

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge

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S.C. SUPREME COURT

DEBORAH MIHAL, and the AMERICAN
CIVIL LIBERTIES UNION FOUNDATION
OF SOUTH CAROLINA,

APPELLANTS,

v.

GOVERNOR HENRY D. MCMASTER, in
His Official Capacity; and MARCIA S. ADAMS,
Executive Director of the South Carolina
Department of Administration, in Her Official
Capacity,

RESPONDENTS.

PETITION FOR A WRIT OF SUPERSEDEAS

For the past year, since South Carolina Governor Henry McMaster first declared a state of emergency in response to the COVID-19 pandemic, state workers deemed “non-essential” have been carrying out their duties remotely. On March 5, 2021, the Governor abruptly reversed course, ordering state agencies to “immediately expedite” the return of non-essential state employees to in-person work. Executive Order 2021-12 (Mar. 5, 2021) (“Return in Person Order”). The Return in Person Order requires employees with disabilities and employees with caretaking responsibilities to return to their offices in person, regardless of the risk to their health or their ability to find appropriate care for their young children or adult dependents. Since it was announced, Appellants have scrambled—so far unsuccessfully—to find arrangements to care for their loved ones and to protect their health and safety.

This case is not about whether the Governor can declare a public health emergency to respond to the threat of COVID-19. He unquestionably can. Nor is it about whether non-essential

state employees can be required to carry out their duties during the pandemic. State employees like Plaintiff Deborah Mihal have been working diligently outside of the office for the past year to keep state agencies operating smoothly despite the many disruptions wrought by the pandemic. The only question in this case is whether the Governor’s emergency authority under S.C. Code Ann. § 25-1-440(a)—which empowers him to take action to protect the “safety, security, and welfare” of South Carolina—extends to issuing an order that protects no one and that would subject non-essential state employees *to the very threat that is the basis for the public health emergency*. It does not.

Far from protecting them, the Return in Person Order would compel non-essential state employees to risk their own health and safety and the health and safety of those they care for. The Return in Person Order is not merely an exercise of the Governor’s authority to revoke or modify executive orders in response to changing circumstances—such as lifting an evacuation order after a storm has passed. Rather, it is akin to ordering residents back to an area evacuated during a hurricane while the storm is still raging—regardless of the damage to their homes or communities, or of the risks to themselves and their families. The threat of COVID-19 has not yet abated. The notion that mandating the more than 24,000 non-essential state employees to carry out their duties in person rather than remotely—in the midst of an ongoing pandemic—is necessary or even beneficial to anyone’s safety, security, or welfare is just as unfounded as mandating citizens to return to the eye of the hurricane.

The conditions that generate Appellants’ harms are necessarily time-limited. The risks from returning to the workplace in person will—hopefully—abate, as more people are able to get vaccinated, positivity rates decline, more schools return to additional days of in-person learning, and childcare centers return to full capacity. Accordingly, Appellants do not seek a policy

permanently authorizing remote work options for all non-essential employees. Rather, they ask this Court only to enjoin the blanket policy currently in effect, which mandates state agencies to require all non-essential employees to return to the office in person, regardless of their health or caregiving circumstances. In other words, Appellants merely request a return to the status quo at the time this case was initiated.

In the absence of a supersedeas, Appellants will have no way to challenge the denial of a preliminary injunction, as their appeal will become non-justiciable in the normal course.¹ If the Return in Person Order is not enjoined, Appellants will suffer the very harms they seek to prevent. The dangers they now confront—exposure to a deadly virus, dangers to their children’s safety as a result of being left without adequate supervision, exposure to charges of child neglect, and further disruption to their children’s education—are profound, and simply could not be compensated after the fact. Moreover, Appellants are likely to succeed on the merits of their claims, as the Return in Person Order conflicts with the Governor’s responsibility to protect the safety of the state and is *ultra vires*. Immediate action by this Court is necessary to return to the status quo of permitting remote work by non-essential state employees during the pandemic, preserve Appellants’ meritorious appeal, and protect them from irreparable harm in the interim.²

¹ This Court should grant the writ of supersedeas and enjoin the Return in Person Order for the reasons that follow (and were submitted to the court below). Should the Court deny this Petition for a Writ of Supersedeas, Appellants are prepared to move to expedite the appeal of the denial of their Motion for Preliminary Injunction, as well as to certify it for review by this Court as a matter of great public importance. However, at a minimum, should this Court determine that further fact development is required, this Court should vacate the denial of the motion for a preliminary injunction and remand for a preliminary injunction hearing.

² Appellants’ current situation has brought into sharp relief the tremendous sacrifices already made by essential workers and their families. Regardless of the Governor’s authority to mandate the return of such essential workers to work in person, there is no justification for ordering Appellants, whose jobs the state has already deemed “non-essential” for in-person work, to confront those same risks in order to conduct their duties. Nor has the situation changed materially between the time when the state deemed their work non-essential and the date of the

I. BACKGROUND

A. The COVID-19 Public Health Emergency in South Carolina.

Two days after the World Health Organization declared COVID-19 a global pandemic, Governor McMaster declared a public health emergency in South Carolina pursuant to S.C. Code Ann. § 1-3-420 and § 25-1-440. Executive Order (“EO”) 2020-08 (Mar. 13, 2020) at 1–2.

Within a week of declaring a public health emergency, Governor McMaster issued an order directing all non-essential state employees to carry out their public duties remotely. EO 2020-11 (Mar. 19, 2020). The order was intended “[t]o ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional proactive measures to safeguard the health and safety of state employees, pursuant to the cited authorities and other applicable law.” *Id.* at 3. Pursuant to EO 2020-11, non-essential state employees have been performing their public duties safely, effectively, and remotely for more than a full year.

In February 2021, Governor McMaster reiterated that a state of emergency continues to exist in South Carolina and urged South Carolinians to continue “social distancing” and to take other precautionary measures to control the spread of COVID-19. EO 2021-10 (Feb. 21, 2021).

B. The Governor Issues EO 2021-12.

Less than two weeks after he urged South Carolinians to continue to “social distance” to combat the spread of COVID-19, Governor McMaster abruptly shifted course and directed state agencies to “immediately expedite” a requirement that *all* non-essential state employees carry out their duties from their offices in person rather than remotely. EO 2021-12 (Mar. 5, 2021) at 12.

Return in Person Order such that their return to in-person work is suddenly essential to the functioning of the government.

The Return in Person Order did not merely rescind EO 2020-11’s provision directing non-essential state employees to work remotely to combat the spread of COVID-19; it created an affirmative requirement that *all* non-essential state employees return to their offices within the month (if not sooner), regardless of agency need, the nature of an employee’s position, or their personal circumstances. In mid-March, when the directive was issued, the Department of Administration estimated that approximately 33% of all South Carolina state workers, or roughly 24,000 employees, were working remotely due to the COVID-19 crisis.³

Pursuant to the Governor’s Order, the Department of Administration issued a Memorandum implementing the Return in Person Order and announcing that *all* agencies and institutions were expected to return *all* employees to the workplace by March 15, permitting only “a limited amount of time” for agencies to modify their workplace to mitigate the risk of exposure to COVID-19. Memorandum re: “State Government Staffing – Return to Normal Operations” (Mar. 5, 2021) (“Memorandum”) at 1–2.⁴ The Memorandum further eliminated the discretion that state agencies enjoyed prior to the Return in Person Order to approve remote work arrangements on a case by case basis, categorically blocking state agencies from granting remote work arrangements due to COVID-19.⁵

C. The Impact of the Return in Person Order on Appellants.

As a result of the Governor’s Order and the Department of Administration’s Memorandum,

³ Julia Kauffman, *Some South Carolina state employees returning to the workplace*, WCNC (Mar. 12, 2021), <https://www.wcnc.com/article/news/health/coronavirus/south-carolina-state-employees-return-workplace/101-d0ed028b-2519-4d95-8b62-33b20cc622e8>.

⁴ The Memorandum is accessible at <https://admin.sc.gov/sites/default/files/3-5-2021%20MA%20Memorandum%20-%20State%20Government%20Staffing%20-%20Executive%20Order%202021-12.pdf>.

⁵ *See, e.g.*, Return to Campus, Clemson U., <https://www.clemson.edu/covid-19/return-to-campus/working-on-campus.html> (last visited Apr. 12, 2021) (“Per the directive of the South Carolina Department of Administration, the University is temporarily suspending the approval of new requests for Telecommuting/Remote Work Agreements related to COVID-19 . . .”).

all non-essential state employees must shift from remote work to office-based work immediately—regardless of their vaccine status, the risk to their own or their family members’ health, or their ability to find appropriate childcare coverage. For example, even if a childcare center or school for an employee’s child is not available for in-person attendance, employees with caretaking responsibilities must report to the workplace; the Memorandum suggests a return date of April 5. Memorandum at 3. For employees with disabilities that the CDC has identified as placing them at higher risk for severe illness from COVID-19, the Memorandum allows only for a “temporary reasonable accommodation to work remotely until the individual has had an opportunity to be vaccinated,” but does not take into account that the vaccine may be contraindicated for some employees because of their disabilities, that the risks of vaccination may still be unknown for other conditions, such as pregnancy or lactation, or that they may be at higher risk from COVID-19 regardless of their vaccination status because of disabilities or other medical conditions that are not specifically identified by the CDC. *Id.* at 2.

Appellant Deborah Mihal is the Director of Disability Services for the College of Charleston, and has been working remotely successfully with her team for the past year. Indeed, some of her job responsibilities have become more streamlined by working remotely.

The Return in Person Order would have required Mihal to shift from remote work to in-person work by April 5 (although the policy does not impact her until *today*, April 13, as she had already planned to use annual leave over the last week). If the Order continues in effect, Mihal will have no childcare options for her nine-year-old son. Mihal is her son’s primary caretaker; her husband works outside of the house, and her older son has remote school and works part-time. She committed her son to virtual schooling for the full spring semester in January 2021, before she knew she would be expected to work from the office. Since learning of the Return in Person Order,

she has tried but has been unable to enroll him in in-person learning. After-school activities are full, the College does not offer childcare for school-age children, and she has not been able to make other group care arrangements. The only “accommodation” proposed to her prior to the initiation of this lawsuit would still leave hours, several days a week, when her son would be left unsupervised. The proposed schedule also would not allow her to complete many aspects of her job that she is currently performing remotely and that require her to be available during business hours.

Mihal and other College employees have asked what will happen if they cannot comply with the Return in Person Order, but no one has provided them with an answer; Mihal fears she may lose her job if she cannot return to work in-person quickly enough to comply with the Return in Person Order.

Members of the ACLU of South Carolina (“ACLU of SC”) are also unable to find adequate childcare on the short notice imposed by the Return in Person Order. One member with two school-age children will be able to transition them to in-person school, but school only runs until 3:40 p.m., and she has been unable to arrange afternoon childcare. This would leave her children unsupervised for several hours each day while she would be required to be in the office.

For other members of the ACLU of SC, the Return in Person Order puts their health, and the health of their families, squarely at risk. One member is breastfeeding her son who was born in late January, and does not want to get the vaccine, given the unknown risks to her and her infant. Although she was told she could request an accommodation to continue working remotely, and submitted all the necessary documentation, her request was denied and she has been working in person in the office since last week. She used her leave as part of her maternity leave, and the only other option she has been given is to take unpaid leave under the Family and Medical Leave Act.

Her husband is a disabled Veteran who cannot work, so she must earn an income. She has had no choice but to return to the office, unvaccinated, at great risk to herself, her husband, and her infant. Since this case was filed, she has learned that a family member of her direct supervisor has tested positive for COVID-19, but when she asked human resources whether she would be permitted to work remotely to avoid further exposure, her request was denied.

Another ACLU of SC member has a chronic health condition and a wife who is also medically vulnerable. The member is nonetheless being required to work in person immediately, well before he will be fully vaccinated in early May. No accommodations have been offered. A different member has a medical condition that has left her with a weakened immune system, putting her at high risk for COVID-19. Despite requesting an accommodation and providing a letter from her physician as to the need to continue working remotely even after she is vaccinated, the agency is requiring her to return to the office in early May.

On April 9, after this case was filed, and after her multiple requests for accommodations had already been rejected, Mihal's supervisor sent her a form to request a temporary telecommuting accommodation. The accommodation is available only to employees whom supervisors identify as having "extenuating circumstances" based on caregiving responsibilities, and will be available only through June 18, at the latest, regardless of ongoing need. Mihal applied for the accommodation, but has not yet received a final decision. Meanwhile, none of the other ACLU of SC members described above has been offered the opportunity to apply to continue working remotely since the Return in Person Order was issued.⁶

⁶ When they moved for a preliminary injunction before the lower court, these factual statements were contained in sworn statements, attached hereto as Affidavit for Deborah Mihal, Exhibit 1, and Declaration for Susan K. Dunn, Exhibit 2. This Petition echoes those statements with minor updates based on ongoing factual developments.

B. Procedural Background

On April 6, 2021, Appellants filed their Complaint seeking declaratory and injunctive relief against the Return in Person Order on the basis that it exceeded Respondents' statutory authority and improperly imposed unlawful burdens on non-essential state employees in violation of Art. I, § 8 of the South Carolina Constitution and is *ultra vires*. The Complaint was accompanied by a Motion for a Temporary Restraining Order and/or Preliminary Injunction.

On April 8 at 9:30 a.m., the lower court convened a status conference, at which all parties were present. No court reporter was present, nor were the parties invited to present argument. At the conference, the court permitted Respondents to submit a response and indicated that a hearing on the motion for a preliminary injunction would be set for the following week, on April 15. Respondents filed their oppositions to the Motion in the hours following the teleconference.

Later that day, the court emailed counsel inviting Respondents "to submit a proposed order denying the motion for temporary restraining order and/or permanent injunction [*sic.*]," and indicated that it would accept a memorandum from Appellants in opposition and that it expected to render its decision the following morning. Respondent Adams submitted her proposed order that evening. (Respondent McMaster did not submit a separate proposed order.) Appellants filed their reply brief on the morning of Friday, April 9.

On April 9, the court denied the Motion for a Temporary Restraining Order and Preliminary Injunction and cancelled the evidentiary hearing. On the morning of April 12, Appellants moved for the court to reconsider its denial of the Motion for a Preliminary Injunction and applied for a supersedeas. As of this morning, the court has not acted on Appellants' requests. Due to the exigencies of this matter, as described in detail below, Appellants are proceeding with this Petition.

II. SUPERSEDEAS IS NECESSARY TO PRESERVE THE STATUS QUO AND SAFEGUARD APPELLANTS' MERITORIOUS APPEAL.

A supersedeas is necessary here for the same reason that Appellants are likely to succeed on the merits of their appeal of the denial of the Motion for Preliminary Injunction: The critical need to preserve the status quo that has existed since the Governor directed non-essential state workers to work remotely more than a year ago. A reviewing tribunal may grant a supersedeas to “stay proceedings in the trial court, to preserve the status quo pending the determination of the appeal . . . , and to preserve to appellant the fruits of a meritori[o]us appeal where they might otherwise be lost to him.” *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct. App. 1990) (citations omitted); *see also Melton v. Walker*, 209 S.C. 330, 336, 40 S.E.2d 161, 164 (1946). In determining whether to grant a writ of supersedeas, the reviewing tribunal “should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” Rule 241(c)(2), SCACR. Supersedeas is also appropriate in matters presenting “novel questions.” *See, e.g., Matter of Decker*, 322 S.C. 212, 214, 471 S.E.2d 459, 461 (1995) (staying a news reporter’s incarceration during the pendency of an appeal to consider novel qualified privilege issues under both state statute and the First Amendment). The status quo has been defined as the ““last uncontested status between the parties which preceded the controversy.”” *Pashby v. Delia*, 709 F.3d 307, 320 (4th Cir. 2013) (quoting *Aggarao v. MOL Ship Mgmt. Co., Ltd.*, 675 F.3d 355, 378 (4th Cir. 2012)). Each of those conditions is present in this case.

