F. MCCONNELL**, in his capacity as President Pro Tempore of the Senate and Chairman of the Senate Judiciary Committee, **ROBERT W. HARRELL, Jr**, in his capacity as Speaker of the House of Representatives, **JAMES H. HARRISON**, in his capacity as Chairman of the House of Representatives' Judiciary Committee, **ALAN D. CLEMMONS**, in his capacity as Chairman of the House of Representatives' Elections Law Subcommittee, **MARCI ANDINO**, in her capacity as Executive Director of the Election Commission, **JOHN H. HUDGENS, III**, Chairman, **CYNTHIA M. BENSCH, MARILYN BOWERS, PAMELLA B. PINSON**, and **THOMAS WARING**, in their capacity as Commissioners of the Elections Commission, **Defendants.**	**Case No.: 3:11-cv-03120-PMD-HFF-MBS** **NOTICE OF DEPOSITION OF THE SOUTH CAROLINA SENATE**

TO: WILLIAM W. WILKINS, ESQUIRE, ATTORNEY FOR DEFENDANT GLENN F. MCCONNELL:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs in the above-captioned action will take the testimony by oral deposition of the person or persons identified by you as the most knowledgeable to give evidence about the matters described below pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure. Oral testimony will be given before a Notary Public, or before some other officer authorized by law to take depositions. You are notified to designate a person or persons to give testimony about the following matters:

1) The legislative procedure for drawing election districts for the South Carolina Senate (hereinafter "Senate") following the 2010 Census;
2) Software and data used to draw election district maps for the Senate;
3) Data and analysis of racial block voting, racially polarized voting, or any other racial data or analysis commissioned, considered, or used in drawing Senate districts;
4) Formal or informal standards, objectives, and/or goals, whether written or not, adopted or followed by the Senate for the purpose of drawing election districts for the Senate;
5) The drafting of S. 815 as originally proposed on June 8, 2011;
6) Any and all communication with the United States Department of Justice about the Senate redistricting plan;
7) Any and all communications between the Senate and a state or federal political party or any agent thereof, private consultants or experts, or any advocacy group regarding the Senate redistricting plan;
8) The legislative procedure for drawing election districts for the United State House of Representatives (or "congressional districts") following the 2010 Census;
9) Software and data used to draw election district maps for congressional districts;

10) Data and analysis of racial block voting, racially polarized voting, or any other racial data or analysis commissioned, considered, or used in drawing congressional districts;

11) Formal or informal standards, objectives, and/or goals, whether written or not, adopted or followed by the Senate for the purpose of drawing congressional election districts;

12) The drafting of "staff plans" originally proposed in the Senate Redistricting Subcommittee;

13) Any and all communication, whether written or verbal, between the Senate and the South Carolina House of Representatives concerning the passage of H. 3992, including, but not limited to, efforts to reconcile the different versions of H. 3992 following the Senate's vote on June 29, 2011.

14) The drafting of the Amendment to H. 3992 adopted on July 26, 2011 and ultimately passed into law by the General Assembly;

15) Any and all communication with the United States Department of Justice about the congressional redistricting plan;

16) Any and all communications between the Senate and a state or federal political party or any agent thereof, private consultants or experts, or any advocacy group regarding the congressional redistricting plan.

You are notified to appear and take such part in the examination as you may be advised and as shall be fit and proper. Notice is further given as follows:

Date: Thursday, February 9, 2012
Time: 9:00 a.m.
Place: Richard A. Harpootlian, P.A.
1410 Laurel Street
Columbia, SC 29201

s/ Richard A. Harpootlian
Richard A. Harpootlian
Graham L. Newman
M. David Scott
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street
Post Office Box 1090
Columbia, SC 29202
Telephone: (803) 252-4848
Facsimile: (803) 252-4810

Columbia, South Carolina
January 9, 2011

SC NAACP v. McMaster, et al

CA No.: 3:21-cv-03302-JMC-TJH-RMG

EXHIBIT C

Senate Defendants' Response to Plaintiffs' Motion to Compel Production of Documents and Information Requested from House Defendants

Amended Complaint (ECF 6)

Backus, et al v. South Carolina, et al

CA No.: 3:11-cv-03120-HFF-MBS-PMD

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

VANDROTH BACKUS, **WILLIE HARRISON BROWN**, **CHARLESANN BUTTONE**, **BOOKER MANIGAULT**, **EDWARD MCKNIGHT**, **MOSES MIMS, JR, ROOSEVELT WALLACE**, and **WILLIAM G. WILDER**, on behalf of themselves and all other similarly situated persons, **Plaintiffs,** **v.** **THE STATE OF SOUTH CAROLINA**, **NIKKI R. HALEY**, in her capacity as Governor, **KEN ARD**, in his capacity as Lieutenant Governor, **GLENN F. MCCONNELL**, in his capacity as President Pro Tempore of the Senate and Chairman of the Senate Judiciary Committee, **ROBERT W. HARRELL, JR**, in his capacity as Speaker of the House of Representatives, **JAMES H. HARRISON,** in his capacity as Chairman of the House of Representatives' Judiciary Committee, **ALAN D. CLEMMONS**, in his capacity as Chairman of the House of Representatives' Elections Law Subcommittee, **MARCI ANDINO**, in her capacity as Executive Director of the Election Commission, **JOHN H. HUDGENS, III**, Chairman, **CYNTHIA M. BENSCH**, **MARILYN BOWERS**, **PAMELLA B. PINSON**, and **THOMAS WARING**, in their capacity as Commissioners of the Elections Commission, **Defendants.**	**Case No.: 2:11-cv-03120-RMG-HFF-MBS** **PLAINTIFFS' FIRST AMENDED COMPLAINT FOR A DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF PURSUANT TO THE FOURTEENTH AND FIFTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND THE VOTING RIGHTS ACT OF 1965**

