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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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AUG 29 2022

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2021- 000804

Johnnie Cordero Appellant

v.

Matthew Kisner, in his official capacity as
Chair of The Richland County Democratic
Party; The Richland County Democratic Party;
Trav Robertson, Jr., in his official capacity as
Chair of The South Carolina Democratic
Party; The South Carolina Democratic Party,

Respondents.

**MOTION FOR LEAVE TO
SUPPLEMENT RECORD ON APPEAL
PURSUANT TO SCACR 212(b)**

Comes Now, Johnnie Cordero Appellant in the above entitled appeal, acting on his own behalf, who moves this Honorable Court for Leave to Supplement the Record on Appeal to add the following information pertinent to the issues upon which this appeal is based. Argument has not yet commenced.

PROCEDURAL BACKGROUND

1. Notice of Appeal was filed in this matter on July 27, 2021.
2. Appellant filed an Amended Record on Appeal on August 18, 2022
3. Respondents have not filed their Final Brief..

FACTUAL BACKGROUND

In Appellant's complaint in the circuit court he alleged as follows:

Count One

**The Richland County Democratic Party convention
Cannot be held after March 31, 2020.
(South Carolina Code of Laws Section 7-9-10)**

- A. SC Code Section 7-9-70 requires that a county convention must be held
During a twelve-month period ending March thirty-first of each general
Election year during a month determined by the state committee as provided
In Section 7-9-100.**

The language of SC Code Section 7-9-70 is clear and unambiguous. The language is also *mandatory*. This section sets the outside date for County Conventions. That date was March 31, 2020. Plaintiff contends that counties that have not held their convention by March 31, may not hold conventions of any kind. Further, 7-9-100 provides that “[a]ny county failing or refusing to organize under the provision of this title may not have representation in the state convention.” Defendant RCDP under the leadership of Defendant Kisner has failed to adhere to the mandatory provisions of 7-9-100.” (Record on Appeal, p. 1).

In the appeal before this court Appellant argues that the circuit court erred in dismissing his action for declaratory and injunctive relief on the ground that “Plaintiff has no private right of action and lacks standing to bring this action.” Specifically, the court held that:

“Upon reviewing the statutes at issue, this Court finds neither the statutes nor the legislative intent create a private right of action. The statutes do not affirmatively state or imply that a private individual may bring an action to enforce a political party to comply with the statute. The statutes do not create a benefit or special duty to voters or members of a given political party. The State Ethics Commission has the authority to enforce the statute against a political party for any violation. See S.C. Code Ann. § 7-9-10.” And that “. . . the statute is clear and unambiguous and in no need of interpretation.”

The Respondent argues here and in the court below that Appellant lacks standing to sue because S.C. Codes §§ 7-9-10 and 7-9-100 do not confer a private right of action either express or implied and that these statutes may only be enforced by the State Election Commission.

(Order, 6/29/21, Amended Record on Appeal, p. 228). The circuit court agreed. (See, Record on Appeal, p 228).

On August 9, 2022, the South Carolina Democratic Party, Respondent in this action (Defendant below) filed a Verified Petition and Complaint for Declaratory and Injunctive Relief and seeking a preliminary injunction barring Defendant South Carolina Election Commission (Election Commission) from placing Defendants Gary Votour, Harold Geddings, III, and Lucas Faulk on the 2022 general election ballot because, *Defendant South Carolina Labor Party (Labor Party) failed to hold a nominating convention by the deadline set forth at S.C. Code Ann. § 7-9-100. (See, PETITION FOR AN EX PARTE TEMPORARY RESTRAINING ORDER, MOTION FOR A TEMPORARY INJUNCTION, COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, AND MOTION TO EXPEDITE DISCOVERY, (Attached as Exhibit A).*

The verified petition was heard by the Hon. Allison Renee Lee, the judge whose Order is here appealed from. The circuit court granted the petition holding that, inter alia, "S.C. Code Ann. § 7-9-100 is unambiguous and states:

"39. The state convention *shall* meet at a location in this state determined by the state committee to have adequate facilities during a thirteen-month period ending May fifteenth of every general election year on a day and at a time fixed by the state committee and announced publicly at least ten days before the meeting. (Emphasis added).

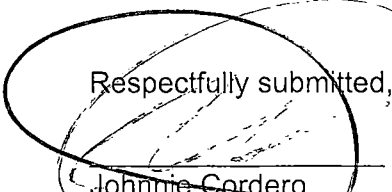
40. Under the rules of statutory interpretation, use of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement." (citation omitted)." (See, Order Granting Plaintiff;s Motion for a Preliminary Injunction, Docket No., 2022-CP-40-4077, attached as Exhibit B).

