

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

SOUTH CAROLINA GREEN PARTY,)
et al.,)
)
Plaintiffs,)
)
v.) Civil Action No. 08-cv-02790-CMC
)
SOUTH CAROLINA STATE)
ELECTION COMMISSION, et al.,)
)
Defendants.)
_____)

**PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF THEIR
MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiffs Eugene Platt, Robert Dunham, and the South Carolina Green Party respectfully submit this supplemental brief in response to the Court's order for further briefing on the question of standing. (Order entered Sept. 9, 2008 (doc. no. 31).)

BACKGROUND

In their memorandum in opposition to the plaintiffs' motion for summary judgment, the defendants argue that the plaintiffs lack standing to bring this case because, according to them, Platt didn't file a timely statement of intention of candidacy. (Defs' Mem. Opp'n Pls' Mot. Prelim. Inj. (doc. no. 23) at 6-7.) They claim that Platt is therefore ineligible to appear on the general election ballot notwithstanding the defendants' unconstitutional application of South Carolina's sore-loser statute. (*Id.*)

The relevant facts are not in dispute. Platt filed a statement of intention of candidacy with the Democratic Party on or about March 17. (*Id.* at Ex. 4.) He then filed his statement of intention of candidacy with the Green Party on or about May 3, 2008. (*Id.* at Ex. 2.)

The standing dispute centers on the proper interpretation of Section 7-11-15 of the South Carolina Code, which provides:

In order to qualify as a candidate to run in the general election, all candidates seeking nomination by political party primary or political party convention must file a statement of intention of candidacy between noon on March sixteenth and noon on March thirtieth as provided in this section.

S.C. Code. Ann. § 7-11-15. The defendants imply that this provision requires a candidate to file *all* statements of intention of candidacy within the statutory window. (Defs' Mem. Opp'n Pls' Mot. Prelim. Inj. (doc. no. 23) at 7.) The plaintiffs argue in response that the provision merely requires a candidate to file *one* statement of candidacy within the statutory window. (Pls. Reply Defs' Resp. Pls' Mot. Prelim. Inj. (doc. no. 30) at 9-10.)

Although the defendants have not yet filed a motion to dismiss or for summary judgment on the question of standing, the Court requested further briefing on the plaintiffs' motion because of the potential importance of this question. (Order entered Sept. 9, 2008 (doc. no. 31).)

DISCUSSION

I. Platt is qualified as a candidate to run in the general election.

Under the most basic canon of statutory construction, the Court must begin its interpretation "by examining the literal and plain language of the

statute.” *Markovsky v. Gonzales*, 486 F.3d 108, 100 (4th Cir. 2007) (quoting *Carbon Fuel Co. v. USX Corp.*, 100 F.3d 1124, 1133 (4th Cir. 1996)). “The court’s inquiry ends with the plain language as well, unless the language is ambiguous.” *Id.* See, e.g., *Virginia Soc. for Human Life, Inc. v. Caldwell*, 152 F.3d 268, 270 (4th Cir. 1998) (applying the plain language rule to the construction of a state election statute); see also *Paschal v. State Election Comm’n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995) (“If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.”)

The plain language of Section 7-11-15 unambiguously requires all candidates to file “a” statement of intention of candidacy between March 16 and March 30. S.C. Code. Ann. § 7-11-15. *Merriam Webster’s Collegiate Dictionary* indicates that “a” comes from the Old English word for “one,” and is “used as a function word before singular nouns.” *Id.* (10th ed. 1997). A candidate who files one statement of intention of candidacy by the deadline is therefore “qualif[ied] as a candidate on the general election ballot” insofar as Section 7-11-15 is concerned. *Id.*

