

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

SOUTH CAROLINA GREEN PARTY,)
et al.,)
)
Plaintiffs,)
)
v.)
)
SOUTH CAROLINA STATE)
ELECTION COMMISSION, et al.,)
)
Defendants.)
_____)

Civil Action No. 08-cv-02790-CMC

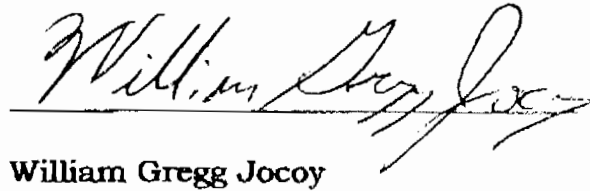
DECLARATION OF GREGG JOCOY

1. My name is Gregg Jocoy, and I am an adult resident of South Carolina.
2. I am an officer in the South Carolina Green Party, a certified political party that nominated Eugene Platt for State House Seat 115.
3. In my capacity as an officer of the South Carolina Green Party, I had occasion to communicate with the South Carolina Election Commission about the ballot-access requirements of South Carolina law in general and specifically about the deadlines for filing statements of intention of candidacy and Platt's qualification as a Green Party candidate.
4. My primary contact at the South Carolina Election Commission was Garry Baum, who is the Commission's Public Information Director.
5. The attached emails are true and correct copies of communications that I received from Baum and then forwarded to the Green Party's attorney, Bryan Sells.
6. In those emails, Baum made two points very clear to me: (1) that a candidate could qualify for the general election ballot as long as he or she filed one

statement of candidacy within the filing period specified in Section 7-11-15 of the South Carolina Code; and (2) that the only basis for Platt's disqualification was the Commission's enforcement of South Carolina's sore-loser statute even though Platt clearly won the Green Party's nomination before he lost in the Democratic primary.

7. I, in my capacity as an officer of the South Carolina Green Party, have relied and continue to rely upon the positions stated in Baum's emails.
8. The positions stated in Baum's emails are consistent with my recollection of the nominating process of the United Citizens Party in 2000.
9. I was a member of the United Citizens Party and a delegate to the Party's state convention.
10. I attended the United Citizens Party's nominating convention in August 2000 in Columbia, South Carolina, at which the party nominated several legislative and congressional candidates who had previously been nominated by the Democratic Party but who had not filed a statement of intention of candidacy with the United Citizens Party within the time specified in Section 7-11-15.
11. It is my recollection that all of these candidates appeared on the ballot as the nominee of both the Democratic Party and the United Citizens Party.
12. I further believe that other fusion candidates have appeared on the ballot in the past (and may appear on the ballot this year) even though they did not file all of their statements of candidacy within the time specified in Section 7-11-15 because it has been the well-known and long-standing practice of the State Election Commission to require only that a candidate file at least one statement of intention of candidacy by that deadline.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on September 10, 2008, at Fort Mill, South Carolina.


William Gregg Jocoy

Bryan Sells

From: Gregg Jocoy [gjocoy@comporium.net]
Sent: Wednesday, August 27, 2008 7:01 AM
To: bsells@aclu.org
Subject: [Fwd: Fusion candidates]

----- Original Message -----
Subject: Fusion candidates
Date: Fri, 18 Apr 2008 16:48:05 -0400
From: Baum, Garry <gbaum@elections.sc.gov>
To: green <gjocoy@comporium.net>
CC: green <davidpwhiteman@yahoo.com>, green
<scgreenpartyinfo@earthlink.net>, Whitmire, Chris <cwhitmi@elections.sc.gov>

Greg,

As we discussed on the phone yesterday, if your party has any fusion candidates for this November's General Election, these candidates would have had to previously file properly with another party during the March filing period.

The State Election Commission asks you to have each candidate fully complete a Statement of Intention of Candidacy form with the respective county or state party officials completing the Receiving section.

Any questions, please let me know. Thank you.

Garry Baum
Public Information Director
South Carolina State Election Commission
Post Office Box 5987
Columbia SC 29250
Tel: 803.734.9146
Fax: 803.734.9366

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--

No virus found in this incoming message.
Checked by AVG.

