

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2021- 000804

RECEIVED

FEB 13 2023

SC Court of Appeals

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.

SECOND AMENDED RECORD ON APPEAL

APPELLANT OF RECORD:
JOHNNIE CORDERO
4204 MANDEL DRIVE
COLUMBIA, SC 29210
(803)753-8091
APPELLANT

OTHER COUNSEL OF RECORD:

NEKKI SHUTT, ESQ.
GRANT BURNETTE LEFEVER, ESQ.

BURNETTE SHUTT & MCDANIEL, PA
912 Lady Street
Columbia, SC 29201 (803)850-0912

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SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Johnnie Cordero,)
) Plaintiff,)
)
vs.)
)
Matthew Kisner, in his official capacity as)
Chair of The Richland County Democratic)
Party, and)
)
The Richland County Democratic Party,)
and)
Trav Robertson, Jr., in his official capacity)
as Chair of The South Carolina Democratic)
Party, and)
)
The South Carolina Democratic Party,)
)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2020-CP-40-_____

SUMMONS

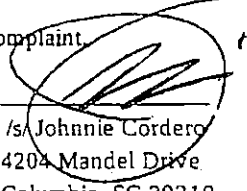
2020CP4001980

2020 APR 16 AM 11:42
RICHLAND COUNTY
CLERK OF COURT
J. S. GIBBIE

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your answer to this Complaint upon the subscriber at the address shown below within thirty (30) days (thirty five (35) days if served by United States Mail) after service hereof, exclusive of the date of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

Dated: 6 April 2020
Columbia, South Carolina


/s/ Johnnie Cordero
4204 Mandel Drive
Columbia, SC 29210
Tel.: (803) 753-8091
Email.: cordero1018@att.net
Plaintiff, pro se

SOUTH CAROLINA

COUNTY OF RICHLAND

Johnnie Cordero,

Plaintiff,

vs.

Matthew Kisner, in his official capacity as
Chair of The Richland County Democratic
Party, and

The Richland County Democratic Party,
and

Trav Robertson, Jr., in his official capacity
as Chair of The South Carolina Democratic
Party, and

The South Carolina Democratic Party,

Defendants.

IN THE COURT OF COMMON PL EAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2020-CP-40-

2020CP4001980

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
PURSUANT TO SC CODE
§§ 15-53-10 and 15-53-90
RULE 65 SC RULES OF
CIVIL PROCEDURE
(JURY TRIAL DEMANDED)

2020 APR 16 AM 11:42
CLERK OF COURT
RICHLAND COUNTY
S.C.

The Plaintiff, Johnnie Cordero, acting on his own behalf, complaining of the Defendants
alleges as follows:

INTRODUCTION

Political parties represent the voice of the people. It is for this reason that they have
significant protection under the First Amendment. But the voice cannot be representative and
authentic if political parties are able to circumvent the rules put in place to ensure that minorities
are heard not only in the voting booth but also in the party activities at every level including
counties. State rules that govern political parties exist against the backdrop of a racist history
that has once again reared its ugly head in the wake of the Supreme Court decision in *Shelby*

County v. Holder, 133 S. Ct. 2612 (2013). The *Shelby* decision has given rise to a veritable tsunami of legislation ostensibly passed to prevent voter fraud but that has actually served to make it difficult for African Americans and other minorities to exercise their right to vote.

Many and varied have been the dilutative techniques used to suppress the African American vote. Everything from literacy tests to poll taxes and grandfather clauses have successfully been used. Over the years the methods have changed but the goals have not. African Americans represent 66.7% of the Democratic electorate in South Carolina. African American registered voters in South Carolina are more than one million strong. African Americans represent 51% of the Richland County population. The right to vote and more particularly to participate in political party activities has been the bedrock of the fight for political recognition and empowerment of minorities both in South Carolina and throughout the United States since the 1960's.

In 1964 the Mississippi Freedom Democratic Party was organized under the leadership of the late Mrs. Fannie Lue Hammer and others who had been excluded by Democratic Party rule from participation in the Mississippi Democratic Party. During this same period the South Carolina Democratic Party also excluded African Americans from participation in the Party.¹ As a direct result of such exclusionary and discriminatory practices the Democratic National Committee (hereinafter "DNC") instituted its *Six Basic Elements*² that have been adopted by the

¹ <https://www.thestate.com/news/special-reports/state-125/article43721457.html>

² Six Basic Elements The six basic elements adopted by the Democratic National Committee as official policy statements, January 1968, shall be implemented at all levels of the South Carolina Democratic Party. (1) All public meetings at all levels of the Democratic Party in each State should be open to all members of the Democratic Party regardless of race, color, creed, national origin, age, gender, or sexual orientation. (2) No test for membership in, nor any oaths of loyalty to, the Democratic Party in any State should be required or used which has the effect of requiring prospective or current members of the Democratic Party to acquiesce in, condone, or support discrimination on the grounds of race, color, creed, national origin, age, gender or sexual orientation. (3) *The time and place for all public meetings of the*

Defendant SCDP and incorporated by Defendant RCDP in its Bylaws by reference. Moreover, the Delegate Selection Rules For the 2020 Democratic National Convention³ state as follows:

“[T]he 1964 Democratic National Convention adopted a resolution which conditioned the seating of delegates at future conventions on the assurances that discrimination in any State Party affairs on the ground of race, color, creed or national origin did not occur.” Rule 4(b) An Open Party.⁴

The said 2020 Delegate Selection Plan establishes an Affirmative Action Plan for each State Party. The intent of the Affirmative Action Plan is best stated in the plan itself.

“The promises of a democratically elected government and the right to vote have not always been extended equally to all Americans. Historically, certain groups of Americans have been explicitly denied the right to vote or have been subjected to discriminatory and exclusionary practices with the intended effect of denying them voting rights.

...

1. The goal of such affirmative action shall be to achieve participation in the delegate selection process and Party organization at all levels by the aforementioned groups *as indicated by their presence in the Democratic electorate.*”

Democratic Party on all levels should be publicized fully and in such a manner as to assure timely notice to all interested persons. Such meetings must be held in places accessible to all Party members and large enough to accommodate all interested persons. (4) The Democratic Party on all levels should support the broadest possible registration without discrimination on grounds of race, color, creed, national origin, age, gender or sexual orientation. (5) The Democratic Party in each State should publicize fully and in such a manner as to assure notice to all interested parties a full description of the legal and practical procedures for selection of Democratic Party Officers and representatives on all levels. Publication of these procedures should be done in such a fashion that all prospective and current members of each State Democratic Party will be fully and adequately informed of the pertinent procedures in time to participate in each selection procedure at all levels of the Democratic Party organization. (6) The Democratic Party in each State should publicize fully and in such a manner as to assure notice to all interested parties a complete description of the legal and practical qualifications for all officers and representatives of the State Democratic Party. Such publications should be done in a timely fashion so that all prospective candidates or applicants for any elected or appointed position within the State Democratic Party and each county will have full and adequate opportunity to compete for office. SCDP Rules as amended April 29, 2017, Section III, pp. 4-5. (Italics added).

³ <https://scdp.org/wp-content/uploads/2017/05/rules-as-amended-2017-2.pdf>

⁴ <https://scdp.org/wp-content/uploads/2017/05/rules-as-amended-2017-2.pdf>

Plaintiff is the Chair of the Affirmative Action Committee of the 2020 Delegate Selection Plan and along with the Affirmative Action Committee has the responsibility of monitoring the Defendant SCDP's implementation of the Affirmative Action Plan. Plaintiff is also a duly elected member of Defendant RCDP's Executive Committee as the Alternate male Committee-person.

In the instant case plaintiff alleges and will show to this Court that the State Election Law governing party conventions as well as the The South Carolina Democratic Party Rules, the Richland County Democratic Party Bylaws, the Democratic National Committee Delegate Selection Rules for the 2020 Democratic National Convention and the South Carolina Delegate Selection Plan and Affirmative Action Plan for the 2020 Democratic National Convention have been knowingly and intentionally violated by the above named Defendants in the ways more particularly hereinafter.

Plaintiff further contends that the declaratory and injunctive relief requested herein is necessary to prevent the further violation of his rights.

PARTIES

1. Plaintiff, Johnnie Cordero, (hereinafter "Plaintiff") is a citizen and resident of Richland County, South Carolina and a registered voter therein. He is also the Chairman of the Democratic Black Caucus of South Carolina (an official caucus of the South Carolina Democratic Party); Chairman of the Affirmative Action Committee of the 2020 Delegate Selection Committee of the South Carolina Democratic Party; Alternate Committeeman of the Richland County Democratic Party and duly elected member of the Executive Committee thereof; President of the Pine Grove Precinct of the Richland County

and President of the Pine Grove Piney Woods Community Alliance.

2. Defendant Matthew Kisner (herein after "Defendant Kisner") is Chair of Richland County Democratic Party and is sued in his official capacity only.
3. Defendant Richland County Democratic Party (hereinafter "RCDP") is a recognized County Party of the South Carolina Democratic Party and is subject to its authority and control.
4. Defendant South Carolina Democratic Party (hereinafter "SCDP") is a political party within the meaning of S.C. Code Ann. § 7-11-12 and is the South Carolina State Party Committee of the National Democratic Party and subject to regulation by the South Carolina Election Commission pursuant to the authority granted the Commission by the South Carolina Code of Laws Title 7 - Elections.
5. Defendant Trav Robertson, Jr., (hereinafter "Defendant Robertson") is the Chair of the South Carolina Democratic Party and is sued in his official capacity only.

JURISDICTION AND VENUE

6. This action is brought pursuant to South Carolina Code of Laws §§ 15-53-10 and 15-53-90 and Rule 65 of the South Carolina Rules of Civil Procedure.
7. The parties have sufficient connections to Richland County, South Carolina, the events at issue occurred therein, and jurisdiction is proper.
8. On or about February 2020 Defendant Matt Kisner acting in his capacity as Chair of Defendant RCDP appointed a "nominating committee" whose members were empowered to recruit candidates and select from among those candidates a slate of persons to offer as

candidates for party elected offices including the County Party Chair. The purpose of the "Slate of Candidates" is to indicate to voters that these candidates have in some way been approved by the Defendant RCDP.

9. Upon information and belief, a meeting or meetings was held at a location unknown to the Plaintiff on a date also unknown to Plaintiff at which nominating committee selected persons to comprise a "slate of candidates".

FACTUAL ALLEGATIONS

10. Plaintiff, a duly elected alternate Committeeman of Defendant RCDP was not notified of the appointment of a nominating committee or of the selection of a slate of candidates or of date, time, place of any meetings to accomplish the selection of the slate.
11. Defendant Kisner knew or should have known that Plaintiff had intentions of running for Richland County Chair.
12. Upon information and belief notice was not provided to Richland County Democrats all of whom are eligible to run for various party offices as required by SCDP and RCDP rules.
13. On or about March 21, 2020, Defendant SCDP issued an update on County Party Conventions indicating that county parties may decide whether to hold Town Hall Teleconventions or Mail-in Ballot. No provision was made for *both* Teleconvention and mail-in ballot.
14. On or about March 21, 2020 Defendant Kisner decided to hold a "remote convention" at an unspecified date in the future.

15. Upon information and belief no meetings of the Executive Committee of the Richland County Democratic Party (of which Plaintiff is a duly elected member) were held prior to the decision to hold a "remote convention" and Plaintiff was not notified if such a meeting or meetings were held.

16. On or about March 21, 2020, Defendant Kisner issued a public statement indicating that because nominations for office are allowed from the convention floor those seeking election may "self-nominate" by emailing a 75-100 word bio indicating their past involvement in Defendant RCDP to the nominating committee by COB Tuesday, March 31, 2020.

CAUSES OF ACTION
Count One

**The Richland County Democratic Party convention
cannot be held after March 31, 2020.
(South Carolina Code of Laws Section 7-9-70)**

- 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 conventions 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 provisions 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.

B. County Committee determines the date, time and *location* of its convention. 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.

17. Section 7-9-70 also provides that the *County Committee* i.e., the *County Executive Committee*, shall set the date, time and location of the county convention -not the county chair. This cannot be accomplished without a meeting of the Executive Committee and a meeting requires statutory notice. The statute also requires that at the meeting a *location* for the convention shall be set.

When determining the effect of words utilized in a statute, a court looks to the "plain meaning" of the words. *City of Rock Hill v. Harris*. 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011). The *Cambridge Dictionary* defines location as a *place*. It follows that the statute by its plain meaning cannot and does not provide for tele conventions or remote conventions.

Plaintiff acknowledges that concerns about the Coronavirus and the spread of this deadly disease are important and must be considered. But the statute does not provide the option Defendants seek to utilize. The statute cannot be ignored. The statute cannot be overruled by the South Carolina Democratic Party and certainly not by the Chair of the Richland County Democratic Party.

Plaintiff also notes that at the time of this writing The Democratic National Committee has not cancelled its convention or gone to a teleconvention but has simply rescheduled the national convention to August 17, 2020. It also appears that Defendant RCDP is the only county to schedule a remote convention.

It should be further noted that although Defendant SCDP has erroneously suggested that counties may hold remote conventions it has not postponed or scheduled a remote convention for the State Party.

Finally, it is Plaintiff's contention that the statute may only be changed by the legislature.

C. Elections required to be held at county conventions cannot be held via remote convention or mail-in ballot.

Section 7-9-80 provides in pertinent part :

"Each county convention shall be called to order by the county chairman and shall proceed to elect a temporary president, a temporary secretary and a committee on credentials for the purpose of organizing."

18. It seems too obvious to state that these requirements cannot be carried out remotely.

First, County Conventions usually have hundreds of participants. Will they all be able to vote? And if so how can the vote be verified? How will we know that the person on the line, if done telephonically, is actually the person permitted to vote? *Party rules prohibit proxy voting.* Moreover, at a regular in-person convention members are permitted to be nominated from the floor. There is no requirement other than that they show up and, of course, be eligible to vote. This is true for the election of county officers as well as delegates to the state convention.

Requiring persons who wish to "self-nominate" to send in a 75-100 word bio indicating their past involvement with the Defendant RCDP is to unlawfully add to the eligibility requirements to run for party office, i.e., candidates need only be registered voters who

reside in Richland County. Nominations from the floor are also permitted by persons who wish to nominate others from the floor. Must they also submit a 75-100 word bio?

Finally, at county conventions a significant amount of time is spent on resolutions. Resolutions determine what issues will be sent to the State and National conventions. Resolutions represent the true voice of the people. The adoption of resolutions at party conventions is always the result of vigorous debate that often takes hours. How will resolutions be handled? On a simple up or down vote - without debate? The implications for freedom of speech and association are compelling.

Plaintiff contends these unlawful arrangements will only benefit party loyalists and the effect will be to exclude registered Democrats who for a host of reasons are not dyed in the wool party loyalists. The people excluded will almost assuredly be those persons who the Affirmative Action Plan was implemented to reach, i.e., African Americans, women, people 36 and younger, LGBTQ and Hispanic, Asian Americans and Pacific Islanders, Native Americans and people with disabilities.

These difficulties aside, Plaintiff contends that these are not authorized by the governing election law and are therefore unlawful. That other remedies may be available to the South Carolina State Legislature (amend the rule) or the Governor of South Carolina under emergency powers⁵ granted him to change election dates does not change the fact that political parties are not authorized to take actions contrary to the law.

⁵ S.C. Code Ann. § 7-13-1170: In an emergency, the governor may declare a new time and date for an election.

CAUSES OF ACTION
Count Two
Violation of Section 2 Voting Rights Act
Voting Rights Act, 42 U.S.C. 1973
The Fannie Lou Hammer, Rosa Parks and Coretta Scott King
Voting Rights Reauthorization Act of 2006 (P.L.109-246)
Fourteenth Amendment U.S. Const. Amend. 14;
Fifteenth Amendment U.S. Const. Amend. 15.

19. It is now settled law that the right to vote is a fundamental right. Plaintiff contends that the right to vote is multifaceted. The right must protect not just what occurs in the voting booth or the right to be there but must also protect all stages leading up to the actual casting of one's ballot.
20. For generations one of the most effective tools used to deter African Americans and other disfavored minorities from exercising the franchise were restrictions that prevented participation in party activities to prevent them from gaining control of the party leadership apparatus.
21. African Americans represent 66.7% of the Democratic electorate in South Carolina. African American registered voters in South Carolina are more than one million strong. African Americans represent 51% of the Richland County population.
22. The acts and omissions complained of herein are disguised dilutive techniques that adversely affect minority voters and as such violated the provisions of the Fannie Lou Hammer, Rosa Parks and Coretta Scott King Voting Rights Reauthorization Act of 2006 (P.L.109-246) and must be enjoined accordingly.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor of the Plaintiff and against the named Defendants, and:

A. Declare, that Defendants KISNER and RCDP scheduled "teleconvention" and mail-in ballots for party elective office and delegate election violates SCCode 7-9-70;

B. Declare, that Defendants ROBERTSON and SCDP by granting authorization for County Parties to hold "teleconventions" and mail-in ballots for County Party elective offices and delegate election violated SCCode 7-9-70;

C. Declare, Defendants KISNER and RCDP's intentional failure to provide notice of Executive Committee meetings at which party business would be and in fact was conducted as provided by SCCode 7-9-70 and SCDP Rule, RCDP Rule and DNC Affirmative Action Rules for Delegate Selection for the 2020 Convention is unlawful;

D. Declare, the actions of the Defendants KISNER, RCDP, ROBERTSON, and SCDP violated rights of the Plaintiff protected by the Fourteenth and Fifteenth Amendments to the United States Constitution, the Voting Rights Act of 1965, and the South Carolina Constitution;

E. Preliminarily and permanently enjoin Defendants and their agents, officers, employees, and all persons acting in concert with any of them from scheduling or holding County or State Democratic Party "teleconventions" or mail-in ballots for delegates to County, State or National Democratic Party conventions;

F. Order Defendants to immediately reschedule County and State Democratic Party conventions to reflect the change of date of the Democratic National Convention to August 17, 2020.

G. Alternatively, Plaintiff requests that Defendant RCDP be enjoined from holding elections for party offices or holding any convention until this matter is heard and decided.

