

# **EXHIBIT B**

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

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

Plaintiffs,

vs.

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 Election Commission,

Defendants,

and

Charleston County Democratic Party,

Intervenor.

Civil Action No: 3:08-cv-02790-JFA

**OPPOSITION OF INTERVENOR TO  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Intervenor, the Charleston County Democratic Party, opposes Plaintiffs' Motion for a Mandatory Preliminary Injunction, which essentially asks this Federal Court to find South Carolina Code section 7-11-10 unconstitutional, to disregard and overrule the contractual and statutory obligations of Plaintiff Platt in his signed oath and in S.C. Code section 7-11-210, and then to direct the State to put a candidate—who sought the nomination through an party primary and lost—on the November ballot in direct contravention of the State elections statutory scheme. Plaintiffs have not asserted a constitutional violation and are not entitled to mandatory preliminary injunction.

The South Carolina statutory scheme for elections, and in particular for the nomination and qualification of candidates, balances competing rights and has been constitutionally challenged and upheld not only by a unanimous South Carolina Supreme Court but also by a three-judge federal panel in the District of South Carolina. *See White v. West*, CA No. 74-1709 (unpublished) (1976)<sup>1</sup> (The court was composed of The Honorable Clement F. Haynsworth, Jr., Chief Judge, United States Circuit Court; The Honorable Donald S. Russell, United States Circuit Judge; and The Honorable Robert F. Chapman, United States District Judge), *cited in Florence County Democratic Party by Moore v. Johnson*, 281 S.C. 218, 220 n.2, 314 S.E.2d 335, 337 n.2 (1984) (“The [federal] court found the candidate’s notice and pledge was constitutional and was an effective way of keeping defeated primary candidates off the general election ballot.”), and *quoted in Florence Co. Democratic Party v. Johnson*, at 10 – 14 (Cir. Ct. order Florence, S.C. Apr. 23, 1981) (Attached as Intervenor’s Exhibit 1).

Plaintiff Platt does not challenge he filed a Statement of Intention of Candidacy declaring his intention to seek the 2008 nomination of the Democratic Party for House District 115. (Intervenor’s Exhibit 2) Plaintiff Platt also does not challenge, or even try to challenge, he knowingly and voluntarily signed and filed a Notice of Candidacy and Pledge as a condition of seeking the Democratic nomination and containing an oath consistent with the State’s requirement in South Carolina Code Section 7-11-210 for seeking a party’s nomination by primary. (Intervenor’s Exhibit 3) Plaintiff Platt also does not challenge he campaigned and actively sought the Democratic nomination by primary through June 10, 2008 when he lost by 24.88 percentage points. (See Intervenor’s Exhibit 4)

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<sup>1</sup> Although this federal court order is unpublished, it has been located by the Federal Records Center in Ellenwood, GA (and should be forthcoming within the next week). A copy will be submitted when received.

In the signed and filed records for seeking the 2008 Democratic nomination for House District 115, Plaintiff Platt expressly affiliated with the Democratic Party and pledged himself to abide by the results of the primary. Plaintiff Platt expressly authorized “the issuance of an injunction upon ex parte application by the chair, as provided by law, should I violate this pledge by offering or campaigning in the ensuing general election for election to this office . . . .” (Intervenor’s Exhibit 3) It was only after he lost the primary by almost 25 percentage points that Plaintiff Platt decided he did not want to honor his oath and the state election laws requiring him not to offer or campaign for this same office in this same election year.

The State statute is plain and clear that “no **person** who was defeated as a candidate for nomination to an office in a party primary or party convention shall have his name placed on the ballot for the ensuing general or special election.” S.C. Code § 7-11-10 (emphasis added). This disqualifies Plaintiff Platt from being placed on the November ballot for the same race and in the same cycle in which he has voluntarily sought and participated in a party primary and lost. Plaintiffs are not being denied access to the ballot or associational freedom—Plaintiff Platt has been disqualified, and the Green Party and Plaintiff voter cannot certify or vote for any particular candidate, like Plaintiff Platt, who is disqualified. There are many other ineligible candidates the Green Party could have attempted to certify, all of whom would not be allowed on the November ballot; however, the Green Party and Plaintiff Platt can earn ballot access for House District 115 in the next election cycle or in any other race for which he qualifies.