Plaintiffs, as citizens and voters of the State of South Carolina, file this first amended

complaint for declaratory and injunctive relief pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, respectfully would show unto the Court:

NATURE OF THE ACTION

1. Plaintiffs are entitled to a declaratory judgment and injunctive relief to prevent the implementation and enforcement of the **STATE OF SOUTH CAROLINA'S** redistricting law that illegally uses race to draw election districts for the United States House of Representatives (Congressional Districts), the South Carolina House of Representatives (House Districts), and the South Carolina Senate (Senate Districts) in violation of the Constitution and laws of the United States. The **STATE OF SOUTH CAROLINA** and the other above named Defendants passed into law Act 71 of 2011 (Act 71 or Senate Redistricting Plan), Act 72 of 2011 (Act 72 or House Redistricting Plan), and Act 75 of 2011 (Act 75 or Congressional Redistricting Plan). The South Carolina General Assembly was required to pass this legislation drawing new legislative and congressional district lines pursuant to Article I of the United States Constitution and the mandate of one-person, one-vote which requires that election districts give equal representation. Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362 (1964). Congressional districts also needed to be redrawn as a result of the 2010 Census that apportioned a new seventh congressional seat to the **STATE OF SOUTH CAROLINA** for representation in the United States House of Representatives. These redistricting plans became effective following federal administrative preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, as amended.

2. In debating, drafting, and passing the Congressional, House, and Senate Redistricting Plans, Defendants discriminated on the basis of race for the purpose of determining which voters belong in which districts. Collectively these laws are race-based redistricting schemes that use race as the predominant factor in drawing election district boundaries. These discriminatory redistricting schemes also result in a diminution in the political power of black

voters whose influence is diluted by packing them into election districts in concentrations that exceed what is necessary and lawful to give them an equal opportunity to participate in the political process. Defendants have denied black voters excluded from these packed majority black districts any opportunity to elect a candidate of their choosing.

3. These race-based redistricting schemes also abandon traditional redistricting principles like drawing compact districts, keeping political subdivisions intact, and keeping communities of interest intact. These racially-neutral traditional redistricting principals, if followed, would have afforded black voters an equal opportunity to participate in the political process. Instead, Defendants have created a system of voting apartheid in South Carolina that segregates white and black voters into election districts by using predetermined percentages of black and white voters for each district to assign voters based on race. This racial quota system has resulted in elections that are always or almost always decided by the district's majority race. As such, Defendants' legislative and congressional redistricting schemes unlawfully discriminate against black voters and deny them an equal opportunity to participate in the political process in violation of the United States Constitution and federal law.

4. Plaintiffs, who are all black or African-American voters (hereinafter "black voters"), seek a Declaratory Judgment on behalf of themselves and all similarly situated persons, that Acts 71, 72, and 75 violate their civil rights protected by the Fourteenth Amendment, the Fifteenth Amendment, and the Voting Rights Act of 1965, 42 U.S.C. § 1973, et seq. Plaintiffs seek a temporary injunction preventing the irreparable harm that will result from the implementation of these laws pending the outcome of this litigation. Plaintiffs also seek a permanent injunction enjoining Defendants from implementing and enforcing these laws and directing Defendants to enact new redistricting plans that adhere to traditional, racially-neutral redistricting principles rather than illegal race-based classifications.

JURISDICTION AND VENUE

5. This action arises under Article I, §§ 2 and 4 and the Fourteenth and Fifteenth Amendments of the United States Constitution and the Voting Rights Act of 1965, 42 U.S.C. § 1973, et seq.

6. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), 2201, and 2284, as well as, 42 U.S.C. §§ 1973, 1981, and 1983.

7. Venue is proper pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 2284.

PARTIES

8. Plaintiff, **VANDROTH BACKUS**, is a registered voter and a resident of Florence County, South Carolina. Under the new Redistricting Plans, **REV. BACKUS** resides in Congressional District Seven, House District 59, and Senate District 30. These Redistricting Plans harm **REV. BACKUS**, a black voter, by discriminating against him on the basis of race for the purpose of including or excluding him from election districts.

9. Plaintiff, **WILLIE HARRISON BROWN**, is a registered voter and a resident of Sumter County, South Carolina. Under the new Redistricting Plans, **MR. BROWN** resides in Congressional District Five, House District 67, and Senate District 35. These Redistricting Plans harm **MR. BROWN**, a black voter, by discriminating against him on the basis of race for the purpose of including or excluding him from election districts.

10. Plaintiff, **CHARLESANN BUTTONE**, is a registered voter and a resident of Georgetown County, South Carolina. Under the new Redistricting Plans, **MS. BUTTONE** resides in Congressional District Seven, House District 103, and Senate District 32. These Redistricting Plans harm **MS. BUTTONE**, a black voter, by discriminating against her on the basis of race for the purpose of including or excluding her from election districts.

