IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

South Carolina State Conference of the NAACP, Marvin Neal, Robynne Campbell; De'Ontay Winchester, Plaintiffs, v. Alan Wilson, in his official capacity as Attorney General of South Carolina, Defendant.	)	Civil Action No. 2:23-cv-01121-DCN **MOTION TO DISMISS AND ALTERNATIVE MOTION TO STAY**

The Defendant Attorney General Alan Wilson, as named herein, hereby move for dismissal of the Complaint in this case pursuant to Rules 12(b)(1) and (6), FRCP, in that, for the reasons set forth below, this Court lacks subject matter jurisdiction of this case, and Plaintiff has failed to state a claim upon which relief can be granted:

1. Plaintiffs lack standing to sue.

2. This case is not ripe for adjudication.

3. This case presents no case or controversy or justiciable controversy.

Alternatively, the Attorney General moves for this Court to abstain from hearing this case now under *Pullman* abstention and stay this case while the South Carolina Supreme Court determines whether to authorize the program that Plaintiffs propose.

Attached in support only of the Rule 12(b)(1) motion and the Motion for Stay are an affidavit and exhibits. These motions are also supported by a memorandum filed herewith.

[Signature block on next page]

Respectfully submitted,

ALAN WILSON
Attorney General
Federal ID No.10457

ROBERT D. COOK
Solicitor General
Federal ID No. 285
Email: RCook@scag.gov

/s/ J. Emory Smith, Jr.
J. EMORY SMITH, JR.
Deputy Solicitor General
Federal ID No. 3908
Email: ESmith@scag.gov

May 3, 2023

Counsel for Defendant Wilson

EXHIBIT A

to Rule 12(b)(1) Motion to Dismiss of Attorney General and Response to Motion for Preliminary Injunction
***NAACP v. Wilson* Civil Action No. 2:23-cv-01121-DCN**

Affidavit of Patricia Howard, Clerk of Court with Request from Board of Paralegal Certification

UNITED STATES DISTRICT COURT DISTRICT OF SOUTH CAROLINA CHARLESTON DIVISION

SOUTH CAROLINA STATE CONFERENCE OF THE NAACP; MARVIN NEAL; ROBYNNE CAMPBELL; DE'ONTAY WINCHESTER;

Plaintiffs,

v.

ALAN WILSON, in his official capacity as Attorney General of South Carolina;

Defendant.

Case No. 2:23-cv-01121-DCN

AFFIDAVIT OF PATRICIA HOWARD

I, Patricia A. Howard, upon my personal knowledge, hereby submit this declaration and declare as follows:

1. My name is Patricia A. Howard, and I currently serve as the Clerk of the Supreme Court of South Carolina. The Supreme Court appointed me Clerk of the Supreme Court in accordance with the provisions of Article V, Section 6 of the South Carolina Constitution on July 17, 2021. I am also an attorney licensed to practice law in South Carolina.

2. Under the South Carolina Constitution, the Supreme Court of South Carolina has "jurisdiction over the admission to the practice of law and the discipline of persons admitted." Art. V, § 4, S.C. Const. This constitutional authority includes defining what constitutes the practice of law, as well as what constitutes the authorized and unauthorized practice of law by nonlawyers. *In re Unauthorized Prac. of L. Rules Proposed by S.C. Bar*, 309 S.C. 304, 306, 422

S.E.2d 123, 124 (1992) (authorizing nonlawyers to engage in activities that constitute the practice of law, such as allowing a business to be represented in magistrates courts by a non-lawyer officer, agent or employee; allowing certified public accounts to render professional assistance, including compensated representation before agencies and the Probate Court; and allowing police officers to prosecute traffic offenses in the magistrate and municipal courts).

3. In *In re Unauthorized Practice of Law Rules Proposed by the South Carolina Bar*, 422 S.E.2d 123 (1992) the Supreme Court declined to adopt a set of proposed rules governing the unauthorized practice of law. The Court held "it is neither practicable nor wise to attempt a comprehensive definition by way of a set of rules. Instead, we are convinced that the better course is to decide what is and what is not the unauthorized practice of law in the context of an actual case or controversy." 422 S.E.2d at 124. The Court invited interested parties to seek a declaratory judgment in the original jurisdiction of the Supreme Court to determine such issues, stating:

> we recognize that other situations will arise which will require this Court to determine whether the conduct at issue involves the unauthorized practice of law. We urge any interested individual who becomes aware of such conduct to bring a declaratory judgment action in this Court's original jurisdiction to determine the validity of the conduct. We hope by this provision to strike a proper balance between the legal profession and other professionals which will ensure the public's protection from the harms caused by the unauthorized practice of law.

Id. at 125.

4. Since the issuance of that opinion, the Supreme Court has accepted numerous cases in its original jurisdiction addressing whether conduct constitutes the unauthorized practice of law. Recent examples include: *Ex Parte Westbrook*, 840 S.E.2d 926 (2020); *Ex Parte Wilson*, 833 S.E.2d 840 (2019); *Boone v. Quicken Loans, Inc.*, 803 S.E.2d 707 (2017); *Rogers Townsend & Thomas, PC v. Peck*, 797 S.E.2d 396 (2017); *Crawford v. Cent. Mortg. Co.*, 744 S.E.2d 538

(2013); *Medlock v. Univ. Health Servs., Inc.*, 743 S.E.2d 830 (2013).

5. There is currently pending before the Supreme Court the attached request filed by the South Carolina Board of Paralegal Certification that would permit paralegals certified under Rule 429, SCACR, to provide limited legal services in the areas of (1) Adult Name Changes; (2) Uncontested Small Estate Matters; and (3) Uncontested Divorce Matters where there are no children. The Supreme Court instructed me to refer the matter to the South Carolina Bar for comment.

6. As the Clerk of the Supreme Court, I am the custodian of the records of the Supreme Court of South Carolina. Documents filed with the Supreme Court in appellate, certiorari, and original jurisdiction matters are stored and maintained in the C-Track Appellate Case Management System.

7. I have reviewed the plaintiffs' complaint, exhibits, declarations, motion, and memorandum of law filed in the United States Federal District Court on March 21, 2023 in Case No. 2:23-cv-01121 by the South Carolina State Conference of the NAACP against Alan Wilson, in his official capacity as the Attorney General of the State of South Carolina. In particular, I have reviewed Exhibit A to the Complaint, which is titled a "Housing Advocate Eviction Advice Training Manual." This manual purports to create a training document for a program meant to allow nonlawyer volunteers to assist persons facing eviction by allowing these volunteers to provide "free, accurate, and limited legal advice to help these tenants request a legal hearing on their eviction actions and prepare for that hearing." (Page 1, Exhibit A to Complaint). At various points in this manual, nonlawyers are advised that any advice they may provide is limited in nature, and they are instructed to immediately refer tenants to attorneys licensed to practice law in South Carolina whenever the scope of advice might exceed authorized limits.

8. I have diligently searched the records of the Supreme Court of South Carolina to determine whether any of the parties or declarants in the case have filed a petition in this Court's original jurisdiction seeking a declaratory judgment to approve this manual or to determine whether the conduct described in this manual constitutes the unauthorized practice of law. My search reveals that neither the NAACP nor any of the named individual plaintiffs or declarants in the case has filed a petition in the original jurisdiction of the Supreme Court seeking a declaratory judgment as to whether the services the NAACP seeks to provide constitute the unauthorized practice of law.

9. I have never been contacted by any of the plaintiffs with questions about how to ask the Supreme Court to review the program described in the complaint or the Housing Advocate Eviction Advice Training Manual attached as Plaintiffs' Exhibit A.

10. If contacted by an interested person with questions about these kinds of petitions, I would have directed that person to the language of *In re Unauthorized Practice of Law Rules*, and Rules 245 and 240 of the South Carolina Appellate Court Rules with regard to the the filing of an original jurisdiction petition. In some instances, a letter request for the approval of a program may be addressed in the original jurisdiction of the Supreme Court. There is no filing fee to file such a petition or letter request.

11. With respect to the attached pending request filed by the South Carolina Board of Paralegal Certification—which was submitted in a letter addressed to the Chief Justice and the other Members of the Supreme Court, rather than as a formal petition in the Court's original jurisdiction—that request is expected to be considered by the Court on its merits once comment is received from the South Carolina Bar.

I declare under penalty of perjury that the foregoing is true and correct.

By:

Patricia A. Howard

Patricia A. Howard
Clerk of Court, Supreme Court of South Carolina

SWORN TO and subscribed
to before me this 3rd day
of May 2023.

Lisa T. Eubanks

Notary Public for South Carolina
My Commission Expires: 11-14-2032

SOUTH CAROLINA BOARD OF PARALEGAL CERTIFICATION

Board Chair
Dr. April N. Taylor, Esq.
ataylor@southuniversity.edu
PO Box 608
Columbia, SC 29202
(803) 799-6653, ext 134

June 7, 2022

The Supreme Court of South Carolina
P.O. Box 11330
Columbia, South Carolina 29211

Dear Chief Justice Beatty and Esteemed Members of the Court:

RE: *UPDATE ON EXPANDED ROLES FOR SOUTH CAROLINA CERTIFIED PARALEGALS (**NOT** UNDER ATTORNEY SUPERVISION).*

Pursuant to a decision at the October 22, 2021 board meeting, the board voted to advance three of our proposed areas for expanded roles to the Supreme Court with the intent that these did NOT have to be done under the supervision of an attorney. The three areas are: 1) Adult Name Changes; 2) Uncontested Small Estate matters (BOTH Testate and Intestate) and 3) Simple uncontested divorce form filling with no children involved and/or an agreement already reached as to custody and support.

After review and research, the Board proposes that South Carolina Certified Paralegals ("SCCP") are trained professionals who have pursued additional education and/or training in support of this designation. We believe that working in partnership and under the supervision of the CLE arm of the SC Bar we would be able to provide additional training to South Carolina Certified Paralegals.

SC Certified Paralegal role expansion in South Carolina involves:

- Detailed educational, experiential and examination requirements for licensure of Licensed Legal Paraprofessionals;
- Court rules to set forth ethical and procedural requirements governing Licensed Legal Paraprofessionals (SCCPS);
- A plan to make necessary changes to South Carolina Judicial documents to ensure South Carolina Certified Paralegals can file documents in cases and take other permitted actions for their clients; including considerations for UPL expansion; and
- A plan for outreach and education to stakeholders about the limited scope of a South Carolina Certified Paralegal practice.

As such we submit the following as areas we believe SCCPs could competently and capably address without the supervision of an attorney. We would welcome feedback from the Court regarding the areas identified and believe that a focused group with representatives from this board, the Bar and the South Carolina Access to Justice Commission could advance these initiatives with more study, rules for enactment and deliberation as to how best to implement these in South Carolina. Do find our notes regarding the three areas for practice attached based on where we have identified some of the greatest need from the 2021 S.C Justice Gap, reviewed by the S.C. Access to Justice Commission; and areas we believe would enhance the legal services available to South Carolinians, particularly some of the poorer rural communities, with the most need.

Included proposals:

1. Requirements for Adult Name Change for SCCP assistance
2. Name Change Packet – Adults (guide to SCCPs)
3. DSS Consent to Release Information (with suggested update)
4. Expanded Roles for Paralegals Small Estates
5. Lexington County Estate Instructions
6. Self-Represented Litigant (SRL) Simple Divorce Instructions with update that a SCCP may assist an SRL with completing the form only and may not appear at any hearings.

We welcome feedback from the Court and an opportunity for this esteemed Court to meet and discuss further with the Board.

Sincerely,

Dr. April N. Taylor, Esq.
Chairperson
South Carolina Board of Paralegal Certification

Adult name change requirements for SCCP Assistance:

How do I file for a name change for my child or myself?

The court has included a name change packet with sample documents that you may use for submission.

1. File an action for name change with the Family Court cover sheet and payment of the $150 filing fee.
2. SCCP may sign as SCCPs instead of attorneys.
3. SCCPs may not appear if a hearing is scheduled and clients will be directed to associate a licensed attorney to complete the name change process.
4. The court must be provided with the following documents:
    a. A fingerprint and background check performed by South Carolina Law Enforcement Division: see instructions included here: South Carolina Law Enforcement Division (sc.gov)
    b. A sworn statement or affidavit stating whether you are under an order to pay child support or alimony; and;
    c. A screening statement from SLED stating whether you are on the sex offender registry; South Carolina Public Sex Offender Registry (sc.gov); and
    d. A screening statement from DSS stating whether you are on the Central Registry on Child Abuse and Neglect. This statement may be released to SCCPs in the same way this information may be released to an attorney (for adult name change purposes only).