Appellant contends and urges this court to find that both Respondents' South Carolina Democratic Party's position in the matter filed on August 9, 2022, and the circuit court's holding in that matter on August 18, 2022, should be considered in this case as it will assist this court in reaching its decision.

Conclusion

For the foregoing reasons Appellant respectfully requests that he be granted leave to supplement the Record on Appeal and such other and further relief as to this court may seem just equitable and proper.

Dated: August 26, 2022
Columbia, SC


Respectfully submitted,

~~Johnnie Cordero~~
4104 Mandel Drive
Columbia, SC 29210
(803) 753-8091
APPELLANT, pro se

CERTIFICATE OF SERVICE

I, Johnnie Cordero, hereby certify that I served an exact copy of this Motion for Leave to Supplement the Record on Appeal on the attorneys for Respondents via USPS first- class mail postage prepaid and addressed as follows:

**BURNETT SHUTT & MCDANIEL, PA
912 LADY STREET,
COLUMBIA, SC 29202
ATTN: NEKKI SHUTT, ESQ.
GRANT BURNETT LEFEVER, ESQ.**

Dated: August 26, 2022
Columbia, SC


~~Johnnie Cordero~~

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AUG 29 2022

SC Court of Appeals

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NO.: _____

South Carolina Democratic Party,

Plaintiff,

v.

South Carolina Labor Party, Gary Votour,
Harold Geddings, III, Lucus Faulk, and
South Carolina Election Commission,

Defendants.

**PETITION FOR AN *EX PARTE*
TEMPORARY RESTRAINING ORDER,
MOTION FOR A TEMPORARY
INJUNCTION, COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF, AND MOTION TO
EXPEDITE DISCOVERY**

Plaintiff South Carolina Democratic Party hereby petitions for a temporary restraining order, moves for a temporary injunction and expedited discovery, and files this complaint for declaratory and injunctive relief, and would respectfully show unto the Court as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff South Carolina Democratic Party (Democratic Party) is a political party duly constituted under the laws of the State of South Carolina that has nominated candidates to appear on the 2022 general election ballot for (in relevant part) the offices of Governor, Lieutenant (Lt.) Governor, and Congress for the First Congressional District (CD-1).

2. Defendant South Carolina Labor Party (Labor Party) is a political party obligated to follow the laws of this State and its own party rules that has unlawfully nominated candidates to appear on the 2022 general election ballot for the offices of Governor, Lt. Governor, and CD-1, and certified those candidates as having been duly nominated by party convention. The purpose of this action is to prevent those unlawfully “nominated” individuals from being placed on the general election ballot.

3. Defendant Gary Votour is believed to be a resident of Richland County and citizen of South Carolina. Votour was unlawfully nominated by the Labor Party as its candidate for the office of Governor and certified as eligible to appear on the general election ballot.

4. Defendant Harold Geddings, III is believed to be a resident of Calhoun County and citizen of South Carolina. Geddings was unlawfully nominated by the Labor Party as its candidate for the office of Lt. Governor and certified as eligible to appear on the general election ballot.

5. Defendant Lucus Devan Faulk is believed to be a resident of Berkeley County and citizen of South Carolina. Faulk was unlawfully nominated by the Labor Party as its candidate for CD-1 and certified as eligible to appear on the general election ballot.

6. Defendant South Carolina Election Commission (Election Commission) is an agency of the State of South Carolina responsible for receiving certifications from political parties of their nominees and preparing the general election ballot according to law. As such, the Election Commission is joined under Rule 19 of the South Carolina Rules of Civil Procedure as a party necessary to grant complete relief.

7. The Court has jurisdiction over the subject matter of any action filed in this dispute pursuant to Article V, Section 11 of the South Carolina Constitution and the Uniform Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10 et seq.

8. Venue is proper in Richland County pursuant to South Carolina Code § 15-7-30(C), because the most substantial part of the acts and omissions giving rise to the allegations here occurred in Richland County, South Carolina.

FACTS

9. South Carolina law allows political parties to nominate candidates for the general election by holding a party convention.

10. However, in doing so, the political party and its candidates must follow procedures required by state law:

Except as provided in subsection (B), party conventions or party primary elections held by political parties certified as such by the State Election Commission pursuant to the provisions of this title to nominate candidates for any of the offices to be filled in a general or special election *must be conducted in accordance with the provisions of this title and with party rules* not in conflict with the provisions of this title or of the Constitution and laws of this State or of the United States.