11. Plaintiff, **BOOKER MANIGAULT**, is a registered voter and a resident of

Berkeley County, South Carolina. Under the new Redistricting Plans, **MR. MANIGAULT** resides in Congressional District One, House District 102, and Senate District 37. These Redistricting Plans harm **MR. MANIGAULT**, a black voter, by discriminating against him on the basis of race for the purpose of including or excluding him from election districts.

12. Plaintiff, **EDWARD MCKNIGHT**, is a registered voter and a resident of Williamsburg County, South Carolina. Under the new Redistricting Plans, **MR. MCKNIGHT** resides in Congressional District Six, House District 101, and Senate District 32. These Redistricting Plans harm **MR. MCKNIGHT**, a black voter, by discriminating against him on the basis of race for the purpose of including or excluding him from election districts.

13. Plaintiff, **MOSES MIMS, JR**, is a registered voter and a resident of Aiken County, South Carolina. Under the new Redistricting Plans, **MR. MIMS** resides in Congressional District 2, House District 82, and Senate District 25. These Redistricting Plans harm **MR. MIMS**, a black voter, by discriminating against him on the basis of race for the purpose of including or excluding him from election districts.

14. Plaintiff, **ROOSEVELT WALLACE**, is a registered voter and a resident of Darlington County, South Carolina. Under the new Redistricting Plans, **MR. WALLACE** resides in Congressional District Seven, House District 62, and Senate District 29. These Redistricting Plans harm **MR. WALLACE**, a black voter, by discriminating against him on the basis of race for the purpose of including or excluding him from election districts.

15. Plaintiff, **WILLIAM G. WILDER**, is a registered voter and a resident of Charleston County, South Carolina. Under the new Redistricting Plans, **MR. WILDER** resides in Congressional District One, House District 119, and Senate District 43. These Redistricting Plans harm **MR. WILDER**, a black voter, by discriminating against him on the basis of race for the purpose of including or excluding him from election districts.

16. Plaintiffs and all other similarly situated black voters were assigned to their new legislative and congressional districts as a result of being subjected to a racial classification. Plaintiffs and all other black voters are personally injured by being subjected to an illegal racial classification and by being placed into election districts in accordance with this race-based scheme rather than in accordance with traditional, race-neutral redistricting principles that require drawing geographically compact districts, keeping political subdivisions intact, and keeping communities of interest intact. These traditional, racially-neutral redistricting principles denied to Plaintiffs in passing these redistricting laws would have facilitated equal participation in the political process.

17. Defendant, the **STATE OF SOUTH CAROLINA**, is a proper defendant as a state subject to the limitations of the Fourteenth Amendment and Fifteenth Amendments of the United States Constitution and Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, et seq.

18. Defendant, **NIKKI R. HALEY**, in her official capacity as Governor of South Carolina, is a proper defendant as the Chief Executive of the State of South Carolina charged with the enforcement of the state's laws under Article IV, Section 15 of the South Carolina Constitution.

19. Defendant, **KEN ARD**, in his official capacity as Lieutenant Governor of South Carolina, is a proper defendant as the President of the South Carolina Senate charged with presiding over the Senate and ratifying bills upon passage by both houses of the General Assembly pursuant to Article III, Section 18 of the South Carolina Constitution.

20. Defendant, **GLEN F. MCCONNELL**, in his official capacity as President Pro Tempore of the South Carolina Senate and Chairman of the Senate Judiciary Committee, is a proper defendant as leader of the Senate and Chairman of the Judiciary Committee responsible

for drafting and passing reapportionment legislation for consideration by the full Senate.

21. Defendant, **ROBERT W. HARRELL, JR.**, in his official capacity as Speaker of the South Carolina House of Representatives, is a proper defendant as leader of the House charged with presiding over the House and ratifying bills upon passage by both houses of the General Assembly pursuant to Article III, Section 18 of the South Carolina Constitution. Speaker **HARRELL** is also the state official authorized by Act 75 to seek preclearance as required by Section 5.

22. Defendant, **JAMES H. HARRISON**, in his official capacity as a member of the South Carolina House of Representatives, is a proper defendant as Chairman of the Judiciary Committee responsible for drafting and passing reapportionment legislation for consideration by the full House.

23. Defendant, **ALAN D. CLEMMONS**, in his official capacity as a member of the South Carolina House of Representatives, is a proper defendant as Chairman of the Election Laws Subcommittee responsible for drafting and passing reapportionment legislation for consideration by the Judiciary Committee and the full House.

24. Defendant, **MARCI ANDINO**, in her official capacity as the Executive Director of the South Carolina Elections Commission, is a proper defendant as the head of the South Carolina agency responsible for implementing and conducting elections pursuant to S.C. Code Ann. §§ 7-3-10, et seq. and 7-13-10, et seq., as amended.

25. Defendants, **JOHN H. HUDGENS, III**, Chair, **CYNTHIA M. BENSCH**, **MARILYN BOWERS**, **PAMELLA B. PINSON**, and **THOMAS WARING**, in their official capacity, are members of the South Carolina Elections Commission Board. All Defendants are proper defendants as persons charged with the powers and duties of the South Carolina Elections Commission pursuant to S.C. Code Ann. §§ 7-3-10, et seq. and 7-13-10, et seq., as amended.

