

*AS*

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

T.R., P.R., and K.W., on behalf of )  
themselves and others similarly situated; )  
and Protection and Advocacy for People )  
with Disabilities, Inc., )

Civil Action No.: 2005-CP-40-02925

Plaintiffs, )

**ORDER GRANTING DEFENDANT  
SOUTH CAROLINA GENERAL  
ASSEMBLY'S MOTION TO  
DISMISS AND DENYING  
DEFENDANT SOUTH CAROLINA  
DEPARTMENT OF  
CORRECTIONS' MOTION TO  
DISMISS**

vs. )

South Carolina General Assembly, )  
and South Carolina Department of )  
Corrections, )

Defendants. )

This matter came before me on June 22, 2006, pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure, upon motion of Defendants South Carolina General Assembly and South Carolina Department of Corrections ("SCDC") for an order granting their separate motions to dismiss. Stuart M. Andrews, Jr., Daniel J. Westbrook, Jeffrey S. Patterson and Travis Dayhuff of Nelson Mullins Riley & Scarborough, L.L.P. appeared on behalf of Plaintiffs. Robert E. Stepp and Roland M. Franklin, Jr. of Sowell Gray Stepp & Laffitte, L.L.C. appeared on behalf of Defendant South Carolina General Assembly. William H. Davidson, II, Andrew F. Lindemann, and Kenneth P. Woodington of Davidson, Morrison & Lindemann, P.A. appeared on behalf of Defendant SCDC. After thorough review of Defendants' motions, the prevailing case law and arguments from counsel, this Court grants the South Carolina General Assembly's motion and denies SCDC's motion for the reasons stated hereafter.

*JWB*

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RICHLAND COUNTY  
FILED  
DANIEL A. SCOTT  
C.C. J.G.S.

## PROCEDURAL HISTORY AND FACTS

Plaintiffs commenced this action with the filing of the Summons and Complaint on June 20, 2005. On July 7, 2005, Plaintiffs filed and served an Amended Complaint.<sup>1</sup> Plaintiffs seek class treatment of their claims and declaratory and injunctive relief with respect to the class as a whole. Amended Complaint ¶¶ 12-18. The Hon. J. Ernest Kinard, Jr., then Chief Administrative Judge for the Fifth Judicial Circuit, declared this litigation complex and assigned it to this Court for disposition. According to the allegations of the Amended Complaint, Defendants “have failed to provide reasonably adequate medical treatment to inmates suffering from serious mental illness in the custody of the South Carolina Department of Corrections” in violation of Article XII, section 2 of the South Carolina Constitution. *Id.* ¶ 1. As a result, Plaintiffs contend that they are subjected to alleged “needless infliction of pain and suffering, in violation of Article 1, § 15 of the South Carolina Constitution.” *Id.*

On July 22, 2005, the South Carolina General Assembly filed a motion to dismiss the Amended Complaint asserting various grounds for dismissal under Rule 12(b), SCRCP, and on August 19, 2005, SCDC filed a motion to dismiss and/or strike and make more definite and certain. In support of the motions, Defendants jointly argued that this action, which raises issues concerning the provision of mental health care within SCDC, is not cognizable because (1) the issues raised are non-justiciable political questions; (2) there is no substantive constitutional right to mental health treatment in SCDC, and thus no legal claim can arise related thereto; (3) Plaintiffs failed to exhaust their administrative remedies; (4) Plaintiffs failed to demand a specific remedy available at law; and (5) the

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<sup>1</sup> The Amended Complaint omitted the State of South Carolina as a defendant to this action.

separation of powers doctrine prohibits Plaintiffs from naming the South Carolina General Assembly as a Defendant to this action.<sup>2</sup> Because the Court concludes that the separation of powers doctrine prohibits a direct action against the General Assembly and this Court is without authority to order the relief sought by Plaintiffs against the General Assembly, the Court grants the South Carolina General Assembly's Motion to Dismiss.

However, separation of powers concerns do not operate to warrant dismissal of SCDC from this action. The Court concludes that SCDC is the state agency statutorily charged with the responsibility of providing for the welfare of prison inmates. The assertion of a constitutional right and alleged violation is a justiciable matter, and whether SCDC's alleged actions rise to the level of a constitutional violation can only be determined after some degree of review of the facts surrounding the allegations. Moreover, the argument that there has been a failure to exhaust administrative remedies is not persuasive with regard to the systemic relief requested in this case by Plaintiffs. Accordingly, the Court denies SCDC's Motion to Dismiss.