H. Grant such other and further relief as to this Court may seem just and proper.

Dated: 4th day of April, 2020
Columbia, South Carolina

Respectfully submitted,

/s/ Johnnie Cordero
4204 Mandel Drive
Columbia, SC 29210
Tel.: (803)753-8091
Email.: cordero1018@att.net

Plaintiff, pro se

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Johnnie Cordero,

Plaintiff,

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as Chair of The South Carolina Democratic
Party, and

The South Carolina Democratic Party.

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2020-CP-40-01980

EXTENSION OF TIME

Plaintiff hereby grants all of the above-named Defendants a thirty-day extension of time through June 17, 2020, in which to answer, move, counterclaim, or otherwise respond to the Complaint in the within action.


Johnnie Cordero
4204 Mandel Drive
Columbia, SC 29210
Tel: (803) 753-8091
Email: Cordero1018@aatt.net

PLAINTIFF, PRO SE

Columbia, South Carolina

May 15, 2020

*also consent to Pro hac vice
appearance of Joe Sandler, Esq.*



SOUTH CAROLINA)
COUNTY OF RICHLAND)
Johnnie Cordero,)
Plaintiff,)
vs.)
Matthew Kisner, in his official capacity as)
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Party, and)
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IN THE COURT OF COMMON PLEAS
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C/A No.: 2020-CP-40-1980

PLAINTIFF'S FIRST
AMENDED COMPLAINT
FOR DECLARATORY
AND INJUNCTIVE RELIEF
PURSUANT TO SC CODE
§§ 15-53-10 and 15-53-90
RULE 65 SC RULES OF
CIVIL PROCEDURE
(JURY TRIAL DEMANDED)

JEANETTE W. MCBRIDE
C.C.P., G.S., & F.C.

2020 MAY 29 AM 9:12

RICHLAND COUNTY
FILED

The Plaintiff, Johnnie Cordero, acting on his own behalf, complaining of the Defendants
alleges as follows:

INTRODUCTION

Political parties represent the voice of the people. It is for this reason that they have
significant protection under the First Amendment. But the voice cannot be representative and
authentic if political parties are able to circumvent the rules put in place to ensure that minorities are
heard not only in the voting booth but also in the party activities at every level including counties.

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In 1964 the Mississippi Freedom Democratic Party was organized under the leadership of the late Mrs. Fannie Lue Hammer and others who had been excluded by Democratic Party rule from participation in the Mississippi Democratic Party. During this same period the South Carolina Democratic Party also excluded African Americans from participation in the Party.¹ As a direct result of such exclusionary and discriminatory practices the Democratic National Committee (hereinafter "DNC") instituted its *Six Basic Elements*² that have been adopted by the Defendant

¹ <https://www.thestate.com/news/special-reports/slate-125/article43721457.html>

² Six Basic Elements The six basic elements adopted by the Democratic National Committee as official policy statements, January 1968, shall be implemented at all levels of the South Carolina Democratic Party. (1) All public meetings at all levels of the Democratic Party in each State should be open to all members of the Democratic Party regardless of race, color, creed, national origin, age, gender, or sexual orientation. (2) No test for membership in, nor any oaths of loyalty to, the Democratic Party in any State should be required

SCDP and incorporated by Defendant RCDP in its Bylaws by reference. Moreover, the Delegate Selection Rules For the 2020 Democratic National Convention³ state as follows:

"[T]he 1964 Democratic National Convention adopted a resolution which conditioned the seating of delegates at future conventions on the assurances that discrimination in any State Party affairs on the ground of race, color, creed or national origin did not occur." Rule 4(b) An Open Party.⁴

The said 2020 Delegate Selection Plan establishes an Affirmative Action Plan for each State Party.

The intent of the Affirmative Action Plan is best stated in the plan itself.

"The promises of a democratically elected government and the right to vote have not always been extended equally to all Americans. Historically, certain groups of Americans have been explicitly denied the right to vote or have been subjected to discriminatory and exclusionary practices with the intended effect of denying them voting rights.

1. The goal of such affirmative action shall be to achieve participation in the delegate selection process and Party organization at all levels by

or used which has the effect of requiring prospective or current members of the Democratic Party to acquiesce in, condone, or support discrimination on the grounds of race, color, creed, national origin, age, gender or sexual orientation. (3) *The time and place for all public meetings of the Democratic Party on all levels should be publicized fully and in such a manner as to assure timely notice to all interested persons. Such meetings must be held in places accessible to all Party members and large enough to accommodate all interested persons.* (4) The Democratic Party on all levels should support the broadest possible registration without discrimination on grounds of race, color, creed, national origin, age, gender or sexual orientation. (5) The Democratic Party in each State should publicize fully and in such a manner as to assure notice to all interested parties a full description of the legal and practical procedures for selection of Democratic Party Officers and representatives on all levels. *Publication of these procedures should be done in such a fashion that all prospective and current members of each State Democratic Party will be fully and adequately informed of the pertinent procedures in time to participate in each selection procedure at all levels of the Democratic Party organization.* (6) *The Democratic Party in each State should publicize fully and in such a manner as to assure notice to all interested parties a complete description of the legal and practical qualifications for all officers and representatives of the State Democratic Party. Such publications should be done in a timely fashion so that all prospective candidates or applicants for any elected or appointed position within the State Democratic Party and each county will have full and adequate opportunity to compete for office.* SCDP Rules as amended April 29, 2017, Section III, pp. 4-5. (italics added).

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the aforementioned groups as indicated by their presence in the Democratic electorate."

Plaintiff is the Chair of the Affirmative Action Committee of the 2020 Delegate Selection Plan and along with the Affirmative Action Committee has the responsibility of monitoring the Defendant SCDP's implementation of the Affirmative Action Plan. Plaintiff is also a duly elected member of Defendant RCDP's Executive Committee as the Alternate male Committee person.

In the instant case plaintiff alleges and will show to this Court that the State Election Law governing party conventions as well as the The South Carolina Democratic Party Rules, the Richland County Democratic Party Bylaws, the Democratic National Committee Delegate Selection Rules for the 2020 Democratic National Convention and the South Carolina Delegate Selection Plan and Affirmative Action Plan for the 2020 Democratic National Convention have been knowingly and intentionally violated by the above named Defendants in the ways more particularly hereinafter.

Plaintiff further contends that the declaratory and injunctive relief requested herein is necessary to prevent the further violation of his rights.

PARTIES

1. Plaintiff, Johnnie Cordero, (hereinafter "Plaintiff") is a citizen and resident of Richland County, South Carolina and a registered voter therein. He is also the Chairman of the Democratic Black Caucus of South Carolina (an official caucus of the South Carolina Democratic Party); Chairman of the Affirmative Action Committee of the 2020 Delegate Selection Committee of the South Carolina Democratic Party; Alternate Committeeman of the Richland County Democratic Party and duly elected member of the Executive

Committee thereof; President of the Pine Grove Precinct of the Richland County Democratic Party; Delegate to the South Carolina Democratic Party 2020 Convention; and President of the Pine Grove Piney Woods Community Alliance.

2. Defendant Matthew Kisner (herein after "Defendant Kisner") is Chair of Richland County Democratic Party and is sued in his official capacity only.
3. Defendant Richland County Democratic Party (hereinafter "RCDP") is a recognized County Party of the South Carolina Democratic Party and is subject to its authority and control.
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JURISDICTION AND VENUE

6. This action is brought pursuant to South Carolina Code of Laws §§ 15-53-10 and 15-53-90 and Rule 65 of the South Carolina Rules of Civil Procedure.
7. The parties have sufficient connections to Richland County, South Carolina, the events at issue occurred therein, and jurisdiction is proper.
8. On or about February 2020 Defendant Matt Kisner acting in his capacity as Chair of Defendant RCDP appointed a "nominating committee" whose members were empowered

to recruit candidates and select from among those candidates a slate of persons to offer as candidates for party elected offices including the County Party Chair. The purpose of the "Slate of Candidates" is to indicate to voters that these candidates have in some way been approved by the Defendant RCDP.

9. Upon information and belief, a meeting or meetings was held at a location unknown to the Plaintiff on a date also unknown to Plaintiff at which nominating committee selected persons to comprise a "slate of candidates".

FACTUAL ALLEGATIONS

10. Plaintiff, a duly elected alternate Committeeman of Defendant RCDP was not notified of the appointment of a nominating committee or of the selection of a slate of candidates or of date, time, place of any meetings to accomplish the selection of the slate.
11. Defendant Kisner knew or should have known that Plaintiff may have had intentions of running for Richland County Chair. And that at least one other person had publicly declared his candidacy.
12. Upon information and belief notice was not provided to Richland County Democrats all of whom are eligible to run for various party offices as required by SCDP and RCDP rules.
13. On or about March 21, 2020, Defendant SCDP issued an update on County Party Conventions indicating that county parties may decide whether to hold Town Hall Teleconventions or Mail-in Ballot. No provision was made for both Teleconvention and mail-in ballot.
14. On or about March 21, 2020 Defendant Kisner decided to hold a "remote convention" at an unspecified date in the future.

15. Upon information and belief no meetings of the Executive Committee of the Richland County Democratic Party (of which Plaintiff is a duly elected member) were held prior to the decision to hold a "remote convention" and Plaintiff was not notified if such a meeting or meetings were held.
16. On or about March 21, 2020, Defendant Kisner issued a public statement indicating that because nominations for office are allowed from the convention floor those seeking election may "self-nominate" by emailing a 75-100 word bio indicating their past involvement in Defendant RCDP to the nominating committee by COB Tuesday, March 31, 2020.
17. On or about April 18, 2020, Defendant Kisner and RCDP held a so-called Remote or Virtual Convention. The so-called convention was no more than a series of pre-recorded videos. The information sent to delegates notifying them of the convention noted that participation is *optional*.
18. On or about April 30, 2020, Defendants Robertson and SCDP held an Executive Committee and intentionally did not notify Plaintiff who was entitled to notice and opportunity to be heard as a duly elected member of the Executive Committee in violation of SCDP and DNC rules. Upon information and belief the meeting was called to discuss the Plaintiff and to take action regarding the within lawsuit.

CAUSES OF ACTION
Count One

**The Richland County Democratic Party convention
cannot be held after March 31, 2020.
(South Carolina Code of Laws §7-9-70)**

A. SC Code §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 conventions 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 provisions 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.

B. The County Committee determines the date, time and *location* of its convention. 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 § 7-9-100.

19. Section 7-9-70 also provides that the *County Committee* i.e., the *County Executive Committee*, shall set the date, time and location of the county convention - not the county chair. This cannot be accomplished without a meeting of the Executive Committee and a meeting requires statutory notice. The statute also requires that at the meeting a *location* for the convention shall be set.

When determining the effect of words utilized in a statute, a court looks to the "plain meaning" of the words. *City of Rock Hill v. Harris*, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011). The *Cambridge Dictionary* defines location as a *place*. It follows that the statute by its plain meaning cannot and does not provide for tele conventions or remote conventions.

Plaintiff acknowledges that concerns about the Coronavirus and the spread of this deadly disease are important and must be considered. But the statute does not provide the option Defendants seek to utilize. The statute cannot be ignored. The statute cannot be overruled by the South Carolina Democratic Party and certainly not by the Chair of the Richland County Democratic Party.

Plaintiff also notes that at the time of this writing The Democratic National Committee has not cancelled its convention or gone to a teleconvention but has simply rescheduled the national convention to August 17, 2020. It also appears that Defendant RCDP is the only county to schedule a remote convention.

It should be further noted that although Defendant SCDP has erroneously suggested that counties may hold remote conventions it has not postponed or scheduled a remote convention for the State Party.

Finally, it is Plaintiff's contention that the statute may only be changed by the legislature.

C. Elections required to be held at county conventions cannot be held via remote convention or mail-in ballot.

Section 7-9-80 provides in pertinent part :

"Each county convention shall be called to order by the county chairman and shall proceed to elect a temporary president, a temporary secretary and a committee on credentials for the purpose of organizing."

20. It seems too obvious to state that these requirements cannot be carried out remotely. First, County Conventions usually have hundreds of participants. Will they all be able to vote? And if so how can the vote be verified? How will we know that the person on the line, if

done telephonically, is actually the person permitted to vote? *Party rules prohibit proxy voting.* Moreover, at a regular in-person convention members are permitted to be nominated from the floor. There is no requirement other than that they show up and, of course, be eligible to vote. This is true for the election of county officers as well as delegates to the state convention.

Requiring persons who wish to "self-nominate" to send in a 75-100 word bio indicating their past involvement with the Defendant RCDP is to unlawfully add to the eligibility requirements to run for party office, i.e., candidates need only be registered voters who reside in Richland County. Nominations from the floor are also permitted by persons who wish to nominate others from the floor. Must they also submit a 75-100 word bio?

Finally, at county conventions a significant amount of time is spent on resolutions. Resolutions determine what issues will be sent to the State and National conventions. Resolutions represent the true voice of the people. The adoption of resolutions at party conventions is always the result of vigorous debate that often takes hours. How will resolutions be handled? On a simple up or down vote - without debate? The implications for freedom of speech and association are compelling.

Plaintiff contends these unlawful arrangements will only benefit party loyalists and the effect will be to exclude registered Democrats who for a host of reasons are not dyed in the wool party loyalists. The people excluded will almost assuredly be those persons who the Affirmative Action Plan was implemented to reach, i.e., African Americans, women, people 36 and younger, LGBTQ and Hispanic, Asian Americans and Pacific Islanders, Native Americans and people with disabilities.

These difficulties aside, Plaintiff contends that these are not authorized by the governing election law and are therefore unlawful. That other remedies may be available to the South Carolina State Legislature (amend the rule) or the Governor of South Carolina under emergency powers⁵ granted him to change election dates does not change the fact that political parties are not authorized to take actions contrary to the law.

CAUSES OF ACTION

Count Two

Violation of Section 2 Voting Rights Act

Voting Rights Act, 42 U.S.C. 1973

The Fannie Lou Hamer, Rosa Parks and Coretta Scott King

Voting Rights Reauthorization Act of 2006 (P.L. 109-246)

Fourteenth Amendment U.S. Const. Amend. 14;

Fifteenth Amendment U.S. Const. Amend. 15.

21. It is now settled law that the right to vote is a fundamental right. Plaintiff contends that the right to vote is multifaceted. The right must protect not just what occurs in the voting booth or the right to be there but must also protect all stages leading up to the actual casting of one's ballot.

22. For generations one of the most effective tools used to deter African Americans and other disfavored minorities from exercising the franchise were restrictions that prevented participation in party activities to prevent them from gaining control of the party leadership apparatus.

⁵ S.C. Code Ann. § 7-13-1170: In an emergency, the governor may declare a new time and date for an election.

23. African Americans represent 66.7% of the Democratic electorate in South Carolina.

African American registered voters in South Carolina are more than one million strong.

African Americans represent 51% of the Richland County population.

24. The acts and omissions complained of herein are disguised dilutive techniques that adversely affect minority voters and as such violated the provisions of the Fannie Lou Hamer, Rosa Parks and Coretta Scott King Voting Rights Reauthorization Act of 2006 (P.L.109-246) and must be enjoined accordingly.

**CAUSES OF ACTION
Count Three
(Defendants Robertson, and SCDP)**

Violation of 42 U.S.C. § 1983
First Amendment U.S. Const. Amend. 1.
Fourteenth Amendment U.S. Const. Amend. 14.
Fifteenth Amendment U.S. Const. Amend. 15.

The Acts of the Defendants Alleged hereinafter were and are intended to punish Plaintiff for exercising rights guaranteed and protected under the 14th and 15th Amendments and thereby give rise to a separate and distinct cause of action for retaliation under 42 U.S.C. § 1983.

25. On or about April 19, 2020, Defendants Robertson and SCDP sent an email to Defendant SCDP's Executive Committee and others not members of the Executive Committee that stated in pertinent part: "Chairman Trav Robertson would like to hold a state executive committee meeting tomorrow, Monday, April 20, at noon. I know it's short notice, but two critical items are time-sensitive that Trav would like to discuss."

26. Plaintiff, a duly elected member of Defendant SCDP Executive Committee was intentionally not notified of the meeting as required by SCDP rules.

27. Upon information and belief, Plaintiff was intentionally excluded from the meeting because the two "critical" "time sensitive issues" were the within lawsuit and the removal of Plaintiff as Chair of the Affirmative Action Committee and the Democratic Black Caucus.
28. Upon information and belief and or about April, 20, 2020, the aforesaid meeting was held. At the meeting the critical matter discussed was the within lawsuit. At the meeting two motions were made. One to remove Plaintiff as Chair of the Affirmative Action Committee (hereinafter "Motion#1") and the second to remove him as Chair of the Democratic Black Caucus of the Party (hereinafter "Motion#2"). Upon information and belief Motion # 1 carried and Motion #2 was tabled.
29. Upon information and belief motion #1 was not warranted and not authorized by party rules or Robert Rules of Order.
30. Upon information and belief the intention of the motion was to remove the Plaintiff as Chair of the Affirmative Action Committee and as Chair of the Democratic Black Caucus of South Carolina protected and guaranteed by 1st, 14th and 15th Amendments to the United States Constitution as well as Section 2 of the Voting Rights Act of 1965.
31. As a direct result of the acts and/or omissions of the Defendants Robertson and SCDP Plaintiff was intentionally denied notice of a meeting at which he was the only item of the agenda and that he was denied notice and the right to be heard.
32. On or about May 20, 2020, Defendants Trav Robertson and SCDP notified party members that it would hold a virtual State Democratic Party Convention and telephone and call in ballots to begin on June 4, 2020.