STATEMENT OF FACTS

26. The South Carolina General Assembly is comprised of two bodies: the Senate, which has forty-six (46) single-member districts, and the House of Representatives (House), which has one hundred and twenty-four (124) single-member districts. S.C. Const. art. III, §§ 1, 3, 6. Members of the Senate are elected to four-year terms every other even-numbered year during the general election. Id. § 6. Members of the House are elected to two-year terms every even-numbered year during the general election. Id. § 3. Representation in the United States House of Representatives is apportioned in accordance with the United States Census. U.S. Const. art. I § 2, cl. 3. Prior to 2010, South Carolina was entitled to elect representatives to six (6) seats in the United States House of Representatives. Due to population growth, South Carolina was apportioned one additional seat following the 2010 Census for a total of seven (7) seats.

27. The **STATE OF SOUTH CAROLINA** must draw legislative and congressional election districts on an equi-populous basis in accordance with the Census. See Reynolds, supra.

28. South Carolina's previous redistricting plans, or "Benchmark Plans," were enacted pursuant to litigation resulting from impasse and malapportionment. In 2001, the South Carolina General Assembly passed redistricting plans for the House, Senate, and Congress. Then-Governor James H. Hodges vetoed the bill and the General Assembly failed to override his veto. A malapportionment lawsuit was filed in the United States District Court for the District of South Carolina under the caption Colleton County Council v. McConnell. On March 20, 2002, the three-judge Court issued an order drawing districts for the House, Senate, and six Congressional districts. Colleton County Council v. McConnell, 201 F.Supp.2d 618 (D.S.C. 2002).

29. The General Assembly subsequently modified the Court's plan for the House and

Senate. Act No. 55, 2003 S.C. Laws 255. Act 55 of 2003 (Benchmark House Plan and/or Benchmark Senate Plan) was subsequently precleared by the Department of Justice pursuant to administrative preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

30. No legislation was passed to modify the court-drawn congressional districts (Benchmark Congressional Plan).

31. The Benchmark Plans were in effect until 2011 when modified by the General Assembly pursuant to the results of the 2010 Census.

A. CHANGES IN DEMOGRAPHICS AS REPORTED BY THE 2010 CENSUS

32. According to the 2010 Census, South Carolina's population has grown from 4,012,012 persons to 4,625,364 persons over the last ten years. This constitutes an increase of more than fifteen (15%) percent.

33. South Carolina has a large black minority population that has grown proportionally to the State's overall growth. The non-Hispanic black population (hereinafter simply "black population") is relatively equal as a percentage of the overall population compared to ten years ago. Presently South Carolina's black population is 1,290,684, or almost twenty-eight (27.9%) percent of the overall population. In 2000, the black population was 1,186,071, or twenty-nine (29.6%) percent of the overall population.

34. Despite overall population growth in South Carolina, this growth was not uniform across the State's forty-six (46) counties. Thirty-four (34) counties increased population while twelve (12) counties lost population. Of the twelve (12) counties that lost population, six (6) of those counties are small rural counties with a majority black population.[1] The other six (6)

[1] Allendale (73.6% black population), Bamberg (61.5%), Hampton (53.9%), Lee (64.3%), Marion (55.9%), and Williamsburg (65.8%)

counties that lost population have a significant black population.[2] Districts representing urban and suburban areas saw the greatest growth during this period.[3]

35. As a result of these population shifts over the last ten years the black population in South Carolina has naturally shifted from rural and urban areas to become increasingly integrated with the white population in suburban areas. The white population has also shifted back to the cities resulting in increasingly integrated urban areas.

36. While communities in South Carolinian are increasingly integrated—with white and black citizens living in the same neighborhoods, working at the same businesses, and attending the same schools—our election districts have become increasingly segregated. Defendants' Redistricting Plans further segregate voters into a system of electoral apartheid.

37. Pursuant to the results of the 2010 Census, all of the Benchmark Plans were malapportioned and needed to be redrawn. The Benchmark Congressional Plan also did not draw a sufficient number of congressional districts to afford South Carolina adequate representation in the United States House of Representatives and needed to be redrawn to create a new seventh congressional district.

B. PASSAGE OF THE LEGISLATIVE AND CONGRESIONAL REDISTRICTING PLANS BY THE GENERAL ASSEMBLY

38. In April 2011, the General Assembly began drafting legislation to redraw South Carolina's legislative and congressional districts. The General Assembly used three separate bills—Senate Bill 815 (S. 815), House Bill 3001 (H. 3001), and House Bill 3002 (H. 3002)—as the legislative vehicle for House, Senate, and Congressional redistricting legislation, respectively. These bills became Acts 71, 72, and 75, respectively, upon passage into law.

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[2] Abbeville (28.3% black population), Barnwell (44.3%), Calhoun (42.6%), Chester (37.4%), Laurens (25.4%), and Union (31.3%)

[3] E.g., Beaufort, Berkeley, Dorchester, Greenville, Horry, Lancaster, Lexington, Richland, York.

39. During the debate and passage of all of these plans, members of the General Assembly claimed they were drawing a redistricting plan motivated by traditional redistricting principles and mandates imposed by federal law. Traditional redistricting principles in South Carolina include drawing geographically compact districts, keeping county and municipal boundaries intact, and keeping communities of interest intact. See Colleton Co., supra.

