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FAX COVER SHEET

Fax Number Transmitted to: 734 5167

To: Swati Patel

From: Patricia Logan Harrison

Re: Violation of Human Rights of Robert Levin
And Request for Emergency Relief

Date: January 8, 2017

Pages, including cover sheet: 89

Trisha

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January 7, 2016

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Attorney General Alan Wilson
South Carolina Attorney General
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Columbia, South Carolina 20201

Lieutenant Governor Henry D. McMaster
PO Box 142
Columbia, South Carolina 29202

William Danielson
Chairman of DDSN Commission
c/o SC Department of Disabilities
and Special Needs
3440 Harden Street
Columbia, South Carolina 29203

Representative Joseph Wilson
1436 Longworth House Office Building
Washington, DC 20515

Solicitor David Pascoe
First Cir. Solicitor's Off.
PO Box 1525
Orangeburg, South Carolina 29116

RE: Human Rights Violations and Diversion of Federal and State Funds

Dear Governor Haley and Gentlemen:

This is a follow up to my letter of March 6, 2016, which is attached. I have not received any response from the recipients of that letter, except for a letter from Attorney General Wilson saying his office does not intend to get involved in Mr. Levin's situation. In our letter, we asked you to "take immediate action to prevent the institutionalization of Rob Levin, who receives services under the Head and Spinal Cord Injury (HASCI) program operated by the South Carolina Department of Disabilities and Special Needs, under contract with the South Carolina Department of Health and Human Services." We included the affidavit of Mr. Levin's treating physician, which clearly described the services required to prevent Mr. Levin from being institutionalized so that the Governor's Office and other officials would understand the immediacy of the needs of this family.

This letter is to inform you that Mr. Levin aspirated on December 31, 2016 and is still hospitalized, being treated for aspiration pneumonia and sepsis. Fortunately for everyone, he has, so far, survived. We have renewed our request for the home-based services ordered by his

physicians with his Richland Lexington Service Coordinator, and with DDSN and DHHS (through their counsel). DHHS and DDSN responded by sending a notice informing us that the agencies intend to terminate payment for his current team of trained caregivers and the assistive technology and supplies he has been receiving. DHHS still has not provided the speech device we have been requesting for years, which would likely have prevented this most recent injury. As Mr. Levin's treating physician warned, once this team is disbanded, it will be nearly impossible to return Mr. Levin to his home. Because DHHS and DDSN have refused to provide the services his physician ordered at home, the hospital is now making arrangements to place Mr. Levin in a nursing home, because his mother is physically unable to continue without those physician-ordered supports. This is not the choice of the family, but is a direct result of the State's continuing violations of the ADA and the Rehabilitation Act and the human rights of citizens of South Carolina who have disabilities.

As I shared in our March, 2016 letter, Mr. Levin's 66 year old mother was left to provide tube feedings and other care for her son 105 hours a week because DDSN and DHHS continue to impose caps that the South Carolina Court of Appeals has twice now found to be violative of the Americans with Disabilities Act in 2014. In *Stogsdill v. DHHS* (S.C.Ct.App. 2014) and *Myers v. DHHS*, that Court found that the caps imposed on DDSN waiver services violate the ADA. But the agencies continue to impose the caps on all but a handful of waiver participants, including imposing the caps on Mr. Levin.

We explained in our letter that Mr. Levin's step-father, a disabled Viet Nam veteran, suffered a stroke and was diagnosed with brain tumors when we contacted the Governor and other officials in March, 2016. No assistance was provided during 2016, when Mrs. Self was stretched to the breaking point trying to provide care for her totally disabled husband and her son and she has suffered permanent injuries herself. We advised in that letter that while Mr. Self was dying, Mrs. Self attempted to seek respite services by placing her son in a nursing home, while awaiting the decision of DDSN and DHHS regarding the home-based services his physicians ordered. Mr. Self died a few months after you received our letter without a decision being rendered and without additional hours being provided.

We informed you that the only offer of assistance we received from DDSN and DHHS was to admit Mr. Levin to a DDSN Regional Center ICF/ID. The affidavit we sent you explained why the placement in an intermediate care facility for persons who have intellectual disabilities would be an inappropriate and dangerous placement for Mr. Levin, who DHHS has each year found to require a higher skilled level of care. We called your attention to the recent \$1 million settlement in the case of Fantasia Jackson at the Pee Dee Center and the long history of abuse and neglect in DDSN Regional Centers.