33. On or about April 17, 2020, Defendant's Kisner and RCDP mailed a packet of information to convention delegates which included an "Official Ballot" for the 2020 Richland County Democratic Party Officers Election. The said "Official Ballot" included only persons selected by the "Nominating Committee". The packet also required that the "Official Ballot" be returned by April 25, 2020. Apparently, the ballots are to be counted by the Defendant SCDP as the return address is Defendant SCDP's headquarters address.
34. On or about April 18, 2020, Defendant Kisner and RCDP mailed out mail-in ballots to 416 delegates. There are 150 precincts in Richland County with a total of 265,897 registered voters of whom 143,632 are non-white. *All registered voters who reside in Richland County are eligible to vote for county officers and to run for county office in the appropriate categories.*
35. The aforesaid official mail in ballot contains the names of the slate of candidates selected by the "nominating committee" without input from the Richland County Executive Committee of which Plaintiff is a member. The mail in ballots do not contain information about write ins, or duties of the officers to be elected. Or that the only qualification to hold office is that you are a registered voter who resides in Richland County. Moreover, you do not have to be a member of the Richland County Democratic Party.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor of the Plaintiff and against the named Defendants, and:

A. Declare, that Defendants KISNER and RCDP scheduled "teleconvention" and mail-in ballots for party elective office and delegate election violates SCCode 7-9-70;

B. Declare, that Defendants ROBERTSON and SCDP by granting authorization for County Parties to hold "teleconventions" and mail-in ballots for County Party elective offices and delegate election violated SCCode 7-9-70;

C. Declare, Defendants KISNER and RCDP's intentional failure to provide notice of Executive Committee meetings at which party business would be and in fact was conducted as provided by SCCode 7-9-70 and SCDP Rule, RCDP Rule and DNC Affirmative Action Rules for Delegate Selection for the 2020 Convention is unlawful;

D. Declare, the actions of the Defendants KISNER, RCDP, ROBERTSON, and SCDP violated rights of the Plaintiff protected by the Fourteenth and Fifteenth Amendments to the United States Constitution, the Voting Rights Act of 1965, and the South Carolina Constitution;

E. Declare that the action to remove Plaintiff as Chair of the Affirmative Action Committee without notice to him or opportunity to be heard violates his right to Due Process and amounts to retaliation for bringing the within lawsuit;

F. Preliminarily and permanently enjoin Defendants and their agents, officers, employees, and all persons acting in concert with any of them from scheduling or holding County or State Democratic Party "teleconventions" or mail-in ballots for delegates to County, State or National Democratic Party conventions;

G. Preliminarily and permanently enjoin Defendants and their agents, officers, employees, and all persons acting in concert with any of them from removing Plaintiff as

Chair of the Affirmative Action Committee without reasonable notice, specified charges and opportunity to be heard;

H. Order Defendants to immediately reschedule County and State Democratic Party conventions to reflect the change of date of the Democratic National Convention to August 17, 2020;

I. Order Defendants to reinstate Plaintiff to his position as Chair of the Affirmative Action Committee forthwith;

J. Alternatively, Plaintiff requests that Defendant RCDP be enjoined from holding elections for party offices or holding any convention until this matter is heard and decided.

K. Grant such other and further relief as to this Court may seem just and proper.

Dated: 21st day of May, 2020
Columbia, South Carolina

Respectfully submitted,

/s/ Johnnie Cordero
4204 Mandel Drive
Columbia, SC 29210
Tel.: (803)753-8091
Email.: cordero1018@att.net

Plaintiff, pro se

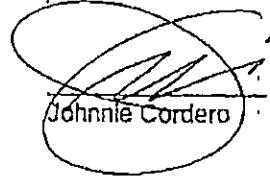
CERTIFICATE OF SERVICE

I, Johnnie Cordero, hereby certify that I have served a exact copy of (1) Motion for Speedy Hearing and Calendar Advancement and (2) First Amended Complaint on the

Attorney for Defendants by depositing same in a depository of the United States Post
Office, postage prepaid and addressed as follows:

Burnett Shutt & McDaniel, PA
912 Lady Street
PO Box 1929
Columbia, SC 29202
Attn: Nekki Shutt, Esq.

Dated: 22 May 2020
Columbia, SC



Johnnie Cordero

**AS DIRECTED BY ORDER OF THE COURT
PAGES 33 AND 34 REMOVED**

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

Johnnie Cordero,

Plaintiff,

vs.

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;
and, The South Carolina Democratic Party,

Defendants.

Civil Action No. 3:20-cv-02195-JFA-PJG

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1343, and 1441, Defendants Trav Robertson and The South Carolina Democratic Party, with the express consent of Defendants Matthew Kisner and The Richland County Democratic Party (Ex. 1), hereby remove this civil action from the Court of Common Pleas for the Fifth Judicial Circuit, Richland County, South Carolina, to the United States District Court for the District of South Carolina, Columbia Division. Defendants state the following grounds for removal:

STATE COURT ACTION

1. *Pro Se* Plaintiff Johnnie Cordero ("Plaintiff") commenced this action by filing a Summons and Complaint in the Richland County Court of Common Pleas, C/A No. 2020-CP-40-01980, on April 16, 2020. A true and correct copy of the Summons and Complaint is attached hereto as **Exhibit 2**.

2. Defendants Matthew Kisner and The Richland County Democratic Party were served with the Summons and Complaint on or about April 17, 2020.

3. The undersigned accepted service for Defendants Trav Robertson and The South Carolina Democratic Party on May 14, 2020.

4. On May 28, 2020, Defendants received a copy Plaintiff's First Amended Complaint and Motion for Speedy Hearing and Calendar Advancement via U.S. Mail to the undersigned. (Ex. 3.) It appears Plaintiff filed the same in the Richland County Court of Common Pleas on May 29, 2020.

5. Defendants have not yet responded to the Complaint or Amended Complaint, as a response is not due until June 17, 2020, under the South Carolina Rules of Civil Procedure and by agreement of the parties. (Ex. 4.)

FEDERAL QUESTION JURISDICTION

6. In his Complaint and Amended Complaint, Plaintiff asserts causes of action for violation of the Voting Rights Act, 42 U.S.C. § 1973; U.S. Const. amend. XIV; U.S. Const. amend. XV; 42 U.S.C. 1983; U.S. Const. amend. I; and S.C. Code Ann. Section 7-9-70.

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and law of the United States.

8. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1343 because the Complaint and Amended Complaint allege deprivation of rights secured by the U.S. Constitution and seek relief under federal laws providing for the protection of civil rights.

9. This Court has supplemental jurisdiction over Plaintiff's single state law claim pursuant to 28 U.S.C. § 1337 because it forms part of the same case or controversy as the above federal law claims.

10. Thus, this Court has removal jurisdiction over this action pursuant to 28 U.S.C. § 1441 (a).

PROCEDURAL REQUIREMENTS OF REMOVAL

11. This action is properly removed to the United States District Court for the District of South Carolina, Columbia Division, because this Court embraces the Court of Common Pleas for the Fifth Judicial Circuit, Richland County, South Carolina, where this action is pending. 28 U.S.C. §§ 1441 (a).

12. True and correct copies of all process, pleadings, and orders served upon Defendants in the state court action are attached hereto as Exhibits 2 and 3. 28 U.S.C. § 1446 (a).

13. This Notice of Removal has been timely filed within 30 days after receipt of the Summons and Complaint by Defendants Trav Robertson and The South Carolina Democratic Party. 28 U.S.C. § 1446 (b)(1).

14. All Defendants have consented to removal. 28 U.S.C. § 1446 (b)(2).

15. After filing this Notice of Removal, Defendants promptly will file a copy of this Notice with the Clerk of Court for the Richland County Court of Common Pleas and serve the same upon Plaintiff. 28 U.S.C. § 1446 (d).

NON-WAIVER

16. By removing this action from the Richland County Court of Common Pleas, Defendants do not waive any defenses available to them.

17. By removing this action from the Richland County Court of Common Pleas, Defendants do not admit any of the allegations in Plaintiff's Complaint or Amended Complaint.

18. Defendants reserve the right to amend or supplement this Notice of Removal.

WHEREFORE, Defendants hereby remove the above-captioned action from the Court of Common Pleas for the Fifth Judicial Circuit, Richland County, South Carolina, to the United States District Court for the District of South Carolina, Columbia Division.

[Signature page to follow.]

Respectfully submitted,

/s/ Nekki Shutt

Nekki Shutt (Fed. ID 6530)
Grant Burnette LeFever (Fed. ID 12943)
BURNETTE SHUTT & McDANIEL, PA
912 Lady Street, Second Floor
PO Box 1929
Columbia, South Carolina 29202
Telephone: (803) 904-7912
Fax: (803) 904-7910
NShutt@BurnetteShutt.Law
GLeFever@BurnetteShutt.Law

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

June 9, 2020

ELECTRONICALLY FILED - 2020 Jun 11 2:40 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001980

EXHIBIT 1

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

Johnnie Cordero,

Plaintiff,

vs.

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; and, The South Carolina
Democratic Party,

Defendants.

C/A No. _____

**CONSENT TO REMOVAL BY
DEFENDANTS MATTHEW KISNER
AND THE RICHLAND COUNTY
DEMOCRATIC PARTY**

Defendants Matthew Kisner and The Richland County Democratic Party consent to the removal of *Johnnie Cordero vs. 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; and, The South Carolina Democratic Party*, C/A No. 2020-CP-40-01980, currently pending in the Court of Common Pleas for the Fifth Judicial Circuit, Richland County, South Carolina, to the District Court for the District of South Carolina, Columbia Division.

By filing this consent, these Defendants do not waive and expressly reserve all defenses.

s/Nekki Shutt

Nekki Shutt (Fed. ID 6530)

Grant Burnette LeFever (Fed. ID 12943)

BURNETTE SHUTT & McDANIEL, PA

912 Lady Street, Second Floor

PO Box 1929

Columbia, South Carolina 29202

Telephone: (803) 904-7912

Fax: (803) 904-7910

NShutt@BurnetteShutt.Law

GLeFever@BurnetteShutt.Law

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina
June 1, 2020

EXHIBIT 2

STATE OF SOUTH CAROLINA

COUNTY OF RICHLANDJOHNNIE CORDERO

Plaintiff(s)

VS.

MATTHEW KISNER, ET AL

Defendant(s)

Submitted By: JOHNNIE CORDEROAddress: 4204 MANDEL DR
COLUMBIA, SC 29210

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2020-CP-40**2020CP4001980**

SC Bar #:

Telephone #: 803-753-8091

Fax #:

Other:

E-mail: CORDERO1018@AOL.NET

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|--|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199)
Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 <u>-NL-</u>
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Label (380)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Interpleader (690) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☒ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Incapacitated Adult Settlement (790)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |

Submitting Party Signature: [Signature]Date: 4-7-20

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

-42-

SOUTH CAROLINA

COUNTY OF RICHLAND

Johnnie Cordero,

Plaintiff,

vs.

Matthew Kisner, in his official capacity as
Chair of The Richland County Democratic
Party, and

The Richland County Democratic Party,
and

Trav Robertson, Jr., in his official capacity
as Chair of The South Carolina Democratic
Party, and

The South Carolina Democratic Party,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2020-CP-40-_____

SUMMONS

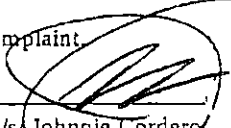
2020CP4001980

2020 APR 16 AM 11:42
CLERK OF COURT
RICHLAND COUNTY
S.C.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your answer to this Complaint upon the subscriber at the address shown below within thirty (30) days (thirty five (35) days if served by United States Mail) after service hereof, exclusive of the date of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

Dated: 6 April 2020
Columbia, South Carolina


/s/ Johnnie Cordero
4204 Mandel Drive
Columbia, SC 29210
Tel.: (803) 753-8091
Email: cordero1018@att.net

Plaintiff, pro se

ELECTRONICALLY FILED - 2020 Jun 11 2:40 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001980

ELECTRONICALLY FILED - 2020 Jun 11 2:40 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001980

SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Johnnie Cordero,	)	C/A No.: 2020-CP-40-_____
Plaintiff,	)	2020CP4001980
vs.	)	COMPLAINT FOR DECLARATORY
	)	AND INJUNCTIVE RELIEF
	)	PURSUANT TO SC CODE
Matthew Kisner, in his official capacity as	)	§§ 15-53-10 and 15-53-90
Chair of The Richland County Democratic	)	RULE 65 SC RULES OF
Party, and	)	CIVIL PROCEDURE
	)	(JURY TRIAL DEMANDED)
The Richland County Democratic Party,	)	
and	)	
	)	
Trav Robertson, Jr., in his official capacity	)	
as Chair of The South Carolina Democratic	)	
Party, and	)	
	)	
The South Carolina Democratic Party,	)	
	)	
Defendants.	)	

2020 JUN 16 AM 11:42
CLERK OF COURT
RICHLAND COUNTY

The Plaintiff, Johnnie Cordero, acting on his own behalf, complaining of the Defendants alleges as follows:

INTRODUCTION

Political parties represent the voice of the people. It is for this reason that they have significant protection under the First Amendment. But the voice cannot be representative and authentic if political parties are able to circumvent the rules put in place to ensure that minorities are heard not only in the voting booth but also in the party activities at every level including counties. State rules that govern political parties exist against the backdrop of a racist history that has once again reared its ugly head in the wake of the Supreme Court decision in *Shelby*

County v. Holder, 133 S. Ct. 2612 (2013). The *Shelby* decision has given rise to a veritable tsunami of legislation ostensibly passed to prevent voter fraud but that has actually served to make it difficult for African Americans and other minorities to exercise their right to vote.

Many and varied have been the dilutive techniques used to suppress the African American vote. Everything from literacy tests to poll taxes and grandfather clauses have successfully been used. Over the years the methods have changed but the goals have not. African Americans represent 66.7% of the Democratic electorate in South Carolina. African American registered voters in South Carolina are more than one million strong. African Americans represent 51% of the Richland County population. The right to vote and more particularly to participate in political party activities has been the bedrock of the fight for political recognition and empowerment of minorities both in South Carolina and throughout the United States since the 1960's.

In 1964 the Mississippi Freedom Democratic Party was organized under the leadership of the late Mrs. Fannie Lue Hammer and others who had been excluded by Democratic Party rule from participation in the Mississippi Democratic Party. During this same period the South Carolina Democratic Party also excluded African Americans from participation in the Party.¹ As a direct result of such exclusionary and discriminatory practices the Democratic National Committee (hereinafter "DNC") instituted its *Six Basic Elements*² that have been adopted by the

¹ <https://www.thestate.com/news/special-reports/state-125/article43721457.html>

² Six Basic Elements The six basic elements adopted by the Democratic National Committee as official policy statements, January 1968, shall be implemented at all levels of the South Carolina Democratic Party. (1) All public meetings at all levels of the Democratic Party in each State should be open to all members of the Democratic Party regardless of race, color, creed, national origin, age, gender, or sexual orientation. (2) No test for membership in, nor any oaths of loyalty to, the Democratic Party in any State should be required or used which has the effect of requiring prospective or current members of the Democratic Party to acquiesce in, condone, or support discrimination on the grounds of race, color, creed, national origin, age, gender or sexual orientation. (3) *The time and place for all public meetings of the*

Defendant SCDP and incorporated by Defendant RCDP in its Bylaws by reference. Moreover, the Delegate Selection Rules For the 2020 Democratic National Convention³ state as follows:

"[T]he 1964 Democratic National Convention adopted a resolution which conditioned the seating of delegates at future conventions on the assurances that discrimination in any State Party affairs on the ground of race, color, creed or national origin did not occur." Rule 4(b) An Open Party.⁴

The said 2020 Delegate Selection Plan establishes an Affirmative Action Plan for each State Party. The intent of the Affirmative Action Plan is best stated in the plan itself.

"The promises of a democratically elected government and the right to vote have not always been extended equally to all Americans. Historically, certain groups of Americans have been explicitly denied the right to vote or have been subjected to discriminatory and exclusionary practices with the intended effect of denying them voting rights.

1. The goal of such affirmative action shall be to achieve participation in the delegate selection process and Party organization at all levels by the aforementioned groups *as indicated by their presence in the Democratic electorate.*"

Democratic Party on all levels should be publicized fully and in such a manner as to assure timely notice to all interested persons. Such meetings must be held in places accessible to all Party members and large enough to accommodate all interested persons. (4) The Democratic Party on all levels should support the broadest possible registration without discrimination on grounds of race, color, creed, national origin, age, gender or sexual orientation. (5) The Democratic Party in each State should publicize fully and in such a manner as to assure notice to all interested parties a full description of the legal and practical procedures for selection of Democratic Party Officers and representatives on all levels. Publication of these procedures should be done in such a fashion that all prospective and current members of each State Democratic Party will be fully and adequately informed of the pertinent procedures in time to participate in each selection procedure at all levels of the Democratic Party organization. (6) The Democratic Party in each State should publicize fully and in such a manner as to assure notice to all interested parties a complete description of the legal and practical qualifications for all officers and representatives of the State Democratic Party. Such publications should be done in a timely fashion so that all prospective candidates or applicants for any elected or appointed position within the State Democratic Party and each county will have full and adequate opportunity to compete for office. SCDP Rules as amended April 29, 2017, Section III, pp. 4-5. (italics added).

³ <https://scdp.org/wp-content/uploads/2017/05/rules-as-amended-2017-2.pdf>

⁴ <https://scdp.org/wp-content/uploads/2017/05/rules-as-amended-2017-2.pdf>

Plaintiff is the Chair of the Affirmative Action Committee of the 2020 Delegate Selection Plan and along with the Affirmative Action Committee has the responsibility of monitoring the Defendant SCDP's implementation of the Affirmative Action Plan. Plaintiff is also a duly elected member of Defendant RCDP's Executive Committee as the Alternate male Committee-person.

In the instant case plaintiff alleges and will show to this Court that the State Election Law governing party conventions as well as the The South Carolina Democratic Party Rules, the Richland County Democratic Party Bylaws, the Democratic National Committee Delegate Selection Rules for the 2020 Democratic National Convention and the South Carolina Delegate Selection Plan and Affirmative Action Plan for the 2020 Democratic National Convention have been knowingly and intentionally violated by the above named Defendants in the ways more particularly hereinafter.

Plaintiff further contends that the declaratory and injunctive relief requested herein is necessary to prevent the further violation of his rights.

PARTIES

1. Plaintiff, Johnnie Cordero, (hereinafter "Plaintiff") is a citizen and resident of Richland County, South Carolina and a registered voter therein. He is also the Chairman of the Democratic Black Caucus of South Carolina (an official caucus of the South Carolina Democratic Party); Chairman of the Affirmative Action Committee of the 2020 Delegate Selection Committee of the South Carolina Democratic Party; Alternate Committeeman of the Richland County Democratic Party and duly elected member of the Executive Committee thereof; President of the Pine Grove Precinct of the Richland County

and President of the Pine Grove Piney Woods Community Alliance.