NAME CHANGE PACKET

The requirements for a name change are found at S.C. Code Ann. § 15-49-20. **If the name change is for a minor child, you should consult an attorney.** In all other cases, you must file an action for a name change by filing the Family Court Cover Sheet and paying the $150.00 filing fee. Some of the mandatory forms are provided in this packet and some you will have to obtain on your own. The forms provided in this packet have been provided to us by the South Carolina Court Administration Office (www.sccourts.org). A checklist of all the mandatory forms is listed at the end of this information sheet. You must also provide the court with specific documents from the following agencies:

Department of Social Services (DSS)

- A screening statement from the South Carolina Department of Social Services (DSS) that indicates if you are on the department's Central Registry of Child Abuse and Neglect **(DSS Form 3072).** The following information is provided as a suggested tool to assist you with obtaining this required information:

DSS Location:	1535 Confederate Avenue (Corner of Bull and Confederate), Columbia, SC
DSS Phone#:	(803) 898-7318 (Office); (803) 898-7641 (Fax)
DSS Website:	https://dss.sc.gov Search for *Central Registry.* Click on *DSS: Central Registry,* then click on *DSS Form 3072*
Cost:	$8.00

If you have any questions about this website or the form, please call DSS at (803) 898-7318. The Family Court staff cannot offer any other information about these forms.

State Law Enforcement Division (SLED)

- The petitioner will need to obtain the results of a (1) Criminal Background Check conducted by the State Law Enforcement Division (SLED), as well as a statement indicating if the petitioner is listed on the SLED's (2) Sex Offender Registry. The following information is provided as a suggested tool to assist you with obtaining the required information:

SLED Phone: (803) 896-1443 (Ask for the *"name change packet"* to be mailed to you.)
Cost: $25.00

If you have any questions about the form or the process in obtaining the form, please call SLED at (803) 896-1443. The Family Court staff cannot offer any other information about these forms.

- The petitioner will need to obtain and provide the results of a fingerprint check. The following agencies will be able to assist you with this process:

_____ County Sheriff's Department
Location:
Phone:
Times:
Cost:

City Police Department of _____
Phone:

If you have any questions concerning the fingerprinting process or the cost and times available, please call either of the two agencies listed above. The Family Court staff cannot offer any other information about these forms.

- A signed Affidavit from the petitioner as to whether or not the petitioner is under a court order to pay child support or alimony.
- Copy of your birth certificate.
- Filing Fee (Cash or money order only – no personal checks. THIS MAY VARY WITH EACH COUNTY.)

Checklist Summary of mandatory items needed:

- ☐ Family Court Cover Sheet form (blank form included in packet)
- ☐ Order and Certificate of Name Change and Amendment of Birth Record form(blank form included in packet)
- ☐ Petition for Name Change and Amendment of Birth Certificate form (blank form included in packet)
- ☐ Verification form (blank form included in packet)
- ☐ Affidavit form re: have or have not been convicted of a crime under a different/same name) (blank form included in packet)
- ☐ DSS Central Registry of Child Abuse and Neglect Form (you must obtain andsubmit)
- ☐ SLED's Criminal Background Check (you must obtain and submit)
- ☐ SLED's Sex Offender Registry form (you must obtain and submit)
- ☐ Fingerprint results (you must obtain and submit)
- ☐ Affidavit (statement) from Petitioner re: you are or are not under court order to pay child support or alimony (blank form included in packet)
- ☐ Copy of Birth Certificate (you must obtain and submit)
- ☐ Copy of Divorce Decree (if reason you are requesting change now and it wasnot done during actual divorce proceedings)
- ☐ Filing Fee (you must provide fee)

If you would like to receive a copy of the signed order, please attach a postage paid, self-addressed envelope and we will mail you one (1) copy at no charge; any additional copies, you will be charged a fee. Certified copies cost $1.00 extra for each copy, plus the copy charge. (THIS MAY VARY WITH EACH COUNTY.) You can call the Family Court Clerk's Office in your county to inquire about the status of your order; however, please allow at least five (5) business days after you have submittedyour paperwork for processing before you call.

Effective January 1, 2016, family court actions in all counties are subject to mediation. Under the provisions of the Supreme Court's Rules for Alternative Dispute Resolution (ADR), mediation is defined as an informal process in which a third-party mediator facilitates settlement discussions between parties. Any settlement is voluntary. In the absence of settlement, the parties lose none of their rights to trial.

Also under the ADR Rules, the parties may agree on a mediator or the Clerk of Court will appoint a mediator from the certified list. If the Clerk appoints a mediator from the list, the mediator will be certified by the Board of Arbitrator and Mediator Certification and may be either a lawyer, a licensed mental health professional or any other individual meeting the certification requirements.

Whether or not the mediator is a lawyer, if appointed by the court, the charge per hour is set at a specified amount under the provisions of ADR Rule 9. Parties are responsible for payment of the mediator as set out in ADR Rule 9.

SUPREME COURT RULES REQUIRE MEDIATION OF ALL CONTESTED DOMESTIC RELATIONS ACTIONS. IF THE DOCKETING INFORMATION ON PAGE 1 OF THIS COVERSHEET INDICATES THAT THIS CASE IS SUBJECT TO **MEDIATION** YOU ARE NOTIFIED THAT MEDIATED SETTLEMENT CONFERENCES ARE REQUIRED IN THIS CASE, AND THAT THE COURT-ANNEXED ADR RULES SHALL APPLY TO ALL CASES IN WHICH MEDIATION IS REQUIRED. FOR ADDITIONAL INFORMATION CONCERNING THE PROCESS AND TIME FRAMES, PLEASE CONSULT THE ADR RULES. KEY SECTIONS OF THE RULES ARE IDENTIFIED BELOW.

CONTESTED ACTIONS INVOLVING CUSTODY AND VISITATION

Rule3	Actions Subject to ADR
Rule 4(d)(1)(3)(4) & (5)	Appointment of Mediator by Family Court
Rule 5(g)	Scheduling in Family Court
Rule 6(g)	Agreement in Family Court
Rule 7(f)	Reporting Results of Conference
Rule9	Compensation of Neutral

ALL OTHER CONTESTED ACTIONS

Rule3	Actions Subject to ADR
Rule 4(d)(2)(3)(4) & (5)	Appointment of Mediator by Family Court
Rule 5(g)	Scheduling in Family Court
Rule 6(g)	Agreement in Family Court
Rule 7(f)	Reporting Results of Conference
Rule9	Compensation of Neutral

Indigent Cases: Where a mediator has been appointed, a party may move before the Chief Judge for Administrative Purposes to be exempted from payment of neutral fees and expenses based upon indigency. Applications for indigency shall be filed no later than ten (10) days after the ADR conference has been concluded. Determination of indigency shall be in the sole discretion of the Chief Judge for Administrative Purposes.

Please Note: Attendance at mediated settlement conferences is mandatory. You must comply with the Supreme Court rules regarding court-ordered mediation. Failure to do so may affect your case and may result in sanctions.

Note: Frivolous civil proceedings are subject to sanctions pursuant to Rule 11, SCRCP, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §§ 15-36-10 et seq.

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF _____) _____ JUDICIAL CIRCUIT
)
_____)
Plaintiff,) **FAMILY COURT COVERSHEET**
vs.)
)
_____)
Defendant.) Docket No. _____

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for docketing purposes for the Clerk of Court and must be signed and dated, and filled out completely. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

Submitted by: _____ **SC Bar #** _____
Address: _____ **Telephone #** _____
_____ **Fax #** _____
Email: _____ **Other:** _____

DOCKETING INFORMATION

☐ This case is subject to MEDIATION pursuant to the Family Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

Nature of Action Codes
(Check One)

Marital Dissolution

☐ Divorce (110)
☐ Annulment (120)
☐ Separate Support and Maintenance (130)
☐ Registration of Foreign Divorce Decree – without support/custody (190)
☐ Registration of Foreign Divorce Decree – with support/custody (191)
☐ Marital Dissolution – Other (199) _____

Abuse and Neglect

☐ Abuse and Neglect – Child (210)
☐ Abuse and Neglect – Adult (220)
☐ Abuse and Neglect – Other (299) _____

Juvenile Delinquency

☐ Truancy (311)
☐ Incorrigible (312)
☐ Runaway (313)
☐ Criminal Offense – Drug (315)
☐ Criminal Offense – Against a Person (316)
☐ Criminal Offense – Property (317)
☐ Criminal Offense – Public Order (318)
☐ Criminal Offense – Other (320)
☐ Juvenile Delinquency – Other (399) _____

Protection from Domestic Abuse

☐ Domestic Abuse – Intimate Partner (410)
☐ Domestic Abuse – Minor (420)
☐ Registration of Foreign Order of Protection (490)
☐ Domestic Abuse – Other (499) _____

Support

☐ Child Support – Private (501)
☐ Child Support – Administrative Process (502)
☐ Child Support – Judicial Process (503)
☐ Registration of Foreign Order of Support (504)
☐ UIFSA – Outgoing (505)
☐ UIFSA – Incoming (506)
☐ Modification of Child Support – Private (507)
☐ Modification of Child Support – DSS (508)
☐ Modification of Alimony (525)
☐ College Expenses (530)
☐ Support – Other (599) _____

Custody/Visitation

☐ Child Custody/Visitation (610)
☐ Modification of Custody/Visitation (615)
☐ Temporary Custody – Nonparent (616)
☐ Registration of Foreign Child Custody Order (690)
☐ Visitation Involvement Parenting (VIP) (DSS only) (691)
☐ Custody/Visitation – Other (699) _____

Miscellaneous Actions

☐ Name Change (710)
☐ Correction/Birth Record (720)
☐ Judicial Bypass (730)
☐ Adoption (740)
☐ Foreign Adoption (741)
☐ Post Dissolution Equitable Distribution (750)
☐ Paternity – Private (761)
☐ Paternity – DSS (762)
☐ Termination of Parental Rights – Private (771)
☐ Termination of Parental Rights – DSS (772)
☐ Miscellaneous Actions – Others (799) _____

Submitting Party Signature: _____ **Date:** _____

Custodial Parent (if applicable): _____

Note: Frivolous civil proceedings are subject to sanctions pursuant to Rule 11, SCRCP, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §§ 15-36-10 et seq.

SCCA 467 (3/2019)

STATE OF SOUTH CAROUNA)
COUNTY OF _____)

In Re: Change of Name)
OF_____)

TO_____)

EX PARTE:)

_____)
Plaintiff

IN THE FAMILY COURT OF THE
_____ JUDICIAL CIRCUIT

ORDER AND CERTIFICATE OF NAME CHANGE AND AMENDMENT OF BIRTH RECORD

Docket No._____

I find that (1) this court has jurisdiction over this matter pursuant to Section 20-7-420 (8) & (9), Code of Laws of South Carolina, 1976, as amended; (2) the party is entitled and not in any way disqualified to have his/her name changed; (3) that the applicable provisions of Section 15-49-10, Code of Laws of South Carolina, 1976, as amended, have been complied with; and (4) that the following reasons exist for the change of name:

_____

_____

_____

I further find that the following information appears on the birth certificate of the party whose name is to be changed:

_____ _____
Full Name at Birth Full Name of Father

_____ _____
Date of Birth Full Maiden Name of Mother

_____
Birthplace: County and State

IT IS, THEREFORE, ORDERED that the name of the party be changed and may be so reflected in the birth certificate of the party,

from _____ to _____

Date:_____

_____
Presiding Judge, _____Judicial Circuit

Plaintiff_____

Address _____

_____

_____

Note: Forward certified copy to State Registrar of Vital Statistics, DHEC, 2600 Bull Street, Columbia, SC 29201.

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT OF THE
COUNTY OF _____) _____ JUDICIAL CIRCUIT
)
EX PARTE:)
)
_____) **PETITION FOR NAME CHANGE**
) **AND AMENDMENT OF BIRTH CERTIFICATE**
Plaintiff)
)
Docket No._____

The Plaintiff was born in_____County, State of

_____on_____and presently

resides in the County of _____, State of South Carolina.

