

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.

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

**REPLY OF INTERVENOR TO
PLAINTIFFS' RESPONSE TO MOTION TO INTERVENE**

Intervenor, the Charleston County Democratic Party, respectfully disagrees with Plaintiffs' efforts to exclude it. Intervenor is a necessary party and has unique statutory and contractual interests that would only be represented in this lawsuit, if at all, by Intervenor.

To resolve the technical deficiency of Intervenor alleging interests that are not adequately represented by Defendants, Intervenor requests this Court take judicial notice of Intervenor's independent and explicit statutory responsibility under S.C. Code § 7-11-210, and contractual right in Plaintiff Platt's signed and filed Oath (Exhibit 3 of the proposed Opp. of Intervenor to Pl.'s Mot. for Prelim. Injunct., Ex. 3 to Mot. to Intervene). In addition to Intervenor's separate interests from these two legal sources, Defendants have not asserted Intervenor's interests and do not attempt to represent them.¹ Moreover, Plaintiffs in this

¹ Defendants barely raised in footnote 1 of Defendants' Memorandum in Opposition to Plaintiffs' Motion for a Preliminary Injunction, at 7, these two legal relationships with corresponding obligations unique to Intervenor and did not mention the interests of Intervenor anywhere else in their filings in this action.

lawsuit have blamed Intervenor and complained of Intervenor's direct actions as leading Defendants, "at the urging of the Democratic Party," to deny Platt access to the general election ballot. (Compl. ¶ 29; Pl.'s Br. in Support of Mot. for Prelim. Injunct. at 2; Pl.'s Response to Mot. to Intervene) However, Plaintiffs suggest this that "urging" by Intervenor and seeking a similar ultimate result so aligns its interests with Defendants that intervention should be denied.

The inadequacy of Defendants' representation is obvious from the procedural and strategic posture this lawsuit forces on Intervenor. The posture also reveals the real adversity of interests between Defendants and Intervenors. Intervenor's interests cannot be adequately represented by the State Election Commission if it decides to settle favorably with Plaintiffs or if it refuses to assert Platt's separate legal obligations in the Oath. Plaintiffs could also answer Defendants' argument about the Oath by questioning the standing of Defendants, who are not parties to the Oath. Defendants could decide the expense or effort was not worth further defense of Plaintiffs' claims. And if appeal were to become necessary, then Defendants could prevent consideration of Intervenor's interests for almost any reason and completely adverse to Intervenor's interests—including practical considerations of time, expense, or delay of printing the ballots. Intervenor should not be forced to sit on the sideline or appear as amicus until its interests have been adversely decided after consideration or by neglect. It is not whether Defendants could or even do make the same arguments as Intervenor, but rather whether they represent Intervenor's interests adequately. In this case, Defendants do not.

Intervenor is not trying to insert itself into other people's business—two of the significant events that disqualify Platt for House District 115 in this election cycle are

Intervenor's primary and the Oath Platt signed and filed with Intervenor.² Intervenor is a necessary party with "significant interests, as detailed in the attached Memorandum in Opposition [of Intervenor] to Plaintiff's Motion for Preliminary Injunction." (Mot. to Intervene at 1) Defendants could have made the same arguments on behalf of Intervenor, but Defendants do not represent them simply by asserting similar arguments. Intervenor must be permitted to satisfy its statutory and contractual obligations without having to depend on the State Election Commission, whose interests may be similar and sometimes overlapping with Intervenor's but do not adequately represent all Intervenor's interests in this lawsuit.³

The plain language of the statute and oath are clear, and Intervenor should be allowed to assert its interests in this action. The South Carolina Supreme Court acknowledged the statute plainly delegates the responsibility of enforcing Code section 7-11-210 to the county party and that the oath is signed by and between Plaintiff Platt and Intervenor. *Florence County Democratic Party by Moore v. Johnson*, 281 S.C. 218, 221, 314 S.E.2d 335, 337-38 (1984) (finding the oath is not an unconstitutional delegation of authority to a private party or an impairment on the right to contract). The state supreme court held Code section 7-11-210 "has merely mandated that one who accepts the benefits gained by running

² See also, *infra*, n.4 for the reasons Plaintiffs do not have standing and that Platt is not qualified to be on the general election ballot for House District 115 in this election cycle regardless of the Constitutional claims.