40. In actuality, the General Assembly drew maps that artificially manipulated percentage of black voting age population (VAP) for each House, Senate, and Congressional District as previously decided by leaders in the General Assembly.

41. The goal of the General Assembly's leadership in adopting a race-based redistricting scheme was to diminish the political power of black voters by making political party synonymous with race. Since black voters continue to overwhelmingly prefer Democratic candidates in South Carolina, Republican leaders in the General Assembly sought to make the Democratic Party the "black party" by packing as many black voters as possible into a few election districts.

42. Defendants' Redistricting Plan packs black voters into a few districts making them "blacker" while also "bleaching out" all of the surrounding election districts. This concentration and disbursement scheme ensures that black voters in majority black districts will overwhelmingly decide the outcome in a few election districts but that black voters in majority white districts, the vast majority of election districts, have no opportunity to participate in the political process. These redistricting laws create a system of electoral apartheid by segregating voters into election districts contrary to natural population shifts that demonstrate that white and black voters in South Carolina are increasingly integrated—choosing to live side by side one another.

43. In passing the House Redistricting Plan, Act 72, the General Assembly adopted a

redistricting plan that:

(a) Packs black voters into House Districts in order to create nine (9) new majority-minority seats with no justification as to why it was necessary to add black VAP percentage to these seats;

(b) Ignores racially-neutral, traditional redistricting principles in order to preserve the twenty-one (21) majority-minority seats that previously existed under the Benchmark House Plan with no justification for maintaining artificially high black VAP percentages;

(c) Reduces the black VAP percentage in all or almost all of the House Districts where black voters were able to elect a candidate of choice with the support of part of the white community, making cooperation between blacks and whites less likely or impossible; and

(d) Disproportionately diminishes the political power of black voters in poor, rural counties which were carved up among several different House Districts ensuring that no single House member will have the primary interest of these poor, rural communities in mind since the majority of their constituency resides in another county.

44. The General Assembly passed and enrolled the House Redistricting Plan, Act 72, and Governor **NIKKI R. HALEY** signed the bill into law on June 28, 2011.

45. In passing the Senate Redistricting Plan, Act 71, the General Assembly adopted a redistricting plan that:

(a) Ignores racially-neutral, traditional redistricting principles in order to maintain artificially high black VAP percentages;

(b) Reduces the black VAP percentage in several Senate Districts where black

voters were able to elect a candidate of choice with the support of part of the white community, making cooperation between blacks and whites less likely or impossible in these districts; and

(c) Disproportionately diminishes the political power of black voters in poor, rural counties which were carved up among several different Senate Districts ensuring that no single Senator will have the primary interest of these poor, rural communities in mind.

46. The General Assembly passed and enrolled the Senate Redistricting Plan, Act 71, and Governor **HALEY** signed the bill into law on June 28, 2011.

47. In passing the Congressional Redistricting Plan, Act 75, the General Assembly adopted a redistricting plan that:

(a) Unnecessarily added black VAP percentage to the Sixth Congressional District. Under the Benchmark Plan, the Sixth District when drawn in 2002 had a black VAP of fifty-three (53.55%) percent. Natural population shift over the last ten years lowered the black VAP percentage under the Benchmark Plan to fifty-two (52.08%) percent – the largest natural decrease per capita of black VAP. Act 75 raises the black VAP to fifty-five (55.18%) percent of the new Sixth District;

(b) Reduced the black VAP percentage in all or almost all of the other existing districts reducing or eliminating the possibility that black voters in these districts could work together with part of the white community to elect a candidate of choice. For example, the Second District saw the largest increase in black VAP under the Benchmark Plan due to natural population shift from twenty-three (23.95%) percent to twenty-five (25.43%) percent. The new Congressional Redistricting Plan lowers the black VAP percentage in the Second

District to twenty-one (21.48%) percent. With the exception of the Fourth[4] and Sixth Districts, the black VAP percentage in all of the other districts—the First, Second, Third, and Fifth—decreases compared to the Benchmark Plan; and

(c) Created a new Seventh Congressional District with a black VAP percentage low enough to make it unlikely black voters would have an equal opportunity to elect a candidate of choice by joining together with part of the white community.

48. The General Assembly passed and enrolled the Congressional Redistricting Plan, Act 75, and Governor **HALEY** signed the bill into law on August 1, 2011.

49. It was not necessary to pack black voters into election districts to reach arbitrary black VAP percentages decided on by Defendants in order to give minority voters in these districts an opportunity to elect a candidate of their choosing. Consequently, Defendants' legislative and congressional Redistricting Plans dilute black voting power by packing black voters into a few districts and dispersing those excluded from the packed districts among the remaining districts in a low enough concentration to be irrelevant to the political process.

50. In order to draw districts that met the arbitrary racial quota adopted by Defendants, it was required to abandon traditional redistricting principals like drawing geographically compact districts, keeping political subdivisions like counties and municipalities intact, and keeping communities of interest intact.

C. SUIT IS TIMELY TO CHALLENGE DISCRIMINATORY STATE ACTION UNDER THE CONSTITUTION AND THE VOTING RIGHTS ACT OF 1965

51. The **STATE OF SOUTH CAROLINA** is a "covered jurisdiction" under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, as amended. As such, the State is

[4] The Fourth District increases only nominally from 18.19% to 18.23%.

required to obtain either judicial or administrative preclearance prior to enacting any change in voting law. Id.