The Plaintiff's legal name is_____

The Plaintiff desires to change his/her name to_____

The plaintiff desires the name for the following reasons:_____
_____
_____
_____

The Plaintiff has no intention to defraud anyone or to avoid creditors by virtue of the name change.

The Plaintiff respectfully requests this Court, pursuant to Section 15-49-10 of the South Carolina Code, Ann. (1976), to allow him/her to change his/her legal name to:

_____

Plaintiff's Address:

_____
Plaintiff's Signature

_____
_____
_____
_____

Telephone No._____

Date:_____, 20_____

FC-229b

STATE OF SOUTH CAROUNA)
)
COUNTY OF _____)
)
)
_____)
Plaintiff)
)
)

IN THE FAMILY COURT OF THE
_____ JUDICIAL CIRCUIT

VERIFICATION

Docket No._____

I, _____, appearing first before the Notary Public, state that I am the Plaintiff in this matter. I have read the attached Petition and know or believe the contents and allegations are true to the best of my knowledge, except for those matters stated which are alleged on information and belief.

SWORN to before me this _____)
day of _____, 20_____.)
)
)
_____)
Notary Public for South Carolina)
My Commission Expires:_____)

_____

Plaintiff's Signature

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)
)
)
_____)
Plaintiff)
)

IN THE FAMILY COURT OF THE
_____ JUDICIAL CIRCUIT

AFFIDAVIT
(Name Change)

Docket No. _____

I,_____, state that I am the Plaintiff in the above captioned action and that I have never been convicted of a crime under a name different than the name I am filing this Petition.

_____, South Carolina

_____, 20_____

_____
Plaintiff's Signature

Subscribed and sworn to before me
this _____ day of

_____, 20_____.

_____
Notary Public for South Carolina

My Commission Expires:_____

I have been convicted of a crime under a name different than the name I am filing this Petition. The name I was convicted under was_____

_____, South Carolina

_____, 20_____

_____
Plaintiff's Signature

Subscribed and sworn to before me
this_____day of

_____,20___.

_____
Notary Public for South Carolina

My Commission Expires:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)
)
)
)
_____)

Plaintiff)
)

IN THE FAMILY COURT OF THE
_____JUDICIAL CIRCUIT

AFFIDAVIT
(Name Change)

Docket No._____

I, _____, state that I am the Plaintiff In the above captioned action and that I am currently not under any order to pay child support or alimony.

_____, South Carolina

_____, 20_____

_____
Plaintiff's Signature

Subscribed and sworn to before me this_____day of

_____, 20____.

_____
Notary Public for South Carolina

My Commission Expires:_____

South Carolina Department of Social Services

CONSENT TO RELEASE INFORMATION

With my signature below, I consent for the South Carolina Department of Social Services to conduct a one-time search of the records indicated below to determine whether they contain information that I was the perpetrator of harm to a child and to release information found to the individual/organization named below.

I understand that the information provided may prove to be unfavorable to me. I agree to hold the South Carolina Department of Social Services and its staff harmless from liability associated with release of information requested on this form. If it appears to me that the information has not been updated or is otherwise inaccurate, I agree to notify the Department immediately.

SECTION I. Purpose for Request

A. I am requesting a search of the Central Registry of Child Abuse and Neglect and the Department's database of records of Child Abuse and Neglect cases in connection with:

- ❑ becoming or remaining a foster parent or potential adoptive parent; or
- ❑ becoming or remaining an employee of or a member of the state or a local foster care review board; or
- ❑ becoming an employee or volunteer for the South Carolina Guardian ad Litem Program or Richland County CASA.

B. ❑ I am requesting a search **ONLY** of the Central Registry of Child Abuse and Neglect for a purpose of _____ .

SECTION II. Mail Results To:

_____ ATTN: _____

_____ TEL. NO: _____

_____

SECTION III. Central Registry Check Fees: Please ☑ appropriate box and include payment. Check or Money Order (NO CASH).

- ❑ Non-Profit Entities……$8.00
- ❑ For-Profit Entities…….…… $25.00
- ❑ State Agencies…….....$8.00
- ❑ Schools…….....$8.00
- ❑ Name Changes…….....$8.00
- ❑ Other (Individuals, etc.)…….....$8.00
- ❑ Private Adoption Investigations…....$25.00

SECTION IV. Please print legibly or type the following: First, Middle and Last Name (NO INITIALS)

Name: _____ DOB: _____ Sex: _____ Race: _____

Maiden/Aliases: _____ Name Change: _____

Place of Birth: _____ SSN: (See instructions) _____

Current Address: _____ Previous Address: (See instructions) _____

_____ _____

SECTION V. Your signature MUST be witnessed or notarized. Please mail appropriate payment and form for processing to: South Carolina Dept. of Social Services, **ATTN: Cashier,** 1535 Confederate Avenue, P.O. Box 1520, Columbia, SC 29202-1520.

_____ _____

Signature of Applicant Date

_____ _____

Signature of Notary or Witness Date

SECTION VI. RESULTS: THIS SECTION IS TO BE COMPLETED ONLY BY AUTHORIZED DSS EMPLOYEES OF THE DEPARTMENT.

- ❑ The name is not included as a perpetrator on the Central Registry of Child Abuse and Neglect.
- ❑ The request has been received. Additional research will be required to respond to the request. Thirty to sixty days may be required. Please call _____ if you have any questions.
- ❑ The name is included as a perpetrator on the Central Registry of Child Abuse and Neglect.
- ❑ The name is included as a perpetrator in the Department's database of records of child abuse and neglect cases. See attached correspondence.

_____ _____

Authorized DSS Employee Date

DSS Form 3072 (AUG 13) Edition of SEP 08 is obsolete.

INSTRUCTIONS FOR DSS FORM 3072 – CONSENT TO RELEASE INFORMATION

PLEASE DO NOT ALTER THIS FORM IN ANY WAY

SECTION I: Purpose for Request: To provide authorization for the SC Department of Social Services to conduct a search of the State Central Registry of Child Abuse and Neglect and/or the DSS Database and to release results. Please indicate the purpose of the search by checking ☑ in the appropriate box.

SECTION II: Mail Results To: Please ensure that you type or stamp the return address next to, "MAIL RESULTS TO," on this form. Please include the contact person's name and telephone number.

SECTION III: Central Registry Fee: Please check ☑ appropriate fee box.

SECTION IV: Please type or print legibly the following information:

- Name: Provide complete spelling of name to include the first, middle and last name - **NO INITIALS.**
- Name Change: List the new name(s).
- Date of Birth: Month/Day/Year
- Sex: (Self Explanatory)
- Race: (Self Explanatory)
- Social Security Number: All the information requested on this form is necessary in order to conduct a thorough search. Providing your Social Security Number (SSN) is optional, but it is recommended that you provide your SSN to assist with the research. Your SSN will be used **only** to conduct what we hope will be a thorough central registry/data base check and will not be given to any person than indicated agency or entity.
- Place of Birth: Provide the name of the State you were born in.
- Current Address: Provide your current residence.
- Previous Address: If current address is less than 7 years; list other addresses, States, Countries you have resided in for the past seven years. Use separate sheet if necessary.

SECTION V: Mail payment; completed Form 3072 Consent to Release Information, and a stamped addressed envelope to:

South Carolina Department of Social Services
Attention: CASHIER
1535 Confederate Avenue
P.O. Box 1520
Columbia, SC 29202-1520

- Signature of Applicant: Requesting the applicant's original signature for a one-time search of the State Central Registry of Child Abuse and Neglect and/or the DSS Database and to release results.

- Signature of Witness or Notary: The applicant's signature must be witnessed or notarized prior to submitting for processing.

PLEASE CALL (803) 898-7229 IF YOU NEED ASSISTANCE COMPLETING THIS FORM.

After receipt by cashier and processing of payment, the Central Registry/DATA BASE check will be completed by authorized DSS personnel in the Division of Human Services.

DSS personnel in the Division of Human Services must do the following:

1. Conduct Central Registry check and/or Database search in accordance with Section I. A or B.
2. Check appropriate results box.
2. Sign and date form; stamp, "confidential" on envelope and mail to return address, Section II.

Distribution
Results of the search will be sent ONLY to the individual or organization specified in Section II of this form.

SC SMALL ESTATES WORK BY SOUTH CAROLINA CERTIFIED PARALEGALS

1) SCOPE OF WORK A CERTIFIED PARALEGAL MAY DO: We are proposing to limit this to uncontested Small Estates, which are defined as estates having no real estate and assets of less than $25,000 (FYI: a $30K car with $10K loan counts as $20K, so it would be a small estate.

2) ENGAGEMENT LETTER/AGREEMENT WITH CLIENT: There should be a standardized Engagement Letter addressing both the specifics of the "scope of work" to be performed by the CP, as well as some language which would be uniform to ALL areas where CPs provide services directly to clients, including but not limited to advice such as: A) if this matter becomes contested, the CP would need to withdraw from providing further assistance and the client should strongly consider hiring an attorney; and B) if a hearing is required in the matter, the CP cannot appear in court and the client should consider hiring an attorney.

3) FORMS and DOCUMENTS REQUIRED: (NOTE: ALL FILINGS CAN BE DONE IN ONE DAY, BUT HAVE NOT CONFIRMED THIS IS THE CASE IN ALL COUNTIES)! DIFFERENT COUNTIES HAVE DIFFERENT REQUIREMENTS. AS FAR AS CAN BE IDENTIFIED, ONLY THESE TWO FORMS ARE NEEDED IN ALL COUNTIES!!! **A LINK TO ALL FORMS CAN BE FOUND AT: sccourts.org/forms**

A) Will (if applicable); (if no will, may need renunciations from other relatives re: PR)

B) Death Certificate;

C) Names and Addresses of all Heirs/Successors;

D) Form 300 (Application/Petition), along with a Form 120 (Proof of Service) if there is a will;

E) Form 305ES (information to Heirs and Devisees) is required in some counties to notify all heirs that an estate is being opened.

F) Collect and pay filing fee to court (In LEX Co. there are TWO $25.00 FEES (BUT NO NOTICE OF CREDITORS);

G) funeral receipt (if someone is seeking reimbursement from the estate for having advanced funds to cover this expense);

H) Form 420ES: Affidavit for Collection of Personal Property Pursuant To Small Estate Proceeding; and

I) NOT Form 421ES: Verified Statement to Close Estate (USED ONLY IF opened as a full estate and it turns out NOT to be $25,000, so not really applicable in these cases).

WHAT ABOUT: Should CPs be given authority to interpret any Private Agreements in connection with the Estate?

4) RELEVANT STATUTES: Small Estates are specifically addressed in 62-3-1201 thru 1204. These statutes do not make any specific reference to attorneys, so it does not appear any language would need to change in order to authorize CPs to directly assist clients in connection with this.

5) "FOUNDATIONAL" ISSUES: What needs to be changed to allow CPs to provide services directly to the public in ANY expanded role? Consider:

1. Modify SC's UPL definition to carve out exceptions for any of these specialty areas;

2. Have the CP complete at least FOUR CPE hours per year pertaining to their specialty area(s);
3. Increase the number of Ethics hours per year to TWO, including additional trust account training if SCCPS are to maintain trust accounts.
4. Consideration of requiring Liability Insurance with a minimum $25,000 for Small Estate work);
5. Apply rules of advertising similar to those for attorneys.

FYI: This link to the Lexington County website is a convenient link to nearly all SC Probate forms and process SCCP'S can use as a starting point: https://lex-co.sc.gov/departments/probate-court/probate-court-forms In particular, the Estate Instructions Letter (near the top of this link), gives a good framework from which to work. The SCCPs certified to work on Small Estates would be given training in this area and provided sample forms and directed to the Court's website for procurement of the most updated forms.

LEXINGTON COUNTY PROBATE COURT
Lexington County Judicial Center
205 East Main Street, Suite 134
Lexington, SC 29072
(803) 785-8324

DANIEL R. ECKSTROM
Judge

JULIE H. THOMPSON
Associate Judge

Please call **785-8324** to schedule an appointment with an estate clerk or you may leave the completed forms for an estate clerk to process. Once your documents are reviewed and no additional information is needed, your estate documents will be processed. If you choose to leave your forms, it usually takes approximately two weeks to be appointed. The following documents will be needed:

- The original Last Will and Testament
- Informal Appointment: Application (Form 300PC) – Completed
- Death Certificate
- Two checks – one made payable to the County of Lexington for the filing fee and one made payable to the newspaper of your choice, listed below.

