

**FILED**

**AUG 30 2011**

**Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Robert W. Harrell, in his official capacity as  
Speaker of the South Carolina House of  
Representatives, and Glenn F. McConnell, in  
his official capacity as President Pro Tempore  
of the South Carolina Senate  
1100 Gervais Street  
Columbia, SC 29201-6215

Plaintiff,

vs.

The United States of America  
U.S. Attorney For the District of Columbia  
Civil Division  
4<sup>th</sup> Floor  
501 Third Street, N.W.  
Washington, D.C. 20530

Eric H. Holder, Jr., in his official capacity as  
Attorney General of the United States  
Office of General Counsel  
Justice Management Division  
Department of Justice  
145 N Street, N.E.  
Washington, D.C. 20530

Defendants.

Civil Action No.:

Case: 1:11-cv-01566  
Assigned To : Sullivan, Emmet G.  
Assign. Date : 8/30/2011  
Description: 3-Judge Court

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**COMPLAINT FOR DECLARATORY JUDGMENT  
PURSUANT TO THE PROVISIONS OF SECTION 5 OF THE  
VOTING RIGHTS ACT OF 1965, AS AMENDED, 42 U.S.C. § 1973C,  
AND REQUEST FOR THREE-JUDGE COURT**

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Plaintiffs Robert W. Harrell, in his official capacity as Speaker of the South Carolina House of Representatives, and Glenn F. McConnell, in his official capacity as President Pro Tempore of the South Carolina Senate, bring this action for declaratory judgment pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c, (hereinafter

“Section 5”), and 28 U.S.C. § 2201, *et seq.* The Plaintiffs respectfully would show the Court the following:

1. This action is filed for the purpose of obtaining a declaratory judgment that H. 3992, a bill signed into law by the Governor of South Carolina on August 1, 2011, satisfies Section 5 of the Voting Rights Act because it has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color, or of diminishing minority voters’ ability to elect their preferred candidates of choice, and that H. 3992 may be enforced by Plaintiffs.. H. 3992 creates new district boundaries for electing members of the United States House of Representatives from South Carolina (the “House”) and affects the nomination and election of members of the House through a redistricting process that is based on the 2010 decennial population data from the United States Census Bureau (“2010 Census”).

**Parties**

2. Plaintiffs Robert W. Harrell and Glenn McConnell are the persons expressly authorized and directed by Section 4 of H. 3992 to seek judicial or administrative approval of the Bill as required by Section 5.

3. The United States is a proper Defendant in this action because “[a] State or political subdivision [covered by Section 5] wishing to make use of a recent amendment to its voting laws ... has a concrete and immediate ‘controversy’ with the Federal Government.” *South Carolina v. Katzenbach*, 383 U.S. 301, 335 (1966).

4. Eric H. Holder, Jr. is a proper defendant in his official capacity as the Attorney General of the United States and is principally responsible for enforcing the Voting Rights Act of 1965, including the defense of Section 5 litigation in the United States District Court for the District of Columbia. 42 U.S.C § 1973c(a).

**Jurisdiction and Venue**

5. This action is brought pursuant to 42 U.S.C. § 1973c(a) and 28 U.S.C. § 2201, under which this Court is authorized to issue the declaratory judgment Plaintiffs seek. This Court has subject matter jurisdiction pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 1331.

6. Venue is proper in this Court pursuant to Section 5, 42 U.S.C. § 1973c, and 28 U.S.C. § 2284.

**Three-Judge Panel Required and Requested**

7. Because the State of South Carolina is a covered jurisdiction under the Voting Rights Act of 1965, *see* 28 C.F.R. Pt. 51, App., changes to the districts from which members of the United States House of Representatives are elected are subject to Section 5. Section 5 provides that no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964 may be enforced unless and until the State (a) obtains a declaratory judgment from this Court that the qualification, prerequisite, standard, or procedure has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in 42 U.S.C. §1973b(2); or (b) submits the qualification, prerequisite, standard, or procedure to the Attorney General for administrative review and preclearance and an objection is not interposed to the State's enforcement of the qualification, prerequisite, standard, or procedure.

8. This action is properly determinable by a district court of three judges in accordance with 42 U.S.C. § 1973c and 28 U.S.C. § 2284.

9. Simultaneously with the filing of this Complaint, Plaintiffs are seeking administrative Section 5 preclearance. Substantial factual information regarding the voting

changes at issue has been presented to Defendants in connection with the administrative Section 5 submission.

**Factual Allegations**

10. The 2010 Census reveals that South Carolina's population has increased to a total of 4,625,364 persons, which represents a 15.3% increase in total population in South Carolina over the 2000 South Carolina population of 4,012,012.

11. The residents of South Carolina currently are entitled to elect a total of six representatives to the United States House of Representatives. Due to the population increase reflected in the 2010 Census, South Carolina residents now are entitled to elect seven representatives to the United States House of Representatives.

12. Article I, § 2 of the United States Constitution requires that a census of the United States be conducted every ten years and that Representatives be chosen "by the People of the several States."