S.C. Code Ann. § 7-11-20(A) (emphasis added).

11. In order to conduct a nominating convention, “[t]he state convention *shall meet* at a location in this state determined by the state committee to have adequate facilities during a thirteen-month period *ending May fifteenth of every general election year* on a date and at a time fixed by the state committee and announced publicly at least ten days before the meeting.” S.C. Code Ann. § 7-9-100 (emphasis added). The state committee “shall notify the delegates to the state convention of the accommodations that are available for the delegates during the convention” with a notice that “must include” the name, location, and cost of the accommodations. Id.

12. Moreover, prior to any state convention, a political party must hold county conventions that determine the delegates and executive committee members eligible to serve at the state nominating convention. See id. S.C. Code Ann. §§ 7-9-90 (state committee composed of one member from each county elected by county convention and state chair and vice-chair elected by state convention); -100 (requiring sufficient notice of month for county conventions).

13. “A county convention must be held during a twelve-month period *ending March thirty-first of each general election year* during a month determined by the state committee as provided in Section 7-9-100.” S.C. Code Ann. § 7-9-70 (emphasis added).

14. In fact, the Labor Party’s own Constitution and Bylaws states that “[e]ach county shall hold its convention at the publicly announced time and place prior to March 31 in each

general election year” and the state party “shall hold its state convention prior to May 15 in each general election year at a publicly announced time and place designated by the state committee. Labor Party CONST. & BYLAWS art. V ¶ 2 & art. VI ¶ 1.

15. The Labor Party did not follow these laws and rules.

16. As set forth more fully in the affidavit of Labor Party co-chair, Willie Legette (attached as **Exhibit A**), eligible members of the Labor Party executive committee voted between March 14 and March 16, 2022, by a margin of 4-2 *not* to run candidates in 2022 and *not* to hold a nominating convention. Ex. A ¶¶ 4–7.

17. On March 17, 2022, Votour filed a statement of intention of candidacy (SIC) and party pledge to run for the Labor Party nomination for Governor.

18. On March 18, 2022, Legette emailed Votour as co-chair, and copied the executive committee of the Labor Party (including Dewitt), stating that the Labor Party executive committee had voted not to hold a convention by the May 15 deadline. Ex. A ¶ 10.

19. No one disputed Legette’s report on the Labor Party’s position. Id.

20. On March 21, 2022, Faulk filed a SIC and party pledge to run for the Labor Party nomination for CD-1.

21. For approximately three and a half months, the Labor Party took no action. It held no county conventions by the March 31 deadline and no state convention by the May 15 deadline.

22. Then, on July 9, 2022, at 10:40 p.m., the Labor Party’s co-chair, Donna Dewitt, sent an email purporting to call a “Nominating Convention” to meet on Saturday, July 30, 2022, at the Riverwalk Pavilion in Cayce, South Carolina. Ex. A ¶ 12 & Ex. 1.

23. Dewitt's email instructed that "Counties that plan to participate should meet by July 16 (two weeks prior to the state convention date) to elect delegates to the convention for the purpose of nominating candidates for the November General Election." Id.

24. Upon information and belief, a meeting purporting to be a state nominating convention of the Labor Party occurred sometime on July 30, 2022, which included Votour, Geddings, and Dewitt.

25. After the meeting, Votour claimed in a Facebook post that he and Geddings were nominated "by a unanimous vote of all delegates in attendance..." for Governor and Lt. Governor:



26. On August 3, 2022, Geddings filed a SIC and party pledge to run as the Labor Party's nominee for Lt. Governor.

27. Thereafter, the Labor Party certified Votour, Geddings, and Faulk to the Election Commission as having been nominated by convention to appear on the November 2022 general election ballot as its candidates for Governor, Lt. Governor, and CD-1, respectively.

28. Prior to the sham convention, on July 26, 2022, Legette contacted the Election Commission via email and warned that Dewitt planned to hold a nominating convention that “violates the rules and decisions made by the leadership of the SC Labor Party and state law.” Ex. A ¶ 13 & Ex. 2.

29. Nevertheless, on August 4, 2022, the Election Commission decided it could not remove Votour, Geddings, or Faulk from the ballot based on Legette’s report.

30. The Election Commission’s deputy executive director, Chris Whitmire, wrote in response that “Unless directed to do otherwise by some competent authority, we are required to place the names of the certified candidates on the Nov. 8, 2022 General Election ballot[.]” Joseph Bustos, “Some SC Labor Party members didn’t want a nominee for governor. Why they’re getting one,” THE STATE (Aug. 4, 2022).¹

31. THE STATE Newspaper reported Dewitt to have defended the decision by stating, “The fact that we had candidates file gives you the opportunity ... to reconvene the organization to have a nominating convention for your candidates[.]” *Id.* That is not correct.

