

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

CHARLESTON DIVISION

**EUGENE BATEN; CHESTER WILLIS;
CHARLETTE PLUMMER-WOOLEY;
BAKARI SELLERS; CORY C. ALPERT;
and BENJAMIN HORNE,**

Civil Action No.: 2:18-cv-00510-PMD

Plaintiffs,

v.

**HENRY MCMASTER, in his official
capacity as Governor of the State of South
Carolina; MARK HAMMOND, in his
official capacity as Secretary of State of the
State of South Carolina; the SOUTH
CAROLINA ELECTION COMMISSION;
BILLY WAY Jr., in his official capacity as a
Chair of the Election Commission; MARK
BENSON, in his official capacity as a
Commission Member of the Election
Commission; MARILYN BOWER, in her
official capacity as a Commission Member of
the Election Commission; E. ALLEN
DAWSON, in his official capacity as a
Commission Member of the Election
Commission; NICOLE SPAIN WHITE, in
her official capacity as a Commission
Member of the Election Commission,**

MOTION TO DISMISS

Defendants.

COMES NOW Defendant Mark Hammond, in his official capacity as Secretary of State of South Carolina (“Secretary Hammond”), by and through the undersigned counsel, hereby moves the Court for an order dismissing the Complaint (ECF No. 1) filed by Plaintiffs Eugene Baten, Chester Willis, Charlette Plummer-Wooley, Bakari Sellers, Cory C. Alpert, and Benjamin Horne

(collectively, “Plaintiffs”) in the above-captioned matter pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The present Motion is based on and supported by the Memorandum in Support (ECF No. 14-1) filed by Governor Henry D. McMaster by which Secretary Hammond adopts and incorporates by reference herein.

As grounds for this Motion, and as more fully set forth in the Memorandum in Support, Secretary Hammond contends that Plaintiffs’ Complaint does not articulate a single viable cause of action or otherwise state a claim for relief that is plausible on its face. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007))). Accepting the Complaint’s factual allegations as true for purposes of this Motion, Plaintiffs have failed to sufficiently plead, *inter alia*, that South Carolina’s use of “[t]he predominant method in America for counting votes in presidential elections,” (Compl. ¶ 1), violates the First and Fourteenth Amendments to the United States Constitution, as well as Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. Therefore, because Plaintiffs have failed to state a claim for relief that is plausible on its face, the Court should dismiss Plaintiffs’ Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

WHEREFORE, for the foregoing reasons and those articulated in the Memorandum in Support (ECF 14-1) submitted on behalf of Governor Henry D. McMaster by which Secretary Hammond adopts and incorporates by reference herein, Secretary Hammond respectfully requests that the Court enter an order dismissing, with prejudice, Plaintiffs’ Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

SIGNATURE PAGE ATTACHED

Respectfully submitted,

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