52. On July 27, 2011, Senator **GLENN F. MCCONNELL** submitted Act 71, the Senate Redistricting Plan, to the United States Attorney General for administrative preclearance. On September 26, 2011, the Attorney General, through his agent, wrote to Senator **MCCONNELL** requesting additional information about the Senate Redistricting Plan. Senator **MCCONNELL** replied to the Attorney General and also filed suit in the United States District Court for the District of Columbia seeking judicial preclearance. See McConnell v. United States of America, 1:11-cv-01794-HHK (D.D.C. 2011).

53. On November 14, 2011, the Attorney General, through his agent, notified Senator **MCCONNELL** that he would not object to the Senate Redistricting Plan, Act 71, mooting the pending lawsuit seeking preclearance.

54. On August 9, 2011, Speaker **ROBERT W. HARRELL, JR.** and Senator **MCCONNELL** submitted the House Redistricting Plan, Act 72, to the Attorney General for administrative preclearance. Contemporaneous with this submission, Defendants filed suit in the United States District Court for the District of Columbia seeking judicial preclearance. See Harrell v. United States of America, 1:11-cv-01454-HHK (D.D.C. 2011).

55. On October 11, 2011, the Attorney General, notified Speaker **HARRELL** and Senator **MCCONNELL** that he would not object to the House Redistricting Plan, Act 72, mooting the pending lawsuit seeking preclearance.

56. On August 30, 2011, Speaker **HARRELL** and Senator **MCCONNELL** submitted the Congressional Redistricting Plan, Act 75, to the Attorney General for administrative preclearance and filed a contemporaneous lawsuit seeking judicial preclearance by the District Court for the District of Columbia. See Harrell v. United States of America, 1:11-

cv-01566-EGS (D.D.C. 2011).

57. On October 28, 2011, the Attorney General notified Speaker **HARRELL** and Senator **MCCONNELL** that he would not object to the Congressional Redistricting Plan, Act 75, mooting the pending lawsuit seeking preclearance.

58. Pursuant to 42 U.S.C. § 1973c(a), Plaintiffs' action against Defendants for declaratory and injunctive relief is now timely to enforce their rights under the United States Constitution and the Voting Rights Act of 1965.

59. At all times relevant herein, Defendants acted under color of state law.

60. Defendants' race-based scheme denies Plaintiffs the equal protection of law, abridges their right to vote, and violates the protection afforded them by the Voting Rights Act of 1965, 42 U.S.C. § 1973, et seq.

FIRST CAUSE FOR DECLARATORY AND INJUNCTIVE RELIEF: LEGISLATIVE AND CONGRESSIONAL REDISTRICTING PLANS DENY BLACK VOTERS EQUAL PROTECTION UNDER THE LAW

61. Plaintiffs incorporate Paragraphs 1-60 as if set forth verbatim herein.

62. Plaintiffs and all other black voters are entitled to the equal protection of law under the Fourteenth Amendment of the United States Constitution.

63. The House Redistricting Plan, Act 72, discriminates against Plaintiffs and all other black voters on the basis of race in one of more of the ways set forth below, each sufficient to demonstrate race-based discrimination used to include or exclude voters from House election districts:

(a) Act 72 has a discriminatory purpose evidenced by the demographics of the plan as a whole;

(b) Act 72 has a discriminatory purpose evidenced by the demographics of specific districts. Defendants discriminated on the basis of race for the purpose of

packing black voters into House Districts 12, 23, 49, 61, 64, 79, 82, 93, 102, 103, 111, 121, and 122, and for the purpose of maintaining an artificially high black VAP percentages in districts like House Districts 25, 55, 66, and 70 contrary to population shift and traditional redistricting principles;

(c) Act 72 has a discriminatory purpose evidenced by the irregular shape of its districts that ignore traditional redistricting principles and natural population shifts in favor of a racial classification used to artificially manipulate the black VAP of each district;

(d) Defendants' purpose in passing Act 72, either in whole or in part, was motivated by race and/or the goal of drawing districts with specific racial composition in each district;

(e) Defendants' purpose in passing Act 72, either in whole or in part, was to reduce the number of election districts where black voters could determine or could help determine the winner;

(f) The shape of the districts drawn by Act 72 are so irrational that they can only be explained as a race-based gerrymander; and

(g) In other ways as proven during the trial of this matter.

64. The Senate Redistricting Plan, Act 71, discriminates against Plaintiffs and all other black voters on the basis of race in one of more of the ways set forth below, each sufficient to demonstrate race-based discrimination used to include or exclude voters from Senate election districts:

(a) Act 71 has a discriminatory purpose evidenced by the demographics of the plan as a whole;

(b) Act 71 has a discriminatory purpose evidenced by the demographics of

specific districts. Defendants discriminated on the basis of race for the purpose of packing black voters into Senate Districts 19, 22, and 29, and for the purpose of maintaining an artificially high black VAP percentages in districts like Senate Districts 21, 30, 32, 36, 39, 40, and 42 contrary to population shift and traditional redistricting principles;

(c) Act 71 has a discriminatory purpose evidenced by the irregular shape of its districts that ignore traditional redistricting principles and natural population shifts in favor of a racial classification used to artificially manipulate the black VAP of each district;

(d) Defendants' purpose in passing Act 71, either in whole or in part, was motivated by race and/or the goal of drawing districts with specific racial composition in each district;

(e) Defendants' purpose in passing Act 71, either in whole or in part, was to reduce the number of election districts where black voters could determine or could help determine the winner;

(f) The shape of the districts drawn by Act 71 are so irrational that they can only be explained as a race-based gerrymander; and

(g) In other ways as proven during the trial of this matter.