This common-sense conclusion is bolstered by the defendants’ own interpretation of the statute. Official communications in April 2008 between Gary Baum, Public Information Director of the South Carolina Election Commission, and Gregg Jocoy, an officer of the South Carolina Green Party, indicated that the Commission would consider the Green Party’s candidates

duly qualified under Section 7-11-15 as long as they had submitted a statement of intention of candidacy with another party before the filing deadline. (Decl. Gregg Jocoy, attached hereto as Ex. 1, at 1-2.) Jocoy also remembers the Commission to have applied the same interpretation of Section 7-11-15 to candidates for the United Citizens Party in the past. (*Id.* at 2.) (As soon as discovery opens in this case, the plaintiffs intend to request copies of the statements of intention of candidacy filed by these and other fusion candidates in the past, and these documents are likely to provide further evidence that the defendants have interpreted Section 7-11-15 in accordance with that provision's plain language.) Other communications indicate that South Carolina's sore-loser statute – not Section 7-11-15 – was the *only* reason that the Commission was disqualifying Platt. Although deference to a state agency's interpretation of a statute is neither necessary nor appropriate if the statute's plain language is as unambiguous as it is here, *see INS v. St. Cyr*, 533 U.S. 289, 320 n.45 (2001); *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003), the Election Commission's interpretation of Section 7-11-15 supports the conclusion that a candidate who files one statement of intention of candidacy by the deadline is qualified to appear on the general election ballot.

The defendants nonetheless suggest in their brief that Section 7-11-15 requires a candidate to file *all* statements of intention of candidacy within the statutory window. This suggestion, however, finds no support in the statute's text. The statute does not require a candidate to file "all statements" but only

“a statement.” Nor does the text require candidates to file a statement “with each party whose nomination they seek.” Those words are nowhere to be found. Had the South Carolina Legislature intended the meaning that the defendants now urge upon the Court, it could have easily made that clear in the text. The Legislature chose not to do so, however, and this Court is not free to rewrite Section 7-11-15 as the defendants request. *See Dodd v. United States*, 545 U.S. 353, 359 (2005); *Timmons v. S.C. Tricentennial Comm'n*, 254 S.C. 378, 402, 175 S.E.2d 805, 817 (1970).

Because Platt filed a statement of intention of candidacy with the Democratic Party within the filing window, he has satisfied the filing requirement of Section 7-11-15 and is otherwise qualified to appear on the general election ballot. The plaintiffs therefore have standing to bring this case.

II. The defendants are estopped from arguing that Platt is not qualified under Section 7-11-15 as a candidate to run in the general election.

The doctrine of equitable estoppel precludes a party from asserting rights that he or she otherwise would have had against another when that party’s own conduct renders assertion of those rights inequitable. *American Bankers Ins. Group, Inc. v. Long*, 453 F.3d 623, 626-27 (4th Cir. 2006). The Supreme Court has held, moreover, that this doctrine precludes a state from re-interpreting a statute so as to deprive the party challenging it of standing to bring the challenge. *Larsen v. Valente*, 456 U.S. 228, 239-41 (1982). Yet that is exactly what the defendants are trying to do here.

As indicated above, communications between the South Carolina Elections Commission and the South Carolina Green Party, specifically indicated that the Commission would accept the Green Party's candidates as long as they had filed one statement of candidacy before the statutory deadline. (Decl. Gregg Jocoy, attached hereto as Ex. 1, at 1-2.) Other communications indicated that the sore loser statute, and not any untimeliness, was the reason for the Commission's decision to disqualify Platt from the general election ballot. (*Id.*)

Platt and the Green Party have clearly relied on the Commission's previously stated position. They have brought this suit precisely because the defendants disqualified Platt on the basis of the sore-loser statute. The Green Party, had it been aware of an alternative basis for disqualification, might have nominated a replacement candidate. S.C. Code. Ann. § 7-11-50. But the deadline for doing so has now passed. S.C. Code. Ann. § 7-11-53.

Only now, in an attempt to deprive the plaintiffs of standing, have the defendants changed their position. This is manipulation for litigation, and nothing prevents the defendants from re-changing their position once more as soon as this case is resolved. Under these circumstances, it would be inequitable to allow the defendants to raise a question about the plaintiffs' standing, and the defendants should be estopped from doing so.

CONCLUSION

This Court should grant the plaintiffs' motion for a preliminary injunction prohibiting the defendants from removing plaintiff Eugene Platt from the ballot as the Green Party's candidate for House Seat 115.

Respectfully Submitted,

/s/Laughlin McDonald
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