#### STANDARD OF REVIEW

A ruling on a 12(b)(6) motion to dismiss for failure to state a claim must be based "solely upon the allegations set forth in the complaint." *Carolina Care Plan, Inc. v. United Healthcare Servs., Inc.*, 361 S.C. 544, 550, 606 S.E.2d 752, 755 (2004) (citing *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999)). The Court should not grant a motion to dismiss "if the facts and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Carolina*

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<sup>2</sup> Defendants also moved to dismiss Plaintiff Protection and Advocacy for People with Disabilities, Inc. ("P&A") for lack of standing to maintain this action. On April 12, 2006, this Court denied Defendants' motion, finding that P&A was created for the express purpose of protecting and advocating for the rights of developmentally disabled and handicapped persons.

*Care Plan, supra* (citing *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)).  
“The question to be considered is whether, when viewed in the light most favorable to the plaintiff, the complaint states any valid claim for relief.” *Carolina Care Plan, supra*.

## LAW / ANALYSIS

### I. The Separation of Powers Doctrine Prohibits a Direct Action Against the General Assembly Under These Allegations.

#### A. The doctrine of separation of powers.

The doctrine of separation of powers is deeply embedded within the structure of our republican form of government and lies at the heart of many of the legal issues that require dismissal of the General Assembly from this case. Article I, section 8 of the Constitution of the South Carolina explicitly states that “the legislative, executive, and judicial powers of the government *shall be forever separate* and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.” S.C. Const. art. I, § 8 (emphasis added). In other articles, the constitution sets out the powers and duties of the executive, legislative and judicial branches to which the limitations of Article I, section 8 apply. The legislative branch makes the laws; the executive branch carries them into effect; and the judicial department interprets them. *State ex rel. McLeod v. Yonce*, 274 S.C. 81, 84, 261 S.E.2d 303, 305 (1979). Separation of powers expresses the policy that “the powers confided by the Constitution to one [branch of government] cannot be exercised by another.” *Culbertson v. Blatt*, 194 S.C. 105, 110, 9 S.E.2d 218, 221 (1940) (quoting *Kilbourn v.*

*Thompson*, 103 U.S. 168, 190 (1880)).<sup>3</sup> This is as important a right as is the right to vote and the other rights memorialized in Article I.

Separation of powers is the fundamental embodiment of our system of checks and balances. *State ex rel. Condon v. Hodges*, 349 S.C. 232, 244, 562 S.E.2d 623, 630 (2002). It is this principle that prevents any one branch of government from assuming disproportionate power, and that preserves the “form of government delineated by the mighty hand of the people.” *Cohen v. Hoff*, 7 S.C.L. (2 Tread.) 657 at \*1 (S.C. Const. App. 1814). The doctrine “puts it beyond the power of [a] court on a mere allegation that the Legislature has violated a constitutional mandate, to issue a prohibitive or other injunctive or mandatory decree which would have the effect of undoing such violation.” *Culbertson*, 194 S.C. at 112, 9 S.E.2d at 219.

Although the powers of the three branches of government are separate, they are not equal. The constitution represents a limitation upon legislative power rather than a grant thereof, and the legislature is free to act in any way not expressly prohibited by the constitution. *Clarke v. South Carolina Pub. Serv. Auth.*, 177 S.C. 427, 181 S.E. 481, 486 (1935). By contrast, the constitution acts as a grant of power to the judicial branch. See S.C. Const. art. V, § 5 (“The Supreme Court shall constitute a court for the correction of errors at law under such regulations as the General Assembly shall prescribe.”); S.C. Const. art. V, § 9 (“The Court of Appeals shall have such jurisdiction as the General

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<sup>3</sup> The doctrine of separation of powers does not require “an absolute division of powers among the three branches of government.” *Gilbert v. Gladden*, 432 A.2d 1351, 1354 n.3 (N.J. 1981) (citation omitted). In fact, the doctrine “necessarily assumes a cooperative effort among them.” *Id.* (citation omitted). Yet, this acknowledgement does not mean that the judiciary can usurp the role of the legislature by becoming intimately and inextricably involved in policy concerns best left to the majoritarian or legislative process. See *Yonce*, 274 S.C. at 88, 261 S.E.2d at 306 (stating that “. . . we recognize that some overlapping authority *has been tolerated* by reason of the *minimal degree* of involvement”) (emphasis added).