65. Congressional Redistricting Plan, Act 75, discriminates against Plaintiffs and all other black voters on the basis of race in one of more of the ways set forth below, each sufficient to demonstrate race-based discrimination used to include or exclude voters from congressional election districts:

(a) Act 75 has a discriminatory purpose evidenced by the demographics of the plan as a whole;

(b) Act 75 has a discriminatory purpose evidenced by the demographics of specific districts, particularly the First, Second, Fifth, Sixth, and Seventh Districts. Act 75 unnecessarily packs black voters into the Sixth District with the effect of diluting black voting power by limiting the number of districts where they have an equal opportunity to participate in electing a candidate of their choosing;

(c) Act 75 has a discriminatory purpose evidenced by the irregular shape of its districts that ignore traditional redistricting principles and natural population shifts in favor of a racial classification used to artificially manipulate the black VAP of each district;

(d) Defendants' purpose in passing Act 75, either in whole or in part, was motivated by race and/or the goal of drawing districts with specific racial composition in each district;

(e) Defendants' purpose in passing Act 75, either in whole or in part, was to reduce the number of election districts where black voters determine or could determine the winner;

(f) The shape of the districts drawn by Act 75 are so irrational that they can only be explained as a race-based gerrymander; and

(g) In other ways as proven during the trial of this matter.

66. Defendants' use of race in drawing legislative and congressional election district lines is not strictly necessary to serve a compelling governmental purpose.

67. Defendants have offered no adequate justification for discriminating on the basis of race for the purpose of drawing legislative and congressional election districts.

68. Defendants' use of race is not the least restrictive means available to give black voters an opportunity to participate equally in the political process.

69. Plaintiffs and all black voters are denied equal protection under the law and injured by the **STATE OF SOUTH CAROLINA**, and her agents, the other above-named defendants, when the State uses race-based discrimination without a compelling governmental purpose or where less restrictive means are available.

70. Plaintiffs have no adequate remedy at law other than the judicial relief sought here. The failure to temporarily and permanently enjoin enforcement of the House, Senate, and Congressional Redistricting Plans will irreparably harm Plaintiffs' by violating their constitutional and statutory rights.

SECOND CAUSE FOR DECLARATORY AND INJUNCTIVE RELIEF: THE LEGISLATIVE AND CONGRESSIONAL REDISTRICTING PLANS VIOLATE SECTION TWO OF THE VOTING RIGHTS ACT OF 1965

71. Plaintiffs incorporate Paragraphs 1-70 as if set forth verbatim herein.

72. Section 2 of the Voting Rights Act of 1965, prohibits the abridgement of the right to vote on account of race, color, or language minority. 42 U.S.C. § 1972(a).

73. Diluting minority-voting power constitutes an abridgement of the right to vote for the purpose of Section 2. Voinovich v. Quilter, 507 U.S. 146, 154, 113 S. Ct. 1149, 1155 (1993). "Dilution of racial minority group voting strength may be caused" either "by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority." Id.

74. The House Redistricting Plan, Act 72, dilutes minority voting strength by packing black voters into House Districts 12, 23, 49, 61, 64, 79, 82, 93, 102, 103, 111, 121, and 122, and maintaining artificially high black VAP percentages in districts like House Districts 25, 55, 66, and 70 contrary to population shift and traditional redistricting principles.

75. The Senate Redistricting Plan, Act 71, dilutes minority voting strength by packing black voters into Senate Districts 19, 22, and 29, and maintaining artificially high black VAP

percentages in districts like Senate Districts 21, 30, 32, 36, 39, 40, and 42 contrary to population shift and traditional redistricting principles.

76. Black voters in the above-named districts already demonstrated an overwhelming ability to elect candidates of choice so that additional packing or artificial manipulation of the district lines contrary to traditional redistricting principles was unnecessary to continue to allow black voters in these districts to elect candidates of choice.

77. The Congressional Redistricting Plan, Act 75, dilutes minority voting strength by packing black voters into the Sixth Congressional District even though black voters in the Sixth Congressional District have demonstrated an overwhelming ability to elect a candidate of choice in a district where, prior to the new Congressional Redistricting Plan, the black VAP percentage declined over time to fifty-two (52.08%) percent through natural population shift.

78. By packing the Sixth Congressional District, Defendants have diluted black voting strength in all other election districts, particularly the First, Second, Fifth, and Seventh Districts.

79. The legislative and congressional Redistricting Plans all dilute the voting power of black voters outside of packed districts. Defendants' packing schemes deliberately reduce the number of "crossover" districts or prevent them from emerging over time through natural population shifts.

80. Crossover districts are districts where white voters join together with black voters to help them elect a candidate of choice.

81. Defendants' Redistricting Plan uses unusual and irrational shapes to draw election districts that violate traditional redistricting principles. Had Defendants followed traditional redistricting principles—which require drawing geographically compact districts, keeping political subdivisions like counties and municipalities intact, and keeping communities of interest

intact—they would have drawn racially integrated election districts that reflect the communities they represent.