32. Simply put, the Labor Party decided not to hold a convention or nominate candidates, but one co-chair disagreed and overrode the party’s decision.

33. Then, having missed the legal deadlines to hold nominating conventions, the Labor Party conducted an illegal, sham convention to place candidates on the ballot for Governor, Lt. Governor, and CD-1.

34. The Democratic Party followed the law and party rules when nominating its candidates for Governor, Lt. Governor, and CD-1.

¹ Available at: <https://www.thestate.com/news/politics-government/article264181221.html>.

35. Absent a temporary restraining order, declaratory relief, and a temporary and permanent injunction from the Court, the Democratic Party and the duly nominated candidates it seeks to elect in the 2022 general election, will suffer an irreparable injury for which there is no adequate remedy at law.

36. Specifically, allowing unlawfully nominated Labor Party candidates to appear on the ballot violates State law to the detriment of the Democratic Party and other political parties who followed the rules and seek a fair, lawful electoral contest.

**PETITION FOR A TEMPORARY RESTRAINING ORDER
AND MOTION FOR A TEMPORARY INJUNCTION
(Rule 65(a)–(b), SCRCP)**

37. Each of the foregoing paragraphs are incorporated herein.

38. Rule 65 of the civil rules provides that an *ex parte* temporary restraining order (TRO) may not issue “unless it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon.” Rule 65(b), SCRCP.

39. A TRO should issue here because the Labor Party failed to comply with the deadline to nominate candidates by party convention, and then held an illegal, sham convention purporting to “nominate” Votour, Geddings, and Faulk and certified those sham nominees to the Election Commission to be placed on the ballot.

40. The Democratic Party and other law-abiding political parties will be harmed if the Election Commission prepares ballots with unlawfully nominated candidates.

41. Once ballots are prepared, printed, and disseminated to election workers, there is no relief for the injury short of forcing the Election Commission to re-print ballots at great disruption to the election process and cost to taxpayers.

42. Once voters vote, the prospect of granting full relief is impossible since the only available remedy is to invalidate votes cast for illegally nominated candidates, thus harming voters who unwittingly voted for sham nominees and denying candidates of other political parties the opportunity to compete for those voters.

43. Accordingly, a TRO should issue to require the Election Commission to cease and desist from finalizing or disseminating general election ballots until a hearing can be held.

44. Once a hearing is held, the Court should issue a temporary injunction under Rule 65(a) of the South Carolina Rules of Civil Procedure as set forth below.

**FOR A FIRST CAUSE OF ACTION
(Declaratory Relief)**

45. Each of the foregoing paragraphs are incorporated herein.

46. Pursuant to South Carolina Code § 15-53-20, the Court should declare that the Labor Party has violated Title 7 of the South Carolina Code of Laws in one or more of the following ways, each of which is sufficient grounds to grant relief:

- a. Holding an untimely nominating convention in violation of South Carolina Code § 7-9-100;
- b. Violating its own party rules in convening an untimely nominating convention, in violation of South Carolina Code § 7-11-20(A);
- c. Acting *ultra vires* and without legitimate process authorizing the convening a convention or nominating candidates; and
- d. In such other ways as may be shown in discovery or during a hearing on the matter.

**FOR A SECOND CAUSE OF ACTION
(Injunctive Relief)**

47. Each of the foregoing paragraphs are incorporated herein.

48. Pursuant to South Carolina Code § 15-53-120, the Court should enter a TRO and, after a hearing, a preliminary and permanent injunction enjoining the Election Commission from placing Votour, Geddings, and Faulk on the 2022 general election ballot and order any such further relief necessary to conform 2022 general election ballot to the law and effectuate the orders and judgment of the Court.

MOTION FOR EXPEDITED DISCOVERY

33. Each of the foregoing paragraphs are incorporated herein.

34. Pursuant to Rules 16, 26, and 57 of the civil rules, Plaintiff moves for a discovery order requiring the Labor Party, Votour, Geddings, Faulk, and the Election Commission to produce the following documents, electronically stored information, and tangible things on or before three (3) days prior to the hearing on the motion for a preliminary injunction:

a. The Labor Party should be ordered to produce:

- i. A copy of the Labor Party constitution, bylaws, or rules in effect in 2020, 2021, and 2022.
- ii. All notices to delegates and the public of any state or county convention held in 2020, 2021, and 2022.
- iii. All minutes of any state or county convention held in 2020, 2021, and 2022.
- iv. All minutes of any meeting of the state executive committee in 2020, 2021, and 2022.
- v. A list of delegates and alternates in attendance at the so-called “convention” purportedly held on July 30, 2022.
- vi. A list of all photographs and video from the so-called “convention” purportedly held on July 30, 2022.