2. Defendant Matthew Kisner (herein after "Defendant Kisner") is Chair of Richland County Democratic Party and is sued in his official capacity only.
3. Defendant Richland County Democratic Party (hereinafter "RCDP") is a recognized County Party of the South Carolina Democratic Party and is subject to its authority and control.
4. Defendant South Carolina Democratic Party (hereinafter "SCDP") is a political party within the meaning of S.C. Code Ann. § 7-11-12 and is the South Carolina State Party Committee of the National Democratic Party and subject to regulation by the South Carolina Election Commission pursuant to the authority granted the Commission by the South Carolina Code of Laws Title 7 - Elections.
5. Defendant Trav Robertson, Jr., (hereinafter "Defendant Robertson") is the Chair of the South Carolina Democratic Party and is sued in his official capacity only.

JURISDICTION AND VENUE

6. This action is brought pursuant to South Carolina Code of Laws §§ 15-53-10 and 15-53-90 and Rule 65 of the South Carolina Rules of Civil Procedure.
7. The parties have sufficient connections to Richland County, South Carolina, the events at issue occurred therein, and jurisdiction is proper.
8. On or about February 2020 Defendant Matt Kisner acting in his capacity as Chair of Defendant RCDP appointed a "nominating committee" whose members were empowered to recruit candidates and select from among those candidates a slate of persons to offer as

candidates for party elected offices including the County Party Chair. The purpose of the "Slate of Candidates" is to indicate to voters that these candidates have in some way been approved by the Defendant RCDP.

9. Upon information and belief, a meeting or meetings was held at a location unknown to the Plaintiff on a date also unknown to Plaintiff at which nominating committee selected persons to comprise a "slate of candidates".

FACTUAL ALLEGATIONS

10. Plaintiff, a duly elected alternate Committeeman of Defendant RCDP was not notified of the appointment of a nominating committee or of the selection of a slate of candidates or of date, time, place of any meetings to accomplish the selection of the slate.
11. Defendant Kisner knew or should have known that Plaintiff had intentions of running for Richland County Chair.
12. Upon information and belief notice was not provided to Richland County Democrats all of whom are eligible to run for various party offices as required by SCDP and RCDP rules.
13. On or about March 21, 2020, Defendant SCDP issued an update on County Party Conventions indicating that county parties may decide whether to hold Town Hall Teleconventions or Mail-in Ballot. No provision was made for *both* Teleconvention and mail-in ballot.
14. On or about March 21, 2020 Defendant Kisner decided to hold a "remote convention" at an unspecified date in the future.

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15. Upon information and belief no meetings of the Executive Committee of the Richland County Democratic Party (of which Plaintiff is a duly elected member) were held prior to the decision to hold a "remote convention" and Plaintiff was not notified if such a meeting or meetings were held.

16. On or about March 21, 2020, Defendant Kisner issued a public statement indicating that because nominations for office are allowed from the convention floor those seeking election may "self-nominate" by emailing a 75-100 word bio indicating their past involvement in Defendant RCDP to the nominating committee by COB Tuesday, March 31, 2020.

CAUSES OF ACTION
Count One

**The Richland County Democratic Party convention
cannot be held after March 31, 2020.
(South Carolina Code of Laws Section 7-9-70)**

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 conventions 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 provisions 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.

B. County Committee determines the date, time and *location* of its convention. 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.

17. Section 7-9-70 also provides that the *County Committee* i.e., the *County Executive Committee*, shall set the date, time and location of the county convention -not the county chair. This cannot be accomplished without a meeting of the Executive Committee and a meeting requires statutory notice. The statute also requires that at the meeting a *location* for the convention shall be set.

When determining the effect of words utilized in a statute, a court looks to the "plain meaning" of the words. *City of Rock Hill v. Harris*. 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011). The *Cambridge Dictionary* defines location as a *place*. It follows that the statute by its plain meaning cannot and does not provide for tele conventions or remote conventions.

Plaintiff acknowledges that concerns about the Coronavirus and the spread of this deadly disease are important and must be considered. But the statute does not provide the option Defendants seek to utilize. The statute cannot be ignored. The statute cannot be overruled by the South Carolina Democratic Party and certainly not by the Chair of the Richland County Democratic Party.

Plaintiff also notes that at the time of this writing The Democratic National Committee has not cancelled its convention or gone to a teleconvention but has simply rescheduled the national convention to August 17, 2020. It also appears that Defendant RCDP is the only county to schedule a remote convention.

It should be further noted that although Defendant SCDP has erroneously suggested that counties may hold remote conventions it has not postponed or scheduled a remote convention for the State Party.

Finally, it is Plaintiff's contention that the statute may only be changed by the legislature.

C. Elections required to be held at county conventions cannot be held via remote convention or mail-in ballot.

Section 7-9-80 provides in pertinent part :

"Each county convention shall be called to order by the county chairman and shall proceed to elect a temporary president, a temporary secretary and a committee on credentials for the purpose of organizing."

18. It seems too obvious to state that these requirements cannot be carried out remotely.

First, County Conventions usually have hundreds of participants. Will they all be able to vote? And if so how can the vote be verified? How will we know that the person on the line, if done telephonically, is actually the person permitted to vote? *Party rules prohibit proxy voting.* Moreover, at a regular in-person convention members are permitted to be nominated from the floor. There is no requirement other than that they show up and, of course, be eligible to vote. This is true for the election of county officers as well as delegates to the state convention.

Requiring persons who wish to "self-nominate" to send in a 75-100 word bio indicating their past involvement with the Defendant RCDP is to unlawfully add to the eligibility requirements to run for party office, i.e., candidates need only be registered voters who

reside in Richland County. Nominations from the floor are also permitted by persons who wish to nominate others from the floor. Must they also submit a 75-100 word bio?

Finally, at county conventions a significant amount of time is spent on resolutions. Resolutions determine what issues will be sent to the State and National conventions. Resolutions represent the true voice of the people. The adoption of resolutions at party conventions is always the result of vigorous debate that often takes hours. How will resolutions be handled? On a simple up or down vote - without debate? The implications for freedom of speech and association are compelling.

Plaintiff contends these unlawful arrangements will only benefit party loyalists and the effect will be to exclude registered Democrats who for a host of reasons are not dyed in the wool party loyalists. The people excluded will almost assuredly be those persons who the Affirmative Action Plan was implemented to reach, i.e., African Americans, women, people 36 and younger, LGBTQ and Hispanic, Asian Americans and Pacific Islanders, Native Americans and people with disabilities.

These difficulties aside, Plaintiff contends that these are not authorized by the governing election law and are therefore unlawful. That other remedies may be available to the South Carolina State Legislature (amend the rule) or the Governor of South Carolina under emergency powers⁵ granted him to change election dates does not change the fact that political parties are not authorized to take actions contrary to the law.

⁵ S.C. Code Ann. § 7-13-1170: In an emergency, the governor may declare a new time and date for an election.

CAUSES OF ACTION

Count Two

Violation of Section 2 Voting Rights Act

Voting Rights Act, 42 U.S.C. 1973

The Fannie Lou Hammer, Rosa Parks and Coretta Scott King

Voting Rights Reauthorization Act of 2006 (P.L.109-246)

Fourteenth Amendment U.S. Const. Amend. 14;

Fifteenth Amendment U.S. Const. Amend. 15.

19. It is now settled law that the right to vote is a fundamental right. Plaintiff contends that the right to vote is multifaceted. The right must protect not just what occurs in the voting booth or the right to be there but must also protect all stages leading up to the actual casting of one's ballot.

20. For generations one of the most effective tools used to deter African Americans and other disfavored minorities from exercising the franchise were restrictions that prevented participation in party activities to prevent them from gaining control of the party leadership apparatus.

21. African Americans represent 66.7% of the Democratic electorate in South Carolina. African American registered voters in South Carolina are more than one million strong. African Americans represent 51% of the Richland County population.

22. The acts and omissions complained of herein are disguised dilutive techniques that adversely affect minority voters and as such violated the provisions of the Fannie Lou Hammer, Rosa Parks and Coretta Scott King Voting Rights Reauthorization Act of 2006 (P.L.109-246) and must be enjoined accordingly.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor of the Plaintiff and against the named Defendants, and:

A. Declare, that Defendants KISNER and RCDP scheduled "teleconvention" and mail-in ballots for party elective office and delegate election violates SCCode 7-9-70;

B. Declare, that Defendants ROBERTSON and SCDP by granting authorization for County Parties to hold "teleconventions" and mail-in ballots for County Party elective offices and delegate election violated SCCode 7-9-70;

C. Declare, Defendants KISNER and RCDP's intentional failure to provide notice of Executive Committee meetings at which party business would be and in fact was conducted as provided by SCCode 7-9-70 and SCDP Rule, RCDP Rule and DNC Affirmative Action Rules for Delegate Selection for the 2020 Convention is unlawful;

D. Declare, the actions of the Defendants KISNER, RCDP, ROBERTSON, and SCDP violated rights of the Plaintiff protected by the Fourteenth and Fifteenth Amendments to the United States Constitution, the Voting Rights Act of 1965, and the South Carolina Constitution;

E. Preliminarily and permanently enjoin Defendants and their agents, officers, employees, and all persons acting in concert with any of them from scheduling or holding County or State Democratic Party "teleconventions" or mail-in ballots for delegates to County, State or National Democratic Party conventions;

F. Order Defendants to immediately reschedule County and State Democratic Party conventions to reflect the change of date of the Democratic National Convention to August 17, 2020.

G. Alternatively, Plaintiff requests that Defendant RCDP be enjoined from holding elections for party offices or holding any convention until this matter is heard and decided.

H. Grant such other and further relief as to this Court may seem just and proper.

Dated: 4th day of April, 2020
Columbia, South Carolina

Respectfully submitted,

/s/ Johnnie Cordero
4204 Mandel Drive
Columbia, SC 29210
Tel.: (803)753-8091
Email.: cordero1018@att.net

Plaintiff, pro se

EXHIBIT 3

ELECTRONICALLY FILED - 2020 Jun 11 2:40 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001980

SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Johnnie Cordero,	)	C/A No.: 2020-CP-40-1980
Plaintiff,	)	
vs.	)	PLAINTIFF'S FIRST
	)	AMENDED COMPLAINT
	)	FOR DECLARATORY
	)	AND INJUNCTIVE RELIEF
Matthew Kisner, in his official capacity as	)	PURSUANT TO SC CODE
Chair of The Richland County Democratic	)	§§ 15-53-10 and 15-53-90
Party, and	)	RULE 65 SC RULES OF
	)	CIVIL PROCEDURE
The Richland County Democratic Party,	)	(JURY TRIAL DEMANDED)
and	)	
	)	
Trav Robertson, Jr., in his official capacity	)	
as Chair of The South Carolina Democratic	)	
Party, and	)	
	)	
The South Carolina Democratic Party,	)	
	)	
Defendants.	)	

The Plaintiff, Johnnie Cordero, acting on his own behalf, complaining of the Defendants alleges as follows:

INTRODUCTION

Political parties represent the voice of the people. It is for this reason that they have significant protection under the First Amendment. But the voice cannot be representative and authentic if political parties are able to circumvent the rules put in place to ensure that minorities are heard not only in the voting booth but also in the party activities at every level including counties.

again reared its ugly head in the wake of the Supreme Court decision in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). The *Shelby* decision has given rise to a veritable tsunami of legislation ostensibly passed to prevent voter fraud but that has actually served to make it difficult for African Americans and other minorities to exercise their right to vote.

Many and varied have been the dilutive techniques used to suppress the African American vote. Everything from literacy tests to poll taxes and grandfather clauses have successfully been used. Over the years the methods have changed but the goals have not. African Americans represent 66.7% of the Democratic electorate in South Carolina. African American registered voters in South Carolina are more than one million strong. African Americans represent 51% of the Richland County population. The right to vote and more particularly to participate in political party activities has been the bedrock of the fight for political recognition and empowerment of minorities both in South Carolina and throughout the United States since the 1960's.

In 1964 the Mississippi Freedom Democratic Party was organized under the leadership of the late Mrs. Fannie Lue Hammer and others who had been excluded by Democratic Party rule from participation in the Mississippi Democratic Party. During this same period the South Carolina Democratic Party also excluded African Americans from participation in the Party.¹ As a direct result of such exclusionary and discriminatory practices the Democratic National Committee (hereinafter "DNC") instituted its *Six Basic Elements*² that have been adopted by the Defendant

¹ <https://www.thestate.com/news/special-reports/state-125/article43721457.html>

² *Six Basic Elements* The six basic elements adopted by the Democratic National Committee as official policy statements, January 1968, shall be implemented at all levels of the South Carolina Democratic Party. (1) All public meetings at all levels of the Democratic Party in each State should be open to all members of the Democratic Party regardless of race, color, creed, national origin, age, gender, or sexual orientation. (2) No test for membership in, nor any oaths of loyalty to, the Democratic Party in any State should be required

SCDP and incorporated by Defendant RCDP in its Bylaws by reference. Moreover, the Delegate Selection Rules For the 2020 Democratic National Convention³ state as follows:

"[T]he 1964 Democratic National Convention adopted a resolution which conditioned the seating of delegates at future conventions on the assurances that discrimination in any State Party affairs on the ground of race, color, creed or national origin did not occur." Rule 4(b) An Open Party.⁴

The said 2020 Delegate Selection Plan establishes an Affirmative Action Plan for each State Party.

The intent of the Affirmative Action Plan is best stated in the plan itself.

"The promises of a democratically elected government and the right to vote have not always been extended equally to all Americans. Historically, certain groups of Americans have been explicitly denied the right to vote or have been subjected to discriminatory and exclusionary practices with the intended effect of denying them voting rights.

...

1. The goal of such affirmative action shall be to achieve participation in the delegate selection process and Party organization at all levels by

or used which has the effect of requiring prospective or current members of the Democratic Party to acquiesce in, condone, or support discrimination on the grounds of race, color, creed, national origin, age, gender or sexual orientation. (3) The time and place for all public meetings of the Democratic Party on all levels should be publicized fully and in such a manner as to assure timely notice to all interested persons. Such meetings must be held in places accessible to all Party members and large enough to accommodate all interested persons. (4) The Democratic Party on all levels should support the broadest possible registration without discrimination on grounds of race, color, creed, national origin, age, gender or sexual orientation. (5) The Democratic Party in each State should publicize fully and in such a manner as to assure notice to all interested parties a full description of the legal and practical procedures for selection of Democratic Party Officers and representatives on all levels. Publication of these procedures should be done in such a fashion that all prospective and current members of each State Democratic Party will be fully and adequately informed of the pertinent procedures in time to participate in each selection procedure at all levels of the Democratic Party organization. (6) The Democratic Party in each State should publicize fully and in such a manner as to assure notice to all interested parties a complete description of the legal and practical qualifications for all officers and representatives of the State Democratic Party. Such publications should be done in a timely fashion so that all prospective candidates or applicants for any elected or appointed position within the State Democratic Party and each county will have full and adequate opportunity to compete for office. SCDP Rules as amended April 29, 2017, Section III, pp. 4-5. (italics added).

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the aforementioned groups *as indicated by their presence in the Democratic electorate.*"

Plaintiff is the Chair of the Affirmative Action Committee of the 2020 Delegate Selection Plan and along with the Affirmative Action Committee has the responsibility of monitoring the Defendant SCDP's implementation of the Affirmative Action Plan. Plaintiff is also a duly elected member of Defendant RCDP's Executive Committee as the Alternate male Committee person.

In the instant case plaintiff alleges and will show to this Court that the State Election Law governing party conventions as well as the The South Carolina Democratic Party Rules, the Richland County Democratic Party Bylaws, the Democratic National Committee Delegate Selection Rules for the 2020 Democratic National Convention and the South Carolina Delegate Selection Plan and Affirmative Action Plan for the 2020 Democratic National Convention have been knowingly and intentionally violated by the above named Defendants in the ways more particularly hereinafter.

Plaintiff further contends that the declaratory and injunctive relief requested herein is necessary to prevent the further violation of his rights.

PARTIES

1. Plaintiff, Johnnie Cordero, (hereinafter "Plaintiff") is a citizen and resident of Richland County, South Carolina and a registered voter therein. He is also the Chairman of the Democratic Black Caucus of South Carolina (an official caucus of the South Carolina Democratic Party); Chairman of the Affirmative Action Committee of the 2020 Delegate Selection Committee of the South Carolina Democratic Party; Alternate Committeeman of the Richland County Democratic Party and duly elected member of the Executive

Committee thereof; President of the Pine Grove Precinct of the Richland County

Democratic Party; Delegate to the South Carolina Democratic Party 2020 Convention; and

President of the Pine Grove Piney Woods Community Alliance.

2. Defendant Matthew Kisner (herein after "Defendant Kisner") is Chair of Richland County Democratic Party and is sued in his official capacity only.
3. Defendant Richland County Democratic Party (hereinafter "RCDP") is a recognized County Party of the South Carolina Democratic Party and is subject to its authority and control.
4. Defendant South Carolina Democratic Party (hereinafter "SCDP") is a political party within the meaning of S.C. Code Ann. § 7-11-12 and is the South Carolina State Party Committee of the National Democratic Party and subject to regulation by the South Carolina Election Commission pursuant to the authority granted the Commission by the South Carolina Code of Laws Title 7 - Elections.
5. Defendant Trav Robertson, Jr., (hereinafter "Defendant Robertson") is the Chair of the South Carolina Democratic Party and is sued in his official capacity only.

JURISDICTION AND VENUE

6. This action is brought pursuant to South Carolina Code of Laws §§ 15-53-10 and 15-53-90 and Rule 65 of the South Carolina Rules of Civil Procedure.
7. The parties have sufficient connections to Richland County, South Carolina, the events at issue occurred therein, and jurisdiction is proper.
8. On or about February 2020 Defendant Matt Kisner acting in his capacity as Chair of Defendant RCDP appointed a "nominating committee" whose members were empowered

to recruit candidates and select from among those candidates a slate of persons to offer as candidates for party elected offices including the County Party Chair. The purpose of the "Slate of Candidates" is to indicate to voters that these candidates have in some way been approved by the Defendant RCDP.

