

consistent with the interpretation given by employees of the State Election Commission. The Defendants disagree with the Plaintiffs' construction of Section 7-11-15 and submit that a reading of the entire statute demonstrates clearly that the South Carolina General Assembly requires that a candidate file a statement of intention of candidacy by March 30th with each of the parties on whose ticket he/she seeks to run.

The Plaintiffs focus only on the initial sentence in Section 7-11-15, which reads:

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. (Emphasis added) The Plaintiffs, in fact, rely on the use of the article "a" in the highlighted portion of the statute to suggest that a candidate need only file a single statement of intention of candidacy. However, when other provisions of Section 7-11-15 are considered, the fallacy of the Plaintiffs' limited and inaccurate construction becomes clear.

Eugene Platt was a candidate for House Seat 115. Accordingly, Section 7-11-15(2) applies to him. That provision reads:

Candidates seeking nomination for the State Senate or House of Representatives must file *their statements of intention of candidacy* with the county executive committee of their respective party in the county of their residence. The county committees must, within five days of the receipt of the statements, transmit the *statements* along with the applicable filing fees to the respective state executive committees. *However, the county committees must report all filings to the state committees no later than five p.m. on March thirtieth.* The state executive committees must certify candidates pursuant to Section 7-13-40.

S.C. Code Ann. § 7-11-15(2). (Emphasis added). This provision uses the plural in referring to "statements of intention of candidacy." While the Plaintiffs suggest that the General Assembly should have used the adjective "all" rather than the article "a" in Section 7-11-15, it is important to note that the General Assembly does require that "all filings" must be reported to the state

committees by 5:00 p.m. on March 30th. The term "all filings" means "all" statements of intention of candidacy.

Section 7-11-15 further explains that:

No candidate's name may appear on a primary election ballot, convention slate of candidates, general election ballot, or special election ballot, except as otherwise provided by law, if (1) the candidate's statement of intention of candidacy has not been filed with the County Election Commission or State Election Commission, as the case may be, by the deadline and (2) the candidate has not been certified by the appropriate political party as required by Sections 7-13-40 and 7-13-350, as applicable. The candidate's name must appear if the candidate produces the signed and dated copy of his timely filed statement of intention of candidacy.

S.C. Code Ann. § 7-11-15. This provision also rejects the Plaintiffs' suggestion that a candidate must only file "a" or a single statement of intention of candidacy. The provision addresses "the candidate's statement of intention of candidacy" and the requirement that "the" statement be timely filed by the March 30th deadline in order for the candidate's name to appear on the general election ballot.

Clearly, Section 7-11-15 requires that a candidate submit a statement of intention of candidacy for each party on whose ticket he/she wishes to run by March 30th. Importantly, Section 7-11-15 includes absolutely no provision for late filings under any circumstances, let alone such circumstances as asserted by the Plaintiffs where a candidate after the March 30th deadline decides to seek the nomination of another political party. Certainly, if the General Assembly had intended to allow for late filings, Section 7-11-15 would provide for such and set forth the procedure for receiving statements of intention of candidacy after the March 30th deadline.

In urging their construction of Section 7-11-15, the Plaintiffs also argue that the State Election Commission has in the past allowed a candidate to appear on the general election ballot

for a party without having timely filed a statement of intention of candidacy for that party where the candidate had timely filed a statement of intention of candidacy for another party. The Plaintiffs have submitted several emails from an employee of the State Election Commission, which they contend suggest that a timely statement of intention of candidacy for one party is sufficient under Section 7-11-15 to place a fusion candidate on the ballot for any other party. To the extent that Section 7-11-15 may have been misapplied in the past, that is not controlling on what the intent of the statute is. It is the intent of the General Assembly that governs, and that intent is clear from the statutory language itself.

Furthermore, the Plaintiffs' interpretation of the cited emails, even if correct, would not make Eugene Platt eligible for the general election ballot. These emails expressed an understanding that the filing of a timely statement of intention of candidacy would allow any "fusion candidate" to appear on the ballot for any parties whose nominations he/she received. That candidate would already qualify to be on the ballot for the party for which a timely statement of intention of candidacy was filed. The candidate would then be allowed to appear on the ballot for any other parties as a fusion candidate.