Assembly shall prescribe by general law.”); S.C. Const. art V, § 11 (“The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law.”). Under the constitution, the judiciary may only exercise those powers that are expressly conferred upon it. *See* S.C. Const. art V, § 11.

One of the express limitations upon the power of the judicial branch is Article I, section 8. With respect to the judiciary’s separate and independent role in the tripartite constitutional system, our supreme court has acknowledged that

“the policy and intent of the constitutional system is that the courts and judges not only shall not be required, but shall not be permitted, to exercise any power or to perform any trust or to assume any duty not pertaining to, or connected with, the administering of the judicial function, and that the exercise of any power or trust or the assumption of any public duty other than such as pertains to the exercise of the judicial function is not only without constitutional warrant, but is against the constitutional mandate in respect of the powers they are to exercise and the character of duties they are to discharge. . . .”

*Yonce*, 274 S.C. at 87, 261 S.E.2d at 306 (quoting 16 Am. Jur. 2d, *Constitutional Law* § 223); *State v. Whittington*, 278 S.C. 661, 663, 301 S.E.2d 134, 135 (1983).

The judicial power is supreme within its sphere of action. *State v. Ansel*, 76 S.C. 395, 57 S.E. 185, 189 (1907). Thus, the South Carolina Supreme Court found the legislature’s attempt to retroactively reinstate limits upon the tort liability of government entities to be an unconstitutional encroachment by the legislature upon the judicial function. *See Simmons v. Greenville Hosp. Sys.*, 355 S.C. 581, 587, 586 S.E.2d 569, 572 (2003). Similarly, the judiciary has recognized that courts may not intrude into the

legislative domain, for example, by requiring the legislature to appropriate public money. *Gregory v. Rollins*, 230 S.C. 269, 95 S.E.2d 487, 490-91 (1956).

Separation of powers and the foundational principles upon which the doctrine rests are applicable to the present case in numerous ways. The doctrine is squarely implicated in this case because Plaintiffs' Amended Complaint is premised upon the following contentions: that this Court may exercise jurisdiction over the legislative branch of government; that the legislative process itself is a justiciable basis for a finding in Plaintiffs' favor; and that this Court possesses the power to order the Senate and the House to "design, maintain, fund, and provide resources for a reasonable and adequate system of mental health care." Amended Complaint, p. 21. Each such contention in the Amended Complaint violates the separation of powers doctrine.

**B. Under the facts of this case, the General Assembly is not a proper party.**

Plaintiffs' Amended Complaint purports to state claims against the "South Carolina General Assembly." This immediately raises a constitutional concern about the extent of authority the judicial branch may exercise over the legislative branch. The exercise by one branch of government of authority over the activities of another undermines the very basic protection against the concentration of power that Article I, section 8 is intended to prevent.

Imbedded in the obvious separation of powers issue, however, is the more basic question of whether the General Assembly is even capable of being sued. Only one reported case has been located in which "the General Assembly" was named as a party. In *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2002), plaintiff challenged the constitutionality of a statute criminalizing the sale of urine with the intent to defraud a

drug screening test. Plaintiff named the State, the General Assembly, the Attorney General for the State of South Carolina, the Solicitor for the circuit in which the case was filed, and the sheriff of the county in which the case was filed. *Id.* at 557, 549 S.E.2d at 591. The Attorney General represented all defendants. *Id.* at 564, 549 S.E.2d at 594. The Supreme Court held the statute in question to be constitutional, although the court struck one provision therein as creating an unconstitutional presumption. *Id.* at 571, 549 S.E.2d at 598.

The propriety of naming the General Assembly as a party defendant in the case was not discussed by the Court, and was apparently not raised. It is clear, however, that all of the issues raised could have been litigated with only the state as the party defendant. Just because the General Assembly enacted a law that is sought to be challenged does not require that the legislature be a party to the case that attacks it, any more than the Governor who signed it into law, or those who are charged with its enforcement. In fact, upon enactment and approval by the Governor, the statute becomes an organic part of the law of the State of South Carolina, and should be defended by the state as a whole rather than by any individual branch of government.