9. Upon information and belief, a meeting or meetings was held at a location unknown to the Plaintiff on a date also unknown to Plaintiff at which nominating committee selected persons to comprise a "slate of candidates".

FACTUAL ALLEGATIONS

10. Plaintiff, a duly elected alternate Committeeman of Defendant RCDP was not notified of the appointment of a nominating committee or of the selection of a slate of candidates or of date, time, place of any meetings to accomplish the selection of the slate.

11. Defendant Kisner knew or should have known that Plaintiff may have had intentions of running for Richland County Chair. And that at least one other person had publicly declared his candidacy.

12. Upon information and belief notice was not provided to Richland County Democrats all of whom are eligible to run for various party offices as required by SCDP and RCDP rules.

13. On or about March 21, 2020, Defendant SCDP issued an update on County Party Conventions indicating that county parties may decide whether to hold Town Hall Teleconventions or Mail-in Ballot. No provision was made for both Teleconvention and mail-in ballot.

14. On or about March 21, 2020 Defendant Kisner decided to hold a "remote convention" at an unspecified date in the future.

15. Upon information and belief no meetings of the Executive Committee of the Richland County Democratic Party (of which Plaintiff is a duly elected member) were held prior to the decision to hold a "remote convention" and Plaintiff was not notified if such a meeting or meetings were held.

16. On or about March 21, 2020, Defendant Kisner issued a public statement indicating that because nominations for office are allowed from the convention floor those seeking election may "self-nominate" by emailing a 75-100 word bio indicating their past involvement in Defendant RCDP to the nominating committee by COB Tuesday, March 31, 2020.

17. On or about April 18, 2020, Defendant Kisner and RCDP held a so-called Remote or Virtual Convention. The so-called convention was no more than a series of pre-recorded videos. The information sent to delegates notifying them of the convention noted that participation is *optional*.

18. On or about April 30, 2020, Defendants Robertson and SCDP held an Executive Committee and intentionally did not notify Plaintiff who was entitled to notice and opportunity to be heard as a duly elected member of the Executive Committee in violation of SCDP and DNC rules. Upon information and belief the meeting was called to discuss the Plaintiff and to take action regarding the within lawsuit.

CAUSES OF ACTION
Count One

**The Richland County Democratic Party convention
cannot be held after March 31, 2020.
(South Carolina Code of Laws §7-9-70)**

A. SC Code §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 conventions 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 provisions 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.

B. The County Committee determines the date, time and *location* of its convention. 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 § 7-9-100.

19. Section 7-9-70 also provides that the *County Committee* i.e., the *County Executive Committee*, shall set the date, time and location of the county convention - not the county chair. This cannot be accomplished without a meeting of the Executive Committee and a meeting requires statutory notice. The statute also requires that at the meeting a *location* for the convention shall be set.

When determining the effect of words utilized in a statute, a court looks to the "plain meaning" of the words. *City of Rock Hill v. Harris*. 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011). The *Cambridge Dictionary* defines location as a *place*. It follows that the statute by its plain meaning cannot and does not provide for tele conventions or remote conventions.

Plaintiff acknowledges that concerns about the Coronavirus and the spread of this deadly disease are important and must be considered. But the statute does not provide the option Defendants seek to utilize. The statute cannot be ignored. The statute cannot be overruled by the South Carolina Democratic Party and certainly not by the Chair of the Richland County Democratic Party.

Plaintiff also notes that at the time of this writing The Democratic National Committee has not cancelled its convention or gone to a teleconvention but has simply rescheduled the national convention to August 17, 2020. It also appears that Defendant RCDP is the only county to schedule a remote convention.

It should be further noted that although Defendant SCDP has erroneously suggested that counties may hold remote conventions it has not postponed or scheduled a remote convention for the State Party.

Finally, it is Plaintiff's contention that the statute may only be changed by the legislature.

C. Elections required to be held at county conventions cannot be held via remote convention or mail-in ballot.

Section 7-9-80 provides in pertinent part :

"Each county convention shall be called to order by the county chairman and shall proceed to elect a temporary president, a temporary secretary and a committee on credentials for the purpose of organizing."

20. It seems too obvious to state that these requirements cannot be carried out remotely. First, County Conventions usually have hundreds of participants. Will they all be able to vote? And if so how can the vote be verified? How will we know that the person on the line, if

done telephonically, is actually the person permitted to vote? *Party rules prohibit proxy voting.* Moreover, at a regular in-person convention members are permitted to be nominated from the floor. There is no requirement other than that they show up and, of course, be eligible to vote. This is true for the election of county officers as well as delegates to the state convention.

Requiring persons who wish to "self-nominate" to send in a 75-100 word bio indicating their past involvement with the Defendant RCDP is to unlawfully adds to the eligibility requirements to run for party office, i.e., candidates need only be registered voters who reside in Richland County. Nominations from the floor are also permitted by persons who wish to nominate others from the floor. Must they also submit a 75-100 word bio?

Finally, at county conventions a significant amount of time is spent on resolutions.

Resolutions determine what issues will be sent to the State and National conventions.

Resolutions represent the true voice of the people. The adoption of resolutions at party conventions is always the result of vigorous debate that often takes hours. How will resolutions be handled? On a simple up or down vote - without debate? The implications for freedom of speech and association are compelling.

Plaintiff contends these unlawful arrangements will only benefit party loyalists and the effect will be to exclude registered Democrats who for a host of reasons are not dyed in the wool party loyalists. The people excluded will almost assuredly be those persons who the Affirmative Action Plan was implemented to reach, i.e., African Americans, women, people 36 and younger, LGBTQ and Hispanic, Asian Americans and Pacific Islanders, Native Americans and people with disabilities.

These difficulties aside, Plaintiff contends that these are not authorized by the governing election law and are therefore unlawful. That other remedies may be available to the South Carolina State Legislature (amend the rule) or the Governor of South Carolina under emergency powers⁵ granted him to change election dates does not change the fact that political parties are not authorized to take actions contrary to the law:

CAUSES OF ACTION

Count Two

Violation of Section 2 Voting Rights Act

Voting Rights Act, 42 U.S.C. 1973

The Fannie Lou Hamer, Rosa Parks and Coretta Scott King

Voting Rights Reauthorization Act of 2006 (P.L.109-246)

Fourteenth Amendment U.S. Const. Amend. 14;

Fifteenth Amendment U.S. Const. Amend. 15.

21. It is now settled law that the right to vote is a fundamental right. Plaintiff contends that the right to vote is multifaceted. The right must protect not just what occurs in the voting booth or the right to be there but must also protect all stages leading up to the actual casting of one's ballot.
22. For generations one of the most effective tools used to deter African Americans and other disfavored minorities from exercising the franchise were restrictions that prevented participation in party activities to prevent them from gaining control of the party leadership apparatus.

⁵ S.C. Code Ann. § 7-13-1170: In an emergency, the governor may declare a new time and date for an election.

23. African Americans represent 66.7% of the Democratic electorate in South Carolina.

African American registered voters in South Carolina are more than one million strong.

African Americans represent 51% of the Richland County population.

24. The acts and omissions complained of herein are disguised dilutive techniques that adversely affect minority voters and as such violated the provisions of the Fannie Lou Hamer, Rosa Parks and Coretta Scott King Voting Rights Reauthorization Act of 2006 (P.L.109-246) and must be enjoined accordingly.

**CAUSES OF ACTION
Count Three
(Defendants Robertson, and SCDP)**

Violation of 42 U.S.C. § 1983
First Amendment U.S. Const. Amend. 1.
Fourteenth Amendment U.S. Const. Amend. 14.
Fifteenth Amendment U.S. Const. Amend. 15.

*The Acts of the Defendants Alleged hereinafter were and are intended to punish
*Plaintiff for exercising rights guaranteed and protected under the 14th and 15th
*Amendments and thereby give rise to a separate and distinct cause of action for
retaliation under 42 U.S.C. § 1983.

25. On or about April 19, 2020, Defendants Robertson and SCDP sent an email to Defendant SCDP's Executive Committee and others not members of the Executive Committee that stated in pertinent part: "Chairman Trav Robertson would like to hold a state executive committee meeting tomorrow, Monday, April 20, at noon. I know it's short notice, but two critical items are time- sensitive that Trav would like to discuss."

26. Plaintiff, a duly elected member of Defendant SCDP Executive Committee was intentionally not notified of the meeting as required by SCDP rules.

27. Upon information and belief, Plaintiff was intentionally excluded from the meeting because the two "critical" "time sensitive issues" were the within lawsuit and the removal of Plaintiff as Chair of the Affirmative Action Committee and the Democratic Black Caucus.

28. Upon information and belief and or about April, 20, 2020, the aforesaid meeting was held.

At the meeting the critical matter discussed was the within lawsuit. At the meeting two motions were made. One to remove Plaintiff as Chair of the Affirmative Action Committee (hereinafter "Motion#1") and the second to remove him as Chair of the Democratic Black Caucus of the Party (hereinafter "Motion#2"). Upon information and belief Motion # 1 carried and Motion #2 was tabled.

29. Upon information and belief motion #1 was not warranted and not authorized by party rules or Robert Rules of Order.

30. Upon information and belief the intention of the motion was to remove the Plaintiff as Chair of the Affirmative Action Committee and as Chair of the Democratic Black Caucus of South Carolina protected and guaranteed by 1st, 14th and 15th Amendments to the United States Constitution as well as Section 2 of the Voting Rights Act of 1965.

31. As a direct result of the acts and/or omissions of the Defendants Robertson and SCDP Plaintiff was intentionally denied notice of a meeting at which he was the only item of the agenda and that he was denied notice and the right to be heard.

32. On or about May 20, 2020, Defendants Trav Robertson and SCDP notified party members that it would hold a virtual State Democratic Party Convention and telephone and call in ballots to begin on June 4, 2020.

33. On or about April 17, 2020, Defendant's Kisner and RCDP mailed a packet of information to convention delegates which included an "Official Ballot" for the 2020 Richland County Democratic Party Officers Election. The said "Official Ballot" included only persons selected by the "Nominating Committee". The packet also required that the "Official Ballot" be returned by April 25, 2020. Apparently, the ballots are to be counted by the Defendant SCDP as the return address is Defendant SCDP's headquarters address.
34. On or about April 18, 2020, Defendant Kisner and RCDP mailed out mail-in ballots to 416 delegates. There are 150 precincts in Richland County with a total of 265,897 registered voters of whom 143,632 are non-white. *All registered voters who reside in Richland County are eligible to vote for county officers and to run for county office in the appropriate categories.*
35. The aforesaid official mail in ballot contains the names of the slate of candidates selected by the "nominating committee" without input from the Richland County Executive Committee of which Plaintiff is a member. The mail in ballots do not contain information about write ins; or duties of the officers to be elected. Or that the only qualification to hold office is that you are a registered voter who resides in Richland County. Moreover, you do not have to be a member of the Richland County Democratic Party.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor of the Plaintiff and against the named Defendants, and:

A. Declare, that Defendants KISNER and RCDP scheduled "teleconvention" and mail-in ballots for party elective office and delegate election violates SCCode 7-9-70;

B. Declare, that Defendants ROBERTSON and SCDP by granting authorization for County Parties to hold "teleconventions" and mail-in ballots for County Party elective offices and delegate election violated SCCode 7-9-70;

C. Declare, Defendants KISNER and RCDP's intentional failure to provide notice of Executive Committee meetings at which party business would be and in fact was conducted as provided by SCCode 7-9-70 and SCDP Rule, RCDP Rule and DNC Affirmative Action Rules for Delegate Selection for the 2020 Convention is unlawful;

D. Declare, the actions of the Defendants KISNER, RCDP, ROBERTSON, and SCDP violated rights of the Plaintiff protected by the Fourteenth and Fifteenth Amendments to the United States Constitution, the Voting Rights Act of 1965, and the South Carolina Constitution;

E. Declare that the action to remove Plaintiff as Chair of the Affirmative Action Committee without notice to him or opportunity to be heard violates his right to Due Process and amounts to retaliation for bringing the within lawsuit;

F. Preliminarily and permanently enjoin Defendants and their agents, officers, employees, and all persons acting in concert with any of them from scheduling or holding County or State Democratic Party "teleconventions" or mail-in ballots for delegates to County, State or National Democratic Party conventions;

G. Preliminarily and permanently enjoin Defendants and their agents, officers, employees, and all persons acting in concert with any of them from removing Plaintiff as

Chair of the Affirmative Action Committee without reasonable notice, specified charges and opportunity to be heard;

H. Order Defendants to immediately reschedule County and State Democratic Party conventions to reflect the change of date of the Democratic National Convention to August 17, 2020;

I. Order Defendants to reinstate Plaintiff to his position as Chair of the Affirmative Action Committee forthwith;

J. Alternatively, Plaintiff requests that Defendant RCDP be enjoined from holding elections for party offices or holding any convention until this matter is heard and decided.

K. Grant such other and further relief as to this Court may seem just and proper.

Dated: 21st day of May, 2020
Columbia, South Carolina

Respectfully submitted,

/s/ Johnnie Cordero
4204 Mandel Drive
Columbia, SC 29210
Tel.: (803)753-8091
Email.: cordero1018@att.net

Plaintiff, pro se

CERTIFICATE OF SERVICE

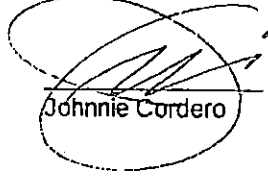
I, Johnnie Cordero, hereby certify that I have served a exact copy of (1) Motion for Speedy Hearing and Calendar Advancement and (2) First Amended Complaint on the

Attorney for Defendants by depositing same in a depository of the United States Post

Office, postage prepaid and addressed as follows:

Burnett Shutt & McDaniel, PA
912 Lady Street
PO Box 1929
Columbia, SC 29202
Attn: Nekki Shutt, Esq.

Dated: 22 May 2020
Columbia, SC



Johnnie Cordero

ELECTRONICALLY FILED - 2020 Jun 11 2:40 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001980 -

SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Johnnie Cordero,)

vs.)

Matthew Kisner, in his official capacity as)
Chair of The Richland County Democratic)
Party, and)

The Richland County Democratic Party, and)

Trav Robertson, Jr., in his official capacity)
as Chair of The South Carolina Democratic)
Party, and)

The South Carolina Democratic Party, and)

Defendants.)

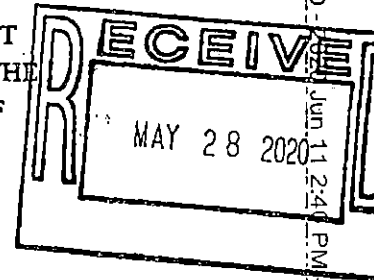
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2020-CP-40-1980

MOTION FOR SPEEDY HEARING
AND
CALENDAR ADVANCEMENT
PURSUANT TO RULE 57 OF THE
SOUTH CAROLINA RULES OF
CIVIL PROCEDURE



SCANNED



Plaintiff, Johnnie Cordero, acting on his own behalf, hereby requests that the above captioned matter be granted a speedy hearing and that this action for declaratory judgement and injunctive relief be advanced on the calendar so that he may be heard as expeditiously as possible.

Plaintiff makes this request to avert irreparable harm to himself as a direct result of the acts and omissions of the defendants complained of and sought to be enjoined in the underlying complaint.

Procedural Background

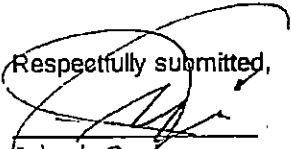
On or about April 16, 2020 Plaintiff filed the above referenced action for Declaratory Judgment and Injunctive relief.

On or about May 14, 2020 counsel for defendants acknowledged service of process.
And plaintiff agreed to an extension of time for Defendants to file an answer until June 7, 2020.

On or about May 20, 2020 Plaintiff received notice that Defendant SCDP will go ahead with a virtual State Convention and telephone ballots beginning on June 6, 2020. in violation of South Carolina Elections Law as set forth more particularly in the underlying complaint for declaratory and injunctive relief.

Dated: 22 May 2020
Columbia, SC

Respectfully submitted,

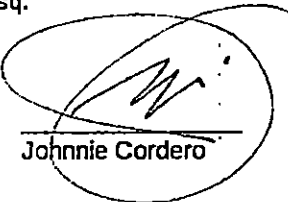

Johnnie Cordero
Plaintiff, pro se
4204 Mandel Drive
Columbia, SC 29210
Tel.: (803) 753-8091
Email.: cordero1018@att.net

Certificate Of Service

I, Johnnie Cordero, hereby certify that I have served a exact copy of (1) Motion for Speedy Hearing and Calendar Advancement and (2) First Amended Complaint on the Attorney for Defendants by depositing same in a depository of the United States Post Office, postage prepaid and addressed as follows:

Burnett Shutt & McDaniel, PA
912 Lady Street
PO Box 1929
Columbia, SC 29202
Attn: Nekki Shutt, Esq.

Dated: 22 May 2020
Columbia, SC


Johnnie Cordero

SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Johnnie Cordero,	)	C/A No.: 2020-CP-40-1980
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S FIRST
	)	AMENDED COMPLAINT
	)	FOR DECLARATORY
	)	AND INJUNCTIVE RELIEF
	)	PURSUANT TO SC CODE
Matthew Kisner, in his official capacity as	)	§§ 15-53-10 and 15-53-90
Chair of The Richland County Democratic	)	RULE 65 SC RULES OF
Party, and	)	CIVIL PROCEDURE
	)	(JURY TRIAL DEMANDED)
The Richland County Democratic Party,	)	
and	)	
	)	
Trav Robertson, Jr, in his official capacity	)	
as Chair of The South Carolina Democratic	)	
Party, and	)	
	)	
The South Carolina Democratic Party,	)	
	)	
	)	
Defendants.	)	

The Plaintiff, Johnnie Cordero, acting on his own behalf, complaining of the Defendants alleges as follows:

INTRODUCTION

Political parties represent the voice of the people. It is for this reason that they have significant protection under the First Amendment. But the voice cannot be representative and authentic if political parties are able to circumvent the rules put in place to ensure that minorities are heard not only in the voting booth but also in the party activities at every level including counties.

again reared its ugly head in the wake of the Supreme Court decision in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). The *Shelby* decision has given rise to a veritable tsunami of legislation ostensibly passed to prevent voter fraud but that has actually served to make it difficult for African Americans and other minorities to exercise their right to vote.

