

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
State of South Carolina, ex rel Alan Wilson,	)	
Attorney General,	)	
	)	C/A No. 2018-CP-40-
Plaintiff,	)	
	)	
v.	)	<b>SUMMONS</b>
	)	
Marci Andino, in her official capacity as	)	
Executive Director of the South Carolina	)	
State Election Commission,	)	
	)	
Defendant.	)	
_____	)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

s/ J. Emory Smith, Jr.  
S.C. Bar No. 5262  
Deputy Solicitor General

ALAN WILSON  
Attorney General

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[Signature block continued next page]

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September 27, 2018

Attorneys for the State ex rel Wilson

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	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
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State of South Carolina, ex rel Alan Wilson,	)	
Attorney General,	)	
	)	C/A No. 2018-CP-40-
Plaintiff,	)	
	)	
v.	)	<b>COMPLAINT</b>
	)	
Marci Andino, in her official capacity as	)	
Executive Director of the South Carolina	)	
State Election Commission,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff State of South Carolina ex rel Alan Wilson, Attorney General alleges the following as to the Defendant:

### **PARTIES**

1. The State of South Carolina is a sovereign state of the United States. Alan Wilson, Attorney General of the State of South Carolina, brings this action on behalf of the State.

2. Marci Andino is the Executive Director of the South Carolina State Election Commission, with all the authority provided to her pursuant to State law including, but not limited to, S.C. Code Ann. §7-3-20.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the parties and the causes of action asserted by Plaintiff pursuant to S.C. Const., Art. V, §11 and S.C. Code Ann, §15-53-10, et seq.

7. Venue is appropriate in Richland County because the Defendant's Office is in Richland County where she exercises those duties given to her by State law, including those matters that are the subject of this proceeding.

### **GENERAL ALLEGATIONS**

7. The 2018 General Election is scheduled for November 6, 2018. See S.C. Code § 7-13-10 ("General elections for Federal, State and county officers in this State shall be held on the first Tuesday following the first Monday in November in each even-numbered year").

8. State law mandates that an individual be registered at least thirty days prior to the date of an election in order to vote. See S.C. Code §§ 7-5-110 ("No person shall be allowed to vote at any election unless he shall be registered as herein required."); 7-5-150 ("The registration books shall be closed thirty days before each election"); 7-5-155(a)(1) ("any qualified citizen may register to vote by mailing or having delivered a completed state registration by mail application form or a completed national registration by mail application form prescribed by the Federal Election Commission not later than thirty days before any election to his county board of voter registration and elections"); 7-5-185 (an electronic voter registration application "is effective upon receipt of the application by the State Election Commission if the application is received thirty days before an election"); 7-5-220 ("registration made thirty days or less before any election is not valid for that election"); 7-5-330(A)-(D) (for registration with motor vehicle application, by mail, at a voter registration agency, or in any other case, valid registration form must be completed at DMV, postmarked, completed at voter registration agency, or

received by county board of voter registration and elections no later 30 days before date of election, respectively).

9. Federal law also mandates that states ensure any eligible applicant be registered to vote if a valid registration form is submitted or postmarked, if by mail, "not later than the lesser of 30 days, or the period provided by State law, before the date of an election." 52 U.S.C.A. § 20507(a)(1).

10. For the 2018 General Election, the in-person registration cut-off date is October 6 and the by mail cut-off date is October 7, 2018. S.C. Code Ann. § 7-5-150 ("The registration books shall be closed thirty days before each election . . .").

11. Hurricane Florence has had a profound impact on this state that has continuing effects today. As a result of this natural disaster, lives have been lost, families displaced and massive amounts of property destroyed. In addition to State and local authorities working tirelessly, the National Guard has been activated in various parts of the State. Anticipating the storm and addressing its aftermath, the following State Executive, Judicial and County Orders and Presidential Declarations (copies attached) demonstrate this impact:

A. Executive Order 2018-30 temporarily closed State Schools and Offices in 26 Counties beginning September 11, 2018, due to shelter and evacuation efforts. Executive Order 2018-35 rescinding that closure order effective September 15 except for Horry and Georgetown counties. Executive Order 2018-36 lifted Horry and Georgetown restrictions and "allow[ed] county authorities to make decisions about access and applicable school districts to make decisions about school openings." Georgetown County Offices were closed

September 25 until further notice. Georgetown County News Release, September 24, 2018, <http://www.georgetowncountysc.org/>.

B. Executive Order 2018-42 declared that a State of Emergency exists in South Carolina effective September 24, 2018. The Order notes that river levels are already at flood state and expected to exceed flood state by 3.49 to 16.6 feet, with flood states continuing through October 1, 2018; [that] residents have evacuated from these areas, and evacuations are still occurring, for some residents and healthcare facilities; and [that] the State continues to support counties or local governments in response and recovery operations, fulfilling more than 1238 requests for additional resources or assistance to address infrastructure, public safety, and public health concerns.”

The Order notes that “the President of the United States of America issued a Major Disaster Declaration for the State of South Carolina, amending it on September 21, 2018, to include Individual Assistance and Public Assistance for various counties, with additional counties to be added.” The Order also suspends licensing and registration requirements regarding private security personnel or companies who are contracted with South Carolina security companies in protecting property and restoring essential services in South Carolina and directed that SLED initiation an emergency registration process.

C. More than 250 roads in Horry County were closed as of September 26, 2018, due to flooding including popular highways. Alex Lang, “Here are the roads closed in Horry County nearly two weeks after Hurricane Florence,” Myrtle

Beach Sun News, (excerpt attached),

<https://www.myrtlebeachonline.com/news/local/article219044315.html>.

