FROM: Alan Wilson, South Carolina Attorney General

TO: First year Deputy Attorney General

DATE: June 22, 2016

RE: Request for a Legal Memorandum

It is early 2017, and Democrats are riding high at the federal government level after Hillary Clinton crushes Donald Trump in an enormous landslide, and Trump takes down many Republicans in Congress with him that were on the ballot. The Democrats are able to pass nearly any piece of legislation they want. They want to primarily take on issues of gun control and health care. Republicans still control power in a number of state governments, including South Carolina, where Republicans control all statewide offices and hold a large majority in the General Assembly. In South Carolina, the Attorney General is responsible for all legal actions within the state, either by initiating a lawsuit or having to defend a lawsuit. While Hillary Clinton won big across the country, she did not win in South Carolina, where many of these Democratic policies remain unpopular.

Congress decides to pass a law that would make further changes to the Affordable Care Act. Frustrated about Republican states not passing the Medicaid expansion, they approve a provision that if states choose not to approve the Medicaid expansion by June 30, 2017, they will lose 15% of its current Medicaid funding. The state of South Carolina, led by a conservative Republican Governor Nikki Haley, believes this provision may be unconstitutional and is considering legal action against the federal government. This should not be analyzed under the Commerce Clause.

Congress is also upset about gun violence. Democrats gained massive victories in 2016 and now control both houses of Congress by wide margins. With a rash of mass shootings occurring over all of 2016, Congress decides to act on the issue. They pass a gun control measure similar to that in Australia did in 1996 which would call for a total ban on semi-automatic assault style weapons. The manufacture and sale would be immediately banned, and possession would be prohibited by 2019. To facilitate this, Congress authorized a ban buyback program, where persons would be compensated for their property, so that no Due Process or 5th Amendment claims would be possible (everyone agrees on this, so it is not an issue). However, the buyback program would administered by states. A national fund would be established and states would be able to cut checks directly from this fund to gun owners. States would be required to administer this program and 100% of their costs would be covered. The issue of Congress having the power to enforce this through its spending power is unquestioned. However, there remains and issue of whether Congress has the power to do this under the Commerce Clause. The South Carolina Attorney General opposes the law and believes this may violate the Commerce Clause. He wants you to analyze the law in regard to this issue only as to this specific law. Do not make any Second Amendment arguments.

Also in South Carolina, facing a massive hole in their budget, decides it needs more revenue. It does not want to raise general taxes since a majority of members of the General Assembly had signed no new taxes pledges and feared they would be defeated in their next election if they voted to raise taxes. Therefore, they pass a law requiring all companies who sell items to South Carolina residents collect sales taxes and remit them to the Treasurer of South Carolina. Amazon does not like this law. They sell extensively within South Carolina, but have only has two fulfillment centers in Rock Hill and Columbia, which ship goods all over the country. Amazon sues South Carolina for violating the law. The Attorney General of South Carolina is tasked with defending this law.

South Carolina also is concerned about its very large agriculture industry. The State Secretary of Agriculture has a great amount of power, which is legally delegated to him within the State Constitution, so his authority to act is without question. Its largest sector of this industry is poultry. Most of the chickens in the state are used for broilers and for eggs. There had been a major outbreak of fowl cholera in the Midwest, which was traced to rats within corn supplies there. The closest state to South Carolina that any trace of this was found was in Kansas and Nebraska, and it was limited to those two states only. Once a chicken gets this disease, it and others in the flock must be immediately destroyed. South Carolina is quite concerned, so they ban the import of all corn (which is a primary feed for chickens, but is also used to feed other animals, who could not contract fowl cholera) from *all* states outside the state of South Carolina. South Carolina is also a large producer of corn itself. This ban will remain in effect so long as the Secretary of Agriculture says it is warranted. However, Indiana is a major supplier of corn, and exports much of that corn throughout the country for feed. Indiana is upset about this and the Indiana Farm Bureau, representing farmers in the state sues South Carolina for this ban violating the Commerce Clause. The Attorney General must defend this temporary ban.

You are a newly hired Deputy Attorney General in South Carolina Attorney General Alan Wilson’s office. One of your duties is to advise him on the current state of the law. He is considering challenging the two Congressional laws and needs to know what the law is on those situations. He also must defend the state law and actions of the Secretary of Agriculture. He also needs to know the state of the law on those issues. He wants you to write a legal memorandum to advise him on this issues.

Wilson has requested that you complete this memorandum by June 30, 2016 by midnight, and submit it to him by turn it in. He further requests that your memorandum be 5 pages or more, double spaced, and that in addition to that, you also submit a table of cases with proper citations. He reminds you that a table of cases should be arranged alphabetically by the first party listed. He further reminds you that if you are citing material from the book, use the case, and a pinpoint citation to the part in the book- you do not have to go and get the actual spot in the case.

\*\*There is no need to make any standing arguments. All parties in this scenario have standing.\*\*

\*\*Do not make any Second Amendment arguments in this paper!!!\*\*