A. Supersedeas is Necessary to Preserve the Status Quo.

Non-essential state employees like Appellants had been working safely and effectively remotely for nearly a year, when the Return in Person Order was issued by the Governor suddenly and without warning, and implemented by state agencies in a matter of weeks. Appellants seek to maintain the status quo when extensions for Appellants to return to in-person work began to expire,

but before Appellants had suffered irreparable harm as a result of the Order.

Courts in South Carolina have temporarily restrained enforcement of policies under similar circumstances—after the policies were issued, but before irreparable harm had occurred. For example, in *Peek v. Spartanburg Regional Healthcare System*, the Court of Appeals affirmed the grant of temporary relief to preserve the status quo by blocking the application of a hospital admitting privileges requirement that would have resulted in the plaintiff losing her medical practice. 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct. App. 2005), *holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010). Even though the policy had been announced over a month earlier, the court held there was no abuse of discretion in finding “[plaintiff] would suffer [this] irreparable harm if the status quo was not maintained.” *Id.* at 455–56.

Here, as in *Peek*, Appellants moved to temporarily enjoin enforcement of the challenged policy after it was issued but before they suffered irreparable harm as a result. Indeed, for several of the impacted individuals, their case might not have been considered ripe had they sought a pre-enforcement injunction: In the time period between the Order’s announcement and its taking full effect, they attempted to make arrangements that would have adequately addressed their individual circumstances—for example, by attempting to arrange childcare, shift their children to in-person schooling, get the vaccine, and/or obtain accommodations from their employers. And here, as in *Peek*, enjoining implementation of the Return in Person Order would “preserve the status quo and thus avoid possible irreparable injury to [Appellants] pending litigation,” *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001); *see also Parker v. S.C. Dairy Comm’n*, 274 S.C. 209, 211, 262 S.E.2d 38, 39–40 (1980) (affirming trial court’s order temporarily enjoining the enforcement of a South Carolina Dairy Commission policy “until the validity of the [policy]

can be adjudicated when the matter is tried on its merits.”); *Aggarao*, 675 F.3d at 378.

Without a writ halting the operation of the Return in Person Order, Appellants will suffer the very irreparable harms that their suit was intended to prevent—and with the passage of time, their case will become essentially unreviewable. The writ is therefore necessary in order to “preserve the fruits of [their] meritori[o]us appeal.” *Graham*, 301 S.C. at 130; *Compton v. S.C. Dep’t of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011).

B. Appellants’ Appeal is Meritorious.

Supersedeas is also necessary because Appellants were entitled to a preliminary injunction, and would lose their opportunity to challenge the wrongful denial in the absence of the writ. A preliminary injunction should issue where “necessary to preserve the status quo ante” when the moving party has shown that “without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law.” *Poynter*, 387 S.C. at 586–87; *see also Zabinski*, 346 S.C. at 601 (“The sole purpose of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation.” (citing *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 199 S.E.2d 60 (1973)); *accord Cty. Council of Charleston v. Felkel*, 244 S.C. 480, 483–84, 137 S.E.2d 577, 578 (1964). A preliminary injunction must issue where the plaintiff will be irreparably harmed with no adequate remedy at law, regardless of the interests of Defendants in carrying out their business in a particular way. *Poynter*, 387 S.C. at 587. Because Appellants satisfy each of the requirements for a preliminary injunction, they will ultimately succeed on appeal—making the immediate grant of a supersedeas critical.

1. Appellants will suffer irreparable harm.

Appellants are likely to prevail in this appeal because of the irreparable harms Mihal and

members of the ACLU of SC will face if required to return to work in-person immediately. Mihal will suffer actual and imminent harm if a preliminary injunction is not granted because she would be forced to leave her nine-year-old son alone, without adult supervision, for hours, several days a week, creating the risk that he would be injured or harmed, or that she could be prosecuted or have her son removed from her care for neglect. Additionally, even if she could find childcare—which she has been unable to do despite diligent efforts—hiring an in-home caregiver or placing her son in care outside the house, and returning to the office before she is fully protected by vaccination, would increase her and her family’s chance of exposure to COVID-19. The harms Mihal and her family will suffer constitute far more than “presumed economic loss,” and are well within the scope of injuries that South Carolina courts have recognized as irreparable. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 52, 674 S.E.2d 505, 509 (Ct. App. 2009) (“noise and traffic” in the neighborhood interfering with enjoyment of property); *Levine v. Spartanburg Reg’l Servs. Dist.*, 367 S.C. 458, 465 & n.3, 626 S.E.2d 38, 42 & n.3 (Ct. App. 2005) (loss of business goodwill); *Peek*, 367 S.C. at 455 (loss of professional practice and career).

Members of the ACLU of SC have likewise been unable to identify appropriate care arrangements for their children and have been denied individualized requests to continue to work remotely until they are vaccinated, putting their own and their families’ health at risk. Non-essential state employees, under the age of 55, and without particular high-risk medical conditions only became eligible for the vaccine on March 31, 2021.⁷ Even when employees make an appointment as soon as they are able, that entails some delay until they can actually *get* the vaccine, and it will take an additional two weeks after the final vaccine dose for its protections to take full effect. Additionally, many schools are open for in-person instruction just 2 to 4 days a week,

⁷ See *COVID-19 Vaccine*, Dep’t Health and Enviro. Control, <https://scdhec.gov/covid19/covid-19-vaccine> (last accessed Apr. 12, 2021).

leaving significant gaps in which children would be unsupervised.⁸ Childcare slots have been sharply reduced during the pandemic, making it far more difficult to arrange care.⁹ Moreover, the fact that *some* childcare providers are open for *some* children does not mean they are able to suddenly accommodate an influx of additional children who now need care due to the issuance of the Return in Person Order.

2. Appellants lack an adequate remedy at law.

Mihal and the state employee members of the ACLU of SC cannot be compensated by money damages for the harms they will suffer if they comply with the Return in Person Order by immediately returning to work in-person on a full-time basis. As described above, complying with the Order entails risks to employees' health and the health of their families, risks to the wellbeing of their children or adults who rely on the state employees for care, and potential exposure to child neglect charges against state employees. *See* S.C. Code Ann. § 63-5-70. These harms simply cannot be recompensed through money damages after the fact. *See, e.g., AJG Holdings*, 382 S.C. at 52 (“criminal law resolutions and an award of monetary damages [found] to be inadequate remedies”); *Levine*, 367 S.C. at 466–67 (“monetary damages alone would not remedy the harm”); *Peek*, 367 S.C. at 457 (“monetary damages are not the only option, and injunctive relief is a better remedy because it would allow Peek to retain both her patient base and her expertise while also retaining her income”).

The lower court's Order incorrectly relied on the existence of workplace fairness and safety laws in holding that Appellants failed to show that other legal remedies are inadequate. The relevant question is not whether a statutory avenue for *some* form of relief exists, but whether

⁸ *Current Operational Status*, S.C. Dep't of Ed., <https://ed.sc.gov/districts-schools/schools/district-and-school-closures/operational-status/> (last visited Apr. 12, 2021).

⁹ *See* Declaration of Amanda McDougald Scott, attached hereto as Exhibit 3.

Appellants will suffer an injury *now* for which they cannot be compensated by money damages *later*. Appellants here meet that test, so it is irrelevant that they may also be entitled to other relief under workplace fairness and safety laws, which are not at issue in this action against the Governor for exceeding his statutory authority.

3. Appellants are likely to succeed on the merits.

The declaration of a public health emergency does not give the Governor free rein to issue orders that do not protect the safety, security, and welfare of South Carolina. The executive branch “may exercise discretion in executing the laws, but only that discretion given by the legislature.” *Hampton v. Haley*, 403 S.C. 395, 404, 743 S.E.2d 258, 262 (2013); *see also Bauer v. S.C. State Hous. Auth.*, 271 S.C. 219, 232, 246 S.E.2d 869, 876 (1978) (limiting authority to “fill[ing] up the details’ [of the emergency statutes] by prescribing rules and regulations for the complete operation and enforcement of the law *within its expressed general purpose*” (emphasis added)). Further, a government actor “commit[s] an *ultra vires* act by exceeding its statutory authority,” as it must “act[] within the legal parameters established by the legislature.” *Baird v. Charleston Cty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999); *see also S.C. Pub. Int. Found. v. S.C. Dep’t of Transportation*, 421 S.C. 110, 122–24, 804 S.E.2d 854, 861–62 (2017); *Evins v. Richland Cty. Historic Pres. Comm’n*, 341 S.C. 15, 21, 532 S.E.2d 876, 879 (2000) (holding Commission’s actions were *ultra vires*). The allowable limits of the Governor’s discretion “and whether or not they have been overstepped in a particular case, are judicial questions.” *Hearon v. Calus*, 178 S.C. 381, 183 S.E. 13, 22 (1935).

Appellants are likely to prevail on the merits of their case because the Return in Person Order exceeds the Governor’s delegated authority to protect “the safety, security, and welfare of the State” during a declared emergency. S.C. Code Ann. § 25-1-440(a). Pursuant to that delegated

authority, the Governor can issue emergency proclamations, and may amend or rescind those executive orders. S.C. Code Ann. § 25-1-440(a)(1). However, any *new* proclamation is subject to the statutory limitations on the Governor’s emergency powers. Because the Return in Person Order does not protect public safety, security, and welfare, it is beyond the Governor’s delegated emergency powers. *Hampton*, 403 S.C. at 404.

Appellants have demonstrated the multiple ways the Return in Person Order is contrary to the Governor’s responsibilities to the state. First, nowhere does the Return in Person Order state how, exactly, requiring non-essential state employees to work in the office rather than remotely, as they have done for the past year, will further health or safety goals. And, strikingly, neither Respondents nor the lower court articulated a basis for how the Order *does* serve those ends. The risk of COVID-19 is far from over—and in fact is far greater than it was one year ago, when a public health emergency was first declared.¹⁰ Both the CDC and South Carolina’s Department of Health and Environmental Control have cautioned of the severe consequences likely to result if restrictions are eased prematurely.¹¹

Despite those dire warnings, the Return in Person Order mandates that agencies bring

¹⁰ For example, on March 5, 2021, when Governor McMaster ordered state agencies to return non-essential state employees to the workplace in person, there were 767 new cases of COVID-19 in South Carolina on that day alone, and a 7-day moving average of 1,234 cases per day, compared to only 166 recorded cases of COVID-19 in South Carolina total on March 19, 2020, when Governor McMaster first ordered that non-essential state employees work remotely. SC Testing Data & Projections (COVID-19), S.C. Dep’t of Health & Env’t Control, <https://scdhec.gov/covid19/sc-testing-data-projections-covid-19>; Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory, Ctrs. for Disease Control & Prevention, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (South Carolina).

¹¹ See Zeke Miller, *CDC Director has Feeling of Impending Doom Amid New Spike*, Associated Press (Mar. 29, 2021), <https://apnews.com/article/biden-cdc-warn-us-coronavirus-4th-surge-2ec501996048f0043f96cb43ba5b962a>; Adam Mintzer, DHEC epidemiologist: Another COVID-19 surge in SC is a ‘top concern,’ WCSC (Apr. 5, 2021), <https://www.live5news.com/2021/04/05/dhec-epidemiologist-another-covid-surge-sc-is-top-concern/>.

employees back to work, but does not mandate any protections to ensure that workplaces are actually safe for employees before they return. Requiring non-essential state employees to work in the office rather than remotely thus contravenes: the state Department of Health and Environmental Control’s guidance for reopening businesses,¹² the federal Occupational Safety and Health Administration’s recommendation to permit telework and deliver services remotely,¹³ and accordingly, the South Carolina General Duty Clause, S.C. Code Ann. Regs. 71-112A, which mandates that “[e]mployers shall maintain a place of employment which is free of recognized hazards which may cause death or serious physical harm to his employees.”

Second, the mandate that non-essential state employees physically report to the office is entirely unnecessary given that non-essential state employees have been working remotely successfully since March 2020—and in some cases, more effectively. Instead, under the Return in Person Order, state employees will struggle to fulfill their job duties given conflicting schedules and the need to take time off work to be at home due to caretaking responsibilities or high-risk medical conditions. And employees may lose their jobs—threatening to leave the state short-handed at the time when it claims to need them the most.

Finally, the Return in Person Order exceeds the Governor’s authority and is *ultra vires* because it would cause a disparate impact on women, Black people and other racial minorities, people who are pregnant, and people with disabilities, which contravenes the South Carolina Human Affairs Law. S.C. Code Ann. § 1-13-80. As Appellants demonstrated in an affidavit

¹² COVID-19 Reopening Guidance for Businesses, S.C. Dep’t of Health & Env’t Control (July 27, 2020), https://scdhec.gov/sites/default/files/media/document/DHEC-Employer-Return-to-Work-Guidance_7.27.20.pdf.

¹³ Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace, Occupational Safety & Health Admin., <https://www.osha.gov/coronavirus/safework#implement-physical-distancing> (last visited Apr. 5, 2021).

introduced below, the Return in Person Order will disproportionately hurt women: Given that a majority of caretaking responsibilities fall to women, they are more likely to be forced to leave their jobs in the absence of available childcare, and data show that women have already borne the brunt of job loss in light of the sharp increase in caregiving demands wrought by the pandemic.¹⁴ For pregnant people, the Return in Person Order allows them to continue to work remotely *only if they are taking steps to be vaccinated*, even though (a) pregnancy creates a higher risk for severe illness resulting from COVID-19,¹⁵ and (b) the CDC has also made clear that the decision whether to receive vaccination is a personal choice for those who are pregnant or breastfeeding/lactating, because “there are currently limited data on the safety of COVID-19 vaccines in pregnant people.”¹⁶ Likewise, employees with disabilities that put them at high risk for severe illness from COVID-19 may not qualify to continue to work remotely because their conditions are not specifically listed as high-risk by the CDC or the vaccine is contraindicated for medical reasons.¹⁷ The reasonable accommodation of continued remote work is not available to them; the Memorandum implementing the Return in Person Order instructs that *all* jobs require being physically present at the workplace as an essential function, Memorandum at 2, even though what job functions are essential for a particular job is fact-specific.¹⁸ Finally, the Return in Person Order

¹⁴ See Declaration of Amanda McDougald Scott, attached hereto as Exhibit 3.

¹⁵ *People with Certain Medical Conditions*, Ctrs. for Disease Control & Prevention (updated Mar. 29, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

¹⁶ *Information about COVID-19 Vaccines for People who Are Pregnant or Breastfeeding*, Ctrs. for Disease Control & Prevention (updated Mar. 18, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/pregnancy.html>.

¹⁷ *Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in the United States: Contraindications and precautions*, Ctrs. for Disease Control & Prevention, <https://www.cdc.gov/vaccines/covid-19/info-by-product/clinical-considerations.html#Contraindications> (last visited Apr. 12, 2021).

¹⁸ See United States Equal Employment Opportunity Commission, *Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA*,

will also have a disparate impact based on race and will likely exacerbate existing disparities in access to the vaccine, as well as rates of COVID-19 infection, hospitalization, and death.¹⁹

The Governor could have simply exercised his authority to rescind his prior order that all non-essential state employees work remotely, allowing state agencies to develop their own plans for employees to return to the workplace. But the Return in Person Order is not merely a modification of a previous order, nor does it “*eas[e]* emergency restrictions set forth earlier in the COVID-19 crisis.” Order at 6. Rather, it cuts off state agencies’ flexibility to allow employees to work remotely, designates the Department of Administration as the arbiter of new in-office work policies, and blocks even *pre*-pandemic agency accommodation policies that would have enabled agencies to approve pandemic-necessitated remote work agreements for some employees based on their individual circumstances.