13. Section 2 of the Fourteenth Amendment to the United States Constitution requires that members of the United States House of Representatives be apportioned among the states according to their respective population numbers.

14. The United States Supreme Court has held that "as nearly as practicable one man's vote in a congressional election is to be worth as much as another's." *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964).

15. In adherence to these Constitutional and legal requirements and following lengthy debates and the adoption of numerous amendments, H. 3992 was passed by the South Carolina House of Representatives and the South Carolina Senate and enrolled on July 26, 2011.

16. The General Assembly adopted H. 3992 after soliciting and receiving input from South Carolina voters and debating the merits of various plans. Prior to the General Assembly's consideration of H. 3992, the House Election Laws Subcommittee held nine public hearings in various cities across the State.

17. Acting on the public input, the House Election Laws Subcommittee adopted guidelines and criteria for congressional and legislative redistricting. The Subcommittee determined that any redistricting plan must comply with the United States Constitution and the Voting Rights Act of 1965, and established specific criteria to which the plans must adhere.

18. The Senate held ten public hearings across the State. After receiving public testimony, the Senate Judiciary Committee adopted Redistricting Guidelines for 2011. These guidelines mandated compliance with the United States Constitution and the Voting Rights Act of 1965.

19. After considering and debating the merits of various plans, the General Assembly enacted a plan that ultimately had strong support in both houses of the General Assembly.

20. H. 3992 was ratified on July 26, 2011, and was signed into law by Governor Nikki Randhawa Haley on August 1, 2011. Thus, the law is now ready for preclearance.

21. No part of H. 3992 can be implemented by the Plaintiffs until this Court enters a declaratory judgment as requested by Plaintiffs, or until the Attorney General indicates that he will not interpose an objection to implementation of H. 3992.

22. H. 3992 is ripe for a determination that the plan has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color, and does not lead to a retrogression in the position of racial minorities or diminish their ability to elect their preferred candidates of choice on account of race.

23. It is important that the Court acts upon Plaintiffs' claims at the earliest practicable date. The election for the United States House of Representatives must be filled by election every two years, and the next election will occur on November 6, 2012. The candidate filing period for the 2012 election will open on March 16, 2012, and close on March 30, 2012. The state primary elections will be held on June 12, 2012, and any run-off primary elections will be held on June 26, 2012. Therefore, in order to preserve the existing election calendar, it is necessary that this Court consider and decide this controversy prior to the opening of the candidate filing period.

### **Count I**

24. Each and every allegation contained in paragraphs one through twenty-three is reaffirmed and realleged as if fully incorporated herein.

25. The last judicially approved Congressional redistricting plan in South Carolina (2002) had one majority-minority district, which maintained its status after the 2010 Census Data was applied to the 2002 redistricting plan ("Benchmark Plan").

26. H. 3992, when compared to the Benchmark Plan, retains the number of majority-minority districts sustained in the Benchmark Plan and, thus, does not lead to retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise or diminish their ability to elect their preferred candidates of choice, and does not otherwise have the effect of denying or abridging the right to vote on account of race or color.

27. H. 3992 does not have the purpose of denying or abridging the right to vote on account of race or color.

28. In addition to complying with the United States Constitution, the South Carolina Constitution, and the Voting Rights Act of 1965, H. 3992 adheres to legitimate state redistricting

policies, including contiguity, compactness, maintaining communities of interests, and protecting incumbency.

29. Plaintiffs are entitled to a judgment that H. 3992 fully complies with Section 5 of the Voting Rights Act of 1965, as amended, and that H. 3992 may be implemented without further delay.

WHEREFORE, Plaintiffs respectfully request that this Court:

(a) Convene a three-judge district court to hear the matters raised in Plaintiffs' Complaint;

(b) Issue such orders and convene such conferences as may be necessary on an expedited basis to ensure that what little discovery may be necessary in this action be taken and completed as expeditiously as possible;

(c) Enter such other and further orders as may be necessary during the pendency of this case to ensure that it is handled as expeditiously as possible;

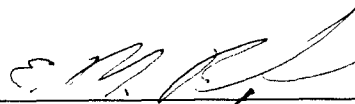
(d) Enter a declaratory judgment that H. 3992 satisfies Section 5 of the Voting Rights Act because it has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color, or of diminishing minority voters' ability to elect their preferred candidates of choice, and that H. 3992 may be enforced by Plaintiffs; and

(e) Grant Plaintiffs such other and further relief as may be appropriate, including the costs of this action.