Most importantly in this case, Plaintiffs have not identified any severe burden on their constitutional rights that would require the strict scrutiny urged by Plaintiffs’ Brief. Plaintiffs assert three rights—the Green Party’s right to select its own nominee, which is not

severely burdened by limiting a party's choice in a particular candidate who is otherwise disqualified as discussed by the U.S. Supreme Court in *Timmons, infra*, and quoted below; and two broad and general voting rights of "the right of individuals to associate for the advancement of political beliefs and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively." Plaintiffs' Brief at 5-6.

There is no severe burden on any individual's, whether the candidate's or voters' or the party's members, associational rights because the statute affects only the qualification of a particular candidate for the general election ballot and has no restrictions on the party to nominate any candidate who is eligible and not disqualified. Specifically, there is no restriction on association, or the disassociation as Plaintiff Platt now claims to have done with the Democratic Party, with the Green Party; any one is free to associate or disassociate, but if a candidate seeks the benefits and path to the general election ballot by a party's primary or convention and loses, then that particular candidate cannot be a candidate again for the same office in the same general election. *Cf. Storer v. Brown*, 415 U.S. 728 (1974) (upholding California's one-year restriction for independent candidates from party association or primary voting). Moreover, the voters' right to cast their ballot effectively has not been severely burdened because Plaintiff Platt could have accepted the Green Party's nomination without seeking another party's nomination and would not have faced disqualification. *See White v. West*, quoted in *Johnson* (Ex. 1) at 12 ("Having used the Democratic Party primary they should not complain that it has certain restrictions preventing defeated primary candidates from running against successful primary candidates."). Instead, Plaintiff Platt accepted being on the Democratic Party primary ballot for any and all voters in the district to participate in and in which the Green Party actually

advertised and encouraged voters in the Democratic Party primary to “vote Platt.” (See Intervenor’s Exhibit 5, at 4)

Addressing the precise argument by the South Carolina Green Party in this case, the Supreme Court recognized that limiting a party from having a particular individual as its nominee is not a severe burden on the party’s rights:

The New Party’s claim that it has a right to select its own candidate is uncontroversial, so far as it goes. *See, e.g., Cousins v. Wigoda*, 419 U.S. 477 (1975) (Party, not State, has right to decide who will be State’s delegates at party convention). That is, the New Party, and not someone else, has the right to select the New Party’s “standard bearer.” It does not follow, though, that a party is absolutely entitled to have its nominee appear on the ballot as that party’s candidate. A particular candidate might be ineligible for office, unwilling to serve, or, as here, another party’s candidate. **That a particular individual may not appear on the ballot as a particular party’s candidate does not severely burden that party’s association rights.**

*Timmons*, 520 U.S. 351 (1997) (emphasis added).

Although *Timmons* upheld an anti-fusion statute, the same logic and principle applies in this circumstance limiting the Green Party’s asserted right to a particular candidate, Plaintiff Platt. There are many valid restrictions on the qualifications of particular House candidates—a resident in the district at the time of filing, at least 21 years of age, not hold another office at the same level, *see, e.g.*, S.C. Const. Art. III, § 7; and S.C. Code § 2-19-270; and most significant for this case: “no person who was defeated as a candidate for nomination to an office in a party primary or party convention shall have his name placed on the ballot for the ensuing general or special election,” S.C. Code § 7-11-10.

In addition, the U.S. Supreme Court has upheld a state’s statute that denied ballot access to particular candidates who sought to be independent candidates but had voted in the immediately preceding party primary elections or had a registered party affiliation at any time during the year before the same primary elections. *Storer v. Brown*, 415 U.S. 728 (1974).