The lower court’s Order frames the issue as a disagreement on policy, but Appellants do not merely disagree with the Return in Person Order; rather, they have introduced uncontroverted evidence that their “safety, security and welfare” will be actively harmed by it. “Discretion in the manner of the performance of an act arises when the act may be performed in one of two or more ways, *either of which would be lawful*, and where it is left to the will or judgment of the performer to determine in which way it shall be performed.” *Blalock v. Johnston*, 180 S.C. 40, 185 S.E. 51, 54 (1936) (emphasis added). The Governor exercises his emergency authority lawfully only if it

<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada> (Oct. 17, 2002).

¹⁹ See Kaiser Family Foundation, Nambi Ndugga et al., *Latest Data on COVID-19 Vaccinations Race/Ethnicity*, Apr. 7, 2021, <https://www.kff.org/coronavirus-covid-19/issue-brief/latest-data-on-covid-19-vaccinations-race-ethnicity/>; Zak Koeske, *Black, Latino SC residents vaccinated at much lower rates than whites, data show*, The State (Feb. 17, 2021), <https://www.thestate.com/news/politics-government/article249304980.html>; Tiana N. Rogers et al., *Racial Disparities in COVID-19 Mortality Among Essential Workers in the United States*, World Med. Health Policy (Aug. 5, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7436547/pdf/WMH3-9999-na.pdf>.

protects the safety and welfare of the State. Because Appellants have shown the Return in Person Order does not do that, he has exceeded the bounds of his discretion and his authority. *See Rose v. Beasley*, 327 S.C. 197, 206, 489 S.E.2d 625, 629–30 (1997).

The legislature delegated certain, limited emergency authority to the Governor. This Court must ensure that the Governor exercises that authority within the limits the legislature has set by enjoining the Return in Person Order. *See Hearon*, 183 S.E. at 22.

III. CONCLUSION.

For the reasons set forth above, this Court should grant the writ of supersedeas and enjoin the Return in Person Order.

Respectfully submitted,

By: /s/ Nancy Bloodgood
Nancy Bloodgood (SC Bar # 6459)
BLOODGOOD & SANDERS, LLC
242 Mathis Ferry Road, Suite 201
Mt. Pleasant, SC 29464
Phone: 843-972-0313
Email: nbloodgood@bloodgoodsanders.com

/s/ Susan K. Dunn
Susan K. Dunn (SC Bar # 1798)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SOUTH CAROLINA
P.O. Box 20998
Charleston, South Carolina 29413
Phone: 843-282-7953
Fax: 843-720-1428
Email: sdunn@aclusc.org

*Admission for *pro hac vice* forthcoming

Attorneys for Appellants

Lindsey Kaley*
Galen L. Sherwin*
Brian Dimmick*
Daniel Mach*
Alexandra Bornstein*
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street, 18th Floor
New York, New York 10004
Phone: 212-519-7823
Email: lkaley@aclu.org
Email: gsherwin@aclu.org
Email: bdimmick@aclu.org
Email: dmach@aclu.org
Email: legal_ab@aclu.org

Charleston, South Carolina
Date: April 13, 2021

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Apr 13 2021

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge

S.C. SUPREME COURT

DEBORAH MIHAL, and the AMERICAN
CIVIL LIBERTIES UNION FOUNDATION
OF SOUTH CAROLINA,

APPELLANTS,

v.

GOVERNOR HENRY D. MCMASTER, in
His Official Capacity; and MARCIA S. ADAMS,
Executive Director of the South Carolina
Department of Administration, in Her Official
Capacity,

RESPONDENTS.

VERIFICATION

I, Deborah Mihal, being duly sworn in accordance with law, depose and state that I have read this Petition and that the allegations contained herein are true to the best of my knowledge and belief.



Signature

Sworn to and subscribed before me
this 13 day of April, 2021.


Notary Public for the State of South Carolina

My Commission Expires: 12/29/2026

RECEIVED

Apr 13 2021

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge

DEBORAH MIHAL, and the AMERICAN
CIVIL LIBERTIES UNION FOUNDATION
OF SOUTH CAROLINA,

APPELLANTS,

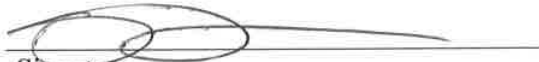
v.

GOVERNOR HENRY D. MCMASTER, in
His Official Capacity; and MARCIA S. ADAMS,
Executive Director of the South Carolina
Department of Administration, in Her Official
Capacity,


RESPONDENTS.

VERIFICATION

I, Susan K. Dunn, Legal Director for the American Civil Liberties Union of South Carolina, being duly sworn in accordance with law, depose and state that I have read this Petition and that the allegations contained herein are true to the best of my knowledge and belief.


Signature

Sworn to and subscribed before me
this 13th day of April, 2021.


Notary Public for the State of South Carolina
My Commission Expires: 3/1/2026

NANCY BLOODGOOD
Notary Public, State of South Carolina
My Commission Expires 3/1/2026

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
DEBORAH MIHAL, and AMERICAN	)	Case No.:
CIVIL LIBERTIES UNION OF SOUTH)	
CAROLINA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
GOVERNOR HENRY MCMASTER, in	)	AFFIDAVIT FOR
His Official Capacity; and MARCIA S.	)	DEBORAH MIHAL
ADAMS, Executive Director of the South)	
Carolina Department of Administration, in)	
Her Official Capacity,)	
)	
Defendant.)	
)	

PERSONALLY appeared before me, Deborah Mihal, who after being duly sworn, deposes and says as follows:

1. I am over the years of eighteen and submit this Affidavit to supplement the allegations in my Complaint.
2. I have been a state employee for twenty-two years, and I have worked for my current employer, the College of Charleston, in my current position, Director of Disability Services, for over ten years. In my role, I oversee the Center for Disability Services, which is responsible for ensuring that the College’s programs and services are accessible for all students. I directly supervise three people and am in the process of hiring a fourth person.
3. My team has been working remotely since March 2020, and we have been able to do so very effectively. Much of our work involves interfacing with students. This is particularly true of our work approving and providing reasonable accommodations, such as extended test-taking time or

audio-recording class lectures, for students with disabilities, which is one of our office's primary responsibilities.

4. Prior to the pandemic, we already had a system in place to hold student meetings related to accommodations via video, since it was not uncommon for such meetings to take place over the summer, before students returned to campus in the fall. When we started working remotely, it was easy to transition all student meetings to this system. We also migrated our accommodation request process online. Previously, students submitted requests for accommodations to our office on paper forms, myself or others in the office would review the paper form to determine whether to approve the accommodation, and someone else in my office would input the information from the form into an online system once that decision was made. We now use a single computer program for all aspects of the request process: students submit their requests online; we review them online; we communicate with students, faculty, and the administration; and we make records of approved accommodations, all through this program. Being forced to make this change while working remotely has actually allowed us to do this significant part of our work more effectively.

5. Another big part of my job involves serving on various committees with people outside of my department, including the Student Affairs Leadership Team and the commencement committee. We have been able to hold our regular meetings over Zoom very effectively.

6. Myself and two of my reports also have childcare responsibilities. I have a nine-year-old son who attends remote school, five days a week, and I serve as his primary caregiver during the school day. My husband works for an engineering firm that requires him to be in the office full-time. He leaves every morning before 8:00 a.m. and does not get home until 5:30 p.m. Monday through Thursday, and after lunch on Friday. I also have a seventeen-year-old son, who also attends remote school and has a part-time job. We have never felt comfortable leaving our

seventeen-year-old to care for our nine-year-old alone. My younger son is very joyful, but he is also very high energy, he moves around a lot, and requires a lot of attention. Between remote school, part-time work, and my younger son's needs, my seventeen-year-old is not a viable option as a regular caretaker for my younger son. One of the women that reports to me is a single parent with two children, who are both in remote school. My other report takes care of her sister's children during the day, since her sister is a first responder. We have all been able to balance our caregiving responsibilities and working from home very effectively.

7. There is just one aspect of our work, proctoring exams for the small number of students who take their exams in-person and have exam accommodations, that has required a physical presence in the office, even during the pandemic. I have been able to go to the office to proctor exams on Friday afternoons, and have done so since January 2021, because my husband gets off work after lunch on Fridays and is able to care for our son.

8. I first learned about the Governor's order requiring state employees to return to in-person work, via an email on the evening of Friday, March 5, from my supervisor to me and the other directors on the Student Affairs Leadership Team at the College. I was concerned to learn about the order. But, I assumed the College would make reasonable accommodations for employees who are caregivers, like myself and my reports, since our supervisors have been aware of our childcare responsibilities since the beginning of the pandemic.

9. On Monday, March 8, all College employees received an email from the President of the College explaining the Governor's order. The email stated that the College had to communicate a plan for bringing people back into the office to the State by Wednesday, March 10, and was trying to come up with that plan as quickly as possible. I became more worried after receiving this email. It felt like we were all holding our breath, waiting to see how the College

would come up with a plan that would work for employees with childcare responsibilities and others who would be unable to return to the office.

10. When I received the College's plan, which had been approved by the State, I was shocked. We got the plan on Thursday, March 11. It stated that most employees had to be back in the office by the following week. All remaining employees, other than those with high-risk health conditions, had to be back in the office by Monday, April 5. The plan specifically addressed those of us with childcare concerns. It explained that all employees with childcare responsibilities would have to return by April 5, even if we had not found alternative childcare arrangements. The plan actually said by the week of April 5, "a lack of childcare is no longer a reason to remain in a remote working status." I was absolutely dumbfounded. We later learned that faculty were exempted from having to return to the office, to minimize the disruption to the academic progress of the College's students.

11. On Monday, March 15, my supervisor emailed me a form she stated needed to be filled out by Friday, March 19, with plans for returning to the office for myself and my reports. I submitted our plans the same day, March 15, but my supervisor responded that they did not comply with the College's guidelines because we stated we would be without childcare until the end of the school and could not return to the office full-time before then. My department was given until the following Wednesday, March 24, to update our plans to comply. I had no idea how I was going to come up with alternative childcare before then.

12. My nine-year-old son attends virtual school five days a week through the Charleston County School District. The school district asked parents to choose whether their children would attend in-person or virtual school, first in late summer 2020 for the first semester of the year, and again in January 2021 for the second semester of the year. Both times we selected virtual school.

The school required us to commit for the full semester to ensure there was appropriate staffing and resources for both programs. At this point, we have committed to virtual school through the end of the school year. We made that decision with the understanding that I would continue to be able to work remotely.

13. We have been scrambling to figure out how I can comply with the Governor's order without putting myself or my family at risk—and even the childcare options I have pursued for my son would entail risks. When I found out I would need to return to the office, I reached out to my son's school to see whether he could switch from remote to in-person school, but I have not heard back. I reached out because it seems like we may have no other options, but we continue to be very concerned about him returning to in-person school this year. We are worried about how it will affect his learning. There have already been so many other disruptions this year. While remote, he has had four different teachers, and if he transitions to in-person school, he will once again be assigned a new teacher since at his school, teachers' classes are either fully in-person or fully remote.

14. We are also very worried about the exposure to the virus if he returns to in-person school. We are worried that his school, which was underfunded before the pandemic, does not have the resources to enforce all of the necessary protocols to keep our son safe. I have been to his school and seen staff members in the building with their masks pulled down below their faces. I cannot imagine how the school can enforce safety procedures for young children if they cannot do so with their employees. If he returns to in-person school he will be dealing with a new environment, new classmates, a new teacher, and new rules. We are worried he will struggle with all of this and will not be able to adopt the behaviors he needs to be safe.

15. Despite having many of the same concerns about other group care settings, we have looked into them as well. We inquired into whether my son could enroll in his school's afterschool

programs and have been told there is no availability. The College does not currently offer childcare. We were told that the College might start to offer childcare sometime in the future, but so far this has not happened. Hiring a nanny, which would allow our son to continue remote schooling while minimizing his exposure to the virus, is too expensive. Even if it were not, we do not have enough time to find and hire someone we trust before I am expected to return to the office. This is especially true given the risk of COVID-19 exposure. We cannot require them to get vaccinated or make sure they are not engaging in behavior that would put themselves and my son at greater risk of exposure. We have been looking, but have not been able to find alternative childcare that will work for my son. Given his age, it would be unsafe to leave him alone during the day. Without adequate supervision, he would likely struggle in school, and could even harm himself. I will not put my son's well-being at risk, so if we cannot find him the care he needs and I cannot remain working remotely, I may lose my job to take care of him.

16. I have also not been vaccinated yet. I scheduled my vaccine appointment as soon as I could, but the first appointment available is not until after I am expected to return to the office, on April 12. I am getting the one-shot vaccine, so I will not be fully protected until two weeks after my appointment, but am expected to be in the office before then.

17. I have also asked about accommodations to allow me to continue to work remotely. The College has a telecommuting policy, but, pursuant to the Department of Administration's memo with guidance for implementing the Governor's order, the College has suspended the approval of any new telecommuting agreements, even if employees are working as or more effectively remotely. I have asked my supervisor about possible accommodations and met with Human Resources (HR) and the Equal Employment Opportunity (EEO) office. Unfortunately, the

options that have been proposed are unworkable. They do not address my childcare issues and they would make it much more difficult to do my job effectively.

18. The College has stated that employees can opt into flexible schedules and come into the office outside of typical business hours. But, the flexible schedule that was initially proposed was 8:00 a.m. to 4:00 p.m., five days a week, which would barely make a difference in terms of childcare. The College has also stated that we can use accrued leave if we cannot return to the office. Annual leave is an earned benefit that I would use up before the school year is over—and then would have no leave remaining. My understanding is we are not able to use sick leave for more than three days in a row without documentation from a doctor that we are actually sick. I have gotten no indication that policy has changed. Even assuming I could use my sick leave to take care of my son, I will have no leave to use in the event I or my family gets sick.

19. When I followed up with the EEO office, they suggested I could try forming a pod with other College employees with childcare responsibilities. I have the same concerns about this, that I do about other group care options. I would not be able to control whether others in the pod took actions that put them and ultimately my son at risk of COVID-19 exposure. A pod would still require each of us to not be in the office for some part of the week, which would likely mean we would still have to use our leave to care for our children. My supervisor suggested I could comply with the requirement that I work 37.5 hours in the office by coming in evenings, for example, 3:00 p.m. to 7:00 p.m., and on weekends. HR made a similar suggestion. I live 45 minutes away from my office. If I adopted this schedule, my son would still be left without childcare for several hours in the afternoon, Monday through Thursday, until my husband returned home at 5:30 p.m.

20. What is more, it would be very difficult to do many aspects of my job if I worked on the schedule they are proposing. There are parts of my job that would not be affected—I could, for

example, review accommodation requests in the office after hours. But, much of my job involves meeting with people and being available during normal business hours. Students may not want to meet to discuss accommodations and other accessibility issues after hours, and very likely not on weekends. I would therefore likely have to have all such meetings in the late afternoons, and with less availability, students would have to wait longer to see me. This would not just be inconvenient, it would affect my office's ability to provide students with disabilities accommodations in a timely manner, which is something the College takes very seriously.

21. Being available to meet during normal business hours is also essential to a number of responsibilities I have as Director, including convening and training a search committee and meeting with candidates for a new position, meeting with the Student Affairs Leadership Team and other committees, leading a weekly all-staff meeting for my team, and interfacing with the Dean of Students office regarding accommodations approvals, case management, and student care. If I adopt the proposed evenings and weekends schedule while others keep normal business hours, the working hours of my full team and other offices I interface with would only overlap for a few hours every day, making scheduling critical meetings, and conducting other real-time communication very difficult. I would not be able to do many of these aspects of my job while I am at home with my son, because the College has expressly told me I am not allowed to work from home. Even if I could be in the office for a limited amount of time during business hours, I have too many responsibilities to be able to fulfill them during that limited time.