D. The Supreme Court's Order of September 17, 2018, declares September 11-21 to be statewide holidays for purposes of computing time under Court rules. Memorandum of Supreme Court Chief Justice Beatty of September 16 directs that "Judges should be flexible in granting continuances to attorneys and parties who have experienced personal issues, including evacuation, caused by the weather conditions that prevent their appearance in court."

12. The State Election Commission has received correspondence from several groups and a county board on behalf of voters expressing concern about the impact of Hurricane Florence and ongoing flooding problems on the abilities of many eligible South Carolina residents to register to vote by these deadlines.

13. Due to the catastrophic impact of Hurricane Florence on this state which is continuing, and in order to protect, to the extent possible, the constitutional right to vote, the State believes that the Court must direct the Executive Director to extend the voter registration deadline until October 17, 2018, consistent with her general authority to ensure that voter registration complies with "applicable state or federal law." §7-3-20. That date would allow citizens whose lives have been disrupted due to the profound impact of Hurricane Florence time to register to vote in order to exercise this fundamental right while recovery efforts proceed.

14. Although not every county in the State has been affected in the same way, all counties have been impacted, as recognized by the above orders and declarations that affect all or significant parts of the State. The Constitution recognizes that standards for

voting must be uniform statewide. Ops. Atty. Gen. (March 12, 2014 – 2014 WL 1398593). Therefore, the new deadline must apply statewide.

**FOR A FIRST CAUSE OF ACTION  
Setting Extended Deadline for Registration of October 17, 2018,  
to Protect Right to Vote**

15. Each of the above allegations is incorporated by reference into this cause of action.

16. The right to vote is fundamental. To protect this right to the extent possible in the wake of a major hurricane causing unparalleled flooding, the Executive Director must be directed to set a voter registration of October 17, 2018 (inclusive of that date), for both in-person registration and by mail, consistent with her general authority to ensure that voter registration complies with “applicable state or federal law.” §7-3-20. *See Ops. Atty. Gen.*, March 8, 2016 - 2016 WL 963705, at \*3 (right to vote is a fundamental right and interpretation by a court of the Voter ID Act will certainly be well cognizant of the fundamental nature of the right to vote); *South Carolina v. United States*, 898 F. Supp. 2d 30, 35–36 (D.D.C. 2012) (“The Attorney General of South Carolina and Ms. Andino have emphasized that a driving principle both at the polling place and in South Carolina state law more generally is erring in favor of the voter.”); *see also, Ops. Atty. Gen.* (October 3, 1989 -1989 WL 406196)(interpreting §41–35–110 of the Code and the authority of the Employment Security Commission to make a certain finding to the limited and exigent circumstances occasioned by the devastation of Hurricane Hugo)



**FOR A SECOND CAUSE OF ACTION**  
**Equitable tolling of Deadline to Protect Right to Vote**

17. Each of the above allegations is incorporated by reference into this cause of action.

18. To preserve the constitutionally protected right to vote in light of the natural catastrophe caused by Hurricane Florence, the court should suspend by equitable tolling the running of the current registration deadline to allow voter registration to proceed up to and including October 17, 2018, for both in-person registration and by mail,. A Court such as this Court, possesses the inherent powers to do justice in the wake of an act of God. *See Carlisle v. U.S.*, 517 U.S. 416, 436 (1996) The Legislature did not intend voters to be barred from exercising their constitutional right to vote because a natural disaster has struck the State..

19. As stated in *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009):

Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. Rodriguez v. Superior Court, 176 Cal.App.4th 1461, 98 Cal.Rptr.3d 728 (2009). “Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period ‘to ensure fundamental practicality and fairness.’” *Id.* at 736 (citation omitted).

*See also, Carlisle v. United States*, 517 U.S. 416, 436 (1996)( In the rare situations Justice STEVENS envisions—delay of a meritorious motion due to an Act of God, see post, at 1480, or cases comparable to those in which we would read and grant an out-of-time rehearing petition, see post, at 1478—these modes of relief should provide an adequate corrective.”); *Windland v. Dretke*, No. 3-05-CV-2438-K, 2006 WL 1391435, at

\*2 (N.D. Tex. May 18, 2006), rev'd sub nom. *Windland v. Quarterman*, 578 F.3d 314 (5th Cir. 2009)<sup>1</sup>.

20. “It has been observed that ‘[e]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control.’ *Ocana*, 91 P.3d at 66.” *Id.*

21. This doctrine permits the Court exercise its inherent powers to toll the deadline to October 17.

### PRAYER FOR RELIEF

WHEREFORE, the State prays that the Court issue an Order granting the following relief:

A. Direct the Defendant Executive Director to set a voter registration deadline of October 17, 2018 (inclusive of that date) , for both in-person registration and by mail, consistently with the above causes of action.

B. Direct the Executive Director to take all such measures are needed to ensure that the deadline is properly implemented.

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<sup>1</sup> As stated in *Windland*:

Petitioner further argues that the AEDPA statute of limitations should be tolled from September 22, 2005 to October 3, 2005 due to a power outage at the prison caused by Hurricane Rita. The court agrees that equitable tolling may be warranted where a hurricane or other natural disaster prevents the timely filing of a federal habeas petition. *See Carlisle v. United States*, 517 U.S. 416, 436, 116 S.Ct. 1460, 1471, 134 L.Ed.2d 613 (1996) (suggesting that equitable tolling doctrine may apply to excuse untimely filing of meritorious motion due to an “Act of God”)

D. For such other relief as may be deemed appropriate by this Court.

s/ J. Emory Smith, Jr.  
S.C. Bar No. 5262  
Deputy Solicitor General

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