Since March, 2016, other persons, including at least one former DDSN Commissioner, have called Governor Haley's attention the systemic abuse, neglect and exploitation of persons living in residential settings funded by DDSN and DHHS. The Governor's Office received a letter, the same month we sent our March, 2016 letter, from a former DDSN Commissioner asking the Governor's Office to examine the pattern of abuse, neglect and deaths of DDSN clients. In response, The Governor's Office called in two DDSN Commissioners, who verified those warnings of the neglect, abuse and corruption in that agency. Instead of holding DDSN

accountable by replacing members of its governing board who have contributed to this corruption, Governor Haley's office pow wowed with its Chairman, who has publically declared that he owes allegiance only to the Governor, who can remove him at will.

Despite being informed, not only by us, but by this former Commissioner, that millions of dollars allocated for services continues to be diverted, the Governor's Office has not questioned in budget meetings why those funds were not spent as allocated by the General Assembly. Instead, the Governor's budget has further increased new funding to DDSN, knowing full well the pattern of diverting these recurring funds. Mr. Danielson has declared that the South Carolina General Assembly has no business complaining about the current state of affairs at DDSN, or how the money is spent.

The Governor's Office has also been provided with the articles published by the Greenville News, which has been reporting for some time the systemic human rights violations in DDSN programs, as well as what appears to be financial mismanagement. We are requesting from the Governor and her Office, pursuant to FOIA, all correspondence, internal memos, emails and other writings in the possession of that office or the Governor related to DDSN from 2010 to the present.

We reminded Governor Haley in our March, 2016 letter that Mr. Levin's services were reduced in 2009 based on blatantly false claims of "budget reductions," and that DHHS allowed \$225 million in state funds to "lapse" that year. We noted that a GAO audit reported that, despite drastically reducing services to persons like Rob, that year DDSN overbilled Medicaid by more than \$10 million. We brought to your attention that in a subsequent year, DHHS failed to spend more than \$280 million it received from the General Assembly. We complained that **"The State of South Carolina has replenished its reserve accounts on the backs of severely disabled persons like Rob."** That violation of human rights and diversion of taxpayer dollars continues unchecked.

We complained that Governor Haley included more than \$13 million in DDSN's budget in FY 2014 to provide services to persons on the waiting lists, which should have been matched with federal funds to produce more than \$40 million in services and jobs for South Carolinians to serve people like Rob. A former DDSN Commissioner also informed Governor Haley that DDSN only spent approximately \$4 million of these funds as allocated by the General Assembly. Yet, those funds are recurring, despite the services never having been provided. We brought to the Governor's attention that the failure to provide services to persons like Rob, who wish to live in their own homes is not an issue of lack of funding. We complained in that letter that the diversion of funds intended to provide services for people like Rob, who have severe disabilities and wish to live at home, has been recurring and ignored by the Governor's Office.

We reminded you in our March 2016 letter that the obligation to provide services in the least restrictive setting, i.e. Mr. Levin's home, is that of the State of South Carolina, pursuant to the Americans with Disabilities Act and the decision of the United States Supreme Court in *Olmstead v. L.C.* It is the State's decision whether it chooses to obtain federal funding (70%) for these services, but, as I explained in my letter last March, the availability of that funding source does not in any way negate the State's obligations under the ADA to pay for these services with

other funds. We have asked that family support funds be used to the extent the state elects not to cover some or all of the costs through Medicaid.

We sent that March, 2016 letter as a courtesy in an unsuccessful attempt to avoid litigation and asked recipients to contact me "if you would like to work together to immediately resolve this family's crisis." We received no response from the Governor's Office and Mr. Self, a veteran who served his country with honor died with his family in a state of total panic. Representative Wilson sent the attached letter after Mr. Self's death expressing sympathy, with a hand written note that said "I appreciate your family." But, that letter did not respond to the needs this veteran's family so clearly laid out in our March, 2016 letter.

We advised in that letter that DHHS convinced the district court judge that Mr. Levin was not "at risk of institutionalization" and that the agencies provided information that misled that court. We appealed the federal district court's decision (that Mr. Levin is not at risk of institutionalization) to the Fourth Circuit Court of Appeals. Last week the Fourth Circuit Court of Appeals remanded Mr. Levin's case and instructed the district court to reconsider whether DHHS is in violation of the anti-retaliation provision of the Americans with Disabilities Act. Yet, DHHS and DDSN continue to ignore this family's plight and their legal obligations.