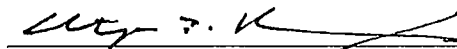
- vii. All communications (letters, emails, text messages, etc.) regarding the decision whether to hold or not hold a convention in 2022.
 - viii. All communications (letters, emails, text messages, etc.) with Votour, Geddings, and Faulk regarding their candidacy to be nominees for the Labor Party on the 2022 general election ballot.
 - ix. All communications (letters, emails, text messages, etc.) with the Election Commission regarding the nomination of candidates to appear on the 2022 general election ballot.
 - x. All communications (letters, emails, text messages, etc.) with the national Labor Party and its officers, committee members, or directors regarding the nomination of candidates to appear on the 2022 general election ballot in South Carolina or any convention in South Carolina in 2022.
- b. Votour, Geddings, Faulk should be ordered to produce:**
- i. A list of all photographs and video from the so-called “convention” purportedly held on July 30, 2022.
 - ii. All communications with any Labor Party officer, committee member, or delegate regarding their candidacy to be nominees for the Labor Party on the 2022 general election ballot.
 - iii. All communications (letters, emails, text messages, etc.) with the Election Commission regarding their candidacy for and appearance as Labor Party nominees on the 2022 general election ballot.
- c. Elections Commission should be ordered to produce:**
- i. All certifications of the Labor Party relating to the 2022 general election and the nomination of candidates for the same, and
 - ii. All communications (letters, emails, texts, etc.) from any Labor Party candidate, officer, committee member or delegate relating to the 2022 election.

PRAYER

WHEREFORE, the Democratic Party requests that the Court grant this petition for a TRO and motion for expedited discovery and order and declare that:

- i. The Election Commission is temporarily restrained from finalizing or printing the 2022 general election ballot until a hearing can be held;
- ii. A hearing will be held within 10 days;
- iii. Defendants shall respond to the above-stated discovery requests on or before three (3) days prior to the hearing for a preliminary injunction;
- iv. The Labor Party has violated one or more laws or party rules in nominating Votour, Geddings, and Faulk as described above;
- v. The Elections Commission is preliminarily and permanently enjoined from placing Votour, Geddings, or Faulk on the 2022 general election ballot; and
- vi. That the Court order any further relief it deems just and proper.

Respectfully submitted,



Christopher P. Kenney (S.C. Bar No. 100147)
RICHARD A. HARPOOTLIAN P.A.
1410 Laurel Street
Post Office Box 1090
Columbia, South Carolina 29202
Phone (803) 252-4848
Facsimile (803) 252-4810
cpk@harpootlianlaw.com

ATTORNEY FOR PLAINTIFF
SOUTH CAROLINA DEMOCRATIC PARTY

August 9, 2022
Columbia, South Carolina.

EXHIBIT B

challenge the Labor Party's convention; and also testified and cross-examined some of the witnesses; and made arguments to the Court. Mr. Geddings and Mr. Faulk did not call or cross-examine any witnesses and did not make any arguments to the Court.

For reasons that follow, Plaintiff's motion for a preliminary injunction is **GRANTED** and the Election Commission is enjoined and **ORDERED** not to include Mr. Votour, Mr. Geddings, or Mr. Faulk on the 2022 general election ballot. This preliminary injunction shall remain in place until dissolution, entry of final judgment, or further order of the Court. Nothing in this order shall be construed to prevent the Election Commission from proceeding immediately to prepare the general election ballots. In issuing this preliminary injunction, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Having carefully considered and weighed the evidence in this case, including exhibits and testimony, the Court makes the following findings of fact by the preponderance of the evidence:

1. Plaintiff is a political party certified by the Election Commission and obliged to follow the laws of this State when nominating candidates to appear on a general election ballot.
2. Plaintiff has nominated candidates to appear on the 2022 general election ballot for, in relevant part, the offices of Governor, Lieutenant (Lt.) Governor, and Congress for the First Congressional District (CD-1).
3. The Labor Party is a political party certified by the Election Commission and obligated to follow the laws of the State when nominating candidates to appear on a general election ballot.
4. Mr. Votour filed a timely statement of intention of candidacy (SIC) and party pledge (PP) indicating his intention to seek the Labor Party's nomination for Governor.