22. At this point, we have not found alternative childcare for my son, and this entire process has just been withering. I feel defeated and totally unsupported. I and others have asked what will happen if we are unable to comply with the Governor's order and return to the office by Monday. We have not received an answer. For this week, I had already planned to use my annual

leave, because it is spring break for South Carolina public schools and my nine-year-old will not be in school. Beginning next week, I will be forced to take time off and use my leave to care for him. This is an earned benefit and I will burn through it. I do not know what will happen when my leave runs out, which it will before the school year is over. I fear that I will lose my job.

FURTHER, YOUR DEPONENT SAYETH NAUGHT.



Deborah Mihal

Sworn to and subscribed before me

this 4 day of April, 2021,

Nancy Bloodgood

Notary Public for the State of South Carolina

My Commission Expires: 3/1/2026

NANCY BLOODGOOD
Notary Public, State of South Carolina
My Commission Expires 3/1/2026

EXHIBIT 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
DEBORAH MIHAL, and AMERICAN	)	Case No.:
CIVIL LIBERTIES UNION)	
FOUNDATION OF SOUTH)	
CAROLINA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
GOVERNOR HENRY MCMASTER, in	)	DECLARATION FOR
His Official Capacity; and MARCIA S.	)	SUSAN K. DUNN
ADAMS, Executive Director of the South)	
Carolina Department of Administration, in)	
Her Official Capacity,)	
)	
Defendant.)	
)	

1. I am the Legal Director of the American Civil Liberties Union of South Carolina, Inc. (“ACLU of SC”), a Plaintiff in the above-captioned action. I have been an attorney with the ACLU of SC since 2009. In performing my duties, I have interacted with ACLU of SC members often, and I regularly work with the staff members responsible for carrying out the mission of the organization. I have personal knowledge of the matters stated in this declaration.

2. The ACLU of SC is a nonpartisan, nonprofit organization dedicated to defending the principles embodied in our Constitution and our nation’s civil rights laws. The ACLU of SC has over 8,000 members throughout the state, including many members who are employed by state agencies.

3. Executive Order 2021-12 (“EO 2021-12”), which requires non-essential state employees to return to working in-person, places ACLU of SC members across the State in

positions in which they must jeopardize their health and safety and/or their family's health and safety, or risk losing their jobs. If EO 2021-12 is not immediately enjoined, the ACLU of SC's members will be seriously and irreparably harmed. Those members that have and will continue to be most harmed by this order are disproportionately women, people who are breastfeeding/lactating, and people with disabilities.

4. The ACLU of South Carolina has heard from multiple members with caregiving responsibilities, most of whom are women, who will be forced to return to the office if EO 2021-12 is not enjoined, even though they have not been able to identify adequate, alternative care arrangements. For example, one member with whom I have spoken has a school-age daughter who is in remote school and will not be able to return to in-person schooling this year. This member's husband is an essential worker, who must do his work in person, so she has been serving as her daughter's primary caregiver during the school day, while continuing to do her own work remotely, very effectively. The Governor's order will leave this member's daughter without appropriate care. The member has only been able to identify a possible temporary child care arrangement, but it over an hour from her home and it does not have the internet connection needed for virtual school.

5. I have spoken to another member who has two children who are both in remote school, one in kindergarten and one in fifth grade. She has gotten approval to switch them from remote to in-person schooling, but she continues to worry about the safety of in-person schooling, and she has not found safe afterschool care for them. She is still struggling to find a solution that will keep them safe and supervised during afterschool hours when she will still be at work in person. When the school year is over, she will have no care for her children and assumes she will have to take leave, and possibly FMLA, which is unpaid.

6. Another member with whom I have corresponded is unable to receive the vaccine because she is breastfeeding her son who was born in late January. She is also the caregiver for her husband who is a disabled veteran. She has chosen not to get vaccinated as she has been advised that the risks of the vaccine in breastmilk are unknown. On March 1, she was informed that all staff at her work were expected to return to the office several days per week beginning the following Monday, March 8, and full-time, beginning Monday, March 15. She was told she could request to continue to work remotely by submitting a letter from her physician supporting her need to do so. She submitted a letter not only from her physician, but from her son's pediatrician and her husband's primary care physician as well. These were submitted to HR in a timely manner. Nonetheless, she was informed on April 2, that she was expected to return to the office full-time beginning April 5. When she asked why her request to continue to work remotely had been denied, she was told by the Director of Human Resources and others that they had never considered a remote working arrangement for her since the Governor's mandate required all state agency employees to return to work on-site, with no exceptions. The only option she was given was to apply for FMLA, which is unpaid. She is unable to afford taking the unpaid leave available under the FMLA, and she has exhausted her available paid time off during her maternity leave. Her husband is unable to work, and she provides her family's only source of income. She therefore has no financially viable option but to return to work. Even though she can do her job equally well from home, the Governor's order has given her no choice but to return to the office, unvaccinated, and expose herself, her husband, and their newborn infant to serious health risks.

7. The ACLU of South Carolina also has members who have other disabilities or health conditions and are high-risk for serious consequences for COVID, who will be

disproportionately harmed by the Governor's Return to the Office Order and denied their rights to reasonable accommodations. For example, one ACLU member with whom I have corresponded has a chronic health condition. His wife is also medically vulnerable. He does not need to be in-person to perform his job and will not be fully vaccinated until early May, but still received an order last Thursday, April 1, to either return to the office *today*, or use annual leave. He asked to wait to return until he is fully vaccinated, but no accommodations have been offered, and FMLA was not suggested as an option. After working remotely for over a year, this member would like the opportunity to return to the office without unnecessary risk to himself or his wife, but he is being denied the opportunity to do so.

8. I have also corresponded with an ACLU member who is a state employee and a supervisor of other employees who are impacted by the requirement to return to work in person. This member is deeply concerned for their employees' wellbeing and their ability to overcome challenges due to childcare concerns, concerns regarding exposing their children to caregivers in an indoor setting who may not be vaccinated or willing to wear masks, and concerns regarding disruption to their children's education in a year already rife with disruption due to remote and hybrid schooling. This supervisor believes that their office has been successful in minimizing the negative impact of COVID on their community of colleagues, and by extension, their family members and broader communities, precisely because they have been able to limit the number of people inside buildings at work by permitting those who are able to work remotely to do so. They believe that it would not be safe at this time to bring their staff back at full capacity in person until a higher percentage of their staff has received vaccines. And they are concerned that the requirement to return to work in person will lead to costly drops in productivity, mental health strain on supervisors and employees, and attrition of valued staff

members due to the availability of remote positions in other states.

9. The ACLU of SC advocates on behalf of women, people who are pregnant or breastfeeding/lactating, and people with disabilities. Through our litigation, lobbying, and advocacy efforts, we have fought to prevent discrimination against these groups in employment, education, access to government services, and many other contexts. The ACLU of SC plans to continue to fight discrimination against women, people who are pregnant or breastfeeding/lactating, and people with disabilities.

I so declare.



Susan K. Dunn

April 5, 2021

EXHIBIT 3

**Expert Disclosure & Initial Report of
Amanda McDougald Scott, MS**

I. Qualifications & List of Publications from Last 10 Years

- (1) I am currently finishing a Doctor of Philosophy (PhD) in International Family and Community Studies at Clemson University. I have successfully defended and will graduate on May 5, 2021.
- (2) In July 2008, I obtained a Master of Science in Applied Experimental Psychology from Augusta State University, and in December 2004, I graduated from the University of South Carolina with a Bachelor of Arts in Experimental Psychology.
- (3) As part of my coursework at these three universities, I have been trained in research methods, social research, statistics, child development, and secondary data analysis, among other areas.
- (4) My doctoral dissertation, entitled “Examining the Everyday Life of Child Care Workers: How Low Wages and the Lack of Benefits Affect Their Lives and Decisions about Employment,” draws upon interviews with 14 child care workers about their daily life experiences to investigate what they consider to be challenges to maintaining employment in their field based upon their lived experiences. I have successfully defended my dissertation, it has been accepted by my committee, and it will be sent to the graduate school this week.
- (5) I currently serve on the Executive Committee of the Prisma Health System Children’s Hospital Community Advisory Council, which I chaired from August 2018 to August 2019. I have been a member since August 2015.
- (6) I currently serve as a Grant Advisory Board member of the Prisma Health Healthy Tomorrows Partnership for Children.
- (7) I currently serve as a reviewer for the Quality of Life Research journal and for the Society for the Psychological Study of Social Issues, which publishes three journals.
- (8) In addition, I have served as a reviewer for the National Research Conference on Early Childhood, which is organized by the Administration for Children and Families.
- (9) From January 2018 to August 2019, I worked at the Institute for Child Success in Greenville, South Carolina, an independent nonprofit research and applied policy organization dedicated to shaping a culture that facilitates and fosters the success of all young children.
- (10) From July 2015 to January 2018, I worked at the Nicholtown Child and Family Collaborative in Greenville, South Carolina, establishing an early learning and community empowerment center in the Nicholtown community, and building 2 and 3-year-old Head Start classrooms in the Phillis Wheatley community center. For these efforts, we were recognized with the Max Heller Neighborhood Improvement Award at the Greenville Chamber’s annual meeting in 2017.

(11) Between graduating from my master's degree program and starting my PhD program, I held a series of research-based jobs and taught Introductory Psychology as an adjunct faculty member at Augusta State University for a semester.

(12) Most recently, this year, I have published two articles on Motherly about the prohibitive costs of child care and why child care workers need to be moved to the front of the COVID-19 vaccination line, and have another paper in review before the Journal of Working Class Studies.

(13) In addition, I am frequently invited to speak about child care in South Carolina. For example, in October 2020, I was invited to present before the South Carolina Joint Citizens & Legislative Committee on Children in both Florence, South Carolina and Greenville, South Carolina on improving benefits to child care workers.

(14) I am the author of numerous papers and other publications, a complete list of which can be found in my curriculum vitae, attached hereto as Exhibit A. My CV also contains further details regarding my educational background, research work experience, and other academic experience.

II. Statement of Opinions

A. Failing to accommodate caregivers has a disproportionate impact on women.

(15) In the U.S., the majority of caregiving responsibilities and burdens fall to women.

(16) American society has long assigned women the role of caregivers for children. Today, mothers in the U.S. continue to spend about twice as much time caring for their children as fathers do (Pew, Modern Parenthood, 2013).

(17) Another indicator of this assigned role is illustrated by the gender gap in stay-at-home parenting. In 2016, 83% of stay-at-home parents were women, while only 17% were men. Of all working and non-working parents, a much greater proportion of mothers continue to stay home than fathers: 27% to 7% (Pew, 2018).

(18) The caregiving responsibilities women shoulder are not limited to children, however. Many women also care for adults. A 2020 report co-authored by the AARP found that a little over three out of every five adult caregivers were women. Furthermore, women adult caregivers were more likely than men adult caregivers to care for two or more adults at once (AARP, 2020).

(19) For caregivers of children with disabilities, a 2009 study co-authored by the AARP found the proportion of women caregivers rose to 72% (AARP, 2009).

(20) In South Carolina, the Centers for Disease Control and Prevention estimates that 1 in 4 adults are caregivers who provide regular care or assistance to a friend or family member with a health problem or disability. 58% of these caregivers are women (CDC, 2015).

(21) Overwhelmingly, it is women who leave the workforce when there is a need for caregiving—with a significant cost to the economy. Each year, the U.S. loses an estimated \$57

billion in lost earnings, productivity, and revenue due to the inability to find accessible, affordable, and truly beneficial child care (Council for a Strong America, 2019).

(22) One of the biggest expenses for families of young children is child care. In South Carolina, infant care costs 68.2% of average rent. Infant care is unaffordable for typical families in the state based on the U.S. Department of Health and Human Services affordability metric that child care cost no more than 7% of a family's income. In South Carolina, infant care for one child would cost almost double that percentage of the median family's income. Child care for a 4-year-old is only marginally less unaffordable (Economic Policy Institute, 2020).

(23) In 2016, a study based on data from the National Survey of Children's Health found that almost 2 million parents of children five and younger had to quit a job, pass on a job, or greatly change their job because of child care problems (Center for American Progress, 2017).

(24) A 2013 Pew Research Center survey found that mothers were much more likely than fathers to make career compromises, such as reducing their work hours, taking a significant amount of time off, and quitting their jobs entirely, to attend to family caregiving needs (Pew, On Pay Gap, 2013).

(25) Furthermore, women report being penalized more by their workplace for taking on child care responsibilities. Of the adults who reduced their work hours or took significant time off from work for family-related reasons, women were about twice as likely as men to report that it hurt their career overall (Pew, On Pay Gap, 2013).

(26) Women have suffered and will continue to suffer from economic harm as a result of increased child care costs and job consequences as a result of the COVID-19 pandemic. The estimated cost of the current and future loss of U.S. women's wages due to pandemic-related child care demands has been estimated at \$64.5 billion per year (Center for American Progress, Women's Workforce Progress, 2020).

B. Due to COVID-19, there is currently a reduced availability of care options.

(27) In many ways, the COVID-19 pandemic has exacerbated women's disproportionate caregiving responsibilities, which has been reflected in the exodus of women from the labor force. During the pandemic, working-age women were nearly three times as likely as men to not be working due to child care demands: 32.1% of these women cited child care concerns as their reason for not working, while only 12% of the men did so (Heggeness & Fields, 2020).

(28) 76% of mothers with children under age 10 report that child care is one of their top three challenges during the COVID-19 pandemic, compared to 54% of fathers with children under age 10 (LeanIn & McKinsey, 2020).

(29) The widespread lack of in-person schooling during the pandemic posed another challenge for woman caregivers. Among parents with children under 12, 80% of mothers stated they spent more time home schooling or helping with distance learning than their spouse did. Only 3% of mothers stated their spouse spent more time with home schooling or supervising remote schooling (New York Times, 2020). This significant extra responsibility increased the risk that mothers make career sacrifices to perform these educational duties (Petts et al., 2020).

(30) One large reason for this heightened child care problem is the reduced availability of care options in the pandemic, a circumstance I studied in South Carolina firsthand for my dissertation when speaking with professional caregivers over the past year in the community (McDougald Scott, 2021).

(31) South Carolina's population is estimated to include about 290,000 children under the age of 5 (U.S. Census, 2019). Before the pandemic, slightly over two-thirds of children under age 6 in South Carolina lived in homes where all available parents worked, meaning that finding child care was a requirement. (Annie E. Casey Foundation, 2009-2019).

(32) Even before the pandemic, 47 percent of South Carolinians lived in a "child care desert," a term that refers to an area where the number of children who need care outpaces the available slots in licensed day care centers by a ratio of three to one (Greenville News, 2018).

(33) When the pandemic started, however, child care workers were dramatically impacted in their daily life and work due to social and safety guidelines, as I also found in my study (McDougald Scott, 2021).

(34) At the end of March 2020, it was reported that 1,000 of the 2,419 regulated child care centers in South Carolina were closed because of the coronavirus outbreak (Greenville News, March 2020).

(35) Although child care stayed open in South Carolina (with the option to close) for those who were classified as essential workers, parents who could choose to keep their children at home did so, which resulted in decreased child care enrollment and ultimately decreased income for child care centers.

(36) Some centers could not withstand the decrease in income and enrollment or felt the risk of staying open was too great and were forced to shut down completely (McDougald Scott, 2021). Some centers went into debt to stay open (National Association for the Education of Young Children, 2020). In other cases, my research subjects described having to close centers due to concerns about child, family, personal safety, and because they were so advised by their attorneys due to potential liability.