Plaintiffs justify their inclusion of the General Assembly as a defendant, by reciting that “[t]he present case, of course, does not involve unwise legislation, but constitutional requirements.” Memorandum in Opposition at 20. This distinction is unavailing. While Article XII, section 2 does refer to the “General Assembly”, other constitutional provisions and statutes impose duties relating to the operation of the prison system upon other parties. For example, it is the statutory responsibility of the South Carolina Department of Mental Health to “provide a statewide system for the delivery of

mental health services to treat, care for, reduce and prevent mental illness and provide mental health services in the areas of mental defectiveness, epilepsy, drug addiction and alcoholism for citizens of this State, *whether or not in an institution.*” S.C. Code Ann. § 44-9-90(7) (2002) (emphasis added). *See also* S.C. Code Ann. § 44-23-220 (2002): In addition, Article XII, section 9 provides that “[t]he Penitentiary and the convicts thereto sentenced shall forever be under the supervision and control of officers employed by the State. . . .” Further, section 24-3-20 of the South Carolina Code recites that “[a] person convicted of an offense against this State and sentenced to imprisonment for more than three months is in the custody of the South Carolina Department of Corrections . . . .” S.C. Code Ann. § 24-3-20(A) (Supp. 2005). Moreover, section 24-1-10 provides that references in the Code to the State Penitentiary “shall mean the Department of Corrections . . . .” S.C. Code Ann. § 24-1-10 (Rev. 1989). Finally, section 24-1-20 declares the policy of the state with respect to the operation and management of the Department of Corrections. S.C. Code Ann. § 24-1-20 (Rev. 1989).

Thus, there are many sources of law with respect to the prison system and many different agencies, including SCDC, that the law charges with responsibility for their operation and management. The prison system is a creature of the state, and is not the province of the General Assembly to supervise, operate or manage.<sup>4</sup> Because prisoners are the responsibility of the state as a whole, it is inappropriate to name the General Assembly as a defendant in a case seeking a determination of the rights of persons confined therein.

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<sup>4</sup> As pointed out in the motion to dismiss filed by SCDC, SCDC is not even a legislative agency, but rather reports to the Governor.

In sum, it is inappropriate for any member of the public to haul the General Assembly into court because he or she disagrees with action or inaction by the legislature, just as it would be inappropriate to sue this Court or any appellate court of this state because of a decision rendered by a court. Although the people of the State of South Carolina, from whom the constitution emanates, *Grier v. Taylor*, 15 S.C.L. (4 McCord) at \*1 (1827), retain the right to challenge the constitutionality of laws enacted by the legislature by means of a declaratory judgment action against the state, they do not have the right to seek judicial redress against the legislature itself. Redress against the legislature is at the polls, not at the courthouse. *See Bridge Co. v. United States*, 105 U.S. 470, 482 (1881) (“For protection against unjust or unwise legislation, within the limits of recognized legislative power, the people must look to the polls and not to the courts. It would be an abuse of judicial power for the courts to attempt to interfere with the constitutional discretion of the legislature.”). Therefore, the General Assembly is not a proper party in a court proceeding.<sup>5</sup>

C. The Court cannot order the relief requested in the Amended Complaint against the General Assembly.

Moreover, this Court cannot provide the relief requested by Plaintiffs against the General Assembly. In their Amended Complaint, Plaintiffs allege an unconstitutional level of mental health care arising from: (1) an alleged shortage of psychologists, mental health counselors, nurses and other clinical staff; (2) deficient treatment plans and

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<sup>5</sup> Plaintiffs point to a number of cases from other jurisdictions where the General Assembly is named as a party. However, the Court finds Plaintiffs’ efforts unavailing because there is no indication in those cases that the issue of whether the General Assembly could be named as a party was raised. Conceivably, in each of the cases cited, the General Assembly consented to being named a party, or perhaps even joined in the action. At any rate, the Court finds that there is no statutory or constitutional provision granting the South Carolina General Assembly the power to sue or be sued.

treatment programs; (3) missed medication dosages; (4) failure to provide therapeutic services; (5) lack of accurate and reliable mental health records; (6) undertrained counselors; (7) a shortage of correctional officers; (8) underpaid correctional officers; (9) officers who allegedly use pepper spray disproportionately on mentally ill prisoners and take advantage of mentally ill prisoners; and (10) a lack of long-term psychiatric care. See Amended Complaint ¶¶ 39-43; 45-49; 55. In addition, Plaintiffs allege a host of problems with the provision and administration of medications. *Id.* ¶¶ 74-80.