5. Mr. Geddings filed a timely SIC and PP indicating his intention to seek the Labor Party's nomination for Lt. Governor.

6. Mr. Faulk filed a timely SIC and PP indicating his intention to seek the Labor Party's nomination for CD-1.

7. Mr. Votour and Mr. Faulk's SIC and PP filings were made prior to the noon deadline on March 30 (*see* S.C. Code Ann. § 7-11-15; *see also* Pl. Ex. 1 (setting deadlines)), while Mr. Geddings' was submitted pursuant to procedures set forth in S.C. Code Ann. § 7-11-12, concerning the joint election of Governor and Lt. Governor. All were accepted by the Election Commission as timely filed and the candidates' SIC and PP filings are not in dispute here.

8. A dispute occurred within the Labor Party over whether to have a convention to nominate candidates to appear on the 2022 general election ballot.

9. Mr. Legette testified he was elected as a co-chair of the Labor Party during the party's March 2020 convention and remains co-chair today.

10. Mr. Legette explained that the Labor Party's joint committee voted 4 to 4 from March 14 to March 16, 2022, not to have a convention or nominate candidates, but that two of the four persons in favor of having a convention were not eligible to vote as members of the joint committee. Thus, Mr. Legette testified that the Labor Party chose not to have a convention or nominate candidates.

11. He memorialized this decision in an email to Mr. Votour with a copy to the other joint committee members, including Ms. Dewitt, on March 18, 2022, stating:

Dear Gary,

We saw your announcement that you filed your Intention of Candidacy to run on the South Carolina Labor Party (SCLP) ballot line.

While we appreciate your interest in running as an SCLP candidate, I am writing to inform you, on behalf of the SCLP State/Joint Committee, that by vote of this committee, the SCLP will not be holding a convention ahead of the May 15 deadline for the 2022 General Election.

Please let me know if you have any questions.

Willie Legette, Co-chair
SC Labor Party

Pl. Ex. 6.

12. To Mr. Legette's knowledge, there was no discussion by the Labor Party of having a state convention to nominate candidates in April or May 2022.

13. He testified that no state party convention was held in 2021. He was unaware of any county conventions in 2021 or 2022.

14. The Court admitted into evidence a copy of the Labor Party's Constitution and Bylaws, which indicates, in relevant part, that county conventions "shall" be held prior to March 31, and state conventions "shall" be held "prior to May 15 in each general election year[.]" Pl. Ex. 7 at art. V ¶ 2; art. VI ¶ 1.

15. Mr. Legette testified that not only were these the party rules that the Labor Party was obligated to follow, but they were also consistent with his understanding of the deadlines imposed by state law.

16. However, in July 2022, Ms. Dewitt called a state convention for July 31, 2022, for the purpose of nominating candidates to appear on the 2022 general election ballot.

17. On July 26, 2022, Mr. Legette contacted the Election Commission to report that Ms. Dewitt planned to hold a nominating convention in July 2022, in violation of the joint committee's decision and the May 15 deadline under S.C. Code Ann. § 7-9-100, and to urge the Election Commission not to certify any nominees of the Labor Party. *See* Pl. Ex. 2 at p. 3.

18. Other members of the Labor Party sent a memorandum (Pl. Ex. 2 at p.5) and letter (Pl. Ex. 4) agreeing that the July 31 convention “would violate both the rules of the Labor Party and decisions made by the party’s leadership consistent with those rules, and it would appear to violate state election law.” Pl. Ex. 4.

19. Ms. Dewitt disagreed, and submitted a letter dated August 1, 2022, to the Election Commission reporting that a convention was held on Saturday, July 30, 2022, “for the purpose of nominating and approving” Mr. Votour, Mr. Geddings, and Mr. Faulk. Pl. Ex. 2 at p. 8.

20. The Election Commission’s executive director, Howard Knapp, testified that there are three methods by which candidates can appear on the general election ballot: nomination by political party convention, nomination by political party primary election, and petition candidates. *See also* S.C. Code Ann. § 7-11-10.

21. Mr. Knapp explained further that political parties are certified by the Election Commission and must follow rules set out by state law.

22. These laws include certain deadlines, a list of which has long been prepared and published by the Election Commission on its website to aid the public in understanding key deadlines and the laws that set those deadlines.

23. A list of those deadlines posted on the Election Commission’s website, titled 2022 Election Calendar, was introduced into evidence and indicates, in relevant part, that the “Deadline for political parties to hold state conventions” is May 15, 2022. *See* Pl. Ex. 1 at p. 2.

