

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

South Carolina Green Party, Eugene Platt, )  
and Robert Dunham, )

Civil Action No. 3:08-02790-JFA

Plaintiffs, )

v. )

South Carolina State Election Commission, )  
John H. Hudgens, Cynthia M. Bensch, )  
Tracey C. Green, Pamela B. Pinson, and )  
Thomas Waring, in their official capacities )  
only as Chairman and members respectively )  
of the South Carolina State Election )  
Commission, )

**ANSWER  
(Jury Trial Requested)**

Defendants. )  
\_\_\_\_\_ )

The Defendants answer the Plaintiffs' Complaint herein as follows:

**UFOR A FIRST DEFENSE**

1. The Plaintiffs' Complaint fails to state a cause of action upon which relief may be granted. The Defendants reserve their right to file a motion pursuant to Rule 12(b)(6), FRCP.

**FOR A SECOND DEFENSE**

2. The Defendants deny each and every allegation of the Plaintiffs' Complaint not hereinafter specifically admitted, qualified, or explained.

3. As to the allegations set forth in Paragraph 1 of the Plaintiffs' Complaint, the Defendants admit the description of the Plaintiffs' claim but deny that the claim has any merit or that

the Plaintiffs are entitled to any declaratory, injunctive or monetary relief requested.

4. The allegations set forth in Paragraphs 2, 3, 4, and 5 of the Plaintiffs' Complaint are legal conclusions, to which no response is required.

5. The allegations set forth in Paragraph 6 of the Plaintiffs' Complaint are admitted.

6. The allegations set forth in Paragraphs 7 and 8 of the Plaintiffs' Complaint are, upon information and belief, admitted.

7. As to the allegations set forth in Paragraph 9 of the Plaintiffs' Complaint, the Defendants deny that the Plaintiff Eugene Platt qualifies as a candidate or as the nominee of the South Carolina Green Party for House Seat 115 in the November 2008 General Election.

8. The allegations set forth in Paragraphs 10 and 11 of the Plaintiffs' Complaint are, upon information and belief, admitted.

9. As to the allegations set forth in Paragraph 12 of the Plaintiffs' Complaint, the Defendants lack sufficient information to ascertain the truth of those allegations, and as a result, denies those allegations at this time.

10. As to the allegations set forth in Paragraphs 13 and 14 of the Plaintiffs' Complaint, the Defendants crave reference to applicable South Carolina statutory law for the duties and responsibilities of the South Carolina State Election Commission.

11. The allegations set forth in Paragraphs 15, 16, 17, 18, and 19 of the Plaintiffs' Complaint are admitted.

12. As to the allegations set forth in Paragraph 20 of the Plaintiffs' Complaint, the Defendants lack sufficient information to ascertain the truth of those allegations, and as a result, denies those allegations at this time.

13. The allegations set forth in Paragraph 21 of the Plaintiffs' Complaint are legal

conclusions, to which no response is required.

14. As to the allegations set forth in Paragraphs 22, 23, and 24 of the Plaintiffs' Complaint, the Defendants crave reference to the referenced and applicable South Carolina statutory law.

15. The allegations set forth in Paragraph 25 of the Plaintiffs' Complaint are denied with respect to the filing of a Statement of Intention of Candidacy with the South Carolina Green Party. Further answering, the Defendants admit only that the Plaintiff Eugene Platt timely filed a Statement of Intention of Candidacy with the South Carolina Democratic Party.

16. As to the allegations set forth in Paragraph 26 of the Plaintiffs' Complaint, the Defendants lack sufficient information to ascertain the truth of those allegations, and as a result, denies those allegations at this time.

17. As to the allegations set forth in Paragraph 27 of the Plaintiffs' Complaint, the Defendants admit that the Plaintiff Eugene Platt competed in the Democratic Party primary on June 10, 2008. The Defendants further admit that the Plaintiff Eugene Platt lost that primary. Of the 1,371 votes cast, Anne Peterson Hutto received 856 votes (62.44%) and Platt received 515 votes (37.56%).

18. The allegations set forth in Paragraph 28 of the Plaintiffs' Complaint are denied.

19. As to the allegations set forth in Paragraph 29 of the Plaintiffs' Complaint, the Defendants admit that the State Election Commission has enforced applicable state law including the "sore loser" statute, codified at S.C. Code Ann. § 7-11-10, which disqualifies the Plaintiff Eugene Platt from having his name placed on the November 2008 general election ballot for House Seat 115.

20. The allegations set forth in Paragraphs 30, 31, 32, 33, 34, and 35 of the Plaintiffs'

Complaint are denied.

21. The Defendants deny the allegations and relief sought as set forth in the prayer of the Plaintiffs' Complaint.

**FOR A THIRD DEFENSE**

22. The Defendants Hudgens, Bensch, Green, Pinson, and Waring, in their official capacities, are not "persons" amenable to suit under 42 U.S.C. § 1983 for money damages.

**FOR A FOURTH DEFENSE**

23. The Defendant South Carolina State Election Commission, as an arm or alter ego of the State of South Carolina, is not a "person" amenable to suit under 42 U.S.C. § 1983 for any relief requested.

**FOR A FIFTH DEFENSE**

24. The Defendants are entitled to immunity under the Eleventh Amendment of the United States Constitution.

**FOR A SIXTH DEFENSE**

25. In the event the Court construes the Plaintiffs' Complaint as asserting a claims against any Defendants in their individual capacities, which is denied, the Defendants Hudgens, Bensch, Green, Pinson, and Waring would be entitled to *Harlow* qualified immunity from suit.

**FOR A SEVENTH DEFENSE**

26. The actions taken by the Defendants are fairly debatable and are therefore presumptively valid.

**FOR AN EIGHTH DEFENSE**

27. The Plaintiffs' claim is barred by the doctrine of laches.

**FOR A NINTH DEFENSE**

28. The Plaintiffs lack standing to bring this action.

**FOR A TENTH DEFENSE**

29. The Plaintiffs' claim is barred by the defense of mootness.

**FOR AN ELEVENTH DEFENSE**

30. This Court lacks subject matter jurisdiction over the Plaintiffs' claims. The Defendants therefore reserve the right to file a motion pursuant to Rule 12(b)(1), FRCP.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendants pray that the Complaint be dismissed with prejudice, for the costs of this action including reasonable attorney's fees under 42 U.S.C. § 1988, and for such other and further relief as the Court deems just and proper.

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