Version: 7.5.524 / Virus Database: 269.23.1/1384 - Release Date: 4/17/2008 3:47 PM

Bryan Sells

From: greggjocoy@riseup.net
Sent: Wednesday, September 10, 2008 7:57 PM
To: bsells@aclu.org
Subject: [Fwd: RE: Garry Baum. Further clarification requested (rev)]



untitled-[1.2] (23 KB)



image002.jpg (7 KB)

----- Original Message

Subject: RE: Garry Baum. Further clarification requested (rev)
From: "Baum, Garry" <gbaum@elections.sc.gov>
Date: Tue, July 1, 2008 1:45 pm
To: "Eugene Platt" <poet1326@hotmail.com>
Cc: djplatypus@gmail.com
runyonwilliamjr1@bellsouth.net
greggjocoy@riseup.net
richardwinger@yahoo.com
"Sells, Bryan \ (ACLU\)" <bsells@aclu.org>
"Whitmire, Chris" <cwhitmi@elections.sc.gov>

Mr. Platt,

Yes is the answer to your second question because you signed the party's pledge and wished to have your name on the general election ballot. My answer did not reference any dates or times when you filed or were the party's nominee. I was answering as the law is written.

"If what I relate in this paragraph is essentially accurate, would Section 7-11-10 bar Ms. Peterson-Hutto from the general election ballot?
No.

If not, please explain why not."

As has been our policy for a number of years with fusion candidates, the convention party would provide us with affirmation by the candidate by the noon, August 15 deadline to be placed on the ballot as their candidate.

Thank you.

Garry Baum

Public Information Director

South Carolina State Election Commission

Post Office Box 5987

Columbia SC 29250

Tel: 803.734.9146

Fax: 803.734.9366

This message originates from the South Carolina State Election Commission. If you have received this message in error, we would appreciate it if you would immediately notify the South Carolina State Election Commission by sending a reply e-mail to the sender of this message. Thank you.

From: Eugene Platt [mailto:poet1326@hotmail.com]
Sent: Tuesday, July 01, 2008 4:29 PM
To: Baum, Garry
Cc: djplatypus@gmail.com; runyonwilliamjr1@bellsouth.net; greggjocoy@riseup.net; richardwinger@yahoo.com; Sells, Bryan (ACLU)
Subject: Garry Baum. Further clarification requested (rev)

[PLEASE DELETE PREVIOUS MESSAGE. THIS CORRECTS AN E-MAIL ADDRESS AND ADDS ANOTHER.]

Tuesday Afternoon, July 1, 2008 ~~~ Charleston

Dear Mr. Baum: Thanks again for your courtesy in responding so promptly as well as your patience with me. Perhaps I am just having a 'slow' day but am unable to reconcile your answer to the first question below with your answer to the second question. Please know I am not suggesting your two answers are inconsistent; however, there appears to be some nuance that I am not grasping.

In the first answer, you write, 'The specific section of 7-11-210 only addresses the candidate . . . not offering as a petition or write-in candidate thereafter.'

Then, when I ask if the pledge described in Section 7-11-210 applies to me, someone who was nominated by convention (and who, therefore, would be neither a petition nor write-in candidate), you answer 'Yes.'

Why is the second question answered in the affirmative? To extrapolate, is this what you are saying: 'Yes, notwithstanding the fact that you were nominated in convention May 3 prior to your loss in the Democratic primary June 10, and notwithstanding the fact you would not be offering as either a petition or as a write-in candidate in the general election, the Democratic Party would still be entitled by Section 7-11-210 to keep your name off the general election ballot.'

Can you understand why I am confused? In any case, please amplify and/or clarify your answers so as to preclude any ambiguity.

Just so you will know who all I am copying this e-mail to, the richardwinger@yahoo.com is Richard Winger, Editor of Ballot Access News. Mr. Winger, who may be the country's preeminent authority on ballot access issues, has expressed interest in my situation. The bsells@aclu.org <mailto:bsells@aclu.org> is Bryan Sells, Staff Counsel, Voting Rights Project, American Civil Liberties Union. (The other addresses I think you already know---my son Paul, Bill Runyon, and Gregg Jocoy.)

By the way, it is my understanding that Anne Peterson-Hutto was also seeking the Working Families Party (WFP) nomination. Erin McKee, Chair, South Carolina WFP, told me that Ms. Peterson-Hutto wanted the WFP nomination, received the paperwork (presumably from Ms. McKee), completed the paperwork, and called her (Ms. McKee) when she did not think she could meet the deadline for submitting the paperwork. It is my further understanding that Ms. McKee, in effect, told Ms. Peterson-Hutto that she (Ms. McKee) was unable to extend the deadline. If what I relate in this paragraph is essentially accurate, would Section 7-11-10 bar Ms.

Peterson-Hutto from the general election ballot? If not, please explain why not.

