

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,

PLAINTIFFS,

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.

Case No.: 2021-CP-40-01599

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

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
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Charleston, South Carolina

Date: April 12, 2021

**Pro hac vice pending*

Attorneys for Plaintiffs

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COUNTY OF RICHLAND)	FOR THE FIFTH JUDICIAL CIRCUIT
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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