

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

UNITED STATES OF AMERICA, and ERIC
HIMPTON HOLDER, JR., in his official
capacity as Attorney General of the United
States,

Defendants,

and

JAMES DUBOSE, *et al.*,

Defendant-Intervenors.

Civil Action No.

1:12-CV-203-CKK-BMK-JDB
(Three Judge Court)

**NOTICE OF RULE 30(B)(6) DEPOSITION OF THE
SOUTH CAROLINA BUDGET AND CONTROL BOARD**

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, counsel for Defendants United States of America and Attorney General Eric H. Holder, Jr. will take the deposition upon oral examination of the South Carolina Budget and Control Board ("Board") commencing on Friday, July 20, 2012, at 9:30 a.m. and continuing thereafter from day to day until completed, at the United States Attorney's Office, 1441 Main Street, Suite 500, Columbia, South Carolina 29201; Phone: (803) 929-3000.

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, the State of South Carolina shall designate one or more officers, directors, managing agents, or other consenting representatives of the Board to testify as to the following matters:

1. The annual legislative appropriations process by which State agencies, and particularly the State Elections Commission, are funded, including any roles, duties, or functions performed by the Budget and Control Board in connection therewith.
2. State law and regulations governing the State Election Commission's use and expenditure of funds appropriated by the General Assembly, including but not limited to:
 - a. Requirements for justifying expenditures;
 - b. Requirements to itemize expenditures;
 - c. Requirements for fiscal impact statements;
 - d. Requirements governing when and under what circumstances appropriated funds may be used;
 - e. Requirements and procedures governing transfer of appropriated funds from one agency to another, or within the same agency;
 - f. Requirements and procedures governing "provisos" relating to appropriated funds; and
 - g. Requirements and procedures governing "carryover" of appropriated funds, including both recurring and nonrecurring funds, from one fiscal year to the next.
3. Any and all communications or transactions from January 1, 2007, through the present among the Budget and Control Board, the General Assembly, the Governor's Office, and/or the State Election Commission relating to or concerning requests by the State Election Commission to transfer appropriated funds for a different use or purpose within the agency, or to carry over appropriated funds from one fiscal year to the next.

Pursuant to Rules 30(b)(2) and 34 of the Federal Rules of Civil Procedure, the State of South Carolina shall identify and produce the documents and items requested in the attached Exhibit A for inspection and copying at and preferably at least 48 hours prior to the commencement of the Rule 30(b)(6) deposition noticed herein.

This deposition shall be recorded by stenographic means and may also be recorded by additional audiovisual means, and shall take place before a notary public or other person authorized by law to administer oaths.

You are invited to attend and examine the witnesses.

Dated: July 13th, 2012

RONALD C. MACHEN, JR.
United States Attorney
District of Columbia

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

s/ Bradley E. Heard

T. Christian Herren, Jr.
Richard Dellheim
Bradley E. Heard (DC Bar No. 458309)
Catherine Meza
Jared M. Slade
Anna M. Baldwin (DC Bar No. 998713)

Attorneys, Voting Section
Civil Rights Division
U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Telephone: (202) 305-4196
Facsimile: (202) 307-3961
Bradley.Heard@usdoj.gov

*Attorneys for Defendants United States of
America and Eric H. Holder, Jr.*

CERTIFICATE OF SERVICE OF DISCOVERY

This will certify that I have this day caused to be served a copy of the within and foregoing **Notice of Rule 30(b)(6) Deposition of the South Carolina Budget and Control Board** upon the following counsel of record by electronic mail:

Paul D. Clement
H. Christopher Bartolomucci
Conor B. Dugan
Stephen V. Potenza
Michael McGinley
BANCROFT PLLC
1919 M Street NW
Washington, DC 20036

Nancy Abudu
Katie O'Connor
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION, INC.
230 Peachtree Street NW, Suite 1440
Atlanta, GA 30303-1227

Wendy R. Weiser
Keesha M. Gaskins
Mimi Marziani
Elisabeth Genn
THE BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW
161 Avenue of the Americas, Floor 12
New York, NY 10013-1205

Armand Derfner
DERFNER, ALTMAN & WILBORN
575 King Street, Suite B
P.O. Box 600
Charleston, SC 29402

Arthur B. Spitzer
AMERICAN CIVIL LIBERTIES UNION OF
THE NATION'S CAPITAL
4301 Connecticut Avenue NW, Suite 434
Washington, DC 20008

Jon M. Greenbaum
Mark A. Posner,
Robert A. Kengle
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW
1401 New York Avenue NW, Suite 400
Washington, DC 20005

Garrard R. Beeney
Michael A. Cooper
Theodore A.B. McCombs
Sean August Camoni
Peter A. Steciuk
Taly Dvorkis
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004-2498

Debo P. Abegbile
Elise C. Boddie
Ryan P. Haygood
Dale E. Ho
Natasha M. Korgaonkar
Leah C. Aden
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
99 Hudson Street, Suite 1600
New York, NY 10013

Douglas H. Flaum
Michael B. de Leeuw
Adam M. Harris
FRIED, FRANK, HARRIS
SHRIVER & JACOBSON LLP
One New York Plaza
New York, NY 10004-1980

Victor L. Goode
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED
PEOPLE
4805 Mt. Hope Drive
Baltimore, MD 21215

