

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Vandroth Backus, Willie Harrison Brown,) Case No.: 2:11-cv-03120-PMD-HFF-MBS
Charlesann Buttone, Booker Manigault,)
Edward McKnight, Moses Mims, Jr.,)
Roosevelt Wallace, and William G. Wilder,)
on behalf of themselves and all other)
similarly situated persons,)

Plaintiffs,)

vs.)

The State of South Carolina,)
“Nikki” R. Haley, in her capacity as)
Governor, Ken Ard, in his capacity as)
Lieutenant Governor, Glenn F. McConnell,)
in his capacity as President Pro Tempore)
of the Senate and Chairman of the Senate)
Judiciary Committee, Robert W. Harrell, Jr.,)
in his capacity as Speaker of the House of)
Representatives, James H. Harrison, in his)
capacity as Chairman of the House of)
Representatives’ Judiciary Committee,)
Alan D. Clemmons, in his capacity as)
Chairman of the House of Representatives’)
Election Law Subcommittee, Marci Andino,)
in her capacity as Executive Director of the)
Election Commission, John H. Hudgens, III,)
Chairman, Cynthia M. Bensch, Marilyn)
Bowers, Pamella B. Pinson, and Thomas)
Waring, in their capacity as Commissioners)
of the Elections Commission,)

Defendants.)

**DEFENDANTS JAMES H. HARRISON AND ALAN D. CLEMMONS’
MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS**

Pursuant to Local Rule 7.04 D.S.C., Defendants James H. Harrison, in his capacity as Chairman of the House of Representatives' Judiciary Committee, and Alan D. Clemmons, in his capacity as Chairman of the House of Representatives' Election Law Subcommittee, hereby join in the arguments made in the Memorandum of Law in Support of the Motion to Dismiss the Amended Complaint filed by Defendant Robert W. Harrell, Jr. and offer the following additional argument in support of their separate motion.

Defendants Harrison and Clemmons are Immune From Suit.

The Amended Complaint includes as defendants James H. Harrison, and Alan D. Clemmons in their official capacities as members of the South Carolina House of Representatives and chairs of the House Judiciary Committee and the Election Laws Subcommittee, respectively. (Am. Compl. ¶¶ 22-23.) Plaintiffs claim that Harrison and Clemmons are proper defendants because they allegedly were responsible for drafting and passing reapportionment legislation for consideration by the Judiciary Committee and the full House. However, because the allegations against Harrison and Clemmons are directed toward acts that are legislative in nature, these defendants are immune from suit and should be dismissed. *See United States v. Johnson*, 383 U.S. 169, 181 (1966); *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951).

The doctrine of legislative immunity grants state legislators absolute immunity “not only from the consequences of litigation’s results *but also from the burden of defending themselves.*” *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (emphasis added); *see also Bogan v. Scott-Harris*, 523 U.S. 44, 49 (1998) (“[S]tate and regional legislators are entitled to absolute immunity from liability under [42 U.S.C.] § 1983 for their legislative activities”); *Supreme Court of Va. v. Consumers Union of the United States*, 446 U.S. 719, 732-34 (1980); *Tenney*, 341 U.S.

at 376. Importantly, whether “an act is legislative turns on the nature of the act, rather than on the motive or intent of the official performing it.” *Bogan*, 523 U.S. at 54. The grant of legislative immunity is “dependent upon the confluence of three separate elements: (1) the actor, who must be a government official or an individual working on his behalf; (2) the act itself, which must fall within the ‘sphere of legitimate legislative activity;’ and (3) the act’s proximity to the legislative arena.” *Marylanders for Fair Representation, Inc. v. Schaefer*, 144 F.R.D. 292, 299 (D. Md. 1992).

An evaluation of these factors leads to the conclusion that Harrison and Clemmons must be dismissed from this action. It is uncontroverted that Defendants Harrison and Clemmons are government officials because they are members of the House of Representatives. (Am. Compl. ¶¶ 22-23.) Next, state and congressional redistricting is clearly a legislative function and, thus, falls within the sphere of legitimate legislative activity. *Reynolds v. Sims*, 377 U.S. 533, 586 (1964) (“[L]egislative reapportionment is primarily a matter for legislative consideration and determination”); *Citizens for Good Gov’t v. City of Quitman, Miss.*, 148 F.3d 472, 475 (5th Cir. 1998) (“Redistricting is a legislative function ‘which the federal courts should make every effort not to preempt.’”) (Internal citations omitted). Finally, the acts allegedly taken by Harrison and Clemmons with respect to the redistricting plans at issue took place in sessions of the House of Representatives and its committees in relation to the business before it. *Eastland v. U. S. Servicemen’s Fund*, 421 U.S. 491, 503 (1975) (defining the test for whether particular activities fall within the “legitimate legislative sphere”). Furthermore, any activities by Harrison and Clemmons were “an integral part of the deliberative and communicative processes by which members participate in committee and congressional proceedings with respect to the consideration and passage or rejection of proposed legislation.” *Gravel v. United States*, 408

U.S. 606, 625 (1972); (Am. Compl. ¶¶ 22-23 (alleging that Harrison and Clemmons were “responsible for drafting and passing reapportionment legislation for consideration by the” Judiciary Committee and the full House)).

Conclusion

Because all factors necessary for legislative immunity are present, this Court should grant Defendants’ Harrison and Clemmons Motion to Dismiss.

Respectfully submitted,

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