With continuing appreciation,

Eugene Platt

Subject: RE: Garry Baum. Sec 7-11-210, a specific situation
Date: Tue, 1 Jul 2008 13:52:33 -0400
From: gbaum@elections.sc.gov
To: poet1326@hotmail.com
CC: djplatypus@gmail.com; greggjocoy@riseup.net; runyonwilliamjr1@bellsouth.net; richardwinger@yahoo.com; cwhitmi@elections.sc.gov

Mr. Platt,

Below are your questions with my answers to follow.

Accordingly, please advise me, with regard to South Carolina Code Section 7-11-210, does the pledge apply to someone who wishes to 'authorize his name to be placed on the general election ballot' as the result of having won in a convention the nomination of one party---prior to losing in the primary of another party?

I do not know this answer. The specific section of 7-11-210 only addresses the candidate abiding by the results of the primary and not offering as a petition or write-in candidate thereafter.

To be even more specific, according to Section 7-11-210, does the pledge I signed when filing for the Democratic Party's nomination and my loss in the Democratic Party primary on June 10, apply to my wish to have my 'name placed on the general election ballot' in accordance with my having received the Green Party's nomination at their state convention in Columbia on May 3, 2008?

Yes.

And this is a hypothetical, but still relevant, question: If I had won the Democratic Party primary on June 10, and if the Green Party convention had been scheduled (for example) June 14 and I had been unsuccessful in my bid for the Green Party nomination at its convention, would Section 7-11-10 allow my name to be on the general election ballot?

No. To sum up this entire issue, Mr. Platt, the only reason you were denied access to the ballot was because you were defeated in a primary- 7-11-10. It wouldn't matter the timing of the primary or convention.

If you were nominated by X number of parties and had won all these parties nominations, you would have been on the ballot because 7-11-10 would not apply. The State Election Commission has placed numerous fusion candidates on ballots. They all had one thing in common. They all had won all there nominations. When you were defeated in the primary, 7-11-10 became applicable.

Thank you.

Garry Baum
Public Information Director
South Carolina State Election Commission Post Office Box 5987 Columbia SC 29250
Tel: 803.734.9146
Fax: 803.734.9366

From: Eugene Platt [mailto:poet1326@hotmail.com]
Sent: Tuesday, July 01, 2008 12:38 PM
To: Baum, Garry
Cc: djplatypus@gmail.com; greggjocoy@riseup.net; runyonwilliamjr1@bellsouth.net; ban@richardwinger.com
Subject: Garry Baum. Sec 7-11-210, a specific situation

Tuesday Morning, July 1, 2008 ~~~ Charleston

Garry Baum, Public Information Director
State Election Commission
Columbia, South Carolina

Dear Mr. Baum,

Thank you for your prompt response to my e-mail sent yesterday. In rereading my e-mail, I see that it should have been more precise in order to allow you to address a 'specific situation' such as mine. Accordingly, please advise me, with regard to South Carolina Code Section 7-11-210, does the pledge apply to someone who wishes to 'authorize his name to be placed on the general election ballot' as the result of having won in a convention the nomination of one party---prior to losing in the primary of another party?

To be even more specific, according to Section 7-11-210, does the pledge I signed when filing for the Democratic Party's nomination and my loss in the Democratic Party primary on June 10, apply to my wish to have my 'name placed on the general election ballot' in accordance with my having received the Green Party's nomination at their state convention in Columbia on May 3, 2008?

And this is a hypothetical, but still relevant, question: If I had won the Democratic Party primary on June 10, and if the Green Party convention had been scheduled (for example) June 14 and I had been unsuccessful in my bid for the Green Party nomination at its convention, would Section 7-11-10 allow my name to be on the general election ballot?

With appreciation,
Eugene Platt

Subject: RE: Garry Baum. But what about Sec 7-11-210?
Date: Tue, 1 Jul 2008 11:02:07 -0400
From: gbaum@elections.sc.gov
To: poet1326@hotmail.com
CC: djplatypus@gmail.com;
runyonwilliamjr1@bellsouth.net; greggjocoy@riseup.net; cwhitmi@elections.sc.gov

Mr. Platt,
SC Code 7-11-210 seems to indicate a candidate pledges to abide by the results of the primary and will not authorize his name to be placed on the general election ballot by petition and will not offer or campaign as a write-in candidate. He authorizes the issuance of an injunction upon ex parte application by the party chairman if he violates this pledge.

Is there a specific situation you would like us to address?

Thank you.

Garry Baum

Public Information Director
South Carolina State Election Commission
Post Office Box 5987
Columbia SC 29250

Tel: 803.734.9146

Fax: 803.734.9366

From: Eugene Platt [mailto:poet1326@hotmail.com]

Sent: Monday, June 30, 2008 4:52 PM

To: Baum, Garry

Cc: djplatypus@gmail.com;

runyonwilliamjr1@bellsouth.net; greggjocoy@riseup.net

Subject: Garry Baum. But what about Sec 7-11-210?