24. Director Knapp agreed that the calendar’s repeated use of the word “deadline” to describe the various events listed meant it was a mandatory obligation imposed by state law.

25. On August 3, 2022, Director Knapp wrote the Attorney General seeking an opinion over whether the Election Commission should place the Labor Party candidates on the general election ballot considering the intra-party dispute. Pl. Ex. 2.

26. The Election Commission did not receive an opinion from the Attorney General.

27. Accordingly, the Election Commission staff concluded that the Commission's statutory obligation under S.C. Code Ann. § 7-13-350(A) did not afford it discretion to reject a timely candidate certification, and informed Ms. Dewitt and Mr. Legette of the same via email on August 4, 2022. *See* Pl. Ex. 3.

28. In that correspondence, the Election Commission explained, "The SEC has determined that because we have received a timely certification in writing from a Labor Party chairperson, the requirements of [S.C. Code Ann. § 7-13-350] have been met, and unless directed to do otherwise by some competent authority, we are required to place the names of the certified candidates on the November 8, 2022 General Election ballot." Pl. Ex. 3.

29. When asked what the Election Commission was referring to as a "competent authority" that might direct otherwise, Director Knapp responded: "courts."

30. Finally, Director Knapp and counsel for the Election Commission explained that, to be able to comply with federal law, the agency had to begin preparing ballots on August 15, 2022, and that time was of the essence to ensure the Election Commission could meet state deadlines to provide ballots to county election commissions and to mail absentee ballots overseas pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. § 1973ff, *see also* S.C. Code Ann. § 7-15-630.

31. Mr. Votour testified the Labor Party had a lawful convention that was reconvened from a previous convention. He also testified that he and the Labor Party complied with all party rules and state law.

32. Though questioning of witnesses, Mr. Votour established that after he sent an email to Mr. Legette regarding his intent to be a candidate for state office, Mr. Legette did not contact him about the matter.

33. Mr. Geddings and Mr. Faulk did not testify at the hearing nor did they cross-examine any witnesses. Also present at the hearing was Donna Dewitt, co-chair of the S.C. Labor Party. The S.C. Labor Party was not represented by legal counsel.

CONCLUSIONS OF LAW

In granting Plaintiff's motion for a preliminary injunction, the Court makes the following conclusions of law:

34. Rule 65 of the South Carolina Rules of Civil Procedure provides that no preliminary injunction shall be issued without notice to the adverse party. Rule 65(a), SCRPC. Here, the Defendants had notice and were present and given an opportunity to be heard and present evidence.

35. "An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation." *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). An applicant must show (1) immediate, irreparable harm; (2) likelihood of success on the merits; and (3) no adequate remedy at law. *Id.*; see also *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010).

36. Plaintiff urges the Court to enjoin the Election Commission³ from including the Labor Party candidates on the general election ballot because their nominating convention was after May 15, 2022, and therefore untimely under S.C. Code Ann. § 7-9-100.

37. Plaintiff argues that certified political parties like the Labor Party are obligated to hold party conventions “pursuant to the provisions of [Title 7 of the South Carolina Code] to nominate candidates ... and with party rules not in conflict with the provisions of this title or of the Constitution and laws of this State or the United States. S.C. Code Ann. § 7-11-20(A); *see also* Pl. Pet. ¶ 46(b) (citing § 7-11-20(A)).

38. Plaintiff argues the uncontradicted evidence shows the Labor Party violated S.C. Code Ann. § 7-9-100 by failing to hold a nominating convention on or before May 15, 2022, making its certification of Mr. Votour, Mr. Geddings, and Mr. Faulk’s respective nominations an *ultra vires* act that state law does not allow. *See* Pl. Pet. ¶ 46(c). The Court agrees.

39. S.C. Code Ann. § 7-9-100 is unambiguous and states:

The state convention *shall* meet at a location in this state determined by the state committee to have adequate facilities during a thirteen-month period ending May fifteenth of every general election year on a day and at a time fixed by the state committee and announced publicly at least ten days before the meeting.

(Emphasis added).

40. “Under the rules of statutory interpretation, use of words such as ‘shall’ or ‘must’ indicates the legislature’s intent to enact a mandatory requirement.” *Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002).

³ Plaintiff does not dispute the Election Commission’s conclusion that it lacked discretion under S.C. Code Ann. § 7-13-350 to do anything other than accept the Labor Party’s nomination and seeks no relief on that basis.

