

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	)	<b>DECLARATION FOR</b>
His Official Capacity; and MARCIA S.	)	<b>SUSAN K. DUNN</b>
ADAMS, Executive Director of the South	)	
Carolina Department of Administration, in	)	
Her Official Capacity,	)	
	)	
Defendant.	)	
	)	

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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 is 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.



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Susan K. Dunn

April 5, 2021