Assuming that Plaintiffs seek the intervention of the Court to correct what they perceive as the unconstitutional shortcomings of the present system of prisoner mental health care, they are in reality asking the Court to (1) determine a standard for each of these issues—*e.g.*, the required number of psychiatrists, counselors, nurses and other clinical staff and their required training and pay; (2) order the General Assembly to address each of these and conceivably other issues in a plan adopted by the General Assembly; (3) determine whether the plan adopted by the General Assembly adequately addresses each of these concerns; (4) determine the amount of funding that would be necessary to implement the plan and order the General Assembly to provide it; and (5) retain oversight responsibility for the implementation and maintenance of the plan. In addition, Plaintiffs request that the Court enter “all other relief” the Plaintiffs can convince the Court is appropriate. *Id.* p. 21. In effect, Plaintiffs ask the Court to thrust itself into the province of the General Assembly to an unprecedented degree.

This Court cannot order the General Assembly to enact specific legislation, to conduct a study of the issues for which Plaintiffs seek review, or to appropriate money. See *Culbertson*, 194 S.C. at 110, 9 S.E.2d at 220 (finding that “it is beyond the power of

[the supreme court] to direct the Legislature to perform any duty it may have” with respect to the election of a board of trustees to the University of South Carolina); *Shasta Beverages v. South Carolina Tax Comm’n*, 280 S.C. 48, 56, 310 S.E.2d 655, 659 (1983) (observing that “[i]t is not the role of [the] Court to advise the legislative or executive branches how to proceed . . . .”); *Gregory v. Rollins*, 230 S.C. 269, 95 S.E.2d 487, 491 (1956) (holding that legislative functions, such as the appropriation of public money, are “beyond the province of the judiciary . . . .”); *Town of Hilton Head Island v. Coal. of Expressway Opponents*, 307 S.C. 449, 455, 415 S.E.2d 801, 805 (1992) (“Our tripartite system of government traditionally precludes the judicial branch from impinging on the legislature’s exercise of a power vested in that body.”). Because this Court lacks the power to afford the relief Plaintiffs seek against the General Assembly, the Court grants the South Carolina General Assembly’s motion to dismiss the General Assembly as a party to this action.<sup>6</sup>

II. **The Doctrine of Separation of Powers Does Not Preclude an Action Against SCDC Under These Facts.**

Unlike the case with the General Assembly, separation of powers does not operate to warrant dismissal of this case with respect to SCDC. Initially, by statute, SCDC has the power to sue and be sued. Specifically, section 24-1-220 of the South Carolina Code provides that “[a]ll actions or suits at law accruing to the department shall be brought in the name of the director, who shall appear for and defend actions or suits at law in which it is to the interest of the department to appear as a party defendant. No suit or action at law shall be brought for or defended on behalf of the department except by authority of

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<sup>6</sup> Because the Court concludes that the General Assembly is not a proper party to this action, the Court does not reach the General Assembly’s contention that Article XII, section 2 of the South Carolina Constitution does not impose an affirmative duty on the part of the General Assembly to provide for the mental health care of prisoners confined to SCDC.

the director.” S.C. Code Ann. § 24-1-220 (Supp. 2005). Thus, unlike the General Assembly, there exists an express statutory provision providing the legal basis by which a party may sue SCDC.

Moreover, Article XII, section 2 of the South Carolina Constitution provides that “[t]he General Assembly . . . shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates.” S.C. Const. art. 12, § 2. In carrying out this duty, the General Assembly has constitutionally delegated the responsibility for the prison system to SCDC.<sup>7</sup> By statute, the director of SCDC is “vested with the exclusive management and control of the prison system, and all properties belonging thereto . . . and shall be responsible for the management of the affairs of the prison system and for the proper care, treatment, feeding, clothing, and management of the prisoners confined therein.” S.C. Code Ann. § 24-1-130 (Supp. 2005). In addition, the law expressly charges the director of SCDC with the “manage[ment] and control of the prison system.” *Id.* Finally, the director of SCDC has been delegated the power to “prescribe reasonable rules and regulations governing the humane treatment, training and discipline of prisoners, and to make provision for the separation and classification of prisoners according to . . . health . . . .” S.C. Code Ann. § 24-1-140 (Supp. 2005). Thus, unlike the General Assembly, SCDC is expressly charged with management of the prison system