Additional documents may be needed if the decedent did not leave a Will. We will need to review your circumstances to determine if you need to file additional forms for processing.

The filing fee is based on the probate assets. After you have filed the Inventory and Appraisement, the fee will be re-calculated and if an adjustment is needed we will send you a letter for the additional fee or send you a refund.

Assets	Filing Fee
$ 0 - $ 4,999	$25.00
$ 5,000 - $ 19,999	$45.00
$ 20,000 - $ 59,999	$67.50
$ 60,000 - $ 99,999	$95.00
$100,000 - $599,999	$95.00 plus .0015 over $ 100,000 – see formula below

EXAMPLE: If the estate is worth $325,000.00. The first $100,000.00 has a fee of $95.00. The remaining $225,000.00 is multiplied by .0015 for a total of $337.50. Add together $95.00 plus $337.50 for a total filing fee of $432.50.

$600,000 +.....Same as formula above plus .0025 for all amounts over $600,000

EXAMPLE: If the estate is worth $925,000.00. The first $600,000.00 has a fee of $845.00. The remaining $325,000.00 is multiplied by .0025 for a total of $812.50. Add together $845.00 plus $812.50 for a total filing fee of $1,657.50.

Newspaper advertising rates are as follows: (choose only 1)

- The Chronicle…….$30.00
- Twin City News……. $42.00

NOTE: All fees must be paid by check or money order and all documents must be completed in ink with original signatures. We cannot accept faxed documents.

If you need additional forms you may call 785-8324 to request forms or you may find them online at **www.lex-co.sc.gov** – Go to Departments, choose Probate Court, scroll to the bottom left side to Forms.

SUMMARY OF FORMS

During the administration of an estate, a Personal Representative must file various forms in the Probate Court. The procedures to follow are required by state law. Enclosed are those forms most routinely used in the normal administration of an estate. When filed, the documents are permanent public records. Therefore, the information must be legible. Please type the information on the forms if you can. Otherwise, the information should be printed clearly in black or dark blue ink.

Your estate clerk can answer certain questions as you proceed to administer the estate. Under state law and judicial rules that apply to the probate courts, our personnel cannot complete forms for the Personal Representative. Those laws also prohibit court personnel from giving legal advice. Within those limits, we want to be as helpful as possible. Most questions can be handled by telephone, however, some questions may require an appointment be made for you. All estate appointments are prescheduled so we are able to serve you in a timely and efficient manner. Most appointments can be scheduled within two weeks. For some matters, you may wish to seek the assistance of an attorney knowledgeable in probate law. With the complexities of the S.C. Probate Code, it may be advisable to retain an attorney, however, it is not required. The probate court cannot recommend a particular lawyer. If you need a referral, you may contact the Lawyer Referral Service at 799-1700.

The following is a brief description of the enclosed forms and a general explanation of their use:

APPLICATION/PETITION (Form 300ES)

This is the probate court form that a person completes and files requesting the court to appoint the Personal Representative and grant that person the powers and authority needed to complete the estate. This form must be filled out in its entirety and must be signed by the applicant and notarized.

INFORMATION TO HEIRS AND DEVISEES (Form 305ES)

This form must be delivered by the Personal Representative to all heirs and devisees within thirty days of appointment. This form is used to notify all persons with an interest in the estate of the name, address and telephone number of the Personal Representative, as well as the date the Personal Representative was appointed and the Will, if any, was probated. You must file Form 120PC, Proof of Delivery with this form.

PROOF OF DELIVERY (Form 120PC)

This form must accompany all forms that require notice to be sent to heirs, devisees, and other interested parties.

INVENTORY AND APPRAISEMENT (Form 350ES)

This form must be completed and filed within ninety days of the appointment of the Personal Representative. It provides a summary of the assets of the estate and their value.

DEED OF DISTRIBUTION (Form 400ES)

Under the law in South Carolina, title to real estate passes at death to the heirs and devisees. This form must be filed at the Register of Deeds office in the county where the property is located. A clocked copy from the Register of Deeds office will then need to be filed in the Probate Court. Please note that although this form may be filed and recorded at any time after appointment of the Personal Representative, it may be advisable to wait until the period for creditor's claims has expired to ensure that the property is available in the event it is needed to pay estate debts. Because of potential personal liability to a Personal Representative, it is advisable to seek legal advice from an attorney in preparing and filing the Deed of Distribution.

ACCOUNTING (Form 361ES)

Any time after the creditor's claim period has expired, the Accounting may be filed. Information on this form shows how the assets of the estate have been received and disbursed. It is important to keep accurate records so that the accounting will be clear and exact. This is filed along with the Application for Settlement when you are ready to close the estate. Please note the beginning balance is that which is included on Schedules B, C, D, F and I from the Inventory and Appraisement. The ending balance must be zero, otherwise you will be required to also file Form 410ES – Proposal for Distribution.

WAIVER OF STATUTORY FILING REQUIREMENTS (Form 364ES)

If this form is signed by all heirs or devisees the Personal Representative is not required to file an Accounting (Form 361ES).

APPLICATION FOR SETTLEMENT (Form 412ES)

This form can be filed as soon as the creditor's claim period has expired but no later than one year after the first publication of Notice to Creditors. It is routinely filed with the Final Accounting and a document called a Notice of Right to Demand Hearing (Form 416ES) that is to be delivered to all heirs or devisees. It is the way you ask the court to approve the distribution of estate assets, approve the accounting and discharge the Personal Representative.

RECEIPT AND RELEASE (Form 403ES)

This form is to be signed by the heirs or devisees and acknowledges receipt from the Personal Representative of any and all assets that have been distributed to them. This form typically releases the Personal Representative of liability to the heirs or devisees.

MOTION FOR EXTENSION (Form 352ES)

If circumstances prevent you from filing any form on time, this form is to be used to request the Probate Court to approve an extension of time to file the document.

* * * * *

The above forms are those most routinely used in the normal administration of an estate. Other situations, including claims by creditors, require other action and the use of additional forms. It is often advisable to seek the legal advice of an attorney knowledgeable in probate law matters.

In certain estates, the law provides for a short summary procedure to be followed. In these cases, most of the above forms do not have to be used.

INSTRUCTIONS FOR COMPLETING THE SELF-REPRESENTED LITIGANT SIMPLE DIVORCE PACKET

DEFENDANT

WARNING: You are strongly encouraged to seek the advice of an attorney before filing any legal matter. This packet is designed to provide information and forms to people who are representing themselves in court. If you proceed without an attorney, it may negatively affect your legal rights. If you are unsure whether to proceed, or have questions about these forms or your legal rights, consult an attorney. Please note that clerks of court, court staff and judges cannot give you legal advice. **You may seek a SCCP to assist you with filling out this form but be advised a SCCP is not a licensed attorney and is not able to appear in court with you.**

DISCLAIMER: The information in this packet is not legal advice and cannot replace the advice of competent legal counsel licensed in your state. Divorce laws vary from state to state and the information contained in this packet is specific to South Carolina. Please note that the information contained in this packet is subject to change and make sure that you have the most current version of this packet before filing.

PART 1: YOUR ROLE AS A DEFENDANT

The following instructions will help you file an Answer for a simple divorce in South Carolina *pro se*, or without an attorney. *Pro se* is a Latin term meaning "in person" or "on one's own behalf." As the courts see more people representing themselves in court, you may also hear the term self-represented litigant instead of *pro se*. While the self represented litigant may not incur the attorney expense, the self-represented litigant does not have the expert guidance that a lawyer can provide.

Getting a divorce is not an easy process, and divorce should not be taken lightly. The self-represented simple divorce packet is designed for people who meet **all** of the following:

- ✓ Are filing on the ground of One (1) Year Continuous Separation without co-habitation
- ✓ Have no marital property **OR** have reached an agreement on how to divide the marital

property

- ✓ Have no marital debt **OR** have reached an agreement on how to divide the debt
- ✓ Have no children **AND** none are expected **AND**
- ✓ Have minor children and have reached an agreement as to custody, visitation, and child support that meets the minimum requirements as set by the South Carolina Child Support Guidelines.

If you and your spouse have been living in separate dwellings for less than one (1) year or cannot agree on the issues regarding minor children, property, and debt, then obtaining a divorce on your own is not recommended. You need to hire an attorney.

If you do not know an attorney who can assist you, you may call the South Carolina Bar's Lawyer Referral Service at 1-800-868-2284 and ask for a Family Law attorney in your county. Members of the South Carolina Bar's Lawyer Referral Service have been in practice for more than 3 years, are in good standing, have provided proof of malpractice insurance, and have agreed to provide a 30 minute consultation for no more than $50. If you believe you qualify for South Carolina Legal Services (SCLS), you may contact their Legal Aid Telephone Intake Service (LATIS) at 1-888-346-5592. Please note that to qualify for SCLS, your income must not be more than 125% of the Federal Poverty Guidelines.

If you and your spouse have been living in separate dwellings for more than one (1) year without co-habitation and can agree on all of the issues involving minor children, property, and debt, the next step is to study **all** of the forms listed below. The name of each form can be found in the upper right hand corner and the form number in the bottom left hand corner.

The following three (3) forms are included in this packet:

- ✓ Defendant's Answer (SCCA 400.05 SRL-DIV)
- ✓ Financial Declaration Form (SCCA 430)
- ✓ Affidavit of Service by Mailing (Answer) (SCCA 400.06 SRL-DIV)

PART 2: COMPLETING YOUR PAPERWORK

If you were sued for divorce, a Summons and Complaint has been filed by your spouse. You

will be served these documents in one of three ways:

- By Certified U.S. Mail, Return Receipt Requested, Restricted Delivery; or
- By receiving the Summons and Complaint from your spouse and voluntarily signing an Acceptance of Service; or
- By a law enforcement officer or private process server.

You must file an Answer **within 30 days after you receive a Summons and Complaint.** You may want to talk to an attorney about your options. If you do not know an attorney who can assist you, you may call the South Carolina Bar's Lawyer Referral Service at 1-800-868-2284 and ask for a Family Law attorney in your county.

Read all the documents carefully. If you received an Acceptance of Service form, complete it and return it to your spouse. Next, read the Complaint carefully and complete the Answer to the best of your abilities. At the end of the Answer there is a space where you can ask the Court for additional relief. If you are the Wife, this is where you can request the Court to allow you to resume your prior name.

Please pay special attention to the Financial Declaration Form. This form asks questions about the finances of both you and your spouse. Fill out the sections of the form that apply to you. You must take the Financial Declaration Form to a notary public before you sign it. After the Answer and Financial Declaration Form are completed, make two copies of each form.

File the Answer and Financial Declaration Form with the same Clerk of Court's office where the Complaint was filed. Take the original and the copies to that Clerk of Court's office. Ask the Clerk to stamp both the originals and copies of the forms. The Clerk will keep the original forms and will return two stamped copies of each form to you.

Mail a stamped copy of both the Answer and Financial Declaration Form along with the Affidavit of Mailing (Answer) to your spouse or to your spouse's attorney by first class mail. Keep the other stamped copies for your files.

PART 3: THE HEARING

On the day of your hearing, you should arrive at the courthouse at least thirty (30) minutes prior to your scheduled time and bring a copy of your paperwork. **Dress appropriately and turn off your cell phone.** Appropriate dress includes suits, jackets, dresses, or dress slacks. Males should tuck their shirts into their pants. Casual clothing such as sweat clothes, tank tops, shorts, and similar summer beach wear is not appropriate for the courtroom. Remove hats when entering the courtroom, unless they are required for a medical condition. Most courts do not allow children into the courtroom so make arrangements for a responsible adult to watch your children while you are in court.

Your spouse will present his/her case first. You should only speak when asked to do so. You will have the opportunity to ask your spouse and any witnesses questions. After your spouse and witnesses have testified, you will be given an opportunity to testify and present witnesses for your case. The judge may interrupt you from time to time to ask you a question. Listen carefully, and answer the questions the judge asks you. If the judge grants the divorce, the judge will sign the Final Order for Divorce and you will receive a copy.

NOTE: You are not divorced until the Final Order for Divorce has been signed by the judge and filed with the Clerk of Court. You are divorced when you receive a clocked copy of the Final Order of Divorce from the Clerk of Court.