(37) These closings left and will continue to leave parents scrambling to find child care options for their children.

(38) One study estimates that the pandemic could lead to the permanent loss of 4.5 million child care slots in the U.S. (Center for American Progress, Permanent Loss, 2020).

(39) As of June 25, 2020, only 60% of South Carolina's child care centers were open (Greenville News, June 2020).

C. There are a wide range of potential harms to women and dependents when they cannot find care.

(40) Without adequate child care options, women and their dependents face a variety of potential harms.

- (41) Women caregivers face professional, legal, and health consequences.
- (42) When mothers could not find child care options during the pandemic, many have had to leave their jobs due to their inability to balance the two responsibilities of work and family (Center for American Progress, Women’s Workforce Progress, 2020; Dockterman, 2021).
- (43) For those who try to maintain their jobs but cannot access quality care, mothers or family caregivers may be forced to cobble together care so that they can balance work with caregiving during the work day. As a result, productivity at work declines and the economy suffers (Center for Education and Workforce, 2020).
- (44) When no adequate care is available but the caregiver cannot leave work due to financial constraints, caregivers may feel forced into a position that would compromise their children’s safety, and risk legal consequences due to possible allegations of neglect should they be forced to leave their children without adequate adult supervision (Rock Hill Herald, 2019; New York Daily News, 2014; Bariola & Collins, 2021; Jennissen et al., 2018).
- (45) Without adequate child care, caregivers also face burnout due to constant caregiving needs and the imbalance between work and home. Burnout has been previously defined in research as “a syndrome composed of emotional exhaustion, depersonalization of clients, and loss of feelings of personal accomplishment,” and can also present itself in the form of physical and mental exhaustion (Maslach & Jackson, 1981; Seti, 2008).
- (46) High levels of work-family stress, a situation that occurs when work and family demands feel incompatible, can lead to a multitude of negative outcomes, not only in the work environment, but also related to home-life and physical well-being (Allen et al., 2000). Allen et al.’s (2000) findings included negative work and non-work outcomes such as physical and mental stress, depression, alcohol abuse, job burnout, family distress, and stress-related illness.
- (47) Inadequate care options hurt dependents as well.
- (48) When schools are closed, for example, such as during the COVID-19 pandemic or during the summer, studies show that children are more likely to be left at home alone, regardless of age (Brooks et al., 2020; Zielewski et al., 2006).
- (49) Children who are not receiving as much of the critical interpersonal time needed with caregivers, or who are unable to form bonds with caregivers due to a lot of turnover in care, may end up facing long-term consequences from the failure to meet children’s developmental needs, such as negative cognitive-academic achievement and behavioral outcomes (Center on the Developing Child at Harvard University, 2016; Vandell et al., 2010).
- (50) Thus, a situation in which caregivers are forced to leave dependents alone while they attend work in-person raises grave concerns for several populations, including for (a) the youngest children, who are not developmentally able to adequately care for themselves; (b) elders who cannot care for themselves; and (c) other vulnerable populations (e.g., disabled or medically or immuno-compromised adults) who cannot care for themselves and may experience an increase in injuries or other forms of harm (Beach & Schulz, 2017; Jennissen et al., 2018).

III. Conclusions

(51) In summary, having reviewed the complaint in this case, Governor Henry McMaster's Executive Order 2021-12's mandate that non-essential state employees return to in-person work, and the accompanying March 5, 2021 memorandum from the South Carolina Department of Administration to all state agency directors regarding an expeditious return to normal operations, my opinion is that the mandate will disproportionately harm women.

(52) Requiring non-essential caretakers to return to the office when there are no adequate care alternatives creates substantial risks for them including potential job loss, placement of children in substandard child care, and negative health effects.

(53) Caregivers who cannot find care for their dependent loved ones so that they can get to work may be faced with the reality of choosing between abandoning or neglecting their dependents and leaving their jobs. We have already seen the latter during the pandemic in the disproportionate job loss numbers between men and women.

(54) For women who must keep their job due to financial constraints, they may be forced to settle for inadequate child care options such as relying on untrained caregivers—for example, having an older child watch a younger child.

(55) In addition, many women caregivers will likely face worse overall health due to greater burnout and other mental health impacts, which may themselves manifest in physical symptoms as well.

IV. Facts and Data Considered by the Witness

In reaching my conclusions, I have considered the following sources.

(a) Complaint, ECF No. 1.

(b) Exec. Order 2021-12, S.C. Off. of the Governor (Mar. 5, 2021), <https://governor.sc.gov/sites/default/files/Documents/Executive-Orders/2021-03-05%20FILED%20Executive%20Order%20No.%202021-12%20-%20Modifying%20%20Amending%20Emergency%20Measures.pdf>.

(c) Memorandum from the S.C. Dep't of Admin. to Agency Directors of all state agencies and institutions of higher education re: State Government Staffing – Return to Normal Operations (Mar. 5, 2021), <https://admin.sc.gov/sites/default/files/3-5-2021%20MA%20Memorandum%20-%20State%20Government%20Staffing%20-%20Executive%20Order%202021-12.pdf>.

(d) Tammy D. Allen et al., *Consequences associated with work-to-family conflict: a review and agenda for future research*, 5 J. Occupational Health Psych. 278 (2000), <https://pubmed.ncbi.nlm.nih.gov/10784291/>.

- (e) Nino Bariola & Caitlyn Collins, *The Gendered Politics of Pandemic Relief: Labor and Family Policies in Denmark, Germany, and the United States During COVID-19*, *Am. Behav. Sci.* 1 (2021), <https://journals.sagepub.com/doi/full/10.1177/00027642211003140>.
- (f) Scott R. Beach & Richard Schulz, *Family Caregiver Factors Associated with Unmet Needs for Care of Older Adults*, 65 *J. Am. Geriatrics Soc'y* 560 (2017), <https://agsjournals.onlinelibrary.wiley.com/doi/abs/10.1111/jgs.14547>.
- (g) Samantha K. Brooks et al., *The impact of unplanned school closure on children's social contact: rapid evidence review separator commenting unavailable*, 25 *Eurosurveillance* 1 (2020), <https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.13.2000188>.
- (h) *Untapped Potential: Economic Impact of Childcare Breakdowns on U.S. States*, Ctr. for Educ. & Workforce (2020), <https://www.uschamberfoundation.org/reports/untapped-potential-economic-impact-childcare-breakdowns-us-states>.
- (i) *From Best Practices to Breakthrough Impacts: A Science-Based Approach to Building a More Promising Future for Young Children and Families*, Harvard U. Ctr. on the Developing Child (2016), <https://developingchild.harvard.edu/resources/from-best-practices-to-breakthrough-impacts/>.
- (j) *The cost of child care in South Carolina*, Econ. Pol'y Inst. (2020), <https://www.epi.org/child-care-costs-in-the-united-states/#/SC>.
- (k) Paula England, Michelle Budig & Nancy Folbre, *Wages of Virtue: The Relative Pay of Care Work*, 49 *Social Probs.* 455 (2014), <https://academic.oup.com/socpro/article-abstract/49/4/455/2279113?redirectedFrom=fulltext>.
- (l) Charles A. Jennissen, Erin Evans, Resmiye Oral & Gerene Denning, *Child abuse and neglect experts' determination of when a child being left home alone constitutes child neglect*, 5 *Injury Epidemiology* 55 (2018), <https://injepijournal.biomedcentral.com/articles/10.1186/s40621-018-0144-0>.
- (m) Christina Maslach & Susan E. Jackson, *The measurement of experienced burnout*, 2 *J. Org. Behav.* 99 (1981), <https://onlinelibrary.wiley.com/doi/abs/10.1002/job.4030020205>.
- (n) Amanda Megan McDougald Scott, *Examining the Everyday Life of Child Care Workers: How Low Wages and the Lack of Benefits Affect Their Lives and Decisions about Employment* (2021) (forthcoming Ph.D. dissertation, Clemson University).
- (o) *Am I Next?: Sacrificing to Stay Open, Child Care Providers Face a Bleak Future Without Relief*, Nat'l Ass'n for the Educ. of Young Child. (2020), https://www.naeyc.org/sites/default/files/globally-shared/downloads/PDFs/our-work/public-policy-advocacy/naeyc_policy_crisis_coronavirus_december_survey_data.pdf.
- (p) Candice L. Seti, *Causes and Treatment of Burnout in Residential Child Care Workers: A Review of the Research*, 24 *Residential Treatment for Child. & Youth* 197 (2008), <https://www.tandfonline.com/doi/abs/10.1080/08865710802111972>.

- (q) Deborah Lowe Vandell et al., *Do Effects of Early Child Care Extend to Age 15 Years? Results From the NICHD Study of Early Child Care and Youth Development*, 81 *Child Dev.* 737 (2010), <https://srcd.onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-8624.2010.01431.x>.
- (r) Erica H. Zielewski et al., *Urban Inst., Children Caring for Themselves and Child Neglect: When Do They Overlap?* (2006), <https://www.urban.org/sites/default/files/publication/50546/311323-Children-Caring-for-Themselves-and-Child-Neglect.PDF>.
- (s) *On Pay Gap, Millennial Women Near Parity – For Now*, Pew Res. Ctr. (Dec. 11, 2013), <https://www.pewresearch.org/social-trends/2013/12/11/on-pay-gap-millennial-women-near-parity-for-now/>.
- (t) Sandra Bishop-Josef et al., *Council for a Strong Am., Want to Grow the Economy? Fix the Child Care Crisis 3* (2019), <https://strongnation.s3.amazonaws.com/documents/602/83bb2275-ce07-4d74-bcee-ff6178daf6bd.pdf>.
- (u) Leila Schochet & Rasheed Malik, *2 Million Parents Forced to Make Career Sacrifices Due to Problems with Child Care*, Ctr. for Am. Progress (Sept. 13, 2017), <https://www.americanprogress.org/issues/early-childhood/news/2017/09/13/438838/2-million-parents-forced-make-career-sacrifices-due-problems-child-care/>.
- (v) *Caregiving in the United States 2020*, at 10, 13, AARP & Nat'l All. for Caregiving (2020), <https://www.aarp.org/ppi/info-2020/caregiving-in-the-united-states.html>.
- (w) *Caregivers of Children 1*, Nat'l All. for Caregiving & AARP (2009), https://assets.aarp.org/rgcenter/il/caregiving_09_children.pdf.
- (x) Gretchen Livingston, *Stay-at-home moms and dads account for about one-in-five U.S. parents*, Pew Res. Ctr. (Sept. 24, 2018), <https://www.pewresearch.org/fact-tank/2018/09/24/stay-at-home-moms-and-dads-account-for-about-one-in-five-u-s-parents/>.
- (y) *South Carolina Caregiving*, Ctrs. for Disease Control & Prevention (2015), <https://www.cdc.gov/aging/data/infographic/2015/south-carolina-caregiving.html>.
- (z) *Modern Parenthood*, Pew Res. Ctr. (Mar. 14, 2013), <https://www.pewresearch.org/social-trends/2013/03/14/chapter-4-how-mothers-and-fathers-spend-their-time/>.
- (aa) Lauren Bauer et al., *Ten economic facts on how mothers spend their time*, Brookings Inst. (Mar. 30, 2021), <https://www.brookings.edu/research/ten-economic-facts-on-how-mothers-spend-their-time/>.
- (bb) Misty L. Heggeness & Jason M. Fields, *Working Moms Bear Brunt of Home Schooling While Working During COVID-19*, U.S. Census Bureau (Aug. 18, 2020), <https://www.census.gov/library/stories/2020/08/parents-juggle-work-and-child-care-during-pandemic.html>.

(cc) Rachel Thomas et al., *Women in the Workplace 2020*, at 18, LeanIn & McKinsey & Co. (2020), https://wiw-report.s3.amazonaws.com/Women_in_the_Workplace_2020.pdf.

(dd) Angelia L. Davis, *Greenville's growth makes it South Carolina's top 'child care desert,'* Greenville News (Nov. 27, 2018), <https://www.greenvilleonline.com/story/news/2018/11/27/greenville-sc-child-care-desert/1669048002/>.

(ee) Ariel Gilreath, *Without coronavirus mandate, child care centers determine on their own to open or close*, Greenville News (Mar. 31, 2020), <https://www.greenvilleonline.com/story/news/2020/03/31/coronavirus-leaves-sc-child-care-centers-deciding-whether-close/5086733002/>.

(ff) Ariel Gilreath, *Nearly half of South Carolina's families live in a child care desert. The pandemic may make it worse.*, Greenville News (June 26, 2020), <https://www.greenvilleonline.com/story/news/education/2020/06/26/coronavirus-contribute-child-care-desert-closed-sc-pandemic/5340991002/>.

(gg) QuickFacts: South Carolina, U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/SC/PST045219>.

(hh) Children under age 6 with all available parents in the labor force in South Carolina, Annie E. Casey Foundation, <https://datacenter.kidscount.org/data/tables/5057-children-under-age-6-with-all-available-parents-in-the-labor-force#detailed/2/42/false/1729,871,870,869,868,867,573,133,38,37/any/11472,11473>.

(ii) Steven Jessen-Howard & Simon Workman, *Coronavirus Pandemic Could Lead to Permanent Loss of Nearly 4.5 Million Child Care Slots*, Ctr. for Am. Progress (Apr. 24, 2020), <https://www.americanprogress.org/issues/early-childhood/news/2020/04/24/483817/coronavirus-pandemic-lead-permanent-loss-nearly-4-5-million-child-care-slots/>.

(jj) Andrew Dys, *Rock Hill mother left child, 5, home alone for hours, police say*, Rock Hill Herald (Mar. 12, 2019), <https://www.heraldonline.com/news/local/crime/article227405349.html>.

(kk) *South Carolina mom arrested for leaving 9-year-old alone isn't only parent struggling to find child care*, N.Y. Daily News (July 29, 2014), <https://www.nydailynews.com/news/national/working-parents-struggle-find-child-care-summer-article-1.1883940>.

(ll) Julie Kashen, Sarah Jane Glynn & Amanda Novello, *How COVID-19 Sent Women's Workforce Progress Backward*, Ctr. for Am. Progress (Oct. 30, 2020), <https://www.americanprogress.org/issues/women/reports/2020/10/30/492582/covid-19-sent-womens-workforce-progress-backward/>.

(mm) Claire Cain Miller, *Nearly Half of Men Say They Do Most of the Home Schooling. 3 Percent of Women Agree.*, N.Y. Times (May 8, 2020), <https://www.nytimes.com/2020/05/06/upshot/pandemic-chores-homeschooling-gender.html>.

(nn) Richard J. Petts et al., *A gendered pandemic: Childcare, homeschooling, and parents' employment during COVID-19*, *Gender, Work & Org.* 1 (2021), <https://onlinelibrary.wiley.com/doi/10.1111/gwao.12614>.

(oo) Eliana Dockterman, *These Mothers Wanted to Care for Their Kids and Keep Their Jobs. Now They're Suing After Being Fired.*, *Time* (Mar. 3, 2021), <https://time.com/5942117/mothers-fired-lawsuit-covid-19/>.

V. Exhibits

I have attached my CV as Exhibit A.

VI. List of All Other Cases in which the Witness Has Testified as a Witness or by Deposition from Past Four Years

I have not provided any expert testimony, either by trial or by deposition, within the past four years.

VII. Statement of Compensation to Be Paid

I am providing the first five hours of my time on this case pro bono and will be paid \$150 per hour thereafter for study and testifying time, except for any travel time, for which I will be paid \$75 per hour.