³ Intervenor should have focused more narrowly on its unique interests in its proposed Opposition to Plaintiffs' Motion for Preliminary Injunction, but at the time Intervenor moved to intervene and submitted a proposed Opposition brief, Defendants had not answered or opposed the motion for preliminary injunction. Further, Intervenor has no security in the protection of its interests by having to rely on the State Election Commission to defend Plaintiffs' claims and the relief it seeks for this election cycle. The Commission has attempted to resolve matters and avoid precedential effect in the past, for example, when it argued that Chief Judge Joseph F. Anderson, Jr.'s October 30, 1996 Order in *Natural Law Party of South Carolina, et al. v. William B. Depass, Jr., et al.*, Civil Action No. 3:96-2301-17, was not binding because the Commission had then been "willing to grant plaintiff Natural Law party of South Carolina ... and its candidates for public office access to the November 5, 1996, general election ballot on the grounds that NLPSC had substantially complied with the requirements of the South Carolina election law pertaining to party organization meetings and candidate filings" Defendants' Mem. in Opp. to Pl.s' Mot. for Injunct. Relief 3 (filed Sept. 8, 2006), *Working Families Party v. Bowers, et al.*, Civil Action No. 3:06-2125-CMC.

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.” *Id.* Although the court concluded the restriction was necessary for the State’s constitutional obligation to preserve the integrity of the electoral process, the statute identifies the interests in the results of the political party’s primary and of the political party’s successful nominee, which are unique interests of Intervenor in this case.

Plaintiff Platt, by virtue of his voluntarily acceptance and sworn oath to participate and abide by the results in the Democratic Party primary for House District 115, lacks standing because it prohibits him from even offering for election to this office in the general election cycle.⁴ S.C Code § 7-11-210 (“I authorize the issuance of an injunction upon ex parte application by the party chairman, as provided by law, should **I violate this pledge by**

⁴ Plaintiffs have no standing because there is no legal basis for Platt to get on the general election ballot for House District 115 in this election cycle. Platt tried two different ways—nomination of the Democratic Party by primary and nomination of the Green Party by convention. Neither effort was successful, and Platt only has standing to reach the Constitutional questions by combining different parts of his two separate efforts to seek the nomination of different political parties. He has also tried to create an issue of the sequence with which he sought the different nominations and claim fusion voting has some impact in this situation. None of these bases comply with the statutory scheme, or with prior interpretations or practices of the Commission, to qualify for the general election ballot.

Platt certainly did not qualify by losing the Democratic Party primary by almost 25%. Platt also did not qualify for the Green Party nomination because he did not comply with the basic statutory requirement of timely filing a Statement of Intention of Candidacy for the Green Party. If there is any access to the general election ballot through an untimely filed Statement of Intention, then it exists only upon first having a separate and legal path to the ballot that creates an opportunity for fusion voting.

Here, Platt cannot take advantage of fusion voting because he did not qualify as the Democratic Party nominee. He now argues for an independent path to the general election ballot, but Platt does not qualify as the nominee for the Green Party either. Platt should not be allowed to force his way onto the general election ballot by claiming he timely filed a Statement of Intention for a different political party for which he did not qualify for the general election ballot.

The State elections statutory scheme does not create any significance for the sequence with which Platt sought any nomination. Plaintiffs assert there is significance with the sequence only to distinguish prior controlling case law. There is no savings clause for seeking the nomination of one political party first or losing another nomination subsequently. The statutory scheme explicitly recognizes disqualification after nomination and provides a method for nomination upon disqualification. S.C. Code § 7-11-50.

Most significantly, South Carolina allows fusion voting by the absence of a prohibition. Fusion voting only applies when a candidate receives more than one nomination for the same office in the same election cycle. That has not happened for Platt at any point during this election cycle, and there is no independent or legal basis for Platt to be put on the general election ballot for House District 115 in this election cycle.

offering or campaigning in the ensuing general election for election to this office or any other office for which a nominee has been elected in the party primary election, unless the nominee for the office has become deceased or otherwise disqualified for election in the ensuing general election.” (emphasis added)). Platt cannot overcome his disqualification from offering for election to this same office in the same election under Code section 7-11-210 or the Oath. In addition to Intervenor’s arguments and interests, the State Election Commission asserts Platt’s Statement of Intention of Candidacy for the South Carolina Green Party was untimely, and Platt admits it. Like Defendants asserting Intervenor’s arguments, Intervenor could make Defendants’ same arguments on the untimely Intention for the Green Party, but it would not represent Defendants’ interests. Either basis is independently sufficient to deny Plaintiffs’ request for extraordinary affirmative relief on Constitutional grounds, but these independent interests by the State Election Commission and by Intervenor should be asserted by the real parties in interest and not just by the parties Plaintiffs chose to sue.

The county party held the primary election. Intervenor is an aggrieved party not only in the statutory requirement that the county party assert its rights for the primary outcome but also in Platt’s blatant violation of his oath in which the losing candidate obligated himself to the county party not to offer again for this same office in this same election. See S.C. Code § 7-11-210; Exhibit 3 of the proposed Opp. of Intervenor to Pl.’s Mot. for Prelim. Injunct., Ex. 3 to Mot. to Intervene. For all these reasons, Intervenor respectfully requests this Court grant the Motion to Intervene and deny the relief requested by Plaintiffs.

Respectfully submitted,

/s/ Matthew T. Richardson

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