Defendant Simple Divorce Checklist

- Once you are served with a Summons and Complaint for Divorce, complete the Answer. Also, complete the section of the Financial Declaration Form that applies to you and have the form notarized.
- File the completed Answer and Financial Declaration Form with the Clerk of Court's office **within 30 days after service.**
- Mail a stamped copy of the Answer and Financial Declaration Form along with the Affidavit of Mailing (Answer) to your spouse or spouse's attorney **within 30 days after service.**
- Your spouse or spouse's attorney will then mail you a Notice of Hearing, which will give you the date and time of your divorce hearing.
- Arrive on the day of your hearing at least 30 minutes early and be sure to dress appropriately, turn off your cell phone, remove your hat, and make sure you have appropriate childcare.
- At the hearing your spouse and his/her witness will testify first. The judge will give you the opportunity to ask your spouse and the witness questions and to present your case.
- At the end of the hearing the judge will sign the Final Order for Divorce and you will receive a copy.
- Be sure that the signed Final Order for Divorce is filed with the Clerk of Court's office and you receive a clocked copy for your files.

EXHIBIT B

to Rule 12(b)(1) Motion to Dismiss of Attorney General and in support of Response to Motion for Preliminary Injunction *NAACP v. Wilson* Civil Action No. 2:23-cv-01121-DCN

Access to Justice Order, Justice Gap Report Launched, Legal Needs Assessment, cover and pp. 3 and 64

2022-06-22-01

The Supreme Court of South Carolina

RE: Access to Justice Commission

ADMINISTRATIVE ORDER

(a) Purpose. The South Carolina Access to Justice Commission was established in 2007,[1] in recognition of the need to expand access to civil legal assistance for people of low income and modest means in South Carolina.

(b) Membership. The Access to Justice Commission shall consist of up to thirty appointed members. With the exception of ex officio members, members shall serve terms for three years with a maximum of two terms at the discretion of the Chief Justice. All current terms as of December 1, 2021, shall be extended to December 31, 2022, and the terms shall thereafter be staggered as described below. An entity represented on the Commission may request that the Chief Justice appoint or invite, as appropriate, a new member representing that entity for the duration of the existing term. The Chief Justice shall designate a Chair from the membership.

Members will be appointed as follows:

(1) Judiciary. The Chief Justice shall appoint five representatives of the Judiciary consisting of:

(A) A Justice from the Supreme Court;

(B) A Judge from the Federal District or Federal Bankruptcy Court for a three-year term, with the initial term ending on December 31, 2025;

(C) A Circuit Court Judge for a three-year term, with the initial term ending on December 31, 2025;

(D) A Family Court Judge for a three-year term, with the initial term ending on December 31, 2025;

(E) A Judge representing either Probate or Master-in-Equity or Magistrates Court appointed by the Chief Justice to serve a three-year term, with the initial term ending on December 31, 2025;

(F) One state Clerk of Court representative to serve for one three-year term, with the initial term ending on December 31, 2025; and

(G) The Director of South Carolina Court Administration and the counsel to the Chief Justice shall serve as ex-officio members.

(2) Practicing Lawyers.

(A) The South Carolina Bar president will appoint one officer member to serve for a three-year term with the initial term ending on December 31, 2025.

(B) The South Carolina Bar Foundation president will appoint one officer member to serve for a three-year term, with the initial term ending on December 31, 2025.

(C) The Chief Justice will appoint one member from the South Carolina Association for Justice for a three-year term, with the initial term ending on December 31, 2025.

(D) The Chief Justice will appoint one member from the South Carolina Defense Trial Attorneys' Association for a three-year term, with the initial term ending on December 31, 2024.

(E) The Chief Justice will appoint one member from firms of more than 15 members for a three-year term, with the initial term ending on December 31, 2024.

(F) The Chief Justice will appoint one member from firms of less than 15 members for a three-year term, with the initial term ending on December 31, 2024.

(G) The Chief Justice will appoint one at-large attorney member for a three-year term, with the initial term ending on December 31, 2024; and

(H) The Chief Justice will appoint one member of the Young Lawyers Division of the South Carolina Bar for a three-year term, with the initial term ending on December 31, 2024.

(3) Civil Legal Services. The Chief Justice will appoint five members to represent the interest of legal aid programs as follows:

(A) One board member and one staff member from South Carolina Legal Services to serve three-year terms, with the initial terms ending on December 31, 2024;

(B) One representative from South Carolina Appleseed Legal Justice Center to serve a three-year term, with the initial term ending on December 31, 2023;

(C) One representative from the South Carolina Bar Pro Bono Board to serve a three-year term, with the initial term ending on December 31, 2024;

(D) One representative from any other civil legal services program to serve a three-year term, with the initial term ending on December 31, 2023;

(E) The Executive Director and the Pro Bono Program Director for the South Carolina Bar shall serve as ex-officio members; and

(F) The Executive Director of the South Carolina Bar Foundation shall serve as an ex-officio member.

(4) Law Schools. The Chief Justice will appoint one representative from each of the accredited law schools in South Carolina who will serve a three-year term, with the initial term ending on December 31, 2023.

(5) Public Members.

(**A**) **Governmental Representative.** The Chief Justice will invite the Governor or his or her designee and two representatives from the South Carolina General Assembly to serve on the Commission for a three-year term, with the initial terms ending on December 31, 2023.

(**B**) **South Carolina Business Community Representative.** The Chief Justice will appoint one member to the Commission from the business community in South Carolina to serve for a three-year term, with the initial term ending on December 31, 2023, from the Association of Corporate Counsel, South Carolina Chapter.

(6) General Appointments. The Chief Justice may appoint additional non-voting advisory members at his or her discretion.

(c) Responsibilities. The Commission is charged with the following goals, purposes, and responsibilities:

(1) Identify and assess current and future needs of low-income South Carolinians for access to justice in civil matters by examining the full range and volume of such unmet legal needs periodically. This evaluation should: (a) determine and document how unrepresented people with legal disputes are attempting to meet these needs without attorneys, the extent to which these efforts are successful, and the consequences of the lack of attorney representation; (b) recognize the enormous efforts currently being made by attorneys to serve low-income South Carolinians; (c) analyze the need for funding and other resources to close the gap; and (d) address any other matters related to the delivery of equal access to justice in civil matters to all South Carolinians.

(2) Develop a strategic plan for delivery of civil legal services to low income South Carolinians throughout the state that will assist with the education of the public about the large gap between the ideal of equal access to the legal system and the reality of lack of representation.

(3) Foster coordination within the civil legal services delivery system and between legal aid organizations and other legal and non-legal organizations.

(4) Support increase of resources and funding for access to justice in civil matters. Analyze feasible options and strategies for pursuing such funding. Examine additional state, local, and other non-IOLTA funding.

(5) Encourage wise and efficient use of available resources through collaboration among legal aid and other organizations including other legal advocacy groups, non-legal advocacy groups, providers of social services, law schools, the court system, corporate and government law departments, and other state and local agencies.

(6) Develop and implement other initiatives designed to expand civil access to justice, such as increasing community education, enhancing technology, developing assisted pro se programs, and encouraging greater voluntary participation of the private bar in pro bono legal assistance to low-income people in South Carolina.

(7) Consider the legal needs and access to the civil justice system of persons whose income and means are such that they do not qualify under existing assistance programs, and propose initiatives designed to meet these needs.

s/Donald W. Beatty
Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
June 22, 2022

1 *See* Order 2007-01-31-01, as amended by Order 2014-10-20-01, as amended by Order 2016-08-10-04, as amended by Order 2019-01-28-01.

Court News ...

South Carolina Judicial Branch
Columbia, South Carolina

S.C. Access to Justice Commission Launches Justice Gap Report

COLUMBIA, S.C. (Sept. 20, 2021) – The South Carolina Access to Justice Commission introduced its inaugural report, Measuring South Carolina's Justice Gap, during a Wednesday, Sept. 16 online event attended by judges, attorneys, court employees, service providers, and others in the South Carolina legal community. The event was recorded and a video replay is available at this link.

Access to Justice Commission Executive Director Hannah Honeycutt started the online event by welcoming attendees, reflecting on the purpose of the Commission, and introducing the event's speakers. Supreme Court of South Carolina Chief Justice Donald W. Beatty then offered remarks, recognizing the Commission's recent progress and thanking South Carolina's civil legal assistance providers for their efforts.

"This cause is personal to me," Chief Justice Beatty said. "At the start of my legal career, I worked for the Neighborhood Legal Assistance Program, but this cause started for me long before then. As a second-year law student I volunteered at Legal Services here in Columbia. During the summers, I worked for Legal Services in Spartanburg. At that time I made the commitment that I would join the Legal Services program somewhere in the state of South Carolina, to assist in the effort to provide legal assistance to those in need. I saw firsthand how difficult it is for individuals to navigate the legal system without representation. This job was so rewarding, both personally and professionally. I gained a lot of experience as a new lawyer. Equally important, I gained so much personal satisfaction in helping others. I felt like I was actually making a difference in the lives of so many. This commitment to access to justice has continued throughout my career. In fact, as Chief Justice, one of my strategic goals is to 'Ensure access to justice for all regardless of income, disability, or language barriers.' In the last four years, the Judicial Branch has made progress toward this goal."

Commission members Will Dillard, an attorney with Belser & Belser, PA in Columbia, and Elizabeth Chambliss, a law professor and director of the NMRS Center on Professionalism at the University of South Carolina School of Law, worked for several years on developing the report. They discussed the data that was used to create the report and shared some of the report's findings. They also shared information about the Commission's new Interactive Data Tool, developed with support from the Legal Services Corporation and the NMRS Center on Professionalism, which provides insights into which South Carolina communities are most challenged when it comes to finding and providing legal representation to citizens. Some key findings in the report included the following:

- More than 35 percent of South Carolinians (approximately 1.7 million people) live below 200 percent of the federal poverty guideline, making them eligible for subsidized legal assistance. South Carolina Legal Services, our state's largest provider of free legal aid, has the resources to employ an average of one attorney for every 21,000 people eligible for their services.
- Private attorneys are also scarce in South Carolina's rural counties: In 2020, 14 of our 46 counties had fewer than ten private practitioners and four counties had fewer than five. The report highlights, among other things, that as a result, South Carolina's courts are filled with unrepresented parties.
- Both sides have an attorney in only 27 percent of all adverse civil matters in Circuit Court. In fiscal year 2019, 99.7 percent of defendants in eviction cases, 92.3 percent of defendants in foreclosure cases, and 96 percent of defendants in debt collection cases were unrepresented.

In closing, Commission Chair and Supreme Court Justice John C. Few urged attendees to consider what they might do to help increase access to justice.

"If we don't know exactly what justice is, we certainly know what justice is not. When such large segments of our society cannot access the justice system that our society has set up, then we know that is not justice," said Justice Few. "This report shows hard data – real numbers from real people about the manner in which, and the degree to which, we are failing as a society to reach people in need. What we can take from this report is that there is a tremendous amount of work left to be done."

Justice Few also announced the Access to Justice Commission's next project: a comprehensive statewide civil legal needs assessment that will lend depth and breadth to the issues uncovered in the Justice Gap Report. This project is a partnership among the Commission, the South Carolina Bar, and the NMRS Center on Professionalism at the University of South Carolina School of Law. The needs assessment will be conducted by researchers from the Center for Housing and Community Studies at UNC Greensboro and will take place over the course of the next year.

Created by the Supreme Court of South Carolina in January 2007, the South Carolina Access to Justice Commission is charged with identifying civil legal needs and developing a long-term plan to provide these services for low-income South Carolinians. To continue learning more about the Commission, visit scaccesstojustice.org or follow on Twitter @SCATJ, and on Facebook and Instagram @scaccesstojustice.

###

In 2021, our partners commissioned a comprehensive assessment of the civil legal needs landscape in South Carolina. The first of its kind in our state, the study set out to answer these questions: What are the legal needs of South Carolina's low- and moderate income citizens? What resources are available to meet

them? What can we do to increase access to justice for all in South Carolina?

Over the next 18 months, researchers from the UNCG Greensboro Center for Housing and Community Studies conducted interviews and focus groups, compiled geographic socioeconomic profiles, and analyzed data from South Carolina's courts and legal aid providers. They produced a report that is both comprehensive and granular, answering the questions above and setting the stage for further conversation and problem solving around South Carolina's most pressing access to justice needs.