In the past, the Governor's Office has informed the courts that the Governor has no control over the State's Medicaid programs. But, these meetings with Commissioners,, along with Commissioner Danielson's recent public declaration mentioned above (that he answers only to Governor Haley) dispel those claims. In another recent case, the Fourth Circuit has recognized that the Governor may not hide behind sovereign immunity for claims brought under the ADA, and that damages, in addition to than injunctive relief, may be sought for injuries sustained due to violations of constitutional rights.

We are asking that the Governor immediately advise Commissioner Danielson to instruct Director Buscemi to continue Mr. Levin's hours until he can be discharged home. We are asking that all hours ordered by his treating physicians be authorized to allow him to return home (not just the hours he was receiving in 2009), along with a speech device which he needs to prevent further harm such as that which occurred on December 31, 2016.

A discharge meeting is scheduled for Monday morning, January 9, 2017. We have invited the media to be present when Mr. Levin is discharged - either back to his own home if necessary services are provided, or to record him being forced to move into a nursing home, if his request for services is denied or again ignored. I would hope that reporters will be present to film his return home, with the services he needs authorized and hope it will not be necessary to file a new legal action, but please consider this to be our attempt to resolve these issues before taking that action.

Cordially,



Patricia Logan Harrison

cc: Damon Wlodarczyk, Esq.
 Senator John Scott
 Senator Thomas Alexander
 Senator Chuck Grassley, attn. Karen Summer
 Representative John M. Mulveney
 Senator John Scott
 Senator Alexander
 Senator Lindsey Graham
 Representative Elizabeth Bernstein
 Representative James Smith
 Representative Joe Wilson
 Clare Ansberry, *Wall Street Journal*
 Seanna Adcox, *The Associated Press*
 John Monk, *The State*
 Dawndy Mercer Plank, *WIS TV*
 Yvonne Wenger, *The Baltimore Sun*
 Mary Leitner, RichLex DSN Board

 Mary Self
 Senator Rex Rice
 Senator Tim Scott
 Senator Vincent Sheheen
 Tim Smith, *The Greenville News*
 Dawndy Mercer Plank, *WIS TV*
 Joseph Weber, Fox News
 Robert Pear, *The New York Times*
 Gloria Prevost, P&A
 John Monk, *The State*
 David Wright, CMS Atlanta
 Ed O'Keefe, *Washington Post*
 Yvonne Wenger, *Baltimore Sun*
 Lauren Sausser, *Charleston Courier*
 President Elect Donald Trump
 Alison N. Barkoff, Esq., USDOJ
 Tanya Graham, RichLex DSN Board

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March 9, 2016

Governor Nikki Haley
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James H. "Jay" Lucas
Speaker, South Carolina House of Representatives
506 Blatt Building
Columbia, South Carolina 29201

Alan Wilson
South Carolina Attorney General
1000 Assembly Street
Columbia, South Carolina 20201

Lieutenant Governor Henry D. McMaster
PO Box 142
Columbia, South Carolina 29202

Dear Governor Haley, Attorney General Wilson, Speaker Lucas and Lt. Governor McMaster:

March is Brain Injury Awareness Month. I am writing in hopes that the State of South Carolina will take immediate action to prevent the institutionalization of Rob Levin, who receives services under the Head and Spinal Cord Injury (HASCI) program operated by the South Carolina Department of Disabilities and Special Needs, under contract with the South Carolina Department of Health and Human Services. I am enclosing the affidavit of Mr. Levin's treating physician, which clearly describes the services required to prevent Mr. Levin from being institutionalized. Mr. Levin was injured at Ground Zero in the days following 9/11 and he spent four years in a nursing home in North Augusta prior to returning to live at home ten years ago.

DHHS has taken the position that Mr. Levin is not at risk of institutionalization, thus requiring his sixty-six year old mother, Mrs. Self, to provide tube feedings and other care for her son 105 hours a week. We have appealed the federal court's decision (that Mr. Levin is not at risk of institutionalization) to the Fourth Circuit Court of Appeals. Recently, Mr. Levin's step-father, a disabled Viet Nam veteran, suffered a stroke and has been diagnosed with brain tumors. Now, Mrs. Self is being stretched to the breaking point, between providing care for her husband of thirty-eight years and her son. She has sought to admit her son to a nursing home until the needed home-based services are provided and he has been placed on waiting lists. There is certainly no doubt that Mr. Levin is at risk of institutionalization, as a request to place him in a nursing home is being processed as I write this letter.

