

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

SOUTH CAROLINA GREEN PARTY,)
EUGENE PLATT, and ROBERT)
DUNHAM,)

Plaintiffs,)

v.)

3:08-cv-02790-CMC

SOUTH CAROLINA STATE)
ELECTION COMMISSION, JOHN H.)
HUDGENS, CYNTHIA M. BENSCH,)
TRACEY C. GREEN, PAMELLA B.)
PINSON, and THOMAS WARING, in)
their official capacities as members)
of the South Carolina State Election)
Commission, and the CHARLESTON)
COUNTY DEMOCRATIC PARTY,)

RULE 26(f) REPORT

Defendants.)

The parties, having consulted pursuant to Rule 26(f), Fed. R. Civ. P., hereby report as follows:

We agree that the schedule set forth in the Conference and Scheduling Order issued **September 4, 2008** is appropriate for this case. The parties' proposed discovery plan as required by Fed. R. Civ. P. Rule 26(f) and the information required by Local Civil Rule 26.03 is attached.

/s/Laughlin McDonald
Laughlin McDonald

/s/Bryan Sells
Bryan Sells

Attorneys for Plaintiffs

/s/Andrew Lindemann
Andrew Lindemann

Attorney for Defendants

/s/Matthew Richardson
Matthew Richardson

Attorney for Defendant-Intervenor

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ADDITIONAL INFORMATION
REQUIRED BY LOCAL RULE 26.03

Defendants.)

(1) A short statement of the facts of the case:

This case is an as-applied challenge to South Carolina's sore-loser statute.

Plaintiff Eugene Platt, a resident of Charleston County, sought the nomination of the Democratic Party and the Green Party for State House Seat 115. Platt won the Green Party's nomination at its state convention on May 3. More than a month later, on June 10, Platt failed to win the Democratic Party's nomination in that party's primary election.

The South Carolina State Election Commission subsequently disqualified Platt from appearing on the general election ballot as the Green Party's nominee. The Commission relied on South Carolina's "sore-loser statute," which provides

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 Ann. § 7-11-10. Because Platt lost the Democratic Primary, the Commission determined that he was ineligible to appear on the ballot as the Green Party’s nominee.

The Green Party, Platt, and a would-be Platt voter now challenge the constitutionality of South Carolina's sore-loser statute as applied to Platt.

(2) The names of fact witnesses likely to be called by the party and a brief summary of their expected testimony;

Plaintiffs:

1. Eugene Platt. Platt will testify as to the basic facts of this case as well as the burdens imposed by the challenged statute.

2. Greg Jocoy. Jocoy will testify as to the basic facts of this case as well as the burdens imposed by the challenged statute.

Defendants:

1. Marci Andino. Ms. Andino is the Executive Director of the South Carolina State Election Commission and will testify regarding the two Statements of Intention of Candidacy of Eugene Platt that were filed with the Commission.

2. Gary Baum. Mr. Baum is the Public Information Director of the South Carolina State Election Commission and will testify regarding the two Statements of Intention of Candidacy of Eugene Platt that were filed with the

Commission.

(3) The names and subject matter of expert witnesses (if no witnesses have been identified, the subject matter and field of expertise should be given as to experts likely to be offered);

Plaintiffs:

1. Political scientist. The plaintiffs may call a political scientist to testify as to the burdens imposed by the challenged statute and the strength or legitimacy of any justifications for the statute offered by the defendants.

2. Historian. The plaintiffs may call an historian to testify as to the strength or legitimacy of any justifications for the statute offered by the defendants.

3. Ballot access expert. The plaintiffs may call a ballot-access expert to testify as to the strength or legitimacy of any justifications for the statute offered by the defendants.

(4) A summary of the claims or defenses with statutory and/or case citations supporting the same;

Claim:

The plaintiffs claim that South Carolina's sore-loser statute, as applied to Eugene Platt, violates rights guaranteed to the plaintiffs by the First and Fourteenth Amendments to the United States Constitution, as enforced by 42 U.S.C. § 1983.

Defenses:

The Defendants rely on the legal defenses as set forth in their Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction filed August 25, 2008.

The Intervenor-Defendants also rely on the defense of failure to allege or establish facts sufficient to state a cause of action or to obtain any relief sought. *White v. West*, CA No. 74-1709 (three-judge federal voting rights panel) (unpublished) (D.S.C. 1976); *Florence County Democratic Party by Moore v. Johnson*, 281 S.C. 218, 314 S.E.2d 335 (1984); see also *Storer v. Brown*, 415 U.S. 728 (1974).

(5) Absent special instructions from the assigned judge, the parties shall propose dates for the following deadlines listed in Local Civil Rule 16.02:

(a) Exchange of Fed. R. Civ. P. 26(a)(2) expert disclosures;

N/A.

(b) Completion of discovery.

N/A.

(6) The parties shall inform the Court whether there are any special circumstances which would affect the time frames applied in preparing the scheduling order. See generally Local Civil Rule 16.02(C) (Content of Scheduling Order).

None.

(7) The parties shall provide any additional information requested in the Pre-Scheduling Order (Local Civil Rule 16.01) or otherwise requested by the

assigned judge.

None.

/s/Laughlin McDonald
Laughlin McDonald

/s/Bryan Sells
Bryan Sells

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PROPOSED DISCOVERY PLAN

Defendants.)

(A) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made;

None. The disclosures will be made on October 8, 2008.

(B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

The plaintiffs may need discovery on the history of the defendants' application of the statute. The parties agree that discovery should be completed in accordance with the schedule set forth in the Conference and

Scheduling Order entered September 4, 2008. The parties further agree that discovery should not be conducted in phases or limited to or focused on particular issues.

(C) any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

None.

(D) any issues about claims of privilege or of protection as trial-preparation materials, including — if the parties agree on a procedure to assert these claims after production — whether to ask the court to include their agreement in an order;

None.

(E) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

None.

(F) any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).

None.

/s/Laughlin McDonald
Laughlin McDonald

/s/Bryan Sells
Bryan Sells

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/s/Andrew Lindemann
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/s/Matthew Richardson
Matthew Richardson

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