

THE STATE OF SOUTH CAROLINA
IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Tom Davis, individually, and as a Citizen, Resident,
Taxpayer, Qualified Elector and State Senator of
South Carolina Petitioner,

v.

Hugh K. Leatherman, Sr., in his capacity as President
Pro Tempore of the South Carolina Senate; James
H. Lucas, in his capacity as Speaker of the South
Carolina House of Representatives and as a member
of the Legislative Council; Henry D. McMaster, in
capacity as Lieutenant Governor and President of the
South Carolina Senate and as a member of the
Legislative Council; Nikki R. Haley, in her capacity
as Governor of South Carolina; Alan M. Wilson, in
his capacity as Attorney General of the State of South
Carolina; Luke A. Rankin, in his capacity as a member
of the Legislative Council; F. Gregory Delleney, Jr., in
his capacity as a member of the Legislative Council;
Mark Hammond, in his capacity as a member of the
Legislative Council; and the State of South Carolina Respondents.

NOTICE OF MOTION AND MOTION FOR LEAVE
TO FILE AN AMICUS CURIAE BRIEF

TO: THE RESPONDENTS ABOVE-NAMED:

YOU ARE HEREBY PROVIDED NOTICE, that the Movant herein, Larry A. Martin, has filed and does hereby file with the Supreme Court of South Carolina, pursuant to Rule 213 of the South Carolina Appellate Rules, a Notice of Motion and Motion for Leave to File an Amicus Brief; if you object to this motion, you shall have ten (10) days, commencing from the date of service, to file an original and six (6) copies of your return with the Clerk of the Supreme Court of South Carolina, and to also within such time serve a copy of your return on the Movant herein,

Larry A. Martin, at Post Office Box 247, Pickens, SC 29671, and your failure to file a timely return in this manner may be deemed to be consent by you to the granting of the within motion.

Further, the Movant herein, Larry A. Martin, for purposes of discharging his obligation pursuant to the referenced Rule 213 to identify his interest in the subject matter and to state why a brief of an *amicus curiae* brief is desirable, alleges the following as part of the within motion:

1. The proposed Complaint asks: were the provisions of Article III and Article IV of the South Carolina Constitution amended by virtue of the acts alleged in paragraphs 22 through 31 of the proposed Complaint and, if so, what is the text of those constitutional amendments?
2. He was a member of the South Carolina Senate during the times referenced in the proposed Complaint and has personal knowledge in regard to the matters alleged.
3. As chairman of the Senate Judiciary Committee, he handled H. 3152, a joint resolution proposing certain amendments to the South Carolina Constitution and referred to in the proposed Complaint as the "Joint Resolution," in both the Judiciary Committee and on the Senate floor.
4. He was at the podium in the Senate when the amendment to delay the implementation of the constitutional amendments was proposed. He inquired of Senate Counsel at that time to make sure that all of the constitutional amendments proposed in H. 3152 would take effect after the general election of 2018, should that amendment be adopted, and he was assured that adding paragraph G to the joint resolution accomplished that objective relative to all the proposed amendments to Article IV and it was thereafter adopted. The joint resolution was subsequently adopted by the House, as amended by the Senate, and that was the form of the resolution approved by the voters at the general election in 2018.
5. He was chairman of the South Carolina Senate Judiciary Committee when S. 446, the bill to ratify the constitutional amendments set forth in H. 3152 and referred to in the proposed Complaint as the "Ratified Constitutional Amendments," was introduced from the time it was filed in the Senate through the time it was ratified by the House Speaker and the Lieutenant Governor and then subsequently codified and published by the Legislative Council.
6. When he cosponsored the ratification bill, S. 446, his objective was to ensure that the 2012 general-election vote, which approved the constitutional amendments, was ratified pursuant to Article XVI, Section 1 of the state constitution; to that end, he made sure all of the sections in that ratification bill, which set forth the text of the constitutional amendments, included as a predicate both the Joint Resolution and the approval by the voters at 2012 general election.

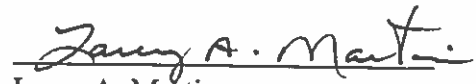
7. It was his expectation that the express inclusion of the predicates referenced in paragraph 6 above would make clear that the ratified constitutional amendments were to become effective after the general election in 2018, and it was also his expectation that, as a result of the express inclusion of those predicates, the Code Commissioner of the Legislative Council would insert the appropriate “effective 2018” footnotes for each of the ratified constitutional amendments.

8. He agrees with Petitioner Davis’ position that the General Assembly cannot alter the text of a constitutional amendment through ratification and contends that S. 446 of 2014 in form was drawn by staff at the request of its sponsors to implement the constitutional amendment as provided in the Joint Resolution (Act #289 of 2012) and subsequently approved by the voters of South Carolina in the 2012 general election; that all of the referenced amendments to Article IV, sections 9,10, and 11, are to be effective “beginning with the general election of 2018” and “upon the joint election” of the Governor and Lieutenant Governor; in that regard, he believes that he is uniquely situated to inform this Court as to legislative intent in regard to both the joint resolution and the subsequent ratification.

9. He disputes the contention set forth in the returns to the petition filed by the Respondent James H. Lucas and the Respondent F. Gregory Delleney, Jr. that a clarification in regard to the effective date of the amendments to the state constitution “lies in the legislative process” or that “if a majority of the General Assembly believes that any clarifications are needed to 2014 Act 214, those clarifications can be enacted”; such a legislative fix, he contends, is not possible in that Article XVI of the state constitution provides for legislative ratification to occur after the 2012 general election in which the constitutional referendum was approved by the qualified electors and before another general election; the time for legislation action has come and gone.

10. He believes this matter is justiciable by this Court in that sections 9, 10, and 11 of Article IV of the state constitution have been erroneously removed by the Code Commissioner in clear contravention of paragraph G of the Joint Resolution (Act #289 of 2012 (H. 3152) and the reference to the Joint Resolution in each part of the 2014 ratification, S. 446 of 2014.

For the forgoing reasons, the movant, Larry A. Martin, respectfully requests that the Supreme Court of South Carolina provide leave for him to file an *amicus curiae* brief in this action; that if such leave were granted, movant's arguments would expound upon the points and contentions made in Items 2-10; and, that the Court proceed to consider this matter in its original jurisdiction.



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January 4, 2017

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his capacity as a member of the Legislative Council;
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Legislative Council; and the State of South Carolina Respondents.

CERTIFICATE OF MAILING

I have deposited a copy of the Notice of Motion and Motion for Leave to File an Amicus
Curaie Brief in the United States Mail, postage prepaid, on January 4, 2017, addressed as
follows:

The Honorable Alan Wilson
P.O. Box 11549
Columbia, South Carolina 29211

The Honorable Jay H. Lucas
506 Blatt Building
Columbia, South Carolina 29201

The Honorable Hugh K. Leatherman
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Columbia, South Carolina 29201

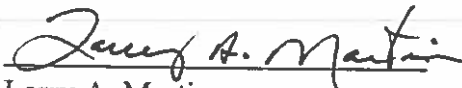
The Honorable Henry D. McMaster
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