Many and varied have been the dilutive techniques used to suppress the African American vote. Everything from literacy tests to poll taxes and grandfather clauses have successfully been used. Over the years the methods have changed but the goals have not. African Americans represent 66.7% of the Democratic electorate in South Carolina. African American registered voters in South Carolina are more than one million strong. African Americans represent 51% of the Richland County population. The right to vote and more particularly to participate in political party activities has been the bedrock of the fight for political recognition and empowerment of minorities both in South Carolina and throughout the United States since the 1960's.

In 1964 the Mississippi Freedom Democratic Party was organized under the leadership of the late Mrs. Fannie Lue Hammer and others who had been excluded by Democratic Party rule from participation in the Mississippi Democratic Party. During this same period the South Carolina Democratic Party also excluded African Americans from participation in the Party.¹ As a direct result of such exclusionary and discriminatory practices the Democratic National Committee (hereinafter "DNC") instituted its *Six Basic Elements*² that have been adopted by the Defendant

¹ <https://www.thestate.com/news/special-reports/state-125/article43721457.html>

² Six Basic Elements The six basic elements adopted by the Democratic National Committee as official policy statements, January 1968, shall be implemented at all levels of the South Carolina Democratic Party. (1) All public meetings at all levels of the Democratic Party in each State should be open to all members of the Democratic Party regardless of race, color, creed, national origin, age, gender, or sexual orientation. (2) No test for membership in, nor any oaths of loyalty to, the Democratic Party in any State should be required

SCDP and incorporated by Defendant RCDP in its Bylaws by reference. Moreover, the Delegate

Selection Rules For the 2020 Democratic National Convention³ state as follows:

"[T]he 1964 Democratic National Convention adopted a resolution which conditioned the seating of delegates at future conventions on the assurances that discrimination in any State Party affairs on the ground of race, color, creed or national origin did not occur." Rule 4(b) An Open Party.⁴

The said 2020 Delegate Selection Plan establishes an Affirmative Action Plan for each State Party.

The intent of the Affirmative Action Plan is best stated in the plan itself.

"The promises of a democratically elected government and the right to vote have not always been extended equally to all Americans. Historically, certain groups of Americans have been explicitly denied the right to vote or have been subjected to discriminatory and exclusionary practices with the intended effect of denying them voting rights.

...
1. The goal of such affirmative action shall be to achieve participation in the delegate selection process and Party organization at all levels by

or used which has the effect of requiring prospective or current members of the Democratic Party to acquiesce in, condone, or support discrimination on the grounds of race, color, creed, national origin, age, gender or sexual orientation. (3) *The time and place for all public meetings of the Democratic Party on all levels should be publicized fully and in such a manner as to assure timely notice to all interested persons. Such meetings must be held in places accessible to all Party members and large enough to accommodate all interested persons.* (4) *The Democratic Party on all levels should support the broadest possible registration without discrimination on grounds of race, color, creed, national origin, age, gender or sexual orientation.* (5) *The Democratic Party in each State should publicize fully and in such a manner as to assure notice to all interested parties a full description of the legal and practical procedures for selection of Democratic Party Officers and representatives on all levels. Publication of these procedures should be done in such a fashion that all prospective and current members of each State Democratic Party will be fully and adequately informed of the pertinent procedures in time to participate in each selection procedure at all levels of the Democratic Party organization.* (6) *The Democratic Party in each State should publicize fully and in such a manner as to assure notice to all interested parties a complete description of the legal and practical qualifications for all officers and representatives of the State Democratic Party. Such publications should be done in a timely fashion so that all prospective candidates or applicants for any elected or appointed position within the State Democratic Party and each county will have full and adequate opportunity to compete for office.* SCDP Rules as amended April 29, 2017, Section III, pp. 4-5. (italics added).

³ <https://scdp.org/wp-content/uploads/2017/05/rules-as-amended-2017-2.pdf>

⁴ <https://scdp.org/wp-content/uploads/2017/05/rules-as-amended-2017-2.pdf>

the aforementioned groups *as indicated by their presence in the Democratic electorate.*"

Plaintiff is the Chair of the Affirmative Action Committee of the 2020 Delegate Selection Plan and along with the Affirmative Action Committee has the responsibility of monitoring the Defendant SCDP's implementation of the Affirmative Action Plan. Plaintiff is also a duly elected member of Defendant RCDP's Executive Committee as the Alternate male Committee- person.

In the instant case plaintiff alleges and will show to this Court that the State Election Law governing party conventions as well as the The South Carolina Democratic Party Rules, the Richland County Democratic Party Bylaws, the Democratic National Committee Delegate Selection Rules for the 2020 Democratic National Convention and the South Carolina Delegate Selection Plan and Affirmative Action Plan for the 2020 Democratic National Convention have been knowingly and intentionally violated by the above named Defendants in the ways more particularly hereinafter.

Plaintiff further contends that the declaratory and injunctive relief requested herein is necessary to prevent the further violation of his rights.

PARTIES

1. Plaintiff, Johnnie Cordero, (hereinafter "Plaintiff") is a citizen and resident of Richland County, South Carolina and a registered voter therein. He is also the Chairman of the Democratic Black Caucus of South Carolina (an official caucus of the South Carolina Democratic Party); Chairman of the Affirmative Action Committee of the 2020 Delegate Selection Committee of the South Carolina Democratic Party; Alternate Committeeman of the Richland County Democratic Party and duly elected member of the Executive

Committee thereof; President of the Pine Grove Precinct of the Richland County

Democratic Party; Delegate to the South Carolina Democratic Party 2020 Convention; and

President of the Pine Grove Piney Woods Community Alliance.

2. Defendant Matthew Kisner (herein after "Defendant Kisner") is Chair of Richland County Democratic Party and is sued in his official capacity only.
3. Defendant Richland County Democratic Party (hereinafter "RCDP") is a recognized County Party of the South Carolina Democratic Party and is subject to its authority and control.
4. Defendant South Carolina Democratic Party (hereinafter "SCDP") is a political party within the meaning of S.C. Code Ann. § 7-11-12 and is the South Carolina State Party Committee of the National Democratic Party and subject to regulation by the South Carolina Election Commission pursuant to the authority granted the Commission by the South Carolina Code of Laws Title 7 - Elections.
5. Defendant Trav Robertson, Jr., (hereinafter "Defendant Robertson") is the Chair of the South Carolina Democratic Party and is sued in his official capacity only.

JURISDICTION AND VENUE

6. This action is brought pursuant to South Carolina Code of Laws §§ 15-53-10 and 15-53-90 and Rule 65 of the South Carolina Rules of Civil Procedure.
7. The parties have sufficient connections to Richland County, South Carolina, the events at issue occurred therein, and jurisdiction is proper.
8. On or about February 2020 Defendant Matt Kisner acting in his capacity as Chair of Defendant RCDP appointed a "nominating committee" whose members were empowered

to recruit candidates and select from among those candidates a slate of persons to offer as candidates for party elected offices including the County Party Chair. The purpose of the "Slate of Candidates" is to indicate to voters that these candidates have in some way been approved by the Defendant RCDP.

9. Upon information and belief, a meeting or meetings was held at a location unknown to the Plaintiff on a date also unknown to Plaintiff at which nominating committee selected persons to comprise a "slate of candidates".

FACTUAL ALLEGATIONS

10. Plaintiff, a duly elected alternate Committeeman of Defendant RCDP was not notified of the appointment of a nominating committee or of the selection of a slate of candidates or of date, time, place of any meetings to accomplish the selection of the slate.
11. Defendant Kisner knew or should have known that Plaintiff may have had intentions of running for Richland County Chair. And that at least one other person had publicly declared his candidacy.
12. Upon information and belief notice was not provided to Richland County Democrats all of whom are eligible to run for various party offices as required by SCDP and RCDP rules.
13. On or about March 21, 2020, Defendant SCDP issued an update on County Party Conventions indicating that county parties may decide whether to hold Town Hall Teleconventions or Mail-in Ballot. No provision was made for both Teleconvention and mail-in ballot.
14. On or about March 21, 2020 Defendant Kisner decided to hold a "remote convention" at an unspecified date in the future.

15. Upon information and belief no meetings of the Executive Committee of the Richland County Democratic Party (of which Plaintiff is a duly elected member) were held prior to the decision to hold a "remote convention" and Plaintiff was not notified if such a meeting or meetings were held.
16. On or about March 21, 2020, Defendant Kisner issued a public statement indicating that because nominations for office are allowed from the convention floor those seeking election may "self-nominate" by emailing a 75-100 word bio indicating their past involvement in Defendant RCDP to the nominating committee by COB Tuesday, March 31, 2020.
17. On or about April 18, 2020, Defendant Kisner and RCDP held a so-called Remote or Virtual Convention. The so-called convention was no more than a series of pre-recorded videos. The information sent to delegates notifying them of the convention noted that participation is *optional*.
18. On or about April 30, 2020, Defendants Robertson and SCDP held an Executive Committee and intentionally did not notify Plaintiff who was entitled to notice and opportunity to be heard as a duly elected member of the Executive Committee in violation of SCDP and DNC rules. Upon information and belief the meeting was called to discuss the Plaintiff and to take action regarding the within lawsuit.

CAUSES OF ACTION
Count One

**The Richland County Democratic Party convention
cannot be held after March 31, 2020.
(South Carolina Code of Laws §7-9-70)**

A. SC Code §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 conventions 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 provisions 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.

B. The County Committee determines the date, time and *location* of its convention. 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 § 7-9-100.

19. Section 7-9-70 also provides that the *County Committee* i.e., the *County Executive Committee*, shall set the date, time and location of the county convention - not the county chair. This cannot be accomplished without a meeting of the Executive Committee and a meeting requires statutory notice. The statute also requires that at the meeting a *location* for the convention shall be set.

When determining the effect of words utilized in a statute, a court looks to the "plain meaning" of the words. *City of Rock Hill v. Harris*. 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011). The *Cambridge Dictionary* defines location as a *place*. It follows that the statute by its plain meaning cannot and does not provide for tele conventions or remote conventions.

Plaintiff acknowledges that concerns about the Coronavirus and the spread of this deadly disease are important and must be considered. But the statute does not provide the option Defendants seek to utilize. The statute cannot be ignored. The statute cannot be overruled by the South Carolina Democratic Party and certainly not by the Chair of the Richland County Democratic Party.

Plaintiff also notes that at the time of this writing The Democratic National Committee has not cancelled its convention or gone to a teleconvention but has simply rescheduled the national convention to August 17, 2020. It also appears that Defendant RCDP is the only county to schedule a remote convention.

It should be further noted that although Defendant SCDP has erroneously suggested that counties may hold remote conventions it has not postponed or scheduled a remote convention for the State Party.

Finally, it is Plaintiff's contention that the statute may only be changed by the legislature.

C. Elections required to be held at county conventions cannot be held via remote convention or mail-in ballot.

Section 7-9-80 provides in pertinent part :

"Each county convention shall be called to order by the county chairman and shall proceed to elect a temporary president, a temporary secretary and a committee on credentials for the purpose of organizing."

20. It seems too obvious to state that these requirements cannot be carried out remotely. First, County Conventions usually have hundreds of participants. Will they all be able to vote? And if so how can the vote be verified? How will we know that the person on the line, if

done telephonically, is actually the person permitted to vote? *Party rules prohibit proxy voting.* Moreover, at a regular in-person convention members are permitted to be nominated from the floor. There is no requirement other than that they show up and, of course, be eligible to vote. This is true for the election of county officers as well as delegates to the state convention.

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Plaintiff contends these unlawful arrangements will only benefit party loyalists and the effect will be to exclude registered Democrats who for a host of reasons are not dyed in the wool party loyalists. The people excluded will almost assuredly be those persons who the Affirmative Action Plan was implemented to reach, i.e., African Americans, women, people 36 and younger, LGBTQ and Hispanic, Asian Americans and Pacific Islanders, Native Americans and people with disabilities.

These difficulties aside, Plaintiff contends that these are not authorized by the governing election law and are therefore unlawful. That other remedies may be available to the South Carolina State Legislature (amend the rule) or the Governor of South Carolina under emergency powers⁵ granted him to change election dates does not change the fact that political parties are not authorized to take actions contrary to the law.

CAUSES OF ACTION

Count Two

Violation of Section 2 Voting Rights Act

Voting Rights Act, 42 U.S.C. 1973

The Fannie Lou Hamer, Rosa Parks and Coretta Scott King

Voting Rights Reauthorization Act of 2006 (P.L.109-246)

Fourteenth Amendment U.S. Const. Amend. 14;

Fifteenth Amendment U.S. Const. Amend. 15.

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22. For generations one of the most effective tools used to deter African Americans and other disfavored minorities from exercising the franchise were restrictions that prevented participation in party activities to prevent them from gaining control of the party leadership apparatus.

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African American registered voters in South Carolina are more than one million strong.

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24. The acts and omissions complained of herein are disguised dilutive techniques that adversely affect minority voters and as such violated the provisions of the Fannie Lou Hamer, Rosa Parks and Coretta Scott King Voting Rights Reauthorization Act of 2006 (P.L.109-246) and must be enjoined accordingly.

**CAUSES OF ACTION
Count Three
(Defendants Robertson, and SCDP)**

**Violation of 42 U.S.C. § 1983
First Amendment U.S. Const. Amend. 1.
Fourteenth Amendment U.S. Const. Amend. 14.
Fifteenth Amendment U.S. Const. Amend. 15.**

The Acts of the Defendants Alleged hereinafter were and are intended to punish Plaintiff for exercising rights guaranteed and protected under the 14th and 15th Amendments and thereby give rise to a separate and distinct cause of action for retaliation under 42 U.S.C. § 1983.

25. On or about April 19, 2020, Defendants Robertson and SCDP sent an email to Defendant SCDP's Executive Committee and others not members of the Executive Committee that stated in pertinent part: "Chairman Trav Robertson would like to hold a state executive committee meeting tomorrow, Monday, April 20, at noon. I know it's short notice, but two critical items are time- sensitive that Trav would like to discuss."

26. Plaintiff, a duly elected member of Defendant SCDP Executive Committee was intentionally not notified of the meeting as required by SCDP rules.

27. Upon information and belief, Plaintiff was intentionally excluded from the meeting because the two "critical" "time sensitive issues" were the within lawsuit and the removal of Plaintiff as Chair of the Affirmative Action Committee and the Democratic Black Caucus.

28. Upon information and belief and or about April, 20, 2020, the aforesaid meeting was held.

At the meeting the critical matter discussed was the within lawsuit. At the meeting two motions were made. One to remove Plaintiff as Chair of the Affirmative Action Committee (hereinafter "Motion#1") and the second to remove him as Chair of the Democratic Black Caucus of the Party (hereinafter "Motion#2"). Upon information and belief Motion # 1 carried and Motion #2 was tabled.

29. Upon information and belief motion #1 was not warranted and not authorized by party rules or Robert Rules of Order.

30. Upon information and belief the intention of the motion was to remove the Plaintiff as Chair of the Affirmative Action Committee and as Chair of the Democratic Black Caucus of South Carolina protected and guaranteed by 1st, 14th and 15th Amendments to the United States Constitution as well as Section 2 of the Voting Rights Act of 1965.

31. As a direct result of the acts and/or omissions of the Defendants Robertson and SCDP Plaintiff was intentionally denied notice of a meeting at which he was the only item of the agenda and that he was denied notice and the right to be heard.

32. On or about May 20, 2020, Defendants Trav Robertson and SCDP notified party members that it would hold a virtual State Democratic Party Convention and telephone and call in ballots to begin on June 4, 2020.

33. On or about April 17, 2020, Defendant's Kisner and RCDP mailed a packet of information to convention delegates which included an "Official Ballot" for the 2020 Richland County Democratic Party Officers Election. The said "Official Ballot" included only persons selected by the "Nominating Committee". The packet also required that the "Official Ballot" be returned by April 25, 2020. Apparently, the ballots are to be counted by the Defendant SCDP as the return address is Defendant SCDP's headquarters address.
34. On or about April 18, 2020, Defendant Kisner and RCDP mailed out mail-in ballots to 416 delegates. There are 150 precincts in Richland County with a total of 265,897 registered voters of whom 143,632 are non-white. *All registered voters who reside in Richland County are eligible to vote for county officers and to run for county office in the appropriate categories.*
35. The aforesaid official mail in ballot contains the names of the slate of candidates selected by the "nominating committee" without input from the Richland County Executive Committee of which Plaintiff is a member. The mail in ballots do not contain information about write ins, or duties of the officers to be elected. Or that the only qualification to hold office is that you are a registered voter who resides in Richland County. Moreover, you do not have to be a member of the Richland County Democratic Party.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor of the Plaintiff and against the named Defendants, and:

A. Declare, that Defendants KISNER and RCDP scheduled "teleconvention" and mail-in ballots for party elective office and delegate election violates SCCode 7-9-70;

B. Declare, that Defendants ROBERTSON and SCDP by granting authorization for County Parties to hold "teleconventions" and mail-in ballots for County Party elective offices and delegate election violated SCCode 7-9-70;

C. Declare, Defendants KISNER and RCDP's intentional failure to provide notice of Executive Committee meetings at which party business would be and in fact was conducted as provided by SCCode 7-9-70 and SCDP Rule, RCDP Rule and DNC Affirmative Action Rules for Delegate Selection for the 2020 Convention is unlawful;

D. Declare, the actions of the Defendants KISNER, RCDP, ROBERTSON, and SCDP violated rights of the Plaintiff protected by the Fourteenth and Fifteenth Amendments to the United States Constitution, the Voting Rights Act of 1965, and the South Carolina Constitution;

E. Declare that the action to remove Plaintiff as Chair of the Affirmative Action Committee without notice to him or opportunity to be heard violates his right to Due Process and amounts to retaliation for bringing the within lawsuit;

F. Preliminarily and permanently enjoin Defendants and their agents, officers, employees, and all persons acting in concert with any of them from scheduling or holding County or State Democratic Party "teleconventions" or mail-in ballots for delegates to County, State or National Democratic Party conventions;

G. Preliminarily and permanently enjoin Defendants and their agents, officers, employees, and all persons acting in concert with any of them from removing Plaintiff as

Chair of the Affirmative Action Committee without reasonable notice, specified charges and opportunity to be heard;

H. Order Defendants to immediately reschedule County and State Democratic Party conventions to reflect the change of date of the Democratic National Convention to August 17, 2020;

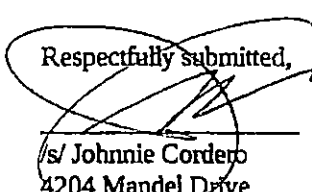
I. Order Defendants to reinstate Plaintiff to his position as Chair of the Affirmative Action Committee forthwith;

J. Alternatively, Plaintiff requests that Defendant RCDP be enjoined from holding elections for party offices or holding any convention until this matter is heard and decided.