Dated: July 13th, 2012

/s/ Bradley E. Heard
BRADLEY E. HEARD
U.S. Department of Justice

EXHIBIT A TO NOTICE OF RULE 30(B)(6) DEPOSITION TO THE
SOUTH CAROLINA BUDGET AND CONTROL BOARD

Pursuant to Rules 30(b)(2) and 34 of the Federal Rules of Civil Procedure, Defendants United States of America and Attorney General Eric H. Holder, Jr. request that Plaintiff State of South Carolina identify and produce the documents and items requested below for inspection and copying at or prior to the commencement of the Rule 30(b)(6) deposition noticed herein. For the convenience of the parties and counsel, as well as the deponent(s), and to avoid unnecessary delay at the deposition, the United States requests that responsive documents be produced at a mutually agreeable location at least 48 hours prior to the deposition. This request is continuing in nature as provided by Rule 26(e) of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

1. “The State,” “South Carolina,” or “Plaintiff” means Plaintiff State of South Carolina and any of its agents, representatives, employees, and any person acting or purporting to act on its behalf.
2. “Board,” unless otherwise stated, means the South Carolina Budget and Control Board.
3. “Act R54” means 2011 South Carolina Acts 27, H3003 (119th Leg.), which amends the code of laws of South Carolina relating to election related requirements, including the requirement that a voter present photographic identification when she presents herself to vote as well as the procedures for implementing the photographic identification requirement.
4. “Legislator” means an elected member of the South Carolina House of Representatives or the South Carolina State Senate, including employees, staff, interns,

representatives, designees, agents, or any persons acting or purporting to act on behalf of the South Carolina House of Representatives or the South Carolina State Senate, any committee thereof, or any elected member of the South Carolina House of Representatives or the South Carolina State Senate.

5. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Federal Rule of Civil Procedure 34 and the phrase “writings and recordings” is defined in Federal Rule of Evidence 1001, and includes, but is not limited to, any computer discs, tapes, printouts and emails, and databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

6. In responding to these requests, please produce all responsive documents in the possession, custody, or control of the State, or documents known to be available to the State, regardless of whether such documents are possessed directly by the State or its past and present agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on behalf of the State or subject to the State’s control.

7. All references in these requests to an individual person or officer include any and all past and present agents, advisors, employees, representatives, attorneys, consultants, contractors, predecessors in office or position, and all other persons or entities acting on behalf of or under control of such a person.

8. All references in these requests to any governmental entity, or any other type of organization include its past and present officers, executives, directors, employees, agents,

representatives, attorneys, consultants, contractors and all other persons acting or purporting to act on behalf of such an organization.

9. All documents shall be produced as they are kept in the usual course of business or be organized and labeled to correspond to each request. For all documents produced, please identify the names of the person from whose files the documents were produced.

10. No portion of a document request may be left unanswered because an objection is interposed to another part of that request. If the State objects to any portion of a document request, the State must state with specificity the grounds of any objections. Any ground not stated will be waived.

11. If production of any document referred to in this request is refused based on the assertion of a claim or privilege, with respect to each such document; (a) identify the document by date, name and title of author, name(s) of recipient(s), title or references, and a description of the document without revealing information for which the privilege is claimed; (b) state the privilege(s) pursuant to which production is refused; and (c) in the case of any document concerning any meeting or conversation, state the date and subject matter of such meeting or conversation, and identify the persons who attended the meeting or participated in the conversation.

12. In the event that a responsive document has been destroyed or has passed out of the State's custody or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

13. In the event that a responsive document is not available in the form requested but is available in another form or can be obtained, in whole or in part, from other data in the State's

possession, custody, or control, please so state and either supply the information requested in the form in which it is available or supply the data from which the information requested can be obtained.

14. Original and all non-identical copies of responsive documents, including all drafts must be produced. If the State is unable to produce the original of any document, please produce the best available copy and all non-identical copies, including drafts.

15. In construing these requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the masculine gender include the feminine, and words used in the singular include the plural.

16. If any part of the requested information is stored on computer disc, tapes or in any other electronic form, and is responsive to the request, it should be provided in the electronic form, consistent with the parties’ agreement on production of electronically stored information.

17. Documents available only in paper or hardcopy format shall be scanned into electronic format and produced via a secure FTP site, as provided herein.

18. Paper documents shall be produced consistent with the parties’ agreement on production of electronically stored information.

19. These document requests apply to the period from January 1, 2007, through the present unless otherwise limited or expanded by a particular request.

DOCUMENT REQUESTS

1. All state laws and regulations governing state agencies’ use and expenditure of funds appropriated by the General Assembly, including but not limited to:

a. Requirements for justifying expenditures;

- b. Requirements to itemize expenditures;
 - c. Requirements for fiscal impact statements;
 - d. Requirements governing when and under what circumstances appropriated funds must be used;
 - e. Requirements and procedures governing transfer of appropriated funds from one agency to another, or within the same agency;
 - f. Requirements and procedures governing “provisos” relating to appropriated funds; and
 - g. Requirements and procedures governing “carryover” of appropriated funds, including recurring and nonrecurring funds, from one fiscal year to the next.
- 2. Any and all forms or documents required to be completed by state agencies requesting a transfer of appropriated funds from one agency to another, or within the same agency.
 - 3. Any and all forms or documents required to be completed by state agencies requesting “carryover” of appropriated funds, including recurring and nonrecurring funds, from one fiscal year to the next.
 - 4. Any and all communications or transactions among the Budget and Control Board, the General Assembly, the Governor’s Office, and/or the State Election Commission relating to or concerning requests by the State Election Commission to transfer appropriated funds for a different use or purpose within the agency, or to carry over appropriated funds from one fiscal year to the next.