Reservation

I specifically reserve the right to amend, add to, or subtract from this document as new evidence comes into my discovery, as new or additional records become available, or as new opinions are formulated.

Signature

Amanda M McDougald Scott
Amanda McDougald Scott

April 5, 2021
Date

Notarization

Sworn to and subscribed before me this 5th day of April, 2021.

Rebekah Roe
Notary Public for the State of South Carolina

My commission expires: 10/13/2026



WORK EXPERIENCE

Candidate for Greenville County Council District 24, SC (January 2020—November 2020)

Ran a competitive race for Greenville County Council, fundraised, compiled data about District while also working on policy analysis, dissertation, and Medicaid for child care workers on a state level.

Institute for Child Success, Greenville, SC (January 2018—August 2019)

Research Associate (October 2018—August 2019): policy research, academic and non-academic writing, planning and executing conferences and events, communications and marketing, relationship development and management, legislative affairs, grant writing, representing the Institute for Child Success in various capacities on a national and statewide level

Special Projects Associate (January 2018—October 2018): represented the Institute for Child Success in various capacities on a national and statewide level, policy research, academic and non-academic writing, planned and executed conferences and events, communications and marketing, relationship development and management, legislative affairs, grant writing

Nicholtown Child and Family Collaborative, Greenville, SC (July 2015—January 2018)

Project Coordinator: Established an Early Learning and Community Empowerment Center in Nicholtown Community. Implementation of Strategic Plan, implementation and building of Head Start 2 and 3 year old classrooms in Phillis Wheatley Community Center, found resources for community center, community engagement, oversight of facility development, data analysis, management, coordination of Nicholtown Early Learning Coalition, presentation and representation of and for Taskforce efforts, fundraising and grant writing, social media and website development and upkeep, administrative duties, impact assessments, et cetera.

Facilities Chair: Explored necessary steps to building and providing for Early Learning and Community Empowerment Center in Nicholtown Community.

Clemson University, Greenville, SC (August 2014—May 2016)

Graduate Assistant:

NIH Dating Violence Study (August 2014—June 2015): Data analysis, management; conducting independent analysis and presentation of dating violence data.

Vanderbilt University Medical Center, Nashville, TN (September 2011—July 2014)

Program Coordinator II:

Effective Health Communication Core (May 2013- July 2014): Performed oversight of programs related to the Health Communication Research Core, and other assigned work; provide consultation and research services to other investigators; work closely with the leaders from assigned programs and projects to develop resources, provide consultative services, and assist with research projects; independently perform a wide variety of complex and independent activities to plan, organize, and conduct social, economic, or health services research.

Research Analyst II:

iAdapt Study (September 2011- September 2013): Managed iAdapt study to design and implement literacy-appropriate materials for webpage accessible through the Vanderbilt health portal, improved access to

Amanda M. McDougald Scott, MS

433 Longview Terrace, Greenville, SC 29605 • 803-960-7477 • amandamcdougald@me.com

resources regarding type II diabetes medication management; oversaw interns, assured grant specification fidelity, ran focus groups, recruited participants, data analysis, paper writing, presented at professional conferences.

Caring Hearts (January 2013- July 2014): Planning, conducting, and evaluating project: recruiting and interviewing participants, planning research specific aims, designing and implementing research projects

Nashville Mobile Market, Nashville, TN (August 2013—August 2014)
Nutrition Education Coordinator: Conducted a quality assessment survey to determine potential and current NMM customer use of the Market, with an emphasis on elderly, homebound residents.

Healthy Augusta, Inc., Augusta, GA (May 2010—February 2012)
Executive Director and founder: Founded and led a community-based non-profit. Organized group members and Board, wrote 501(c)(3) application, wrote bylaws and Articles of Incorporation, organized events and fundraising.
Ex-Officio Board Member February 2012—2014

Georgia Prevention Institute, Augusta, GA (April, 2009—August 2011)
Research Associate, SMART Study: clinical testing with children (CAS, WJ III, Tower of London, eye tracker), clinical lab manager, data management, data analysis, manuscript writing, supervisor to graduate intern.

Augusta State University, Augusta, GA (January 2010—May 2010)
Adjunct Faculty member: teaching Introductory Psychology

Augusta State University, Augusta, GA (August 2005—July 2007)
Research design, data analysis, data collection, and presentation on direct to consumer advertising and mental illness stigma
Data analysis, data collection, presentation on predicting justifications of aggression with professor.
Graduate assistantship: data entry, grading papers and exams, proctoring exams, assisting undergraduate students, general clerical duties.

ABA Therapist, Columbia, SC (March 2003-December 2003)
In-home therapy sessions with autistic children

Various service industry jobs through college and graduate school years (2001- 2009)

EDUCATION

Clemson University, Clemson, South Carolina

PhD program, International Family and Community Studies

August 2014- Graduation May 5, 2021

Coursework Includes: Life in the Global Community, International Human Rights Law, Topics in Social Research, Research Methods II, Community Transformation, Secondary Data Analysis, Independent study on the Emergency Department for the Greenville Health System

Clemson University, Clemson, South Carolina

Amanda M. McDougald Scott, MS

433 Longview Terrace, Greenville, SC 29605 • 803-960-7477 • amandamcdougald@me.com

Certificate Program, International Family and Community Studies
January 2013-May 2014

Coursework Included: Human Development and Family Life in Cultural Context, International Law and Policy on Children's Issues, Community Development: Principles and Practices, Cultural Areas: Latin America

Augusta State University, Augusta, Georgia

MS Applied Experimental Psychology

Graduated July, 2008

Coursework Included: Research Methods and Statistics, Group Therapy, Cognitive Assessment, Behavioral Pathology, Learning, Social Psychology, Close Relationships, Human Resource Management, Behavioral Neuroscience, Research Practicum, Research Internship, Development

Research Internships:

Child Enrichment Inc., The Shelter and Child Advocacy Center (May 2006—2008)

During Master's training internship, worked under the direction of the Director of Child Enrichment in creating, planning, organizing, and implementing research project.

Conducted research project on public policy issue with supervision of Child Advocacy Center director

Research design, data analysis, data collection, and presentation of research on attitudes, beliefs, and knowledge of child sexual abuse (CSA) among CSA investigators.

Department of Human Resources, Atlanta, GA (January 2007—May 2007)

Legislative Team member for the Department of Human Resources of Georgia as a Legislative Intern as assigned by the Governor's Office: tracked bills, attended Legislative Team meetings, researched bills, bill analysis, attended Senate and House Committee meetings, duties as assigned by DHR Commissioner, Deputy Commissioner, and Legislative Team members

University of South Carolina, Columbia, South Carolina

BA Experimental Psychology

Graduated December 13, 2004

Coursework Included: Research Methods, Statistics, Psychology Lab, Child Development, Cognitive Psychology, Abnormal, Independent Study, Learning and Memory, Psychology of Marriage, Sensation and Perception, Social Psychology, Psychology and Religion, Personality

Research experience: (September 2004—December 2004)

Attachment Style, Gender, and Romantic Partner Preference project

Worked with professor and doctoral student on data collection and entry

University of Limerick, Limerick, Ireland

Study Abroad program through USC, Spring 2004

Randolph-Macon Woman's College, Lynchburg, Virginia

BA Psychology

Freshman year, 2001-2002

Professional Training: Emerge SC Class of 2020, Clyburn Fellowship Class of 2019, Furman Women's Leadership Institute Class of 2018, "Design Thinking for The Social

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Sector" *Stanford Social Innovation Review* workshop, Qualitative research: Making Claims and Building Theory, Mixed Methods, GIS, Dealing with Difficult Behaviors, New Leadership Orientation, CITI, Workplace Civility, Financial Foundations I, II, and III, Vanderbilt Program for Research Administration Development (VPRAD), Excel levels 1 & 2, SPSS, NVivo, Qualitative Research, CPR and First Aid Training

Skills: Computer: SPSS, REDCap, NVivo, Microsoft and Mac Office, Basic understanding of Java (101) Language: Basic understanding of Spanish

PROFESSIONAL ACTIVITIES

Prisma Health System Children's Community Advisory Council *Executive Committee*
Member: Policy and Advocacy 2020-present, Past Chair October 2019—2020, Chair August 2018—October 2019, Vice-Chair August 2017—August 2018; Special Events and Volunteers: August 2016—August 2017; Member: August 2015-present
Fundraising Team Leader: September 2015- January 2016

Prisma Health Healthy Tomorrows Partnership for Children: *Grant Advisory Board member January 2020-present.*

Greenville Homeless Alliance, Advocacy Working Group, *Member January 2021--present*
Greenville County Care Coordination Collaborative, *Member January 2016—present*
Academy Health, *Member since August 2014,*
Advocate 2014-present; Advocacy Interest Group Advisory Committee, Secretary October 2014-2018

American Heart Association, *Advocate June 2015- January 2018*
SCRA (Society for Community Research and Action), *Member since April 2014, Practice Council Member – August 2014-2017*

Quality of Life Research Journal, *Reviewer*
National Research Conference on Early Childhood, The Administration for Children and Families, *Reviewer January 2016-February 2016*

SPSSI (The Society for the Psychological Study of Social Issues), *Member; Reviewer, Applied Social Issues Internship Selection Committee 2015- present*

SSSP (Southeastern Society of Social Psychologists), *Member*

National Collaborative to Improve Primary Care Through Industrial and Systems Engineering (iPrACTISE)
Contributed to white paper: Improving the Quality and Efficiency of Primary Care through Industrial and Systems Engineering – A White Paper. 2013. Funded by AHRQ Grant Number: 1R13HS022170-01

AACH (American Academy on Communication in Healthcare), *Member 2013—present*

CONFERENCE PROCEEDING AND PUBLICATION

McDougald Scott, A.M. (2021, February). *Why child care is so expensive when child care workers make so little—and what we can do about it.* Motherly. <https://www.mother.ly/state-of-motherhood/why-is-child-care-expensive>

McDougald Scott, A.M. (2021, January). *Child care workers need to be moved to the front of the COVID vaccination line—immediately.* Motherly. <https://www.mother.ly/state-of-motherhood/childcare-should-get-covid-vaccine>

McDougald Scott, A. (in review). Benefits for child care workers: How the state could help through a Medicaid Waiver. *Journal of Working Class Studies.*

Amanda M. McDougald Scott, MS

433 Longview Terrace, Greenville, SC 29605 • 803-960-7477 • amandamcdougald@me.com

- McDougald Scott, A., Rusnak, S., Carolan, M. (2019). *South Carolina early childhood data report*. Institute for Child Success.
<https://www.instituteforchildsuccess.org/publication/2019-sc-databook/>
- McDougald Scott, A. M. (2016). It takes a village: Project planning for two-generation services in an underserved South Carolina community. *THEory into ACTION Bulletin, February 2016*.
- Kripalani, S., Goggins, K., Nwosu, S., Schildcrout, J., Mixon, A., McNaughton, C., McDougald Scott, A. M., Wallston, K. (2015). Medication non-adherence before hospitalization for acute cardiac events. *Journal of Health Communication, Health Literacy Special Edition*.
- Holden, R. J., McDougald Scott, A. M., Hoonakker, P. L. T., Hundt, A. S., & Carayon, P. (2015). Data collection challenges in community settings: Insights from two field studies of patients with chronic disease. *Quality of Life Research, 24*, 1043-1055.
- Kripalani, S, Wallston, K., Cavanaugh, K. L., Osborn, C. Y., Mulvaney, S., McDougald Scott, A., Russell Rothman, R. (2014). *Measures to assess a health literate organization* (White paper). Vanderbilt University Medical Center, Health Services Research, Nashville, TN. Funded by Institute of Medicine.
- Hall, W. J., Kresica, A. M., & McDougald, A. M. (2014). School counselors' education and training, competency, and supportive behaviors concerning gay, lesbian, and bisexual students. *Professional School Counseling, 17*, 130-141.
- McDougald Scott, A., Purcell Jackson, G., Ho, YX., Yan, Z, Davison, C., Rosenbloom, ST. (2013, November). *Adapting comparative effectiveness research for delivery to patients and providers through a patient portal*. Conference Proceeding at the American Medical Informatics Association conference, Washington, D.C..
- White, R.O., Thompson, J.R., Rothman, R.L., McDougald Scott, A.M., Heerman, W.J., Sommer, E.C., Barkin, S.L. (2013). A health literate approach to the prevention of childhood overweight & obesity. *Patient Education and Counseling, 93*(3), 612-618.

INVITED SPEAKING ENGAGEMENTS AND PRESENTATIONS

- McDougald Scott, A. M. (2020, November). *Childcare in SC and Efforts to Save Child Care and the Importance of Paid Leave for All*. Moderator at the Women's Rights and Empowerment Network (WREN), Zoom.
- McDougald Scott, A.M. (2020, October). Benefits for Child Care Workers: How the State Could Help through a Medicaid Waiver. Presentation at the Joint Citizens and Legislative Committee meetings in Florence, SC.
- McDougald Scott, A.M. (2020, October). Benefits for Child Care Workers: How the State Could Help through a Medicaid Waiver. Presentation at the Joint Citizens and Legislative Committee meetings in Greenville, SC.
- McDougald Scott, A.M. (2020, June). Benefits for Child Care Workers: How the State Could Help through a Medicaid Waiver. Presentation at AcademyHealth Research and Relevance in State Health Policy Virtual SUPLN Adjunct Meeting, Online.

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- McDougald Scott, A.M. (2020, February). *Non-Expansion States: Would You Consider Expansion for Our Helping Professions?* Poster presentation at the 2020 AcademyHealth National Health Policy Conference, Washington, D.C..
- Carolan, M. and McDougald Scott, A.M. (2019, September). *Using Public Data as a Foundation for Children Flourishing.* Session at Children's Trust Building Hope for Children Conference, Greenville, SC.
- McDougald Scott, A.M. (2019, July). *Have Community Services and Resources for Elders with Heart Failure Been Effective? A Systematic Review.* Poster presentation at the 9th International Conference on Social Work in Health and Mental Health, York, United Kingdom.
- McDougald Scott, A.M. (2019, June). *Youth and Homeless Panel.* Panelist at the United Way of Greenville County "That's My Greenville Event," Greenville, SC.
- McDougald Scott, A.M. (2019, April). *Childcare in South Carolina.* Panelist at the Women's Rights and Empowerment Network (WREN) State Summit, Columbia, SC.
- McDougald Scott, A. M. (2018, November). *Childcare in South Carolina.* Panelist at the Women's Rights and Empowerment Network (WREN) Upstate Summit, Greenville, SC.
- McDougald Scott, A. M. (2017, June). *It Takes a Village: Project Planning for Two-Generation Services in an Underserved South Carolina Community.* Panel presentation at the Society for the Psychological Study of Social Issues, Albuquerque, NM.
- McDougald Scott, A. M. & Dillard, C. E. (2016, December). *Nicholtown Child and Family Collaborative.* Panelist at the Chairman's Summit on Early Childhood hosted by South Carolina First Steps, Columbia, SC.
- McDougald Scott, A. M. & Dillard, C. E. (2016, October). *It Takes a Village: Project Planning for Two-Generation Services in an Underserved South Carolina Community.* Poster presentation at the Institute for Child Success Conference, Charlotte, NC.
- McDougald Scott, A. M., Hedge, J., McDonell, J. R., Sianko, N., Tsykalova, L. (2015, May). *Protective Factors for Early Sex Initiation among Adolescents.* Poster presentation at the National Health Outreach Conference, Atlanta, GA.
- McDougald Scott, A. M. (2015, April). *Social Support and Access to Healthcare as Predictors of Heart Disease Among Young Adults.* Poster presentation at the Health, Education, and Human Development Research Forum, Clemson, SC.
- McDougald Scott, A. M., Kripalani, S., Wallston, K., Cavanaugh, K. L., Osborn, C. Y., Mulvaney, S., Russell Rothman, R. (2014, October). *Measures to Assess a Health Literate Organization.* Podium presentation at American Academy on Communication in Healthcare, Research and Teaching Forum, Orlando, FL.
- Kadokia, R. J., Kay, H. F., Ehrenfeld, J. M., Kripalani, S., Idrees, K., McDougald Scott, A. M., Archer, K. R., Mir, H. (2014, October). *Surgical Apgar Score (SAS) is Associated with*

Amanda M. McDougald Scott, MS

433 Longview Terrace, Greenville, SC 29605 • 803-960-7477 • amandamcdougald@me.com

Postoperative complications in the Orthopaedic Trauma Patient Population. Paper presented at Orthopaedic Trauma Association (OTA) Annual Meeting, Tampa, FL.