K. Grant such other and further relief as to this Court may seem just and proper.

Dated: 21st day of May, 2020
Columbia, South Carolina

Respectfully submitted,


/s/ Johnnie Cordero
4204 Mandel Drive
Columbia, SC 29210
Tel.: (803)753-8091
Email.: cordero1018@att.net

Plaintiff, pro se

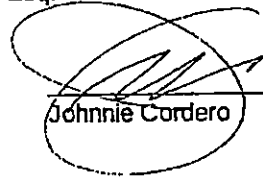
CERTIFICATE OF SERVICE

I, Johnnie Cordero, hereby certify that I have served a exact copy of (1) Motion for Speedy Hearing and Calendar Advancement and (2) First Amended Complaint on the

Attorney for Defendants by depositing same in a depository of the United States Post
Office, postage prepaid and addressed as follows:

Burnett Shutt & McDaniel, PA
912 Lady Street
PO Box 1929
Columbia, SC 29202
Attn: Nekki Shutt, Esq.

Dated: 22 May 2020
Columbia, SC



Johnnie Cordero

ELECTRONICALLY FILED - 2020 Jun 11 2:40 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001980

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

Johnnie Cordero,

Plaintiff,

vs.

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; and, The South Carolina
Democratic Party,

Defendants.

Civil Action No. 3:20-cv-02195-JFA-PJG

DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISMISS
PURSUANT TO RULE 12(b)(6)

YOU WILL PLEASE TAKE NOTICE that Defendants Matthew Kisner, Richland County Democratic Party, Trav Robertson, Jr., and the South Carolina Democratic Party (collectively, "Defendants") respectfully move this Court for an Order dismissing Plaintiff's First Amended Complaint (ECF No. 1-3) in its entirety, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and applicable case law, for failure to state a claim upon which relief can be granted. The specific grounds for Defendants' motion are as follows:

1. The state statutes Plaintiff seeks to enforce, governing the timing of county party conventions, are not constitutionally enforceable, and, even if they are, there is no private right of action to enforce them;
2. Plaintiff has failed to state facts that would show state action or any violation of the federal Voting Rights Act;
3. Plaintiff has failed to state facts that would show state action or any violation of his constitutional rights under 42 U.S.C. § 1983; and,
4. All of Plaintiff's claims for injunctive and declaratory relief are moot.

This motion is based upon the pleadings filed in this matter, the Rules of this Court, all applicable state and federal statutes, the supporting memorandum of law, and any other information this Court may accept.

Respectfully submitted,

s/ Grant Burnette LeFever
Nekki Shutt (Fed. ID 6530)
Grant Burnette LeFever (Fed. ID 12943)
BURNETTE SHUTT & McDANIEL, PA
912 Lady Street, Second Floor
PO Box 1929
Columbia, South Carolina 29202
Telephone: (803) 904-7912
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NShutt@BurnetteShutt.Law
GLeFever@BurnetteShutt.Law

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

June 16, 2020

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

Johnnie Cordero,	)	C/A No. 3:20-2195-JFA-PJG
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Matthew Kisner, <i>in his official capacity as</i>	)	ORDER AND
<i>Chair of the Richland County Democratic</i>	)	REPORT AND RECOMMENDATION
<i>Party; The Richland County Democratic</i>	)	
<i>Party; Trav Robertson, Jr., in his official</i>	)	
<i>capacity as Chair of the South Carolina</i>	)	
<i>Democratic Party; The South Carolina</i>	)	
<i>Democratic Party,</i>	)	
	)	
Defendants.	)	
	)	

Plaintiff Johnnie Cordero, a self-represented litigant, filed this civil rights action in the Richland County Court of Common Pleas asserting claims pursuant to 42 U.S.C. § 1983; the Voting Rights Act of 1965, 52 U.S.C. §§ 10101, et seq.; and South Carolina Code §§ 7-9-70 to -100. The defendants removed the action to this court on June 9, 2020. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) for a Report and Recommendation on the defendants' motion to dismiss. (ECF No. 9.) Pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the court advised Cordero of the summary judgment and dismissal procedures and the possible consequences if he failed to respond adequately to the defendants' motion. (ECF No. 10.) Cordero filed a response in opposition to the motion (ECF No. 20), and the defendants filed a reply (ECF No. 24). Having reviewed the record presented and the applicable law, the court finds that the defendants' motion should be granted as to Cordero's federal claims and the case should be remanded to the Richland County Court of Common Pleas.

BACKGROUND

The following allegations are taken as true for purposes of resolving the defendants' motion to dismiss. Plaintiff Johnnie Cordero is a member of the South Carolina Democratic Party ("SCDP") and the Richland County Democratic Party ("RCDP") and holds various leadership positions within those organizations. (Am. Compl., ECF No. 1-3 at 5-6.) In February 2020, Defendant Matt Kisner, chairperson of the RCDP, appointed a nominating committee to recruit candidates for various positions in the RCDP, including the party chairmanship. (Id. at 7-8.) Cordero had intentions of running for the chairmanship of the RCDP but was not notified about the formation of the nominating committee or the date and times at which the nominating committee met. (Id.)

On March 21, 2020, the SCDP notified county parties that they could either hold their county party conventions virtually or by mail. (Id. at 7.) RCDP officials decided to hold a virtual convention, but Cordero was excluded from that decision-making process. (Id. at 8.) On April 16, 2020, Cordero filed this action in the Richland County Court of Common Pleas seeking to have the virtual and mail-in conventions declared illegal under state law and the Voting Rights Act and to enjoin the defendants from holding the conventions. The RCDP convention was held on April 18, 2020. (Id.)

In April 2020, the SCDP Executive Committee met to discuss Cordero's lawsuit. (Id.) The SCDP Executive Committee did not provide Cordero notice of the meeting despite Cordero's membership on the Executive Committee, in violation of SCDP and Democratic National Committee rules. (Id.) In that meeting, the Executive Committee also removed Cordero from his chairmanship of the Affirmative Action Committee and discussed removing Cordero from his chairmanship of the Democratic Black Caucus.

In the Amended Complaint, Cordero asserts that South Carolina Code § 7-9-70 prohibits the RCDP from holding its convention after March 31, 2020, and that South Carolina Code § 7-9-80 prohibits the RCDP from holding its convention virtually or by mail. Cordero also asserts that the defendants' actions violate Section Two of the Voting Rights Act and constitute retaliation against Cordero's First, Fourteenth, and Fifteenth Amendment rights.

DISCUSSION

A. Rule 12(b)(6) Standard

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) examines the legal sufficiency of the facts alleged on the face of the complaint. Edwards v. City of Goldsboro, 178 F.3d 231, 243 (4th Cir. 1999). To survive a Rule 12(b)(6) motion, “[f]actual allegations must be enough to raise a right to relief above the speculative level.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). The “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). A claim is facially plausible when the factual content allows the court to reasonably infer that the defendant is liable for the misconduct alleged. Id. When considering a motion to dismiss, the court must accept as true all of the factual allegations contained in the complaint. Erickson v. Pardus, 551 U.S. 89, 94 (2007). The court “may also consider documents attached to the complaint, see Fed. R. Civ. P. 10(c), as well as those attached to the motion to dismiss, so long as they are integral to the complaint and authentic.” Philips v. Pitt Cty. Mem’l Hosp., 572 F.3d 176, 180 (4th Cir. 2009) (citing Blankenship v. Manchin, 471 F.3d 523, 526 n.1 (4th Cir. 2006)).

Further, while the federal court is charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious case, see, e.g., Erickson, 551

U.S. 89, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleadings to allege facts which set forth a federal claim, nor can the court assume the existence of a genuine issue of material fact where none exists. Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir. 1990).

B. The Defendants' Motion

1. Voting Rights Act

The defendants argue that Cordero fails to state a claim upon which relief can be granted under the Voting Rights Act. The court agrees.

The Voting Rights Act states, "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title." 52 U.S.C. § 10301(a).

In the Amended Complaint, under a section titled "CAUSES OF ACTION – Count Two – Violation of Section 2 Voting Rights Act," Cordero alleges "The acts and omissions complained of herein are disguised dilutive techniques that adversely affect minority voters," which violate the Voting Rights Act. (Am. Compl., ECF No. 1-3 at 13.) This vague allegation fails to comply with the federal pleading requirements. See Fed. R. Civ. P. 8 (requiring that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief"); Iqbal, 556 U.S. at 678 (stating Federal Rule of Civil Procedure 8 does not require detailed factual allegations, but it requires more than a plain accusation that the defendant unlawfully harmed the plaintiff, devoid of factual support). Cordero's conclusory citation to the "acts and omissions complained of herein" fails to identify the defendants' action that purportedly violated the Voting Rights Act.

None of the factual allegations in the Amended Complaint obviously describes a technique to dilute minority voting power, and Cordero makes no allegation that his right to vote in any election has been curbed by the defendants' actions. See 52 U.S.C. § 10101(a)(1) ("All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding."). Accordingly, Cordero fails to state a claim pursuant to the Voting Rights Act upon which relief can be granted.

2. 42 U.S.C. § 1983

The defendants argue that Cordero fails to state a retaliation claim upon which relief can be granted pursuant to 42 U.S.C. § 1983. Again, the court agrees.

A legal action under 42 U.S.C. § 1983 allows "a party who has been deprived of a federal right under the color of state law to seek relief." City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 707 (1999). To state a claim under § 1983, a plaintiff must allege: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988). "To constitute state action, 'the deprivation must be caused by the exercise of some right or privilege created by the State . . . or by a person for whom the State is responsible,' and 'the party charged with the deprivation must be a person who may fairly be said to be a state actor.'" West, 487 U.S. at 49 (quoting Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 936 n.18 (1982)); see also Goldstein v. Chestnut Ridge Volunteer Fire Co., 218 F.3d

337, 341 (4th Cir. 2000) (discussing the different tests used to identify when private parties can be considered state actors in civil rights suits).

Here, Cordero fails to plausibly allege that the defendants are state actors amenable to suit pursuant to 42 U.S.C. § 1983. Cordero argues the defendants retaliated against him for filing this lawsuit by removing him as the chairperson of the Affirmative Action Committee. Courts have found that while political parties are state actors when they take roles in the election process, the internal decisions of political parties regarding leadership positions are not actions that are fairly attributable to the state. See New York State Bd. of Elections v. Lopez Torres, 552 U.S. 196, 203 (2008) (“A political party has a First Amendment right to limit its membership as it wishes, and to choose a candidate-selection process that will in its view produce the nominee who best represents its political platform.”); Jacobson v. Kings Cty. Democratic Cty. Comm., 788 F. App’x 770, 772 (2d Cir. 2019) (stating that a political party acts as a private organization and is protected from constitutional scrutiny when it conducts “internal party affairs which have no direct relation to the electoral process”); Max v. Republican Comm. of Lancaster Cty., 587 F.3d 198, 202 (3d Cir. 2009) (rejecting the plaintiff’s claim that the county political party retaliated against her because the party was not a state actor amenable to suit pursuant to § 1983). Accordingly, Cordero fails to state a claim pursuant to § 1983 upon which relief can be granted.

3. State Law Claims

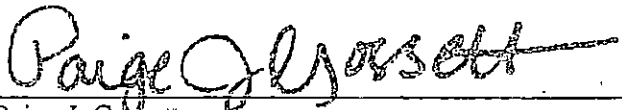
The defendants argue Plaintiff fails to state a claim for violations of South Carolina’s statutes governing political party conventions. However, the court finds that because Cordero’s federal claims are subject to dismissal, the court should exercise its discretion to remand Cordero’s state claims to the Richland County Court of Common Pleas. See 28 U.S.C. § 1367(c) (authorizing a district court to decline to exercise jurisdiction over a supplemental claim); Carnegie-Mellon

Univ. v. Cohill, 484 U.S. 343, 349-50 (1988) (discussing the factors in deciding whether to exercise supplemental jurisdiction after removal). Here, Cordero raises numerous state law claims that, in the interest of comity, are more appropriate for consideration in South Carolina's courts because they include complex issues of state law. See 28 U.S.C. § 1367(c) (listing bases for declining supplemental jurisdiction, including the presence of novel or complex issues of state law and the dismissal of federal claims); Hinson v. Nw. Fin. S.C. Inc., 239 F.3d 611, 617 (4th Cir. 2001) (finding the district court did not abuse its discretion to remand the case to state court where the federal claims were no longer at issue, the state claims predominated, and the state claims involved interpretations of complex state statutes on which there was no state precedent).

RECOMMENDATION

Based on the foregoing, the court recommends the defendants' motion to dismiss be granted as to Cordero's federal claims. The court also recommends that the court exercise its discretion to remand Cordero's state law claims to the Richland County Court of Common Pleas.¹

September 1, 2020
Columbia, South Carolina


Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

The parties' attention is directed to the important notice on the next page.

¹ In light of the court's recommendation, Cordero's motion for compulsory joinder (ECF No. 22), motion to strike (ECF No. 27), and motion for issuance of subpoena (ECF No. 31) are denied as moot.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’ ” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schirone, 727 F.2d 91 (4th Cir. 1984).

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



Johnnie Cordero,

C/A No. 3:20-2195-JFA-PJG

Plaintiff,

v.

ORDER

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,

A TRUE COPY
ATTEST: ROBIN L. BLUME, CLERK

BY: *Mary R. Alvey*
DEPUTY CLERK

Defendants.

Plaintiff Johnnie Cordero, a self-represented litigant, filed this civil rights action in the Richland County Court of Common Pleas asserting claims pursuant to 42 U.S.C. § 1983; the Voting Rights Act of 1965, 52 U.S.C. §§ 10101, *et seq.*; and South Carolina Code §§ 7-9-70 to -100. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), the case was referred to the Magistrate Judge for pretrial proceedings immediately upon removal. In lieu of Answering the Complaint, Defendants collectively filed a motion to dismiss for failure to state a claim. (ECF No. 9).

After reviewing this motion and subsequent filings, the Magistrate Judge assigned to this action¹ prepared a thorough Report and Recommendation ("Report"). (ECF No. 34).

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.). The Magistrate Judge makes only a recommendation to this

Within the Report, the Magistrate Judge opines that Defendants' motion to dismiss should be granted as to Plaintiff's federal law claims and all other claims remanded back to state court. The Report sets forth, in detail, the relevant facts and standards of law on this matter, and this Court incorporates those facts and standards without a recitation. Both parties submitted objections. (ECF Nos. 37 & 38). Therefore, this matter is ripe for review.

I. LEGAL STANDARD

The court is charged with making a *de novo* determination of those portions of the Report to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1). However, a district court is only required to conduct a *de novo* review of the specific portions of the Magistrate Judge's Report to which an objection is made. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); *Carniewski v. W. Virginia Bd. of Prob. & Parole*, 974 F.2d 1330 (4th Cir. 1992). In the absence of specific objections to portions of the Report of the Magistrate, this court is not required to give an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Thus, the court must only review those portions of the Report to which Petitioner has made a specific written objection. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005).

"An objection is specific if it 'enables the district judge to focus attention on those issues—factual and legal—that are at the heart of the parties' dispute.'" *Dunlap v. TM*

Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976).

Trucking of the Carolinas, LLC, No. 0:15-cv-04009-JMC, 2017 WL 6345402, at *5 n.6 (D.S.C. Dec. 12, 2017) (citing *One Parcel of Real Prop. Known as 2121 E. 30th St.*, 73 F.3d 1057, 1059 (10th Cir. 1996)). A specific objection to the Magistrate Judge's Report thus requires more than a reassertion of arguments from the complaint or a mere citation to legal authorities. See *Workman v. Perry*, No. 6:17-cv-00765-RBH, 2017 WL 4791150, at *1 (D.S.C. Oct. 23, 2017). A specific objection must "direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

"Generally stated, nonspecific objections have the same effect as would a failure to object." *Staley v. Norton*, No. 9:07-0288-PMD, 2007 WL 821181, at *1 (D.S.C. Mar. 2, 2007) (citing *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991)). The court reviews portions "not objected to—including those portions to which only 'general and conclusory' objections have been made—for *clear error*." *Id.* (emphasis added) (citing *Diamond*, 416 F.3d at 315; *Camby*, 718 F.2d at 200; *Orpiano*, 687 F.2d at 47).

The legal standard employed in a motion to dismiss is well-settled and correctly stated within the Report. Accordingly, that standard is incorporated herein without a recitation.

II. DISCUSSION

As stated above, the relevant facts and standards of law on this matter are incorporated from the Report. Important here, neither the Plaintiff nor Defendants contest the Magistrate Judge's recommendation that Plaintiff's two federal law claims be

dismissed. (ECF No. 37)(“Defendants do not object to the Magistrate Judge’s well-reasoned recommendation of dismissal of Plaintiff’s federal law claims, which resolves two of Plaintiff’s three causes of action.”); (ECF No. 38)(“Although Plaintiff does not object to other parts of the Report and Recommendations he does wish to preserve for appellate review the important issues raised in [the motion for random case reassignment]”). In the absence of specific objections to portions of the Report of the Magistrate, this court is not required to give an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Thus, the portion of the Report recommending dismissal of Plaintiff’s two federal law claims is adopted without objection. A review of the Report indicates that the Magistrate Judge correctly concluded that the Plaintiff’s pleadings fail to state a claim as to the two federal claims and should be dismissed.