The executive summary of the report appears below. Click here to read the full report.

Read the Full Report

Use the SC Civil Legal Needs Dashboard to explore statewide and county-level data.

Explore the Data

You can help increase access to justice in South Carolina. Let's get to work.

Find Out How You Can Help

Select Language ▼

Executive Summary.

The South Carolina Access to Justice Commission and the Center for Housing and Community Studies of the University of North Carolina Greensboro, together with their partners the South Carolina Bar and the NMRS Center on Professionalism of the University of South Carolina School of Law, came together to launch this ambitious first-ever statewide civil legal needs assessment. The study team set out to learn about the life experiences of low- and moderate-income South Carolinians, the legal problems they encounter, and the gaps between their legal needs and the legal resources available to them.

To that end, we developed a comprehensive, mixed-method study incorporating multiple sources of data. The study draws on in-depth interviews with lawyers, administrators, community leaders, educators, legislators, and judges, inquiring about legal needs and resources; roundtable discussions with everyday South Carolinians from Rock Hill to Ridgeland and from Greenville to Conway, to talk about their experiences with lawyers and in courtrooms; surveys of South Carolina residents and lawyers, with questions designed to broaden our understanding of legal needs and how people deal with them, and how we might improve the availability of legal assistance; data about the number and types of cases handled by the court system; and data from legal services providers about the number of intakes and persons served. We also draw on Census data and other publicly available data on the demographic, socioeconomic, and geographic characteristics of South Carolina and its people.

In the pages that follow, we present a summary of the important themes and insights that emerged from this eighteen-month study of the South Carolina legal services system. The views and opinions presented here are not those of the researchers or the sponsors, but rather those of a wide and diverse community of service providers, clients, local residents and expert commentators – those who have a direct stake in the critical needs that we have identified and put on the table for discussion.

1. There are too many people in need of civil legal services and not enough services to go around.

The overarching theme running through all the work of the needs assessment – an alarm that sounded wherever we went – is people's dire need for legal help, and the gap

anyone who hadn't gone to law school to do the work of lawyers. "There's a reason why legal training," he said, "is all about, we call issue spotting, indicate you get the fact pattern, it's scan and figure out what is really at issue here. And that thing is hard to develop to train into people. And that would be the worry, I think for lawyers when we start to talk about enabling nonlawyers to do it."

We discussed the possibility of more formal certification programs that would allow trained experts to do some things that lawyers do now, within strict limits. "Let's get some other folks involved," agreed one lawyer. "And they would need some sort of training or certification." Another said the housing practice might lend itself to this approach. "What we're talking about here, where even if you're not a lawyer, well, maybe not a full paralegal, but maybe you're somewhere between full lay person and paralegal, there would be some sort of training regime that would enable you to participate." He added, "For example, the eviction area, it's a rather limited area of law, you can literally read all the statutes at issue."

"That would be the worry, I think for lawyers when we start to talk about enabling nonlawyers to do it."

But one of the lawyers suggested that we should first expand pro bono programs to make sure the lawyers are doing all they can. "An optimal answer would include fully mobilizing our existing attorneys, to go out and meet the needs of all of our citizens through some sort of program, whether it's CLE credits, whether we develop some sort of tax incentive regime, you know, if you could do that, that would probably be the best way to go." (We will talk about these programs in a later section of this report.) Another lawyer said, "I one hundred percent agree that there are other ways to do this other than relying on bar members. But people that do this for pay and are trained and maybe you have some sort of certification system for them as well and have the oversight just like you would have the oversight of a lawyer in a law firm." So, not a full-throated endorsement of certification initiatives.

We asked about efforts to train nonprofit staff members and other nonlawyers to spot legal issues. Some offered support. "I'm a huge fan of having nonlawyers trained to help people and answer general questions and things," said one. "I think it's worth our time to educate them on our services," said another, "and to definitely partner with them so that we can obtain referrals from them and do that on an efficient basis." A third, an immigration lawyer, gave an example of when issue spotting can be useful "Especially when it comes to immigration," she said, "because it's ever changing, so for people to be

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

South Carolina State Conference of the NAACP, Marvin Neal, Robynne Campbell; De'Ontay Winchester, Plaintiffs, v. Alan Wilson, in his official capacity as Attorney General, Defendant.	Civil Action No. 2:23-cv-01121-DCN **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND ALTERNATIVE MOTION TO STAY AND IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION**

This Court should grant the Attorney General's Motion to Dismiss under Rules 12(b)(1) and 12(b)(6),[1] and deny the Motion for Preliminary Injunction or alternatively, should stay this action under *Pullman* abstention for the reasons set forth below.

INTRODUCTION

Plaintiffs, in effect, seek the extraordinary step of having the United States District Court direct the Supreme Court of the State of South Carolina as to what practice of law should be permitted in this State without first giving that Court the opportunity to exercise its constitutional authority and jurisdiction to determine whether to authorize Plaintiffs' proposed program. The South Carolina "Constitution commits to [the Supreme] Court the duty to regulate the practice of law in South Carolina. S.C. Const. art. V, §4; see also S.C.Code Ann. § 40–5–10– (1986)." *In re Unauthorized Prac. of L. Rules Proposed by S.C. Bar*, 309 S.C. 304, 305, 422 S.E.2d 123, 124

[1] The exhibits and affidavit and internet sources referenced herein are offered and discussed only in support of the 12(b)(1) motion, the Motion for Stay and in opposition to the Preliminary Injunction motion. They are not submitted for purposes of the 12(b)(6) motion.

(1992). Plaintiffs want the District Court to step into that role and regulate the practice of law in this State. Doing so would be a first in this State, and at this point, falls outside this Court's jurisdiction.

South Carolina law prohibits only the practice of law that is *unauthorized*. Under S.C. Code Ann. §40-5-310 "[n]o person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina." [emphasis added]. Nonlawyers, as well as lawyers who are licensed only in another jurisdiction, may engage in conduct that is defined as the practice of law where authorized by the Supreme Court. E.g., Rule 5.5(c), RPC, Rule 407, SCACR (setting forth the legal services a lawyer who is licensed only in another jurisdiction may provide in South Carolina); Rule 21, SCRMC (permitting nonlawyer representation in magistrates court in South Carolina). Moreover, as discussed, *infra*, the Supreme Court has "otherwise authorized" the practice of law by various nonlawyer individuals and entities and has entertained requests for authorization submitted by letter and by formal actions within the Court's original jurisdiction. *See,* Ex. A, affidavit of the Clerk of Court, attached to Motion and *In re Unauthorized Prac. of L. Rules Proposed by S.C. Bar*, 309 S.C. 304, 307, 422 S.E.2d 123, 125 (1992) ("we recognize that other situations will arise which will require this Court to determine whether the conduct at issue involves the unauthorized practice of law. We urge any interested individual who becomes aware of such conduct to bring a declaratory judgment action in this Court's original jurisdiction to determine the validity of the conduct."). A letter request for authorization of a program may be treated as a matter within the Court's original jurisdiction.

Plaintiffs have not availed themselves of these opportunities to have their proposed program considered (*see* Ex. A, affidavit), and therefore, they cannot claim that they have been injured by restrictions on the unauthorized practice of law when their program might be authorized. Therefore, Plaintiffs do not have standing to challenge these restrictions and their action is not ripe. This suit should be dismissed or alternatively, it should be stayed under *Pullman* abstention, while Plaintiffs apply to the Supreme Court for the approval of their program.

BACKGROUND

Plaintiffs' Memorandum in Support of a Preliminary Injunction provides some information about their proposed program including the following:

> The South Carolina NAACP now wishes to expand its free services to provide tenants facing eviction with limited legal guidance that will help them assert their rights in court. To this end, the South Carolina NAACP plans to train and supervise "Housing Advocates"—volunteers who are well versed in the legal process of evictions but are not lawyers. Drawing on helpful consultations with an array of South Carolina housing law experts and legal services providers, the South Carolina NAACP has created a thorough training guide that will enable Housing Advocates to provide advice about the legal proceeding and flag certain defenses the tenant may be able to assert in court.

ECF # 4-1, p. 3. "Advocates must inform the tenants with whom they work that they are not lawyers and that they can provide only the advice specified in the training; and they must secure the tenants' informed consent." *Id*. at p. 5. Further information about the program is provided at pages 3 – 6 of Plaintiffs' Memorandum.

Plaintiffs omit a key part of §40-5-310, *supra*, in quoting from the statute at page 7 of their memorandum. They assert that "[b]y statute, South Carolina prohibits any person from "practic[ing] law . . . unless he is enrolled as a member of the South Carolina Bar," omitting the

alternative of being "otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina." They point to cases in which they claim that the Supreme Court has adopted "an overly broad interpretation of UPL that sweeps in limited legal advice that Plaintiffs wish to provide" and ignore cases in which the Supreme Court has authorized, following a request, performance of legal services by unlicensed individuals:

> *Medlock v. Univ. Health Servs., Inc*., 404 S.C. 25, 743 S.E.2d 830 (2013) (holding "a non-attorney may present claims against an estate and petition for allowance of claims in the probate court on behalf of a business entity without engaging in the unauthorized practice of law.").
>
> *Boone v. Quicken Loans, Inc.,* 420 S.C. 452, 468, 803 S.E.2d 707, 715 (2017) (holding that, even though nonlawyers performed a number of functions, the conduct was not the unauthorized practice of law due to attorney involvement at various stages of the process).
>
> *Crawford v. Cent. Mortg. Co*., 404 S.C. 39, 744 S.E.2d 538 (2013) (holding that lenders did not engage in the unauthorized practice of law in modifying mortgage loans without participation of a licensed attorney).
>
> *Franklin v. Chavis*, 371 S.C. 527, 640 S.E.2d 873 (2007) (accepting a case in the original jurisdiction and determining that, while some actions involving the preparation of a will constituted the practice of law, the preparation of probate forms did not constitute the practice of law).

They also ignore that *In re Unauthorized Prac. of L. Rules Proposed by S.C. Bar*, *supra*, authorizes activities that are traditionally defined as the practice of law by non-lawyers and unlicensed lawyers in the following circumstances: representation of businesses in magistrate's court by a non-lawyer officer, agent or employee, including attorneys licensed in other jurisdictions and those possessing Limited Certificates of Admission; representation of clients before agencies by CPAs, laypersons and others when authorized by the agencies; CPAs rendering assistance before agencies and the Probate Court; prosecution in magistrate's court by the arresting officer. As noted above, the Court also authorized and encouraged "interested individuals . . . . . to bring a declaratory judgment action in this Court's original jurisdiction to

determine the validity of the conduct that may involve the unauthorized practice of law." 309 S.C. at 307 and 422 S.E. 2d at 125; *Medlock v. Univ. Health Serv., Inc.*, 404 S.C. at 28, 743 S.E.2d at 831 (2013) ("We have encouraged any interested individual to bring a declaratory judgment action in this Court's original jurisdiction to determine the validity of any questionable conduct.").

As stated in *Crawford, supra*,

> The unauthorized practice of law jurisprudence in South Carolina is driven by the public policy of protecting consumers. *See In re Unauthorized Practice of Law Rules*, 309 S.C. at 307, 422 S.E.2d at 123 ("We hope by this provision to strike a proper balance between the legal profession and other professionals which will ensure the public's protection from the harms caused by the unauthorized practice of law."). For this reason, this Court has consistently refrained from adopting a specific rule to define the practice of law. Id. at 305, 422 S.E.2d at 124 (stating "it is neither practicable nor wise" to formulate a comprehensive definition of the practice of law). Instead, whether an activity constitutes the practice of law remains flexible and turns on the facts of each case. *Id.*

404 S.C. at 45, 744 S.E.2d at 541. Although the Court has identified certain activities as the practice of law (*Franklin, supra,* 640 S.E.2d at 876)("the preparation of legal documents constitutes the practice of law when such preparation involves the giving of advice, consultation, explanation, or recommendations on matters of law")), it has emphasized that "[t]he unauthorized practice of law jurisprudence in South Carolina is driven by the public policy of protecting consumers" and "whether an activity constitutes the practice of law remains flexible." *Crawford, supra. See also Boone, supra,* 420 S.C. at 470, 803 S.E.2d at 716 (observing a finding by the Court that the conduct at issue constituted the unauthorized practice of law would mark an unwise and unnecessary intrusion into the marketplace given the measures in place to protect the public).