41. The 2022 Election Commission Calendar, prepared and published by the Election Commission, clearly advises the public of election deadlines, including deadlines for political parties to convene a convention to nominate candidates for elected office. Pl. Ex. 1. The Labor Party's rules indicate a convention must be held prior to May 15 in each general election year and that "[a]ll conventions will be conducted in accordance with the laws and regulations of the state of South Carolina." Ex. 7 at art. VI ¶ 1.

42. This mandate was not followed by the Labor Party, which held its nominating convention in July 2022.

43. Mr. Votour raised questions with witnesses over whether the Labor Party was permitted to "reconvene" a nominating convention. Construing this argument in the most favorable light, the Court declines to credit it for two reasons.

44. First, to reconvene a convention, a political party must first convene one. The uncontradicted factual record here is that the Labor Party's last convention was March 2020 during a previous general election year. No convention was held in 2021 or prior to the May 15, 2022 deadline.

45. Second, the Court agrees with Plaintiff's argument that when the South Carolina Code of Laws refers to reconvening, it contemplates the situation whereby a convention is held during a non-general election year "for the purpose of reorganization," and then "must set a month during the general election year for the county convention to be reconvened for the purpose of nominating candidates for public office to be filled in the general election." S.C. Code Ann. § 7-9-100; *see also id.* § 7-9-70. That is not the circumstance presented to the Court in this matter.

46. Indeed, if a political party could simply deem any convention to be "reconvened" from a prior one, it would render the deadline imposed by S.C. Code Ann. § 7-9-100 meaningless.

See Jones v. State Farm Mut. Auto Ins. Co., 364 S.C. 222, 232, 612 S.E.2d 719, 724 (Ct. App. 2005) (courts reject interpretations that defeat plain legislative intent).

47. Therefore, the Court concludes Plaintiff is likely to prevail on the merits.

48. Mr. Votour's arguments that the Labor Party acted in good faith and Plaintiff has unclean hands do not address the issues in this matter. The question in this case is controlled by statutes that set deadlines for certain activities connected with the election process. State law is clear and unambiguous on the deadlines and no exceptions are provided. This Court is constrained to apply the law as written.

49. After the hearing, the Court received correspondence from Mr. Votour, which raised the issue that the candidates' certifications were lawful and that the vote of the joint committee was not as Mr. Legette claimed. However, the Court agrees with Plaintiff that the issue for the Court is not to decide the internal dispute of the Labor Party or to review the Election Commission's decision that it lacked discretion to reject certification of the nominations. Instead, the issue is whether the nominating convention complied with the statutory deadline. The evidence on that point is clear: it did not.

50. Further, the Court concludes that, without an injunction, Plaintiff and others could suffer irreparable harm.

51. Based on the evidence and the law, it appears time is of the essence to avoid disruption to key election deadlines to prepare ballots and disseminate them within South Carolina and overseas consistent with state and federal law.

52. Further, "[i]ntegrity in elections is foundational." *Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 556, 725 S.E.2d 704, 706 (2012).

53. In *Anderson*, the Supreme Court granted relief based on a “the substantial likelihood that the respective political parties ha[d] erroneously certified candidates for inclusion on the primary ballot,” reasoning that prospective relief to ensure the ballot was accurate was necessary to avoid chaos and address the consequences “of the political parties ignoring their statutory gatekeeping role[.]” *Id.* Thus, the Supreme Court granted relief “to require compliance with the law and ensure that only legally qualified candidates are included on the ballots.” *Id.* The same reasoning applies here.

54. The voters of this State are entitled to a general election ballot with candidates nominated in compliance with state law.

55. The Court also agrees that Plaintiff and other political parties will be harmed if the Election Commission prepares ballots with unlawfully nominated candidates and that, once ballots are prepared, printed, and disseminated to election workers and voters, there is no relief for the injury. *See* Pet. ¶¶ 40–42.

56. Accordingly, the Court concludes Plaintiff has shown an immediate, irreparable harm, a likelihood to succeed on the merits, and no adequate remedy at law such that it is entitled to an injunction.

CONCLUSION

For the reasons set forth above, the preliminary injunction is **GRANTED**, and the Election Commission is **ORDERED** not to include Mr. Votour, Mr. Geddings, or Mr. Faulk on the 2022 general election ballot. Nothing in this order shall be construed to prevent the Election Commission from proceeding immediately to prepare the general election ballots.

AND IT IS SO ORDERED.

SIGNATURE PAGE TO FOLLOW



Richland Common Pleas

Case Caption: South Carolina Democratic Party vs South Carolina Labor Party ,
defendant, et al
Case Number: 2022CP4004077
Type: Order/Other

IT IS SO ORDERED!

s/ Alison Renee Lee

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