The Court recognized the statute was part of a “general state policy aimed at maintaining the integrity of . . . the ballot,” and did not find discrimination or a constitutional violation against the particular candidates who had to wait a year before disassociation from a party was recognized. Thus, Plaintiffs have not shown that Code section 7-11-10 imposes a severe burden on any of Plaintiffs’ rights.

The two courts – South Carolina Supreme Court in *Johnson* and the U.S. District Court in *White v. West* – that have addressed constitutional challenges like this one to the same statute being challenged here both have upheld the statute. “States certainly have an interest in protecting the integrity, fairness, and efficiency of their ballots and election processes as means for electing public officials. . . . States also have a strong interest in the stability of their political systems . . . [and] permits them to enact reasonable election regulations that may, in practice, favor the traditional two party system, and that temper the destabilizing effects of party splintering and excessive factionalism.” *Timmons*, 520 U.S. 351 (internal citations omitted). The three judge panel for the federal district court in *White v. West* identified the obvious purpose of the State statute being challenged by Plaintiff “is to prevent a primary candidate who has appealed to the entire electorate in seeking his party’s nomination and lost to again appeal to the entire electorate as a candidate in the general election. This effort to protect the integrity if the ballot is commendable, and necessary to prevent confusion.” *White v. West*, quoted in *Johnson* (Ex. 1) at 12. South Carolina has “merely mandated that the one who accepts the benefits gained by running as a party candidate agree to abide by the results of the primary election and not offer or campaign in the general election for any office for which that party has a nominee. This is a reasonable restriction necessary to preserve the integrity of the electoral process.” *Johnson*, 281 S.C. at 221, 314 S.E.2d at 338. Even if strict scrutiny were appropriate because Plaintiffs could

identify a severe burden on their rights by Code section 7-11-10, the State's interests are compelling and its restriction minimal on Plaintiffs in this case.

South Carolina Code section 7-11-10 applies equally by its plain meaning and clear terms to all political parties and to nomination by primary or convention. The state election laws also contemplated just such a scenario and specifically address what should happen when, as here, a candidate has been nominated by a political party but is subsequently disqualified. See S.C. Code § 7-11-50. Additionally, there is no distinction made in the statute based on the time of nomination by a particular political party. Whether Plaintiff Platt was nominated by the South Carolina Green Party before, after, or at the same time as the primary he participated in does not change the application of the State election laws because, along with the plain meaning and clear terms of the statute, the timing of nomination by convention could be manipulated by a party nominating by convention.

In any event, the election laws only require certification by August 15 as part of its reasonable time, place, and manner regulation for the orderly conduct of elections, and the time for the Green Party to certify its candidates in South Carolina has expired. See S.C. Code § 7-13-350; *Willis v. Wukela*, Op. No. 26530, Shearouse Adv. Sh. 32, at 48 (S.C. S. Ct. filed Aug. 7, 2008) (“[B]y the very nature of the election system, contests of a primary election must be settled in time for the electorate to exercise their voting franchise at the general election set by law.”). This could have easily been avoided by the South Carolina Green Party either nominating and certifying a qualified candidate under Code section 7-11-50 by the deadline or by challenging this statute sooner after Plaintiff Platt lost the primary on June 10, instead of waiting two months until one week before the deadline.

## CONCLUSION

The U.S. Constitution does not require the State to allow a political party to certify any particular candidate the party wishes and a state's restriction on a particular candidate who seeks and loses a party's nomination by primary is not a severe burden on the rights of another party nominating that particular candidate, or the particular candidate in the same general election. Reasonable restrictions protect the integrity of the election process. Code section 7-11-10 is one of those restrictions that permits the State to limit election and campaign-related disorder. There is no constitutional violation when a particular candidate is disqualified under Code section 7-11-10 in light of the U.S. Supreme Court decision in *Timmons*, and after both the South Carolina Supreme Court decision in *Johnson* and the U.S. District Court decision in *White v. West* have upheld this exact same state statute to federal constitutional challenges. Therefore, the motion for an affirmative mandatory injunction should be denied and the case dismissed.

Respectfully submitted,

/s/ Matthew T. Richardson

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