Kadokia, R. J., Kay, H.F., Ehrenfeld, J. M., Kripalani, S., Idrees, K., McDougald Scott, A. M., Archer, K. R., Mir, H. (2014, October). *Timing, Incidence, and Risk Factors Associated with Unplanned Postoperative Hospital Readmissions in the Orthopaedic Trauma Patient Population.* Paper presented at: Orthopaedic Trauma Association (OTA) Annual Meeting, Tampa, FL.

McDonell, J. R., Hedge, J., Sianko, N., Xavier, J., Hyunh, H., McDougald-Scott, A., Tsykalova, L., & Mitchell, M. (September, 2014). *Multilevel factors predicting punitive parenting in a rural setting.* Paper presented to the 20th International Congress of the International Society for Child Abuse and Neglect, Nagoya, Japan.

McDougald Scott, A. M. & Holden, R. J. (2014, April). *Social and community factors shaping information, motivation, and behavioral skills in patients' dietary adherence.* Poster presented at the Health, Education, and Human Development Research Forum, Clemson, SC.

McDougald Scott, A. M., Novak, L. L., & Holden, R. J. (2014, March). *Systems framework and tool to map attributes of patients' home and community environments.* Presentation at I-PrACTISE Annual Meeting, Madison, WI.

McDougald Scott, A. M. & Holden, R. J. (2013, November). *Social and community factors shaping information, motivation, and behavioral skills in patients' dietary adherence.* Poster presented at the annual meeting of the Society of Southeastern Social Psychologists, Augusta, GA.

McDougald, A. (2011, August). *Healthy Augusta: What Can It Do for Your Community?* Invited speaker at the Richmond County Board of Education Food Services Workshop, Augusta, GA.

McDougald, A. (2011, May). *Healthy Augusta: What Can It Do for Your Community?* Invited speaker at the Harrisburg Community Event, Augusta, GA.

McDougald, A. (2011, February). *Healthy Augusta: What Can It Do for Harrisburg?* Invited speaker at the Harrisburg Neighborhood Association meeting, Augusta, GA.

Davis, C., McDougald, A., Tomporowski, P., (2011, April). *Are Exercise-induced Cognitive Benefits in Children Due to Improvements in Fatness, Fitness, or Insulin Resistance?* Poster presented at Society of Behavioral Medicine Rapid Communications.

McDougald, A. (2010, October). *Health, Wellness, and Nutrition: Building a Healthy Workforce.* Invited speaker at the Appalachian Regional Conference in Rome, GA.

Davis, C., McDougald, A., Tomporowski, P., (2010, October). *Exercise training improves teacher ratings of executive function.* Poster presented at the Obesity Annual Scientific Meeting, San Diego, CA.

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- McDougald, A., Raintree, J., Smith, T., (2007, February). *Direct-to-consumer television advertising and attitudes toward mental illness*. Poster presented at the annual meeting of the Southeastern Psychological Association, New Orleans, LA.
- McDougald, A. and Abbott, A. (2007, February). *Child sexual abuse training's impact on CSA cognitions and perceptions*. Poster presented at the annual meeting of the Southeastern Psychological Association, New Orleans, LA.
- Richardson, D., Malone, W., & McDougald, A. (2006, July). *Predicting justification for aggression among African Americans and Caucasians*. Poster presented at the semiannual meeting of the Society for the Psychological Study of Social Issues, Long Beach, CA.
- Richardson, D., Malone, W., & McDougald, A. (2006, March). *Predicting self-reports of direct and indirect aggression*. Poster presented at the annual meeting of the Southeastern Psychological Association, Atlanta, GA.
- Leonard, B., McDougald, A., Davis, K., & Myers, L. (2005). *Attachment style, gender, and romantic partner preference*. Poster presented at Discovery Day at the University of South Carolina, Columbia, SC.

MEDIA FEATURES

- Moderation of Kamala Harris Education Town Hall, May 2019. Greenville, South Carolina.
- Greenville Partnership for Philanthropy. (2020, October 7). *Greenville County Council Candidate Forum, District 24* [Video]. Vimeo. <https://vimeo.com/466686514>
- Thomas, F. (Host). (2020, September 14). Elections and education: How does [sic] these two correlate and why is it important to vote [Audio podcast episode featuring Amanda McDougald Scott, Candidate for Greenville County Council, District 24]. In *Heart Work: Education for the Soul*. <https://anchor.fm/farrell-thomas/episodes/Elections-and-education-How-does-these-two-correlate-and-why-is-it-important-to-vote-ejkc33>
- McDougald Scott, A. M., Lidow, A.C., Negon, T., and Giese, B.Z. (2019, April). *South Carolina Poised to become National Leader in Breastfeeding and Lactation* [Webinar]. Women's Rights and Empowerment Network. <https://www.instituteforchildsuccess.org/south-carolina-poised-leader-in-breastfeeding-and-lactation/>
- McDougald Scott, A. (2018, December). Child care: an economic imperative for Greenville. *Institute for Child Success*. <https://www.instituteforchildsuccess.org/child-care-an-economic-imperative-for-greenville/>
- McDougald Scott, A. & Goggins, K. (2014, August). *Nashville Mobile Market Report: Results from a Door-to-Door Quality Assessment* [Unpublished manuscript]. Provided to Nashville Mobile Market Board and Leadership for enhanced quality of service. Nashville Mobile Market.
- McDougald, A. (2010, October). *Academics, Executive Functioning, and Fitness: What Pulls These Together as Important Focal Issues for Education and Community?* Appalachian Regional Commission. http://www.arc.gov/news/article.asp?ARTICLE_ID=250

Amanda M. McDougald Scott, MS

433 Longview Terrace, Greenville, SC 29605 • 803-960-7477 • amandamcdougald@me.com

McDougald, A. & Davis, C (2010, May). *Effects of exercise on overweight children: A brief overview* (Talking points). Provided to GA Representative Wayne Howard 5/13/10.

ORGANIZATIONS AND VOLUNTEER ACTIVITIES:

- Upstate Carolina Education Outreach: *Board Member December 2018—present*
- Keep Greenville County Beautiful: *Board Member April 2018—present*
- Greenville County Democratic Party:
 - Candidate for Greenville County Council District 24: January 2020—November 2020*
 - Candidate Development Co-Chair: August 2017—present*
 - County Delegate: January 2017—present*
- Junior League of Greenville: *August 2014—March 2021*
 - Diversity and Inclusion Vice Chair May 2020—March 2021*
 - LEAD Committee June 2020—May 2020*
 - Community Project Research and Development Committee June 2018—June 2019*
 - Community Impact Group – Families and Children Committee June 2016—June 2017*
 - Planned Girl Scouts Career Exploration Clinic, presented on Networking and Etiquette: November 2016*
 - Kids in the Kitchen Chair August 2015 – May 2016*
- Prisma Health System Children's Hospital Community Advocacy Committee: *August 2015—present*
 - Executive Council Member August 2016—present*
 - Policy and Advocacy 2020-present*
 - Immediate Past Chair 2019-2020*
 - Chair 2018-2019*
 - Vice Chair 2017-2018*
 - Volunteer and Event Liaison 2016-2017*
- South Carolina Women in Leadership: *Upstate Circle Coordinator December 2019--present*
- American Red Cross: *Go Red for Women Executive Committee Member 2020-present*
- Tina Belge for SC Senate 6: *Scheduler, policy, team member December 2018-March 2019*
- Urban League Upstate Network: *February 2016—August 2018*
 - Board Member At-Large: February 2016—August 2018*
 - Home Run for Healthy Kids Committee member August 2014- May 2015*
- PULSE Greenville: *November 2014-November 2016*
 - Connects Committee member January 2015 – January 2017*
- Nashville Mobile Market: *May 2013—August 2014*
 - Nutrition Education Coordinator May 2013—August 2014*
- Junior League Nashville: *August 2011—August 2014*
 - Advocacy and Public Awareness Committee Chair-Elect May 2013—July 2014;*
 - Advocacy and Public Awareness Committee member May 2012—May 2013;*
 - TN Advocacy and Public Awareness Committee member May 2013- August 2014;*
 - Kids in the Kitchen data consultant May 2013- August 2014;*
 - Council Member April 2014- August 2014*
- Historic Nashville: *Board Member January 2012—January 2014*
 - Executive Committee March 2013—January 2014*
 - Programs Chair January 2013—January 2014*
 - Marketing Committee, Behind the Scenes Tour Committee January 2012- January 2013*

Amanda M. McDougald Scott, MS

433 Longview Terrace, Greenville, SC 29605 • 803-960-7477 • amandamcdougald@me.com

Healthy Augusta: *Executive Director and founder May 2010—February 2012*
Ex-Officio Board Member February 2012—2014
Junior League Augusta: *April 2010—August 2011*
Historic Augusta: *member March 2009- September 2011, Loft Tour Committee 2011*
American Cancer Society: *Boulé on the Bayou Committee Member, Logistics Chair, February 2010—August 2010*
Young Professionals of Augusta: *member November 2009—September 2011; Ambassador April 2010—September 2011*
Take Back the Block: *Marketing committee member 2010-2011*
Bert Yancey Golf Tournament for Mental Health: *Tournament preparations, plan meals including organizing meal donations, plan fundraising events, solicit sponsorships for the annual tournament; ASU student liaison 2005-2006, Food and Beverage Chair 2006-August 2011.*
Psi Chi: *Planned Halloween and Christmas events for abused children; budget committee, ASU 2005-2007, lifetime member*
USC Study Abroad orientation leader: *Helped study abroad students new to USC become familiarized with USC during orientation and the school years (2004)*

AWARDS AND HONORS

Emerge South Carolina Class of 2020
Clyburn Fellow Class of 2019
Max Heller Neighborhood Improvement Award: Nicholtown Child and Family Collaborative, 2017
Presidential Scholarship for the AcademyHealth Institute on Advocacy and Public Policy
Georgia Governor's Internship
Leadership Augusta nomination
"She's So Skirt!"
USC Dean's List
Psi Chi National Honor Society
New Hope Presbytery Scholarship
R-MWC academic scholarship
Who's Who nominations
North Carolina Senate Page
Jesse Helms Leadership Conference
Presbyterian Women's Scholarship
Jim Privette Leadership Scholarship

Amanda M. McDougald Scott, MS

433 Longview Terrace, Greenville, SC 29605 • 803-960-7477 • amandamcdougald@me.com

REFERENCES

Chandra Dillard
Furman University
Director of Community Relations
South Carolina House of Representatives, District 23
Nicholtown Child and Family Collaborative Board Chair
Chandra.dillard@furman.edu

Deborah Richardson, PhD
Augusta University
Associate Dean, Professor of the College of Science and Mathematics Department of
Psychological Sciences; Medical College of Georgia Department of Medicine:
General Internal Medicine; The Graduate School
(706)-667-4148
derichardson@augusta.edu

Bryan Boroughs
Institute for Child Success
Vice President
bboroughs@instituteforchildsuccess.org

Sunil Kripalani, MD, MSc, SFHM
Vanderbilt University Medical Center
Associate Professor and Chief of the Section of Hospital Medicine, Division of General
Internal Medicine; Director of the Center for Clinical Quality and Implementation
Research, Director of the Effective Health Communication Core, and Associate
Director of the Center for Effective Health Communication
sunil.kripalani@vanderbilt.edu

S. Trent Rosenbloom, MD, MPH
Vanderbilt University Medical Center
Associate Professor of Biomedical Informatics, Internal Medicine and Pediatrics, and
Nursing
(615) 936-1541
trent.rosenbloom@vanderbilt.edu

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Deborah Mihal, and American Civil
Liberties Union Foundation of South
Carolina,

C/A No.: 2021-CP-40-01599

Plaintiffs,

**ORDER DENYING PLAINTIFFS’
MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION**

v.

Governor Henry McMaster, in his official
capacity, and Marcia S. Adams, Executive
Director of the South Carolina
Department of Administration, in her
official capacity,

Defendants.

THIS MATTER came before this Court on April 8, 2021, on Plaintiffs’ Motion for Temporary Restraining Order (“TRO”) and/or Preliminary Injunction requesting that this Court prohibiting Defendants, Governor Henry McMaster and Marcia S. Adams, Executive Director of the South Carolina Department of Administration (“SCDOA”), and anyone acting on their behalf from enforcing the provision in from Executive Order 2021-12 (March 5, 2021) that requires non-essential employees to return to the workplace without reasonable accommodations.

For the reasons set forth below, I hereby DENY the Plaintiffs’ Motion for Temporary Restraining Order and/or Preliminary Injunction.

STANDARD OF REVIEW

Rule 65, SCRCP, permits a party to seek injunctive relief, such as a Temporary Restraining Order (“TRO”) and/or Preliminary Injunction, if it believes it will suffer irreparable harm or injury during the pendency of the action.

“An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). In order to obtain this type of relief, Plaintiffs must establish three elements. First, the Plaintiffs must convince the Court that they have a likelihood of success on the merits. Second, the Plaintiffs must show that they have an inadequate remedy at law. Third, the Plaintiffs must demonstrate that they will suffer irreparable harm in the absence of an injunction. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (2002); *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 50, 674 S.E.2d 505, 508 (S.C. App. 2009)

PLAINTIFFS’ COMPLAINT AND MOTION

To begin, on April 5, 2021, Plaintiffs filed a Complaint asking this Court to declare that the “Return in Person Order” contained in Executive Order 2021-12, as implemented by the South Carolina Department of Administration, is “unenforceable” to the extent that it requires non-essential state employees to return to their workplaces in person “without reasonable accommodations for caregiving, health risk, and disability.” They also request that the Court enjoin the Defendants from implementing the Return in Person Order. (Plaintiffs’ Complaint, p. 19).

They base these demands on an allegation that the Executive Order “exceed[s] the scope of authority granted to the Governor and/or the Department of Administration and is *ultra vires*[.]” (Plaintiffs’ Complaint, p. 19). At its essence, Plaintiffs’ argument is based on the theory that the “Return in Person Order, as implemented by the Memorandum, creates requirements for non-essential state employees that are contrary to the safety, security, and welfare of the State. Both the Governor and the Department of Administration, therefore, have exceeded their statutory authority, usurped the legislative power of the General Assembly, and improperly imposed

unlawful burdens on non-essential state employees in violation of Art. I, § 8 of the South Carolina Constitution.” (Plaintiffs’ Complaint, ¶ 53). Similarly, they also claim that the Governor exceeded his authority under S.C. Code Ann. § 25-1-440 (i.e., committed an *ultra vires* act) by issuing the Return in Person Order contained in EO-2021-12. (Plaintiffs’ Complaint, ¶¶ 57-58).

For the reasons listed below, I find that Plaintiffs have failed to demonstrate sufficiently any of the three elements required for an injunction. They have not demonstrated a likelihood of success on the merits, have failed to show that they have no other adequate remedy at law, and have failed to show that they will otherwise suffer irreparable harm.

