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Date: 12/2/2016 4:47:55 PM

Subject: FW: Correcting a nonconforming ratified constitutional amendment

Attachments: Supreme Court Petition.zip
senate -- petition for original jurisdiction and supporting documents.pdf
senate -- petition to supreme court.pdf
senate -- leatherman and lucas letter.pdf

FYI - Sen. Davis is planning to file a lawsuit on the issue of how the next Lt. Gov is selected unless the House and Senate come to a resolution (via unanimous consent) during organizational session.

From: Tom Davis [mailto:tdavis@harveyandbattey.com]
Sent: Friday, December 02, 2016 11:13 AM
To: HKL@scsenate.gov; JayLucas@schouse.gov
Subject: Correcting a nonconforming ratified constitutional amendment

December 2, 2016

Sen. Hugh K. Leatherman, Sr.
President Pro Tem of the S.C. Senate
HKL@scsenate.gov

James H. Lucas
Speaker of the S.C. House of Representatives
JayLucas@schouse.gov

Re: Correcting a ratified constitutional amendment's nonconformity with the amendment authorized by the General Assembly and approved by the electors in South Carolina

Dear President Pro Tem Leatherman and Speaker Lucas:

Attached are draft pleadings before the Supreme Court of South Carolina in its original jurisdiction, requesting that it: 1) Declare that the qualifying phrase "Beginning with the general election of 2018" must be added to the Section 11, Article IV amendment to the South Carolina Constitution approved by the qualified electors in the 2012 general election or, alternatively, 2) Declare that the 2014 ratification of this constitutional amendment is void and of no legal effect.

The General Assembly's ratification of this amendment did not conform with either the text of the amendment included in the Joint Resolution passed by the General Assembly, authorizing the electors' consideration of the amendment, or the text of amendment approved by the electors. I am sure you would both agree it is critically important for this nonconformity to be corrected, immediately, before circumstances occur that call for an application of the amendment.

Accordingly, at the General Assembly's organizational meeting next Tuesday, I ask that Speaker Lucas move for a unanimous-consent "Sense of the House," and that Pro Tem Leatherman similarly move for such a "Sense of the Senate," confirming this nonconformity will be corrected as the very first order of business when the General Assembly convenes on January 10, 2016.

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If either unanimous-consent motion fails, or if such motions are not made, then I will infer an attempt to legislatively correct this matter would encounter delays and, accordingly, that it would be likely for circumstances to occur that call for an application of the amendment (given Gov. Nikki Haley's decision to accept an appointment by President-elect Trump and the vacancy in the Lieutenant Governor's office that would occur if and when that appointment is confirmed).

If that is what happens – or, rather, doesn't happen – then I will finalize, sign and serve attached pleadings on December 7, 2016, and file them in the Supreme Court of South Carolina. And I will also then request that each of the named respondents immediately consent to the matter being considered by the Court in its original jurisdiction and join in the stated prayer for relief. In that way, the stated nonconformity could be corrected by the Court in short order.

To repeat: the General Assembly has included within the South Carolina Constitution an amendment that is materially different, both in text and effect, from the text the General Assembly authorized for consideration by the electors and the text those electors approved. This goes to the very heart of constitutional governance; the people's will, legitimately exercised, has not been effected, and this wrong must be corrected, immediately.

By copy of this letter, I am advising the other parties in interest to the suit – Gov. Haley, Lt. Gov. Henry D. McMaster, and Attorney General Alan M. Wilson – of this correspondence, and asking that they immediately make public statements in support of remedying the stated wrong. I am also copying Sen. Luke A. Rankin, Rep. Greg Delleney and Secretary of State Mark Hammond (who, along with Lt. Gov. McMaster and Speaker Lucas, serve on the S.C. Legislative Council). Thanks for your attention to and consideration of this extremely important matter.

Sincerely,

Tom Davis

cc: Gov. Nikki R. Haley (via email)
Lt. Gov. Henry D. McMaster (via email)
Attorney Gen. Alan M. Wilson (via email)
Sen. Luke A. Rankin (via email)
Rep. Greg Delleney
Secretary of State Mark Hammond