In the present case, Eugene Platt is *not* a fusion candidate. He is seeking to appear on the ballot for one party only, the Green Party, and he did not file a timely statement of intention of candidacy with the Green Party. Platt did file a timely statement of intention of candidacy with the Democratic Party, but he does not qualify and cannot appear on the general election ballot as the Democratic candidate. In other words, Platt has no legal right to be on the general election ballot because he is not a fusion candidate and is legally barred from appearing on the ballot as the nominee for the actual party with which he filed a timely statement of intention of candidacy.

Finally, the Plaintiffs argue that the Defendants should be estopped from raising a standing defense and maintaining that the Plaintiffs cannot meet the redressability prong of the

standing analysis. This argument clearly lacks merit. The United States Supreme Court and the Fourth Circuit have held on numerous occasions that subject matter jurisdiction may not be established by any conduct of the parties, including by consent or estoppel. For instance, in *Constantine v. Rectors and Visitors of George Mason University*, 411 F.3d 474 (4th Cir. 2005), the Fourth Circuit explained that "[b]ecause a federal court's subject-matter jurisdiction is created -- and limited -- by Article III and federal statutes, no action of the parties can confer subject-matter jurisdiction upon a federal court and ordinary principles of consent, waiver, and estoppel do not apply." 411 F.3d at 480, citing *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982). Consequently, contrary to the Plaintiffs' assertion, the Plaintiffs' standing to bring this action -- which includes the redressability prong -- cannot be established by estoppel.¹

Furthermore, the Green Party claims detrimental reliance because, had it been aware that Platt did not qualify for the general election ballot, it "might have nominated a replacement candidate." This claim fails for two reasons. First, the Green Party was advised in June 2008 that Platt did not qualify for the general election ballot and it made no effort to nominate a replacement candidate. Second, the Green Party could not have selected a replacement candidate because that person would not have filed a timely statement of intention of candidacy by the March 30th deadline.

Lastly, the Defendants submit that the doctrine of equitable estoppel has no application to an issue of law. In *Automobile Club of Michigan v. Commissioner of Internal Revenue*, 353 U.S. 180 (1957), the Supreme Court held that "[t]he doctrine of equitable estoppel is not a bar to the

¹ The Plaintiffs cite the case of *Larson v. Valente*, 456 U.S. 228 (1982), for the proposition that standing may be established by way of estoppel. That is not the holding of the Supreme Court in *Larson*. In fact, neither the word "estoppel" nor "estop" appears in that opinion. Moreover, no cases could be found where *Larson* was cited for the proposition asserted here -- that standing and hence Article III jurisdiction could be established by estoppel.

correction ... of a mistake of law." 353 U.S. at 183. *See also, McDade v. Morton*, 353 F.Supp. 1006, 1012 (D.D.C. 1973) ("[n]or is the administrative agency itself estopped by its former interpretation of a statute, however long standing, from correcting that which it presently feels to be clearly erroneous"); *Southern Hardwood Traffic Asso. v. United States*, 282 F.Supp. 1013, 1020(W.D. Tenn. 1968) ("it is clear that equitable estoppel against the Government cannot be invoked where the Government has acted to correct a mistake of law"). Here, the Plaintiffs argue that the Defendants should be estopped from applying Section 7-11-15 to disqualify Eugene Platt where he failed to file his statement of intention of candidacy with the Green Party until after the March 30th deadline. That is purely an issue of law to which equitable estoppel clearly has no applicability.

Based on the foregoing discussion, the Defendants reiterate their prior position that, even if this Court were to decide the constitutional questions presented by the Plaintiffs, the Plaintiffs would not be entitled to the ultimate relief that they seek. A favorable ruling on the constitutional question will not overcome the simple fact that Platt is not otherwise qualified to be on the general election ballot because he did not timely file a statement of intention of candidacy with the Green Party. Consequently, the Plaintiffs cannot meet the redressability prong of the standing analysis and have not demonstrated the existence of an Article III case or controversy

Respectfully submitted,

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