LEGAL DISCUSSION

I. PLAINTIFFS CANNOT DEMONSTRATE A LIKELIHOOD OF SUCCESS AT THIS STAGE OF THE LITIGATION, WHERE THE GOVERNOR HAS AMPLE AUTHORITY TO AMEND OR RESCIND HIS PRIOR EXECUTIVE ORDERS DURING THE CURRENT COVID-19 EMERGENCY.

Plaintiffs argue that the Governor does not have the authority to amend or rescind his earlier order from March 19, 2020 (EO-2020-11) that directed non-essential personnel to cease reporting to work, physically or in-person, effective Friday, March 20, 2020. (Plaintiffs’ Complaint, ¶ 19). Specifically, Plaintiffs appear to argue that the Governor's exercise of his authority in mandating a "return to work" in the current executive order is *ultra vires*.

At first glance, such an argument is contrary to the very language of the statute in which the General Assembly authorized the Governor to issue Executive Orders during a declared emergency, stated as follows:

- (a) The Governor, when an emergency has been declared,¹ as the elected Chief Executive of the State, is responsible for the safety, security, and welfare of the State and is empowered with the following additional authority to adequately discharge this responsibility:

¹ All parties appear to agree that an “emergency has been declared” and, to some degree, still exists. The General Assembly retains the power to terminate the declared emergency. S.C. Code Ann § 25-1-440(a)(2).

- (1) **issue emergency proclamations and regulations and amend or rescind them**. These proclamations and regulations have the force and effect of law as long as the emergency exists;

S.C. Code Ann. § 25-1-440 (emphasis added).

In this case, the Governor has determined that it is “appropriate to modify, amend, or rescind certain emergency measures as part of the process of regularly reviewing such measures to account for new and distinct circumstances and the latest data related to the impact of COVID-19 and to ensure that any remaining restrictions are targeted and narrowly tailored to address and mitigate the current public health threats in the least restrictive manner possible...” (EO-2021-12, p. 4). As a part of this determination, the Governor ordered the following:

I hereby direct all state agencies to immediately expedite the transition back to normal operations. **All Agency Heads, or their designees, shall submit to the Department of Administration, for review and approval, a plan to expeditiously return all non-essential employees and staff to the workplace on a full-time basis.** This Section shall apply to state government agencies, departments, and offices under the authority of the undersigned. I further direct the Department of Administration to continue to provide or issue any necessary and appropriate additional or supplemental guidance, rules, or regulations regarding the application of this Section, or to otherwise provide clarification regarding the same, to such agencies, departments, and offices and to any additional agencies, departments, and offices so as to facilitate and expedite implementation of these initiatives.

(EO-2021-12, p. 12). In reviewing the Department of Administration’s guidance to other state agencies, the Department encourages agencies to consider requests for lawful accommodations, to observe measures to mitigate risk of exposure to COVID-19, to consider whether to require appropriate masking measures, to permit employees additional time to develop a child care plan,

It is apparent that the Plaintiffs disagree with the policy determinations of the Governor in ordering State Employees to return to the workplace on a full-time basis, as was the near-universal working condition of State employees prior to the initial promulgation of EO-2020-11 in March

2020. They have failed, however, to set forth a *legal* reason in law why the Governor cannot act to return State employees to work. For this reason, Plaintiffs have failed to demonstrate a “likelihood of success.”

In South Carolina, “the powers of the General Assembly are plenary as to all matters of legislation unless limited by some provision of the Constitution.” *Clarke v. S.C. Pub. Serv. Auth.*, 177 S.C. 427, ___, 181 S.E. 481, 486 (1935). Stated differently, it is up to the General Assembly “to exercise discretion as to what the law will be.” *Hampton v. Haley*, 403 S.C. 395, 403, 743 S.E.2d 258, 262 (2013). As for the executive branch, our Supreme Court explained as follows:

The executive branch is constitutionally tasked with ensuring “that the laws be faithfully executed.” Of course, the executive branch . . . may exercise discretion in executing the laws, but only that discretion given by the [General Assembly]. Thus, while non-legislative bodies may make policy determinations when properly delegated such power by the [General Assembly], absent such a delegation, policymaking is an intrusion upon the legislative power.

Id. at 404, 743 S.E.2d at 262 (quoting S.C. CONST. art. IV, § 15).

There appears to be no dispute that the General Assembly specifically granted the Governor the power to issue, amend, or rescind emergency proclamations and regulations during the pending declared emergency. S.C. Code Ann. § 25-1-440. There also appears to be no dispute about the statute’s constitutionality.

In any event, while Plaintiffs may certainly prefer one set of policies over another, and may believe that their preferred policies would better secure the “safety, security, and welfare of the State” than those of the Governor, they have offered no cogent *legal* argument to support their claims. They have, instead, given voice to their beliefs that (1) the Executive Order exposes State employees to increased health risks, or (2) that State employees can do work from home as well as they can at the worksite, or (3) that returning to work may have a disparate impact on some State employees on the basis of sex and disability. (Plaintiffs’ Memorandum of Law, pp. 13-19).

This showing is simply inadequate to demonstrate a likelihood of success. Most unavailing is their reliance on *Hearon v. Calus*, 178 S.C. 381, 183 S.E. 13 (1935), in which our Supreme Court declared that then-Governor Johnston exceeded his authority when he instituted martial law and directed the state militia to occupy state highway commission offices to suppress an alleged “insurrection.” The Court wryly observed that there was:

no particle of evidence, nor even suggestion, that there existed a state of war, or anything approaching disorder. It is common knowledge that in the area where a state of insurrection was said to exist, the militia was called out and martial law declared, all was as calm, quiet, and peaceful as a May morn; and the courts were open and functioning. Under the Governor’s proclamation, the defendants, by force and arms, have taken over the offices, the physical offices, books, properties, and all things pertaining to the state highway department and the state highway commission.

183 S.E. at 21.

Respectfully, it is difficult to follow how the bizarre facts referenced in *Hearon* have any bearing on the current case before the Court. Indeed, in the current case, the Governor is actually *easing* emergency restrictions set forth earlier in the COVID-19 crisis, as the Governor has determined that conditions in South Carolina are better than they were in March 2020.

In sum, Plaintiffs have made no showing of any likelihood of success in this matter, and for that reason alone, their motion must be dismissed.

II. IN ANY EVENT, PLAINTIFFS HAVE FAILED TO DEMONSTRATE THAT THEY HAVE NO ADEQUATE REMEDY AT LAW.

Plaintiffs’ argument that they have no adequate remedy at law for the ills that may come to State employees who return to their physical worksites is also unavailing. On the contrary, it appears that such a State employee would have any number of statutory remedies. For instance:

- If the employee believed that his employing agency did not sufficiently accommodate a qualified disability, he could bring an action under the S.C Human Affairs Law (“SCHAL”) or Americans with Disabilities Act (“ADA”).

- If the employee believed that his employing agency improperly denied him leave under the Family Medical Leave Act (“FMLA”), he could bring an FMLA claim.
- If the employee believed that his employing agency subjected him to an adverse action that is grievable under the South Carolina Grievance Procedure Act, S.C. Code Ann. § 8-17-310, *et seq.*, he could file a grievance and/or appeal under the Act.
- If the employee believed that his employing agency subjected him to race, gender, or disability discrimination under the SCHAL, ADA, or Title VII of the Civil Rights Act of 1964, as amended, he could bring an act pursuant to these statutes.
- If the employee believed that his employing agency subjected him to conditions that cause a workplace injury or illness as defined by the South Carolina Occupational Safety and Health (“SCOSH”) law or the South Carolina Worker’s Compensation Act, he could pursue remedies under these statutes.

In sum, Plaintiffs have made no showing that other legal remedies are inadequate, and for that reason alone, their motion must be dismissed

III. PLAINTIFFS HAVE FAILED TO SHOW THAT THEY WILL SUFFER IRREPARABLE HARM IF THE INJUNCTION IS NOT GRANTED.

As an initial matter, neither the single identified Plaintiff – Deborah Mihal – nor any other State employee has shown that she has or likely will suffer any “irreparable” harm if an injunction is not issued. Indeed, the plethora of remedies available to Mihal and other State employees indicate that even a presumed economic loss on the part of the State employees cannot constitute an “irreparable harm.” *See District of Columbia v E. Trans-Waste of Md., Inc.*, 758 A.2d 1, 15 (D.C. 2000). Nor is this case similar to one where a plaintiff alleges “irreparable harm” in the form of the loss of an entire business or professional practice. *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 37 (S.C. App. 2005), *holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010).

Notably, the General Assembly has already authorized the Department, in coordination with agencies served, to “develop policies and programs concerning...other conditions of employment as may be needed.” S.C. Code Ann. § 8-11-230(6). Furthermore, the evidence before this Court indicates that the Department’s guidance provides state entities with significant flexibility to address the needs of the myriad State employees who may actually require some form of accommodation or assistance in meeting the demands of their position.

CONCLUSION

For the reasons stated above, this Court denies Plaintiffs’ Motion for Temporary Restraining Order and/or Preliminary Injunction.

AND IT IS SO ORDERED.

The Honorable L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

_____, 2021
Columbia, South Carolina



Richland Common Pleas

Case Caption: Deborah Mihal , plaintiff, et al vs Herny D McMaster , defendant, et al
Case Number: 2021CP4001599
Type: Order/Temporary Injunction

So Ordered

s/L. Casey Manning, 2061

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

DEBORAH MIHAL, and the
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SOUTH
CAROLINA,

Case No.: 2021-CP-40-01599

PLAINTIFFS,

**PLAINTIFFS' MOTION FOR
RECONSIDERATION OF ORDER
DENYING PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

vs.

GOVERNOR HENRY D. MCMASTER,
in His Official Capacity; and MARCIA S.
ADAMS, Executive Director of the South
Carolina Department of Administration, in
Her Official Capacity,

DEFENDANTS.

Plaintiffs Deborah Mihal and the American Civil Liberties Union Foundation of South Carolina, through their undersigned counsel of record, will move before the Honorable L. Casey Manning, Presiding Judge of the Fifth Judicial Circuit in Columbia, South Carolina, for an Order altering or amending the Court's April 9, 2021, Order denying Plaintiffs' Motion for a Preliminary Injunction.

In accordance with Rule 59(e) of the SCRCPP, Plaintiffs respectfully request that the Court reconsider its denial of the Preliminary Injunction on the following grounds:

1. Plaintiffs initiated this action, accompanied by their Motion for a Temporary Restraining Order and/or Preliminary Injunction, on Tuesday, April 6, 2021. Plaintiffs in their Notice of Motion requested a hearing be set. *See* Pls' Notice of Motion for Temporary Restraining Order and Preliminary Injunction.

2. A status conference was held on Thursday, April 8, at 9:30 a.m. All parties were present, although no court reporter was present, nor were the parties invited to present argument.
3. The Court permitted Defendants to submit a response to Plaintiffs' Motion and indicated that a decision would issue by the end of the day. The Court further indicated that a hearing on the Motion for a Preliminary Injunction would be set for the following week, starting on April 15, and advised Plaintiffs that live testimony would be recommended.
4. Both Defendants filed their opposition briefs shortly after the status conference. At the Court's invitation, that same evening, Defendant Adams submitted a proposed order denying the Motion for a Temporary Restraining Order and/or Preliminary Injunction. (Defendant McMaster did not submit a separate proposed order.)
5. Plaintiffs filed their Reply brief at 8:20 a.m. on the morning of Friday, April 9, and made clear their intention to submit additional testimony at the scheduled hearing. *See* Pls' Reply at 2, 10, 15.
6. At approximately 11:59 a.m., the Court denied the Motion for a Temporary Restraining Order and Preliminary Injunction, and cancelled the April 15 hearing.
7. This Court should reverse its Order denying Plaintiffs' Motion for Preliminary Injunction because the Order was issued prior to the Plaintiffs' being afforded an opportunity to present additional evidence on disputed factual issues central to the Court's determination, including the premise that Plaintiffs would be able to obtain effective vaccination in time for their mandated return in person, that adequate

childcare arrangements were available to Plaintiffs, and that adequate safety precautions and/or accommodations were available at their workplaces.

8. The Order further rested on factual determinations not supported by the Record before the Court, including the finding that the Order furthered the health, safety, and welfare of South Carolinians, and that the Department of Administration's guidance provided state agencies with sufficient flexibility to provide appropriate accommodations to individual employees. *See* Order at 6-8.
9. The Order was further based on errors of law, including the finding that Plaintiffs had adequate remedies at law and that they would not suffer irreparable harm because their economic losses could be compensated via other means. For the reasons stated in Plaintiffs' Reply, the harms Plaintiffs will suffer, and are already suffering, as a result of the Order—including risks to their own health and the health of their children in the face of a deadly pandemic, risks to their children from being left unsupervised during the workday, and risk of prosecution for child neglect—simply cannot be compensated after the fact through an award of money damages.
10. In light of the emergent circumstances and the need for immediate appellate review in order to prevent further irreparable harm, should this Motion not be heard in sufficient time, Plaintiffs further intend to file a notice of appeal, a petition for a writ of supersedeas, and a motion for expedited appeal. Plaintiffs thus request this Court's decision on their Motion for Reconsideration as quickly as practicable and without delay.

For the foregoing reasons, this Court should reverse its Order denying Plaintiffs' Motion for Preliminary Injunction and reset the previously-scheduled hearing, or in the alternative, issue an order preserving the status quo until an appellate court can review the constitutionality of Executive Order 2021-12 by immediately restraining enforcement of the return to in-person work provision pending appellate review.

By: /s/ Nancy Bloodgood
Nancy Bloodgood (SC Bar # 6459)
BLOODGOOD & SANDERS, LLC
242 Mathis Ferry Road, Suite 201
Mt. Pleasant, SC 29464
Phone: 843-972-0313
Email: nbloodgood@bloodgoodsanders.com

/s/ Susan K. Dunn
Susan K. Dunn (SC Bar # 1798)
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF SOUTH
CAROLINA
P.O. Box 20998
Charleston, South Carolina 29413
Phone: 843-282-7953
Fax: 843-720-1428
Email: sdunn@aclusc.org

Lindsey Kaley*
Galen L. Sherwin*
Brian Dimmick*
Daniel Mach*
Alexandra Bornstein*
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street, 18th Floor
New York, New York 10004
Phone: 212-519-7823
Email: lkaley@aclu.org
Email: gsherwin@aclu.org
Email: bdimmick@aclu.org
Email: dmach@aclu.org
Email: legal_ab@aclu.org

Charleston, South Carolina

Date: April 12, 2021

**Pro hac vice pending*

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
)	
DEBORAH MIHAL, and the AMERICAN	)	Case No.: 2021-CP-40-01599
CIVIL LIBERTIES UNION)	
FOUNDATION OF SOUTH CAROLINA,)	
PLAINTIFFS,)	
)	
vs.	)	CERTIFICATE OF SERVICE
)	
GOVERNOR HENRY D. MCMASTER, in)	
His Official Capacity; and MARCIA S.)	
ADAMS, Executive Director of the South)	
Carolina Department of Administration, in)	
Her Official Capacity,)	
DEFENDANTS.)	

I hereby certify that on April 12, 2021 I served a copy of the Motion for Reconsideration of Order Denying Plaintiffs' Motion for Preliminary Injunction to the following:

The Hon. Henry McMaster
Office of the Governor
1100 Gervais Street
Columbia, South Carolina 29201

Marcia S. Adams
South Carolina Department of Administration
1200 Senate Street
Columbia, South Carolina 29201

- VIA CERTIFIED MAIL
- VIA EMAIL AND FIRST CLASS MAIL

by placing a copy of said documents in the United States mail with sufficient postage thereon.

/s/ Nancy Bloodgood
Nancy Bloodgood