82. Under the legislative and congressional Redistricting Plans, black voters excluded from majority-minority districts are disbursed in small enough numbers to deny them any opportunity to elect a candidate of choice through crossover voting.

83. Defendants' packing scheme also prevents new crossover districts from naturally emerging through population shift. If Defendants had instead drawn legislative and congressional districts using traditional redistricting principles, then additional crossover districts would continue to emerge naturally over time through population shift.

84. By destroying existing crossover districts and blocking the emergence of new crossover districts, Defendants have denied black voters an equal opportunity to participate in the political process and relegated them to only participating in electing a candidate of choice in the handful of districts Defendants have packed with black voters.

85. Consequently, the legislative and congressional Redistricting Plans abridge Plaintiffs' and all black voters' right to vote by resegregating electoral politics in South Carolina. Black voters in black districts are guaranteed to elect a candidate of choice, while black voters in white districts are virtually irrelevant.

86. Plaintiffs have no adequate remedy at law other than the judicial relief sought here. The failure to temporarily and permanently enjoin enforcement of the legislative and congressional Redistricting Plans, Acts 71, 72, and 75, will irreparably harm Plaintiffs by violating their constitutional and statutory rights.

THIRD CAUSE FOR DECLARATORY AND INJUNCTIVE RELIEF:
THE REDISTRICTING PLANS VIOLATE THE FIFTEENTH AMENDMENT

87. Plaintiffs incorporate Paragraphs 1-86 as if set forth verbatim herein.

88. The Fifteenth Amendment of the United States Constitution prohibits the denial or abridgement of the right to vote on account of race, color, or previous condition of servitude. U.S. Const. amend XV.

89. The Fifteenth Amendment protects minority voters from being disenfranchised by race-based gerrymanders. Gomillion v. Lightfoot, 364 U.S. 339, 341, 81 S. Ct. 125, 127 (1960).

90. The legislative and congressional Redistricting Plans, Acts 71, 72, and 75, use race to dilute black voting power in one or more of the manners stated above, incorporated here as if set forth verbatim.

91. Consequently, the Redistricting Plans deny black voters an equal opportunity to participate in the political process that could have been achieved by adopting racially-neutral redistricting principles that would give Plaintiffs and all black voters an equal opportunity to elect candidates of choice.

92. Plaintiffs have no adequate remedy at law other than the judicial relief sought here. The failure to temporarily and permanently enjoin enforcement of Acts 71, 72, and 75 will irreparably harm Plaintiffs' constitutional and statutory rights.

REQUEST FOR A THREE-JUDGE COURT

93. Plaintiffs request trial of this case by a three-judge court pursuant to 42 U.S.C. § 1973c(a) and 28 U.S.C. § 2284.

PRAYER FOR RELIEF

WHEREFORE, having fully set forth their allegations against Defendants, Plaintiffs respectfully request that this Court:

(i) Assume jurisdiction of this case and try it before a three-judge court;

(ii) Temporarily enjoin Defendants from calling, holding, supervising, or certifying any elections under Acts 71, 72, and 75 pending the outcome of this

litigation;

(iii) Issue a declaratory judgment that Acts 71, 72, and 75 are illegal for one or more of the reasons set forth above;

(iv) Permanently enjoin Defendants from calling, holding, supervising, or certifying any elections under Acts 71, 72, and 75;

(v) Set a reasonable deadline for Defendants to enact and adopt legislative and congressional redistricting plan for House, Senate, and Congressional Districts that do not violate Plaintiffs' constitutional or statutory rights;

(vi) Retain jurisdiction while Defendants enact these plans by this Court's deadline;

(vii) Order new redistricting plans in the event that Defendants fail to adopt new plans or fail to adopt plans that conform with this Court's judgment;

(viii) Adjudge all reasonable attorneys' fees, costs, and expenses against Defendants in favor of Plaintiffs pursuant to 42 U.S.C. §§ 1973l(e) and 1988(b), as amended; and

(ix) Grant other such relief as this Court deems just and proper.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted by:

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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
November 23, 2011

EXHIBIT A TO AMENDED SUMMONS

Defendants:

1) The State of South Carolina
Attorney General Alan Wilson
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Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

2) Governor Nimrata "Nikki" Haley
Office of the Governor
State House, 1st Floor
Columbia, SC 29201

3) Lt. Governor Ken Ard
Office of the Lt. Governor
State House, 1st Floor
Columbia, SC 29201

4) Senator Glenn F. McConnell, President Pro Tempore
101 Gressette Building
Columbia, SC 29201

5) Representative Robert W. Harrell, Jr., Speaker
506 Blatt Building
Columbia, SC 29211

6) Representative James H. Harrison
512 Blatt Building
Columbia, SC 29201

7) Representative Alan D. Clemmons
519-C Blatt Building
Columbia, SC 29201

8) Ms. Marci Andino, Executive Director
State Election Commission
2221 Devine Street, Suite 105
Columbia, SC 29205

9) Commissioner John H. Hudgens, III, Chair
State Election Commission

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10) Commissioner Cynthia M. Bensch
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11) Commissioner Marilyn Bowers
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12) Commissioner Pamella B. Pinson
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