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<sup>7</sup> In citing this provision, the Court does not intend to express an opinion as to what substantive requirements, if any, the provision may contain. *See McLamore v. State*, 257 S.C. 413, 423, 186 S.E.2d 250, 255 (1972) (stating “no constitutional duty imposed on any governmental entity to educate or rehabilitate [prison inmates]”); *Sullivan v. South Carolina Dept. of Corrections*, 355 S.C. 437, 444, 586 S.E.2d 124, 127 (2003), *cert. denied*, 540 U.S. 1153 (2004) (observing that even if Article 12, § 2 were to be “read to require *some* kind of rehabilitation for inmates, it does not mandate any specific programs that must be provided by the General Assembly or the SCDC. . . .”) (emphasis in original).

and statutorily authorized to be sued concerning an alleged denial of constitutional rights and alleged violations thereof. Therefore, contrary to SCDC's contentions, separation of powers concerns do not warrant dismissal of SCDC from this action.<sup>8</sup>

### III. Exhaustion of Administrative Remedies.

While the decision to require a plaintiff to exhaust administrative remedies is within the discretion of a court, *Smith v. South Carolina Ret. Sys.*, 336 S.C. 505, 525-6, 520 S.E.2d 339, 349-50 (Ct. App. 1999), a court must have a "sound basis for excusing the failure to exhaust administrative relief." *Allen v. South Carolina Alcoholic Bev. Control Comm'n*, 321 S.C. 188, 194, 467 S.E.2d 450, 453 (Ct. App. 1996) (quoting *Hyde v. South Carolina Dep't of Mental Health*, 314 S.C.207, 209, 422 S.E.2d 582, 583 (1994)).

The Court finds that a sound basis for excusing the failure to exhaust administrative remedies exists in this case. This action seeks to remedy an alleged system-wide crisis in South Carolina's prisons affecting potentially thousands of mentally ill prison inmates. Bringing these claims in a single suit is obviously more efficient and cost effective than addressing these claims in thousands of separate actions begun as SCDC grievances. Indeed, the fundamental questions presented in this litigation cannot be resolved on a case-by-case basis through an administrative remedy, and can only be appropriately reviewed collectively.<sup>9</sup>

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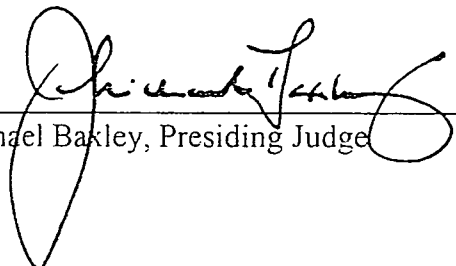
<sup>8</sup> This is not to say that separation of powers may ultimately circumscribe the remedy available to Plaintiffs against SCDC. However, at this juncture, the Court only concludes that separation of powers does not preclude SCDC from being sued as an agency in this action.

<sup>9</sup> In so holding, the Court expresses no opinion as to the extent, if any, to which class certification would be appropriate in this case.

Based on the above, the Court finds and concludes that the doctrine of separation of powers prohibits a direct action against the South Carolina General Assembly under the facts of this case, and there is no provision of the state constitution or statutory provision granting the South Carolina General Assembly the power to sue or be sued. Accordingly, the South Carolina General Assembly's motion to dismiss that body as a party to this action is granted.

Additionally, the Court finds and concludes that unlike the South Carolina General Assembly, SCDC is statutorily empowered to sue and be sued in the courts of this state. Moreover, SCDC is statutorily vested with the exclusive management of the prison system in South Carolina, and Plaintiffs' assertion of an alleged constitutional right as prison inmates and violation thereof is a justiciable matter over which this Court has jurisdiction. Accordingly, SCDC's motion to dismiss is denied.

**IT IS THEREFORE ORDERED** that Defendant South Carolina General Assembly's Motion to Dismiss is **GRANTED**, and Defendant South Carolina Department of Correction's Motion to Dismiss is **DENIED**.

  
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J. Michael Bakley, Presiding Judge

Hartsville, South Carolina

August 16, 2006