Accordingly, the Supreme Court has taken a proactive role in considering how to provide better access to justice, including the use of non-lawyers. In particular, the Supreme Court

established the Access to Justice Commission in 2007 "in recognition of the need to expand access to civil legal representation for people of low income and modest means in South Carolina." Order, June 22, 2022, Exhibit B to Motion; *see also* "S.C. Access to Justice Commission Launches Justice Gap Report", *Id.* The Commission consists of members from the judiciary, practicing lawyers, legal aid programs, law schools and the public. *Id.* In August 2022, the Chief Justice of the Supreme Court asked "all South Carolina attorneys to participate in the Statewide Legal Needs Assessment, an online survey about the need for, and access to, civil legal representation in South Carolina."[2] The publication of the final report was announced on the South Carolina Judicial Branch website and a launch event was held on February 21, 2023 in the Supreme Court Courtroom with Members of the Court in attendance. *See* https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2771. The full report, including a recording of the presentation in the Supreme Court Courtroom, can be found via this link: https://www.scaccesstojustice.org/legal-needs, excerpts of which are set forth below.

> The South Carolina Access to Justice Commission and the Center for Housing and Community Studies of the University of North Carolina Greensboro, together with their partners the South Carolina Bar and the NMRS Center on Professionalism of the University of South Carolina School of Law, came together to launch this ambitious first-ever statewide civil legal needs assessment. The study team set out to learn about the life experiences of low- and moderate-income South Carolinians, the legal problems they encounter, and the gaps between their legal needs and the legal resources available to them.
>
> To that end, we developed a comprehensive, mixed-method study incorporating multiple sources of data. The study draws on in-depth interviews with lawyers, administrators, community leaders, educators, legislators, and judges, inquiring about legal needs and resources; roundtable discussions with everyday South Carolinians from Rock Hill to Ridgeland and from Greenville to Conway, to talk about their experiences with lawyers and in courtrooms; surveys of South Carolina residents and lawyers, with questions designed to broaden our understanding of legal needs and how people deal with them, and how we might improve the availability of legal assistance; data about the number and types of cases handled by the court system; and data from legal services providers about

[2] See https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2720.

> the number of intakes and persons served. We also draw on Census data and other publicly available data on the demographic, socioeconomic, and geographic characteristics of South Carolina and its people.
>
> In the pages that follow, we present a summary of the important themes and insights that emerged from this eighteen-month study of the South Carolina legal services system. The views and opinions presented here are not those of the researchers or the sponsors, but rather those of a wide and diverse community of service providers, clients, local residents and expert commentators – those who have a direct stake in the critical needs that we have identified and put on the table for discussion.

Assessment, page 3, Exhibit B to Motion. The survey included the following regarding certification for non-lawyers including, in particular, housing practice:

> We discussed the possibility of more formal certification programs that would allow trained experts to do some things that lawyers do now, within strict limits. "Let's get some other folks involved," agreed one lawyer. "And they would need some sort of training or certification."
>
> Another said the housing practice might lend itself to this approach. "What we're talking about here, where even if you're not a lawyer, well, maybe not a full paralegal, but maybe you're somewhere between full lay person and paralegal, there would be some sort of training regime that would enable you to participate." He added, "For example, the eviction area, it's a rather limited area of law, you can literally read all the statutes at issue."

Report at page 64. Ex. B to Motion.

Although the Supreme Court has long invited original jurisdiction actions to determine whether particular legal practices should be unauthorized (*In re Unauthorized Practice, supra*), the Court has also received and is currently considering a less formal request made by letter. In the request from the Board of Paralegal Certification attached to Exhibit A, the Clerk's affidavit, the organization has proposed three areas for expanded roles for paralegals without the supervision of an attorney: "1) Adult Name Changes; 2) Uncontested Small Estate matters (BOTH Testate and Intestate) and 3) Simple uncontested divorce form filling with no children

involved and/or an agreement already reached as to custody and support." The request has been referred to the South Carolina Bar for comment. *Id.*

Given the Court's active consideration of expansion of legal services for lower income citizens, and its current consideration of additional roles for non-lawyer paralegals, the Supreme Court should be given the opportunity to review Plaintiffs' proposed program before the District Court takes action. Accordingly, as discussed below, this suit should be dismissed or alternatively the District Court should abstain, while the Supreme Court reviews the proposal.

I

THIS ACTION SHOULD BE DISMISSED

A

Plaintiffs Lack Standing To Sue

As this Court has stated:

> "[T]he irreducible constitutional minimum of standing contains three elements." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). First, a plaintiff must demonstrate an "injury-in-fact", which is a "concrete and particularized ... invasion of a legally protected interest." *Id.* Second, "there must be a causal connection between the injury and the conduct complained of, meaning that the injury must be "fairly ... trace[able] to the challenged action of the defendant." *Id.* Third, "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." Id.

Charleston Waterkeeper v. Frontier Logistics, L.P., 488 F. Supp. 3d 240, 252 (D.S.C. 2020). Accordingly, when Plaintiffs have not sought authorization for their program by an original jurisdiction action or a letter request, they cannot claim an injury-in-fact nor can they establish a causal connection between Supreme Court precedent and the status of their program under the law when they have not requested approval of their program. This case may be compared with *Prayze FM v. F.C.C.*, 214 F.3d 245, 251–52 (2d Cir. 2000), in which the Second Circuit Court of

Appeals found that a "microbroadcaster" lacked standing to challenge microbroadcasting regulations when it had not applied for a license or a waiver from the regulations:

> As a general rule, "to establish standing to challenge an allegedly unconstitutional policy, a plaintiff must submit to the challenged policy." *Jackson–Bey v. Hanslmaier*, 115 F.3d 1091, 1096 (2d Cir.1997). "This threshold requirement for standing may be excused only where a plaintiff makes a substantial showing that application for the benefit ... would have been futile." *Prayze, supra;* We conclude that, for several reasons, Prayze has not demonstrated the requisite futility. . . .although even the FCC's new regime seemingly prohibits granting licenses to broadcasters, like Prayze, who operated without a license in defiance of the FCC's instructions to stop, see id. at 7623, that rule, like all FCC rules, is subject to waiver, see 47 C.F.R. § 1.3, and there is no history from which to judge how the FCC will handle such waiver requests.
>
> Under the circumstances, we cannot say an application by Prayze for a license and a waiver would be futile. Accordingly, Prayze does not now have standing to bring an as-applied challenge to the microbroadcasting regulations. We, of *252 course, express no view on the merits of an as-applied challenge, were Prayze to be denied a license or waiver and subsequently choose to bring such a challenge in a court of competent jurisdiction.

Plaintiffs cannot show that seeking authorization from the South Carolina Supreme Court would be futile when the Supreme Court has authorized other practices by non-lawyers, is currently considering a proposal for expanded roles for non-lawyer paralegals and when the Supreme Court has established a Commission to consider ways in which legal services might be expanded to serve low and moderate income citizens.

Other cases support the conclusion that Plaintiffs lack standing when they have not sought authorization. In *Jackson-Bey, supra*, the Court cited *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 167–68 (1972), in which "the Supreme Court held that an African American who never actually applied for membership to the Moose Lodge lacked standing to challenge the club's all-white membership requirement." *See also, Chance Mgmt., Inc. v. State of S.D.*, 97 F.3d 1107, 1115 (8th Cir. 1996) ("Sanders, who has not applied individually for a license as an operator and whose only 'injury' is that flowing from his status as a shareholder of Chance

Management, also lacks standing"); *Hightower v. City of Bos*., 693 F.3d 61, 70 (1st Cir. 2012)("Hightower lacks standing to raise a claim as to a Class B license; she has never applied for such a license, been denied one, or had such a license revoked.").

Courts have distinguished as-applied challenges, such as the instant case, from a facial challenge which is not made here. *See Prayze, supra; Second Amend. Arms v. City of Chicago*, 135 F. Supp. 3d 743, 762 (N.D. Ill. 2015)("Plaintiff Franzese has not applied for a license under the 2014 Ordinance, and so he lacks standing to raise an as-applied challenge to that ordinance. . . . Plaintiff does have standing to seek injunctive relief by way of a facial challenge to the 2014 Ordinance."); *Dolls, Inc. v. City of Coralville, Iowa*, 425 F. Supp. 2d 958, 973 (S.D. Iowa 2006)("Dolls has not submitted a conditional use permit application, has not paid an application fee, and has not submitted a site plan, as required by the City's conditional use permit procedures. Because this section has never been applied to Dolls, Dolls cannot have suffered an injury traceable to its application. Consequently, Dolls does not have standing to challenge this section on an as-applied basis."). *Brokamp v. James*, 573 F. Supp. 3d 696, 705 (N.D.N.Y. 2021) stated:

> Brokamp does not allege that she has applied for a license, nor does she allege that applying for a license would be futile. Indeed, plaintiff concedes that she has no intention of applying to become a licensed mental health counselor in New York. Am. Compl. ¶ 35. Because plaintiff's alleged injuries result from her own decision to not apply for a license in New York, and she does not allege that obtaining a license would have been futile, she has failed to satisfy a "threshold requirement for standing" on her as-applied claims. *See Jackson-Bey*, 115 F.3d at 1096; *Prayze FM*, 214 F.3d at 251-52.

Plaintiffs, therefore, fail to meet standing requirements, when they have not sought review and approval of their program, and the Supreme Court provides avenues for them to seek authorization. (Ex. A, Affidavit).

II

THIS CASE IS NOT RIPE

This case is not ripe for reasons similar to why the Plaintiffs lack standing.

> The ripeness doctrine dictates that a federal court should not decide a controversy grounded in uncertain and contingent events that may not occur as anticipated or *1086 may not occur at all. *Richardson v. U.S. News and World Report,* Inc., 623 F.Supp. 350, 352 (D.D.C.1985) . . . .
>
> When determining whether a case is ripe for review, courts must consider whether a substantial controversy exists, between parties having adverse legal interests, of sufficient immediacy and reality to warrant adjudication. *Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498, 506 (1972). Stated another way, ripeness turns on "the fitness of the issues for a judicial decision and the hardship to the parties of upholding court consideration." *Pacific Gas & Elec. Co. v. State Energy Resources Conservation and Dev. Comm.*, 461 U.S. 190, 201 (1983). It is not enough that a threat of possible injury currently exists; the mere threat of potential injury is too contingent or remote to support present adjudication. Instead, the injury must be clearly impending. *Vorbeck v. Schicker*, 660 F.2d 1260 (8th Cir.1981), cert. den'd, 455 U.S. 921 (1982).

Thrifty Rent-A-Car Sys., Inc. v. Thrifty Auto Sales of Charleston, Inc., 849 F. Supp. 1083, 1085–86 (D.S.C. 1991).

No injury is clearly impending in the instant case. Plaintiffs have not implemented their program so no current risk of prosecution exists. Although "[a] litigant is not required "to expose himself to liability before bringing suit to challenge the basis" of a threat of prosecution[,] *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128–29 (2007)[,]. . . '[a] plaintiff bringing a pre-enforcement facial challenge against a statute' must show that he 'has an actual and well-founded fear that the law will be enforced against' him. *Vermont Right to Life Comm., Inc. v. Sorrell*, 221 F.3d 376, 382 (2d Cir. 2000) (internal quotation marks omitted)." *Neroni v. Zayas*, 663 F. App'x 51, 53–54 (2d Cir. 2016). Plaintiffs cannot make such a showing

of a "well- founded fear" because the law would not be enforced against them if their program is approved.

> The requirement of "concreteness" necessary for a justiciable controversy is most stringent when, as here, the adjudication would concern the constitutionality of a challenged state law or statute. *See Public Service Commission v. Wycoff*, 344 U.S. 237, 243, 247 (1952); *Alabama State Federation of Labor v. McAdory*, 325 U.S. at 461, 65 S.Ct. at 1389. This reflects the considered practice of the Supreme Court and other federal courts not to decide any constitutional question in advance of the necessity for its decision. *See Alabama State Federation of Labor v. McAdory*, 325 U.S. at 461. In furtherance of this policy, federal courts will find an action unripe if (1) the factors outlined above do not plainly demonstrate ripeness, (2) the constitutional question will not arise absent further authoritative decision by courts of the state, and (3) the possibility exists that state courts might construe state law in a manner that would avoid the asserted federal constitutional difficulty. *See, e.g., id.* at 460, 462; *Illinois ex rel. Barra v. Archer Daniels Midland Co*., 704 F.2d 935, 942 (7th Cir.1983); *see also General Electric*, 683 F.2d at 210.