We have requested additional nursing and personal care services from DHHS and DDSN to avoid institutionalization, but the agencies' only response has been to offer to admit Mr. Levin to a DDSN Regional Center ICF/ID. The enclosed affidavit of Rob's treating physician explains why this placement in an intermediate care facility for persons who have intellectual disabilities would be an inappropriate and dangerous placement for Mr. Levin, who DHHS has each year

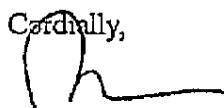
found to require skilled level of care. In addition, I call your attention to the recent \$1 million settlement in the case of Fantasia Jackson at the Pee Dee Center and the long history of abuse and neglect in DDSN Regional Centers.

The obligation to provide services in the least restrictive setting, i.e. Mr. Levin's home, is that of the State of South Carolina, pursuant to the Americans with Disabilities Act and the decision of the United States Supreme Court in *Olmstead v. L.C.* Of course, if the State chooses to provide these service through the HASCI Medicaid waiver program, the federal government will pay approximately 70% of the costs. But, as Judge Hendricks recognized in *Peter B. v. Sanford*, the State's obligation to comply with the Americans with Disabilities Act exists separate and apart from that funding source.

We now know Mr. Levin's services were reduced based on blatantly false claims of "budget reductions," and that DHHS allowed \$225 million in state funds to "lapse" that year. According to a GAO audit, despite drastically reducing services to persons like Rob, that year DDSN overbilled Medicaid by more than \$10 million. In a subsequent year, DHHS failed to spend more than \$280 million it received from the General Assembly. The State of South Carolina has replenished its reserve accounts on the backs of severely disabled persons like Rob. Governor Haley included more than \$13 million in DDSN's budget in FY 2014 to provide new services, which should have been matched with federal funds to produce more than \$40 million in services and jobs for South Carolinians to serve people like Rob. However, DDSN only spent approximately \$4 million of these funds as allocated by the General Assembly. This is not an issue of lack of funding. The diversion of funds intended to provide services for people like Rob, who have severe disabilities, has been recurring and ignored by the Governor's Office and the General Assembly.

We are sending this letter to each of you as a courtesy in an attempt to avoid litigation in the state court. We plan to file a complaint naming the Governor and members of the General Assembly for the State's continuing violations of the Americans with Disabilities Act and the Medicaid Act. You may reach me at 803 360 5555 if you would like to work together to immediately resolve this family's crisis.

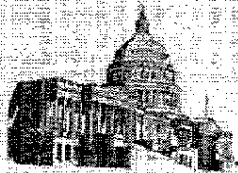
Cordially,



Patricia Logan Harrison

cc: Damon Wlodarczyk, Esq.
 Senator Chuck Grassley, attn. Karen Summer
 Senator John Scott
 Senator Joel Lurie
 Senator Lindsey Graham
 Senator Tim Scott
 Representative Joe Wilson
 Clare Ansberry, *Wall Street Journal*
 Seanna Adcox, *The Associated Press*
 Liv Osby, *Greenville News*
Sumter Item

John Monk, *The State*
 Ron Aiken, *The Nerve*
 Eric Bradner, CNN
 Joseph Weber, Fox News
 Robert Fear, *The New York Times*
 Gloria Prevost, P&A
 David Wright, CMS Atlanta
 Ed O'Keefe, *Washington Post*
 Yvonne Wenger, *Baltimore Sun*
 Lauren Sausser, *Charleston Courier*



HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

JOE WILSON
Second District
South Carolina

June 20, 2016

Mrs. Mary Vick D'antonio Self
7622 Creekwood Drive
Columbia, South Carolina 29223-6108

Dear Mrs. Self,

I was deeply saddened to learn about your husband's death, and I wanted to let you know of my deep sympathy for your loss.

It is never easy to lose someone we love, and my thoughts and prayers are with you during this time of mourning. Although we are never prepared for such losses, I hope that his memory will give you strength and courage at this most difficult of times. Nothing can replace the presence of a loved one, yet we can honor them by continuing in hope and faith.

It is my distinct privilege to serve the people of the Second Congressional District, and if there is anything I can do to help you or your family, please do not hesitate to call upon me.

Sincerely,

JOE WILSON
Member of Congress

JW/mp