*Signature page follows*

Respectfully submitted,

**BAKER HOSTETLER**



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E. Mark Braden ✓  
D.C. Bar No. 419915  
[mbraden@bakerlaw.com](mailto:mbraden@bakerlaw.com)  
Washington Square, Suite 1100  
1050 Connecticut Avenue, NW  
Washington, DC 20036-5304  
(202) 861-1504

*Attorneys for Plaintiff Robert W. Harrell*

**JONES DAY**



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Michael A. Carvin  
D.C. Bar No. 366784  
[macarvin@jonesday.com](mailto:macarvin@jonesday.com)  
Louis K. Fisher  
D.C. Bar No. 475502  
[lkfisher@jonesday.com](mailto:lkfisher@jonesday.com)  
51 Louisiana Avenue, NW  
Washington, DC 20001  
(202) 879-7643

*Attorneys for Plaintiff Glenn F. McConnell*

OF COUNSEL:

**SOWELL GRAY STEPP & LAFFITTE, L.L.C.**

Robert E. Stepp  
Fed. I.D. No.: 4302  
[rstepp@sowellgray.com](mailto:rstepp@sowellgray.com)  
Robert E. Tyson, Jr.  
Fed. I.D. No.: 7815  
[rtyson@sowellgray.com](mailto:rtyson@sowellgray.com)  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, South Carolina 29211  
(803) 929-1400



**WILLOUGHBY & HOEFER, P.A.**

Benjamin P. Mustian  
Fed. I.D. No.: 9615  
[bmustian@willoughbyhoefer.com](mailto:bmustian@willoughbyhoefer.com)

Tracey Green  
Fed. I.D. No.: 6644  
[tgreen@willoughbyhoefer.com](mailto:tgreen@willoughbyhoefer.com)  
930 Richland Street  
Columbia, South Carolina 29202  
(803) 252-3300

*Attorneys for Plaintiff Robert W. Harrell*

JS-44  
 (Rev. 2/11 DC)

*N 11-1566 EGS*

**I (a) PLAINTIFFS**  
 Robert W. Harrell, on behalf of and in his official capacity as Speaker of the South Carolina House of Representatives, and Glenn F. McConnell, in his official capacity as President Pro Tempore of the South Carolina Senate

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Richland  
 (EXCEPT IN U.S. PLAINTIFF CASES) *44586*

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
 E. Mark Braden, Baker Hosteller LLP, 1050 Connecticut Avenue, NW, Washington, DC 20036-5304, (202) 861-1504;  
 Michael A. Carvin, Jones Day, 51 Louisiana Avenue, NW Washington, DC 20001 (202) 879-7643

**DEFENDANTS**  
 The United States of America; Eric H. Holder, Jr., in his official capacity as Attorney General of the United States Office of General Counsel

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Case: 1:11-cv-01566  
 Assigned To : Sullivan, Emmet G.  
 Assign. Date : 8/30/2011  
 Description: 3-Judge Court

**II. BASIS OF JURISDICTION**  
 (PLACE AN X IN ONE BOX ONLY)

1 U.S. Government Plaintiff  
 2 U.S. Government Defendant  
 3 Federal Question (U.S. Government Not a Party)  
 4 Diversity (Indicate Citizenship of Parties in item III)

**III CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) **FOR DIVERSITY CASES ONLY!**

	PTF	DFT		PTF	DFT
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4
Citizen of Another State	<input checked="" type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5
Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6

**IV. CASE ASSIGNMENT AND NATURE OF SUIT**

(Place a X in one category, A-N, that best represents your cause of action and one in a corresponding Nature of Suit)

<input type="radio"/> <b>A. Antitrust</b>  <input type="checkbox"/> 410 Antitrust	<input type="radio"/> <b>B. Personal Injury/Malpractice</b>  <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> <b>C. Administrative Agency Review</b>  <input type="checkbox"/> 151 Medicare Act  <b>Social Security:</b> <input type="checkbox"/> 861 HIA ((1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g) <b>Other Statutes</b> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b>  Any nature of suit from any category may be selected for this category of case assignment.  *(If Antitrust, then A governs)*
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**E. General Civil (Other)**      OR       **F. Pro Se General Civil**

<b>Real Property</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property  <b>Personal Property</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>Bankruptcy</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>Prisoner Petitions</b> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition  <b>Property Rights</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>Federal Tax Suits</b> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<b>Forfeiture/Penalty</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>Other Statutes</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 900 Appeal of fee determination under equal access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act) <i>2</i>
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<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/PRIVACY ACT</b>  <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 American w/Disabilities-Employment <input type="checkbox"/> 446 Americans w/Disabilities-Other	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input checked="" type="radio"/> <b>N. Three-Judge Court</b>  <input checked="" type="checkbox"/> 441 Civil Rights-Voting (if Voting Rights Act)

**V. ORIGIN**

1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multi district Litigation  
  7 Appeal to District Judge from Mag. Judge

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 Request for Declaratory Judgment under Section 5 of the Voting Rights Act, 24 U.S.C 1973(c)

**VII. REQUESTED IN COMPLAINT**       CHECK IF THIS IS A CLASS ACTION UNDER F R C P 23      **DEMAND \$** \_\_\_\_\_      Check YES only if demanded in complaint  
**JURY DEMAND:**      YES       NO

**VIII. RELATED CASE(S) IF ANY**      (See instruction)      YES       NO       If yes, please complete related case form

DATE 08/30/2011      SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence. Use 11001 to indicate plaintiff is resident of Washington, D.C., 88888 if plaintiff is resident of the United States but not of Washington, D.C., and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES. This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT. The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of case.
- VI. CAUSE OF ACTION. Cite the US Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASES, IF ANY. If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

*M*