Wisconsin's Env't Decade, Inc. v. State Bar of Wisconsin, 747 F.2d 407, 410–12 (7th Cir. 1984). A justiciable controversy does not exist in the instant case because, among other reasons, this challenge to the State's unauthorized practice restrictions does not "plainly demonstrate ripeness," and "the possibility exists that state courts might construe state law in a manner that would avoid the asserted federal constitutional difficulty." *Id.*

Similarly, Plaintiffs fail to show "prudential ripeness." As explained in *Neroni v. Zayas*, 663 F. App'x 51, 53–54 (2d Cir. 2016):

> Even if a plaintiff shows that he has a well-founded fear of prosecution, he must also establish "prudential ripeness," which requires "both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Walsh*, 714 F.3d at 691 (internal quotation marks omitted). "The 'fitness' analysis is concerned with whether the issues sought to be adjudicated are contingent on future events or may never occur," and "[i]n assessing this possibility of hardship, we ask whether the challenged action creates a direct and immediate dilemma for the parties." *Id.* (internal quotation marks omitted). . . .Moreover, even assuming that Neroni could show a well-founded fear of prosecution, he has failed to establish "prudential ripeness" because his claims "are contingent on future events or may never occur" and there is no "direct and immediate dilemma for the parties." *Walsh*, 714 F.3d at 691 (internal quotation marks omitted).

Plaintiffs concerns may never be realized if they seek and obtain authorization for their program.

Plaintiffs instead present an abstract issue that this Court has said is not subject to adjudication.

> The doctrine of ripeness exists "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967). It "is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction." *Reno v. Catholic Soc. Servs*., Inc., 509 U.S. 43, 58 (1993). In declaratory judgment actions, a suit is ripe when "the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *MedImmune, Inc. v. Genentech*, Inc., 549 U.S. 118, 127 (2007). Here, Progressive is asking the court to prematurely declare that it has no obligation to defend or indemnify Chambers before a lawsuit that would require either of those obligations exists, making this case not ripe for adjudication.

Progressive N. Ins. Co. v. Chambers, No. 2:19-CV-02684-DCN, 2020 WL 59608, at *2 (D.S.C. Jan. 6, 2020). Just as Progressive requested a premature declaration, Plaintiffs ask this Court to enjoin enforcement of this State's unauthorized practice restrictions, and in effect direct this State's Supreme Court as to what legal practices it must authorize when they have not even asked the Supreme Court to review and approve their program.

C

This Case Presents No Case Or Controversy Or Justiciable Controversy

"[A] justiciable dispute must be brought by a party with standing, which the Supreme Court has deemed 'an essential and unchanging part of the case-or-controversy requirement....' *Lujan* [*v. Defs. Of Wildlife*], 504 U.S. at 560." *Zahn v. Barr*, No. 2:19-CV-3553-DCN, 2020 WL 3440801, at *1 (D.S.C. June 23, 2020). "The ripeness doctrine derives from the case or controversy requirement of Article III of the United States Constitution and from prudential concerns of the federal courts and presents this Court with a threshold question of whether it has

the power to entertain the matter before it, and if so, whether it is prudent to adjudicate the case. *Metzenbaum v. Federal Energy Regulatory Comm'n*, 675 F.2d 1282, 1289–1290 (D.C.Cir.1982)." *Thrifty Rental Car, supra*. No case or controversy exists because of the lack of standing and ripeness. In other words, when, as here, "a plaintiff does not have standing or the controversy is not sufficiently ripe, the court must dismiss the action for lack of subject matter jurisdiction." *Cont'l Cas. Co. v. McCabe Trotter & Beverly*, P.C., No. 2:21-CV-01849-DCN, 2021 WL 3811383, at *2 (D.S.C. Aug. 26, 2021). Accordingly, this suit must be dismissed under Rule 12(b)(1). These same grounds also support dismissal under Rule 12(b)(6) for failure to state a claim, but the affidavit, exhibits and internet sources referenced herein are submitted and discussed only in support of the 12(b)(1) and stay motions.

II

ALTERNATIVELY, THIS COURT SHOULD ABSTAIN FROM HEARING THIS CASE

Although dismissal is appropriate because of the absence of a justiciable controversy, should the Court, *arguendo*, prefer, the Attorney General alternatively moves for this Court to abstain from hearing this case now under *Pullman* abstention and stay this case while the South Carolina Supreme Court determines whether to authorize the program that Plaintiffs propose.[3]

> The oldest and best-settled of the abstention doctrines is *Pullman*-type abstention, taking its name from the pathbreaking case of *Railroad Commission of Texas v. Pullman Co*. The doctrine there established is that a federal court may, and ordinarily should, refrain from deciding a case in which state action is challenged in federal court as contrary to the federal constitution if there are unsettled questions of state law that may be dispositive of

[3] Under Rule 244, SCACR, "[t]he Supreme Court in its discretion may answer questions of law certified to it by any federal court of the United States . . . . " The Attorney General reserves the right to request certification but does not do so now because this Rule limits the Court's consideration to the District Court's record whereas consideration of unauthorized practice of law question in the Supreme Court's original jurisdiction allows for the building of record in that Court. *See* Rule 245(c) ("The Supreme Court may provide for discovery, fact finding and/or a briefing schedule as necessary" in original jurisdiction cases). The Plaintiffs should go directly to the Supreme Court in its original jurisdiction to request authorization for their program.

> the case and avoid the need for deciding the constitutional question. The Supreme Court has held that abstention is indicated on this ground in many cases, and many lower courts have applied this understanding of *Pullman*-type abstention. . . . The *Pullman* doctrine ultimately rests on the desirability of avoiding unnecessary decision of constitutional issues. It is not limited to cases in which the constitutional issue would be decided adversely to the state. [Footnotes omitted]

Federal Practice and Procedure, § 4242 Avoidance of Federal Constitutional Questions —When Abstention Required, 17A Fed. Prac. & Proc. Juris. § 4242 (3d ed.):

> *Pullman* abstention ["*RR Comm. of Tex. v. Pullman Co*., 312 U.S. 496 (1941)] requires federal courts to abstain from deciding an unclear area of state law that raises constitutional issues because state court clarification might serve to avoid a federal constitutional ruling. . . . federal courts should retain jurisdiction over the case, but stay the proceedings so that state courts can rule on the state law question. *England*, 375 U.S. at 416. If the state court fails to resolve the issue, however, the parties may then return to federal court for a ruling on the constitutional issue.

Nivens v. Gilchrist, 444 F.3d 237, 245–46 (4th Cir. 2006). "[The *Pullman* abstention doctrine serves the dual aims of avoiding advisory constitutional decisionmaking, as well as promoting the principles of comity and federalism by avoiding needless federal intervention into local affairs." *Pustell v. Lynn Pub. Sch*., 18 F.3d 50, 53 (1st Cir. 1994); *see also*, *Wise v. Circosta*, 978 F.3d 93, 102 (4th Cir. 2020)(quoting *Pustell*).

This case falls squarely within the above precedent if not dismissed altogether for lack of standing and ripeness. State law is most certainly unsettled when the Supreme Court has provided an avenue to determine whether Plaintiffs' proposed program should be authorized, and Plaintiffs have not taken advantage of that opportunity. Respect for the South Carolina Supreme Court, under principles of comity, as well as "avoiding constitutional decisionmaking" (*Pustell*) warrants letting that Court have the opportunity to determine whether Plaintiffs' proposed program should be authorized before this action proceeds. Therefore, this Court should not proceed in this case without at least staying it under *Pullman* abstention.

III

THE MOTION FOR A PRELIMINARY INJUNCTION SHOULD BE DENIED

Of course, if this Court grants either the Motion to Dismiss or the alternative Motion to Stay this case, the Motion for Preliminary Injunction is moot. If, *arguendo,* this Court chooses to address this Motion for Preliminary Injunction, it should be denied. "'The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.' *United States v. South Carolina*, 840 F. Supp. 2d 898, 914 (D.S.C. 2011) (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981))." *Bauer v. Summey*, 568 F. Supp. 3d 573, 584–85 (D.S.C. 2021). This Motion fails at the starting gate under this overarching standard. To preserve the relative positions of the parties, no injunction should be issued. The Plaintiffs have not implemented their program, and denial of an injunction would maintain that status. Furthermore, the Plaintiffs fail to meet any of the four individual requirements for the issuance of an injunction.

> "A plaintiff seeking a preliminary injunction must establish that [1] he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of the equities tips in his favor, and [4] that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008). "To obtain a preliminary injunction under the Winter test, a movant must make a 'clear showing' of [the] four requirements." *Alkebulanyahh v. Nettles,* 2011 WL 2728453, at *3 (D.S.C. July 13, 2011); see also *Dewhurst v. Century Aluminum Co*., 649 F.3d 287, 290 (4th Cir. 2011) ("*Winter* thus requires that a party seeking a preliminary injunction ... must clearly show that it is likely to succeed on the merits.") (internal quotation marks omitted). As the Supreme Court has noted, a preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

Bauer v. Summey, 568 F. Supp. 3d 573, 584–85 (D.S.C. 2021). "'The irreparable harm to the plaintiff and the harm to the defendant are the two most important factors.' *Direx Israel, Ltd. v. Breakthrough Med. Corp*., 952 F.2d 802, 812 (4th Cir. 1991)." *Redeemer Fellowship of Edisto*

Island v. Town of Edisto Beach, S.C., No. 2:18-CV-02365-DCN, 2019 WL 1243108, at *2 (D.S.C. Mar. 18, 2019)

'"[T]he required 'irreparable harm' must be 'neither remote nor speculative,' but actual and imminent.'" *Id*. (quoting *Tucker Anthony Realty Corp. v. Schlesinger*, 888 F.3d 969, 975 (2d Cir. 1989)). In other words, the plaintiff must make a 'clear showing' of irreparable harm. Id. (quoting ECRI v. McGraw–Hill, Inc., 809 F.2d 223, 226 (3d Cir. 1987))." *Redeemer Fellowship, supra*. Plaintiffs fail to make such a showing. Issues affecting landlord tenant relations are not new. Plaintiffs' program to assist tenants is not yet implemented. Harm is not "imminent." Therefore, denial of a preliminary injunction would not change that status. No irreparable harm can come from leaving that status in place while Plaintiffs make a request of the Supreme Court to authorize their program. When Plaintiffs have failed to show irreparable harm, the inquiry stops there, because they must meet this requirement as well as the other three criteria for obtaining a preliminary injunction; however, this failure necessarily results in a failure to meet two other requirements, that the balance of equities are in their favor and that the public interest would be served by an injunction. Enjoining the application of the South Carolina's unauthorized practice of law restrictions would substitute the United States District Court for the South Carolina Supreme Court and preempt the State of South Carolina's highest Court in its duty to regulate the practice of law in South Carolina. S.C. Const. art. V, §4. Respectfully, such substitution would be extraordinarily harmful to the interests of the State of South Carolina and its Supreme Court in regulating the practice of law in this State, and would be contrary to the public interest. Such substitution is also unnecessary when, as noted repeatedly in this Memorandum, Plaintiffs have failed to avail themselves of the opportunity to request the Supreme Court to review and approve their program.

Although addressing the likelihood of success is unnecessary due to Plaintiffs' failure to meet the other requirements for an injunction, they do not show such a likelihood. For reasons discussed above, they lack standing in this action and this matter is not ripe. Therefore, addressing the merits of Plaintiffs' proposed program would be premature at this point given their failures on standing and ripeness; however, should this Court determine that the merits of Plaintiffs' claims should be considered as to likelihood of success, the Attorney General would respectfully request that he be given the opportunity to address this factor before this Court issues a preliminary injunction.

CONCLUSION

For the foregoing reasons, the Attorney General respectfully requests that this Court grant his Motion to Dismiss, or alternatively, grant his Motion to Stay, and that this Court deny Plaintiffs' Motion for a Preliminary Injunction.

Respectfully submitted,

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