

From: Taylor, Richele
To: Butch Bowers <Butch@ButchBowers.com>
Date: 12/30/2016 10:28:42 AM
Subject: FW: Davis v. Leatherman
Attachments: senate -- return -- lucas and dellene.pdf

Butch – Attached is the Return/Motion to Dismiss from Lucas and Dellene. Below is Davis' response to Patrick Dennis after he read it.

I think Tom is right that the court needs to take it up and that the GA cannot fix it; but, as we discussed, the larger question is whether the Court will consent to his request to alter the Constitution.

Richele

From: Patel, Swati
Sent: Tuesday, December 20, 2016 10:15 PM
To: Veldran, Katherine <KatherineVeldran@gov.sc.gov>; Mottel, Haley <HaleyMottel@gov.sc.gov>; Taylor, Richele <RicheleTaylor@gov.sc.gov>; Schimsa, Rebecca <RebeccaSchimsa@gov.sc.gov>
Subject: Fwd: Davis v. Leatherman

FYI

Sent from my iPhone

Begin forwarded message:

From: "Tom Davis" <tdavis@harveyandbattey.com>
To: "Tom Davis" <tdavis@harveyandbattey.com>
Subject: FW: Davis v. Leatherman

From: Tom Davis
Sent: Tuesday, December 20, 2016 3:46 PM
To: 'Patrick Dennis'
Subject: RE: Davis v. Leatherman

Patrick:

Thanks for providing a copy of Speaker Lucas' and Chairman Dellene's return to my petition. I wish such were not the case, but they are incorrect in alleging, as they do at the bottom of page 11 of their return, that a solution to the ratification error "lies in the legislative process."

Article XVI of the state constitution (see the highlighted language in the text of the amendment below) provides that the legislature's ratification had to occur after the 2012 general election in which the constitutional referendum was approved by the qualified electors and before another general election; that window of time for legislative action, obviously, has closed.

It is not true, as they allege, that "if a majority of the General Assembly believes that any clarifications are needed to 2014 Act 214, those clarifications can be enacted." As a matter of constitutional law they cannot, and the only way at this point to effect the voters' intent, which I contend should be the primary objective of all legislators, is through a declaration by the Court.

Also, to what end do they argue the matter is not ripe for adjudication? On page 14 of the return, they allege that “[a] review of the Complaint reveals that Petitioner’s perceived “dispute” is completely contingent, hypothetical , and abstract in character, and thus not ripe for review ...”

First, this is simply not true; the Petitioner alleges actions taken by constitutional officers that are in violation of the text of the constitutional amendments ratified by the General Assembly, and that actions have been taken and continue to be taken in reliance upon ratified amendments the voters intended to take effect in after the general in 2018. Those actions are currently open to legal challenge.

Second, and as a more practical matter, why would Speaker Lucas and Chairman Delleney want to prevent the Court from hearing this case and effecting the voters’ will? Again, no legislative fix is available. I sincerely do not believe this action is in the best interests of the people of South Carolina, and I respectfully ask that they reconsider their return.

Tom

ARTICLE XVI AMENDMENT AND REVISION OF THE CONSTITUTION

SECTION 1. Amendments.

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives. However, for the general election in 1990, revision of an entire article or the addition of a new article may be proposed as a single amendment with only one question being required to be submitted to the electors. The amendment may delete, revise, and transpose provisions from other articles of the Constitution provided the provisions are germane to the subject matter of the article being revised or being proposed. If it is agreed to by two thirds of the members elected to each House, the amendment or amendments must be entered on the Journals respectively, with the yeas and nays taken on it and must be submitted to the qualified electors of the State at the next general election for Representatives. *If a majority of the electors qualified to vote for members of the General Assembly voting on the question vote in favor of the amendment or amendments and a majority of each branch of the next General Assembly, after the election and before another, ratify the amendment or amendments, by yeas and nays, they become part of the Constitution.* The amendment or amendments must be read three times, on three several days, in each House. (1965 (54) 827; 1967 (55) 140; 1968 (55) 3190; 1969 (56) 47; 1972 (57) 3197; 1973 (58) 86; 1974 (58) 3007; 1975 (59) 24; 1976 (59) 2215; 1977 (60) 23; 1979 Act No. 5; 1985 Act No. 6; 1989 Act No. 11.)

Editor's Note

For similar provisions in Constitution of 1868, see Const 1868, Art XV, Section 1.

SECTION 2. Two or more amendments.

If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

Editor's Note

For similar provisions in Constitution of 1868, see Const 1868, Art XV, Section 2.

SECTION 3. Constitutional Convention.

Whenever two thirds of the members elected to each branch of the General Assembly shall think it necessary to call a Convention to revise, amend or change this Constitution, they shall recommend to the electors to vote for or against a Convention at the next election for Representatives; and if a majority of all the electors voting at said election shall have voted for a Convention, the General Assembly shall, at its next session, provide by law for calling the same; and such Convention shall consist of a number of members equal to that of the most numerous branch of the General Assembly.

Editor's Note

For similar provisions in Constitution of 1868, see Const 1868, Art XV, Section 3.

"If a majority of the electors qualified to vote for members of the General Assembly voting on the question vote in favor of the amendment or amendments and a majority of each branch of the next General Assembly, after the election and before another, ratify the amendment or amendments, by yeas and nays, they become part of the Constitution."

From: Patrick Dennis [<mailto:PatrickDennis@schouse.gov>]

Sent: Tuesday, December 20, 2016 2:48 PM

To: Tom Davis

Subject: Davis v. Leatherman

Senator- you'll receive this via mail as well. Please let me know if you need anything further.

Patrick Dennis

Chief of Staff and

Legal Counsel to the Speaker

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From: BL512bcanonc7065@scstatehouse.net [<mailto:BL512bcanonc7065@scstatehouse.net>]

Sent: Tuesday, December 20, 2016 1:35 PM

To: Roland Franklin <RolandFranklin@schouse.gov>; Patrick Dennis <PatrickDennis@schouse.gov>

Subject: Attached Image