Monday Afternoon, June 30, 2008 ~~~ Four Months, Four Days Till Election

Garry Baum, Public Information Director

State Election Commission

Columbia, South Carolina

Dear Mr. Baum,

Thank you for your courtesy in welcoming me and others to the meeting of your commissioners last Friday. Thanks, too, for always being so prompt in responding to my e-mails.

So far, most of communication between you and me has been about Section 7-11-10. And, indeed, that seemed to be the focus of your commission at its meeting. But please share with me (and, by extension, my son Paul, Gregg Jocoy, and attorney Bill Runyon, to whom I am copying this e-mail) the position of the State Election Commission staff with regard to Section 7-11-210 and, specifically, whether or not (as my reading of 7-11-210 seems to indicate) it applies only to write-in and petition candidacies following a person's defeat in a party's primary or convention.

Eguene Platt

It's a talkathon - but it's not just talk. Check out the i'm Talkathon.
<http://www.imtalkathon.com/?source=EML_WLH_Talkathon_JustTalk>

Bryan Sells

From: Gregg Jocoy [gjocoy@comporium.net]
Sent: Wednesday, August 27, 2008 7:03 AM
To: bsells@aclu.org
Subject: [Fwd: RE: Candidate certification by this Friday, noon]

----- Original Message -----

Subject: RE: Candidate certification by this Friday, noon
Date: Tue, 12 Aug 2008 09:46:56 -0400
From: Baum, Garry <gbaum@elections.sc.gov>
To: <davidpwhiteman@yahoo.com>, "green"
<scgreenpartyinfo@earthlink.net>, "green" <gjocoy@comporium.net>
CC: Whitmire, Chris <cwhitmi@elections.sc.gov>
References:
<142515D98A29B54FA9D79F857FAA6D5712477517@SCEXCH.bcbad.state.sc.us>
<336005.35072.qm@web38102.mail.mud.yahoo.com>

Thank you David. I made a mistake. Yes, we have your certification of your candidates. We will adhere to the Friday deadline, as listed below, for Linda Ketner.
Sorry for the confusion.

Garry Baum
Public Information Director
South Carolina State Election Commission
Post Office Box 5987
Columbia SC 29250
Tel: 803.734.9146
Fax: 803.734.9366

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-----Original Message-----

From: David Whiteman [mailto:davidpwhiteman@yahoo.com]
Sent: Monday, August 11, 2008 10:50 PM
To: green; green; Baum, Garry
Cc: Whitmire, Chris
Subject: Re: Candidate certification by this Friday, noon

Hi Garry. I'm confused about this notice. I already did our letter with all that information certifying our candidates, to you and to the county election commission. That was what I dropped off to you a few weeks ago.

Please let me know if I need to do anything further.

Regarding Linda Ketner, if you do not receive her signed Statement of Candidacy by Friday at noon, then we will assume that she will not be on the Green Party line in congressional district #1.

David Whiteman
SC Green Party
803-799-1205

--- On Mon, 8/11/08, Baum, Garry <gbaum@elections.sc.gov> wrote:

> From: Baum, Garry <gbaum@elections.sc.gov>
> Subject: Candidate certification by this Friday, noon
> To: "green" <scgreenpartyinfo@earthlink.net>, "green"
> <davidpwhiteman@yahoo.com>, "green" <gjocoy@comporium.net>
> Cc: "Chris Whitmire" <cwhitmi@elections.sc.gov>
> Date: Monday, August 11, 2008, 11:34 AM Hope all is well.
> Please provide the State Election Commission and any county election
> commission where you have candidates a certification of candidates
> letter. We must have this letter by noon, this Friday, August 15.
> Include among other standard information:
> 1. party letterhead
> 2. specifically how names are to appear on ballot 3. include a
> statement that "Each candidate certified meets, or will meet by the
> time of the general election, or as otherwise required by law, the
> qualifications for the office for which he has filed."
>
> Also, we still need Linda Ketner's, US House 1, signed Statement of
> Intention of Candidacy form.
>
> Any questions, please let me know. Thank you.
>
> Garry Baum
> Public Information Director
> South Carolina State Election Commission Post Office Box 5987 Columbia

> SC 29250
> Tel: 803.734.9146
> Fax: 803.734.9366
>
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Version: 8.0.138 / Virus Database: 270.6.0/1604 - Release Date: 8/11/2008 5:50 AM