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To: Patel, SwatiSwatiPatel@gov.sc.gov
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Veldran, KatherineKatherineVeldran@gov.sc.gov
Mottel, HaleyHaleyMottel@gov.sc.gov
Date: 12/12/2016 3:54:06 PM
Subject: Re: Filing of petition with the Supreme Court of South Carolina

Thanks

Richele K Taylor
Chief Legal Counsel
Office of the Governor
South Carolina
Direct 803-734-8465

Sent from my iPhone

On Dec 12, 2016, at 2:58 PM, Patel, Swati <SwatiPatel@gov.sc.gov> wrote:

He has named us in this suit. We should be served today.

From: Tom Davis [<mailto:tdavis@harveyandbattey.com>]
Sent: Monday, December 12, 2016 2:38 PM
To: Tom Davis
Cc: Tom Davis
Subject: Filing of petition with the Supreme Court of South Carolina



December 12, 2016

FOR IMMEDIATE RELEASE:

CONTACT:

State Senator Tom Davis
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tdavis@harveyandbattey.com

BEAUFORT, S.C. – South Carolina State Senator Tom Davis released the following statement regarding

the petition he filed earlier today with the Supreme Court of South Carolina:

“This morning I filed a petition with the Supreme Court of South Carolina, asking this question: Have the provisions of Article III and Article IV of the South Carolina Constitution been amended by virtue of a joint resolution passed by the General Assembly in May 2012, approved by the state’s qualified electors in November 2012, and ratified by the General Assembly in May 2014, and if they have, what is the text of those constitutional amendments?”

The joint resolution passed by the General Assembly and the ballot question considered and approved by the electors plainly stated that all the proposed amendments were to be effective “beginning with the general election of 2018” or “upon the joint election” of the Governor and Lieutenant Governor; however, the General Assembly’s ratification of the prior two actions – such being the third and final step prescribed by Article XVI, section 1 of our state constitution for amending the provisions thereof – plainly stated this 2018 effective date for only some of the amendments. As a result, the Legislative Council, the agency charged with publishing the general and permanent laws of South Carolina, has updated our state constitution so as to:

- Provide for a “beginning with the general election of 2018” effective date in regard to the inclusion of Article IV, section 8, which pertains to the joint election of the Governor and Lieutenant Governor;
- Provide for a “as soon as practicable after the convening of the General Assembly in 2019” effective date in regard to the inclusion of Article III, section 37, which pertains to the Senate’s election of a President to preside over the Senate;
- Provide for an effective date of May 29, 2014 (i.e., the date of ratification), in regard to deletion of Article IV, section 9, which pertains to the Senate’s choosing a President Pro Tempore of the Senate to act in the absence of the Lieutenant Governor;
- Provide for an effective date of May 29, 2014 (i.e., the date of ratification), in regard to the deletion of Article IV, section 10, which pertains to the Lieutenant Governor presiding as President of the Senate;
- Provide for an effective date of May 29, 2014 (i.e., the date of ratification), in regard to the inclusion of Article IV, section 11, which pertains to succession in the case of the Governor or Lieutenant Governor vacating the office; and
- Provide for an effective date of May 29, 2014 (i.e., the date of ratification), in regard to the amending of Article IV, section 12, which pertains to notification being provided to the President of the Senate in the case of the Governor’s incapacity.

Subsequent to May 29, 2014, our state’s officials have acted as though Article IV, sections 9 and 10 had not yet been deleted from, and as though Article IV, section 11 had not yet been included in, our state constitution. For example, on June 18, 2014 – in the presence of constitutional officers for the state that included, without limitation, the Governor, the Chief Justice of the Supreme Court of South Carolina, and the Attorney General – the following actions occurred, sequentially, in the chambers of the South Carolina Senate:

- Sen. John E. Courson resigned as President Pro Tempore of the Senate;
- Sen. Yancey McGill was elected to be President Pro Tempore of the Senate;
- Glenn F. McConnell resigned as Lieutenant Governor of South Carolina; and

- Sen. Yancey McGill vacated his seat in the South Carolina Senate and proceeded to preside in the Senate as the Lieutenant Governor.

All of these actions are in accord with the joint resolution passed by the General Assembly and the ballot question considered and approved by the electors (which called for the amendments pertaining to the referenced sections 9, 10 and 11 to be effective “beginning with the general election of 2018” or “upon the joint election” of the Governor and Lieutenant Governor), but are not in accord with the ratification of those amendments by the General Assembly or the way in which they were enrolled by the Legislative Council (which called for the amendments pertaining to those sections to be effective as of May 29, 2014, i.e., the date of ratification).

In short, there is a material inconsistency between the amendments as approved by the people of South Carolina and those that were subsequently ratified by their representatives in the General Assembly and enrolled in the state’s official records. The petition I have filed today with the Supreme Court of South Carolina seeks to have this ambiguity resolved in favor of the effective date actually approved by the people.

That all six of the amendments set forth in the joint resolution passed by the General Assembly in May 2012 were to become effective in 2018 is beyond dispute; Section 1, Paragraph (G) of that resolution provides as follows: “It is proposed that the amendments proposed to Article IV of the Constitution of this State become effective for the general election of 2018 and the organization of the Senate to take place following the general election of 2018.”

Likewise, it is beyond question that the effective date of constitutional amendment question considered by the qualified electors in November 2012 was materially the same as provided in the joint election, with all six amendment provisions being stated as a single question and predicated by the following phrases (which essentially mean the same thing): “beginning with the general election of 2018” or “upon the joint election” of the Governor and Lieutenant Governor.

Finally, it is clear that the General Assembly’s ratification of the six amendments in May 2014 provided for two different effective dates: an effective date of beginning with the general election of 2018 for those pertaining to Article III, section 37, and Article IV, section 8, and an effective date of May 29, 2014, i.e., the date of ratification, for those pertaining to Article IV, sections 9, 10, 11 and 12.

It is important for this ambiguity regarding the effective dates of the amendments to be resolved expeditiously in light of Gov. Nikki R. Haley’s pending nomination by President-elect Donald J. Trump to be our country’s ambassador to the United Nations and the resulting vacancy in the governor’s office that would occur if and when her nomination is confirmed. Accordingly, it is my hope and expectation that the named respondents in the petition will join in my request that the Supreme Court of South Carolina proceed to hear this matter in its original jurisdiction and thereafter expeditiously issue its order resolving this inconsistency as to the effective date of the constitutional amendments in favor of the one approved by the people.

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<senate -- final draft of pleadings in supreme court -- execution copy.pdf>

<senate -- press release -- 2016 -- supreme court petition.pdf>