Plaintiff’s objections reference only the Magistrate Judge’s failure to consider his previously filed motion for random case assignment (ECF No. 18) and addendum thereto (ECF No. 29). Because this motion was adjudicated by the undersigned in a separate order, Plaintiff’s objections are now moot.

Defendants’ objections center on the Magistrate Judge’s recommendation that this court decline to exercise supplemental jurisdiction over the remaining state law claims. Rather, the Defendants advocate for the immediate dismissal of these state law claims based on the arguments in their initial motion to dismiss. However, upon review of this matter, the court agrees that the remaining state law claims should be remanded.

This court does not have original jurisdiction over the remaining state law claims once separated from the federal claims. The district court may decline to exercise supplemental jurisdiction over claims if it has dismissed all claims over which it has original jurisdiction. 28 U.S.C. § 1367(c)(3). Trial courts enjoy wide latitude in determining whether or not to retain jurisdiction over state claims when all federal claims have been dismissed. *Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995). Among the factors that inform this discretionary determination are convenience and fairness to the parties, the existence of any underlying issues of federal policy, comity, and considerations of judicial economy. *Id.* (citing *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 350 n. 7 (1988)).

Here, litigation is still in its earliest stages. Although all parties prepared arguments pertaining to the dismissal of the state law claims, little else has been done to advance this case towards trial. Indeed, all Defendants have yet to prepare an Answer to the Complaint. Accordingly, it does not appear that any party has expended time or resources engaging in any discovery. Therefore, the consideration of judicial economy weighs in favor of this Court declining to exercise jurisdiction over the state claims.

Also, remanding the remaining state claims to state court would prove to be convenient and fair to all parties. Again, neither party has expended a severe amount of time in relation to this case that would prove to be unfair if dismissed at this early stage. Likewise, no party would be inconvenienced by advancing their respective positions in front of a state judge in a state court. Similarly, notions of comity weigh in favor of declining jurisdiction so that a state judge with a greater familiarity of the remaining state

law claims can preside over this matter. Taken as a whole, these factors indicate that the remaining state law claims should be remanded to a state court and presided over by a state official.

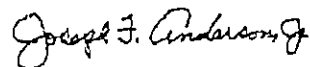
Accordingly, Defendants' objections are overruled as the Report correctly concluded that the remaining state law claims are subject to remand.

III: CONCLUSION

After carefully reviewing the applicable laws, the record in this case, the Report and Recommendation, and the objections thereto, this Court finds the Magistrate Judge's recommendation fairly and accurately summarizes the facts and applies the correct principles of law. Accordingly, the Court adopts the Report (ECF No. 34) in all regards. Thus, Defendants' motion to dismiss (ECF No. 9) is granted in part as to Plaintiff's two federal law claims. Plaintiff's remaining state law claims are remanded to the Richland County Court of Common Pleas.

IT IS SO ORDERED.

September 25, 2020
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge

Mary Floyd

To: mcbridej@rcgov.us
Cc: nshutt@burnetteshutt.law; aabercrombie@burnetteshutt.law; glefever@burnetteshutt.law;
jwilliamson@burnetteshutt.law; twolfe@burnetteshutt.law; glefever@burnetteshutt.law;
paralegals@burnetteshutt.law
Subject: Cordero vs. Kisner, et al.
Attachments: 20-2195 certified order to remand.pdf; 21-2195 NEF #40.pdf

Dear : Ms. McBride:

Pursuant to an order entered today by the Honorable Joseph F. Anderson, Jr., United States District Judge, the above mentioned case has been remanded to your court. Attached to this email is a certified copy of the order of remand. Also, attorneys and parties in the case have been notified they are responsible for supplementing the state record with all documents filed in Federal Court. If you have any questions or if you need any further information, please do not hesitate to contact me. Please reply to confirm receipt of this email.

Mary L. Floyd
*Courtroom Deputy for Judge Joseph F. Anderson, Jr.
Civil and Criminal Case Manager*

Phone : 803-765-5353
Email: Mary_L_Floyd@scd.uscourts.gov

SCD website: www.scd.uscourts.gov



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Johnnie Cordero,

Plaintiff,

vs.

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; and, The South Carolina
Democratic Party,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C/A No. 2020-CP-40-01980

**DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISMISS
PURSUANT TO RULE 12(b)(6)**

YOU WILL PLEASE TAKE NOTICE that Defendants Matthew Kisner, Richland County Democratic Party, Trav Robertson, Jr., and the South Carolina Democratic Party (collectively, "Defendants") respectfully move this Court for an Order dismissing the only remaining claim and jury trial request in Plaintiff's First Amended Complaint, pursuant to Rule 12(b)(6), SCRCPP, for failure to state a claim upon which relief can be granted. The specific grounds for Defendants' Motion are that Plaintiff has failed to state facts sufficient to constitute a cause of action because of the following:

1. There is no private right of action, express or implied, to enforce the state statutes Plaintiff seeks to enforce.
2. Plaintiff's claims for relief are moot.
3. Plaintiff has no right to a jury trial because he seeks equitable relief only.

This Motion is based upon the pleadings filed in this matter, the Rules of this Court, all applicable statutes and case law, a forthcoming memorandum of law, and any other information this Court may accept.

[Signature on following page.]

Respectfully submitted,

s/ Grant Burnette LeFever
Nekki Shutt (SC Bar 8784)
Grant Burnette LeFever (SC Bar 103807)
BURNETTE SHUTT & McDANIEL, PA
912 Lady Street, 2nd Floor (2920 1)
PO Box 1929
Columbia, South Carolina 29202
Telephone: (803) 904-7912
Fax: (803) 904-7910
NShutt@BurnetteShutt.Law
GLeFever@BurnetteShutt.Law

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

October 26, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Johnnie Cordero,	)	C/A No.: 2020-CP-40-1980
Plaintiff,	)	
vs.	)	PLAINTIFF'S NOTICE OF MOTION
Matthew Kisner, in his official capacity as	)	AND MOTION FOR DEFAULT
Chair of The Richland County Democratic	)	JUDGMENT PURSUANT TO RULE
Party; The Richland County Democratic	)	55 OF THE SC RULES OF CIVIL
Party; Trav Robertson, Jr., in his official	)	<u>PROCEDURE</u>
capacity as Chair of The South Carolina	)	
Democratic Party; and The South Carolina	)	
Democratic Party,	)	
Defendants.	)	

RICHLAND COUNTY
 FILED
 2020 NOV 16 AM 10:38
 JEANETTE W. McBRIDE
 C.C.R., G.S., & F.C.

PLEASE TAKE NOTICE that Plaintiff, Johnnie Cordero, acting on his own behalf, respectfully moves this Court for the entry of an ORDER of DEFAULT against the Defendants named herein pursuant the provisions of Rule 55(b)(2) of the South Carolina Rules of Civil Procedure based upon the grounds set forth more particularly in the ARGUMENT set forth herein.

Procedural Background

This civil action for declaratory and injunctive relief was filed with this Court on April 7, 2020, but was not docketed until April 16, 2020.

Defendants Kisner and Richland County Democratic Party were served on April 17, 2020.

The Richland County Sheriff's Department was unsuccessful in its attempt to serve Defendants Trav Robertson, Jr. and South Carolina Democratic Party (SCDP) on April 17, 2020.

Defendants Robertson and SCDP were served on May 11, 2020 by leaving a copy of the Summons and Complaint at the offices of the Democratic Party on the Desk of Executive Director Jay Parmley on May 11, 2020.

On April 20, 2020, Defendant Robertson called a meeting of the Executive Committee of Defendant South Carolina Democratic Party at which meeting the lawsuit was the topic of discussion. Plaintiff, although a member of the executive committee was intentionally excluded from the meeting. The fact that Defendant Robertson held a meeting of the executive committee

~~to discuss the lawsuit is prima facie evidence that he had notice of the action at that time.~~

On May 14, 2020 Plaintiff was contacted by Nekki Shutt, Esq. who identified herself as attorney for all of the Defendants and requested a 30 day extension of time to file a response to the complaint. Plaintiff consented to an extension until June 17, 2020.

On May 29, 2020 Plaintiff filed a First Amended Complaint.

On June 9, 2020 Defendants removed this matter to Federal District Court.

On September 25, 2020, by Order of the District Court the state law claims were remanded to this court.

On October 26, 2020, Defendants filed a Motion to Dismiss pursuant to Rule 12(b)(5) indicating that a memorandum of law was to follow.

Plaintiff hereby rejects Defendants' 12(b)(6) Motion to Dismiss as untimely and now files the within Motion for Default pursuant to Rule 55 SC Rules of Civil Procedure.

ARGUMENT

Removal to Federal District Court pursuant to 28 USC 1441, automatically and immediately divests the state court of jurisdiction. In the event that the district court remands a matter to state court the clock begins to run anew at the point at which the matter was removed, and simultaneously divests the federal district court of jurisdiction.

This is necessarily true because the act of removal takes the action away from the state court so that defendants (the only parties that may remove to Federal District Court) have, in effect, elected not to file a response in state court. When this strategy backfires and the district court refuses to hear the matter it places the defendant in the same position it was in when the matter was removed. Obviously the Federal District Court cannot extend the Defendants' time to respond in State court as it has no such jurisdiction.

In the instant case Defendants removed this matter to Federal District Court on June 9, 2020. By prior agreement of the parties Defendants had until June 17, 2020, to respond to the complaint. When the removal was filed Defendants had eight days remaining in which to file their response. Plaintiff contends that removal stopped the clock in state court on June 9, 2020.

Plaintiff contends that since this matter was remanded by Order of the District Court on September 25, 2020 the Defendants had until October 3, 2020 to file their response to the complaint. Even if the Defendants time to respond is determined to be September 30, 2020, (the date of official notification of the remand by the Clerk of Court) the last date upon which any response would be timely was October 8, 2020.

Defendants now file a Motion to Dismiss pursuant to 12(b)(6) on October 26, 2020, that is, 18 to 23 days late depending on which calculation governs. *The issue here is that Defendants gambled and lost.* This court should also consider that the removal of this civil action to district court was unnecessary since it is now settled law that "...state courts are assumed to be equally capable of deciding state and federal issues." *Boy Scouts of America v. The Hartford Accident and Indemnity Co., Civil Action 3:19-CV-1318-B, ROSS 13543113 (N.D. Tex. Aug. 6, 2020.* Defendants should not now be rewarded for having refused to acknowledge the clear jurisdiction of this court initially and by now moving to dismiss this matter by the same tactic used in federal court. This court must ask why this matter was removed to Federal Court

in the first place. The answer is obvious. The intention of the Defendants was and remains to prevent this action from being heard in this Court where it was originally filed and where it always belonged.

Moreover, the Federal District Court without ruling clearly implied that a Motion to Dismiss is not likely to prevail.

In the Order and Recommendation of the Magistrate adopted in its entirety by the District Judge the Magistrate concluded in part that: "... Cordero raises numerous state law claims that, in the interest of comity, are more appropriate for consideration in South Carolina's courts because they include complex issues of state law," and that "... the state law claims involved interpretations of complex state statutes on which there was no state precedent." (Mag. Order & Recommendation, p.8). While Federal District Judge Anderson in his Order noted that:

"Here litigation is in its earliest stages. Although all parties prepared arguments pertaining to the dismissal of the state law claims, little else has been done to advance this case towards trial. Indeed, *all Defendants have yet to prepare an Answer to the Complaint.* Accordingly, it does not appear that any party has expended time or resources engaging in any discovery. . . . Similarly, notions of comity weigh in favor of declining jurisdiction so that a state judge with a greater familiarity of the remaining state law claims can preside over this matter." (Order, pps. 5-6) (Italics mine).

Defendants' strategy in this matter is both transparent and dilatory. It is to avoid filing an answer to the complaint for as long as this court will allow. This matter was appropriately filed in the Richland County Court of Common Pleas in April of this year. It is now November and the Defendants have still not answered the complaint. Their tactics should be recognized for what they are - dilatory and intended to prevent the Plaintiff from having his day in court for fear that the actions of the Democratic Party alleged in the Complaint will be held up to public view.

Rule 12(a) of the South Carolina Rules of Civil Procedure provides that "... a defendant shall serve his answer within 30 days after the service of the complaint upon him . . ."

Defendants did not serve an answer or otherwise move or seek an extension of time to answer or otherwise move.

Plaintiff contends that while he has been unable to find case law directly on point, he submits that Rule 6(c) of the South Carolina Rules of Civil Procedure implicitly supports his argument. The Rule provides that "... [t]he period of time provided for the doing of any act or the taking of any proceeding *is not affected or limited by the continued existence or expiration of a term of court.* (Italics added).

Since the South Carolina Rules of Civil Procedure are based on the Federal Rules, where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure. See *H. Lightsey & J. Flanagan, South Carolina Civil Procedure*, (2d ed. 1985). *Gardner v. Newsome Chevrolet-Buick Inc.*, 404 S.E.2d 200, 201, 304 S.C. 328 (S.C. 1991).

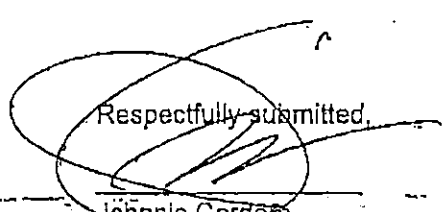
Rule 6(c) of the Federal Rules was abolished in 1966. It was, however retained in South Carolina State practice. According to the Note on Rule 6(c) the rule was retained in South Carolina "... as a much-needed clarification of State practice. The confusion as to the powers of the court with the modern advent of many "special terms" is eliminated." This seems to imply that the court maintains its power to affect any proceeding when the term of court ends. Plaintiff contends therefore and would urge this court to find that in the case of removal *and* remand the state court clock is stopped and the matter is merely *suspended*.

CONCLUSION

For the foregoing reasons Plaintiff requests that an Order of Default issue granting the relief requested in the original complaint filed in this matter on April 16, 2020 and for such other and further relief that this court deems just, equitable and proper.

Dated: 4 November 2020
Columbia, SC

Respectfully submitted,

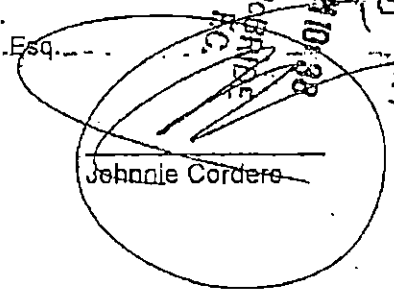

Johnnie Cordero
Plaintiff, pro se
4204 Mandel Drive
Columbia, SC 29210
Tel.: (803) 753-8091
Email.: cordero1018@att.net

Certificate Of Service

I, Johnnie Cordero, hereby certify that I have served a exact copy of PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR DEFAULT JUDGMENT PURSUANT TO RULE 55 OF THE SC RULES OF CIVIL PROCEDURE on the Attorney for Defendants by depositing same in a depository of the United States Post Office, postage prepaid and addressed as follows:

Burnett Shutt & McDaniel, PA
912 Lady Street
PO Box 1929
Columbia, SC 29202
Attn: Nekki Shutt, Esq.
Attn: Grant Burnett-Lefever, Esq.

Dated: 4 November 2020
Columbia, SC


Johnnie Cordero

2020 NOV 16 AM 10:38
JEANETTE W. McBRIDE
C.C.P., G.S., & H.C.
FILED
RICHLAND COUNTY

Richland County Common Pleas

Clerk : Jeanette W. McBride
Richland County Judicial Center
Columbia, SC 29201
(803) 576-1999

Received From: Cordero, Johnnie

Date: 11/16/2020

Receipt #: 282778

Clerk: c40bmetts

Paying for: Self

Transaction Type: Payment

Reference #:3722

Comment:

Payment Type: Money Order \$25.00

Total Paid: \$25.00

Non-Refundable

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2020CP4001980	Johnnie Cordero vs Matthew Kisner.	\$25.00	\$25.00	\$0.00
Total Cases: 1		\$25.00	\$25.00	\$0.00

-119-

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Johnnie Cordero,

Plaintiff (pro se),

vs.

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; and, The South Carolina Democratic Party,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C/A No. 2020-CP-40-01980

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' JOINT MOTION TO
DISMISS PURSUANT TO
RULE 12(b)(6), SCRPC**

Defendants Matthew Kisner, the Richland County Democratic Party, Trav Robertson, Jr., and the South Carolina Democratic Party (collectively, "Defendants") respectfully submit this Memorandum in Support of their Joint Motion to Dismiss. For the reasons set forth herein, Defendants respectfully request that this Court grant their Motion and dismiss this action with prejudice.

INTRODUCTION¹

On March 11, 2020, the World Health Organization declared the rapidly spreading coronavirus outbreak a global pandemic. Two days later, on March 13, 2020, the President of the United States declared a national emergency, and the Governor of South Carolina declared a state of emergency, due to the pandemic. In the days and weeks that followed, Governor McMaster issued more than a dozen executive orders implementing various safety measures, including prohibiting public gatherings and ordering law enforcement to disperse gatherings of

¹ Defendants ask the Court to take judicial notice of the facts presented in this section pursuant to Rule 201, SCRE.

three or more people. Counties and municipalities across the state followed suit in passing their own emergency ordinances further restricting social contact and movement.

On March 21, 2020, in order to comply with state and local restrictions on public gatherings and to ensure the health and safety of convention participants, Defendant South Carolina Democratic Party ("SCDP") directed the thirty-three county Democratic Party committees that had their usual in-person conventions planned for late March to hold their conventions remotely, via telephone town hall or mail-in ballot, by April 25, 2020.² The April 25 deadline was set in consideration of the significant planning required of the county committees to implement remote convention procedures, despite a state law setting March 31 as the deadline to hold county conventions. Defendant Richland County Democratic Party ("RCDP") sent mail-in ballots to county party convention delegates and held a virtual convention on April 18, 2020. On May 19, 2020, due to ongoing concerns for the health and safety of participants, the SCDP announced its decision to move the State Convention, originally scheduled for May 30, to a remote platform, with a virtual convention on June 6. Notably, even the Democratic National Committee ultimately postponed the Democratic National Convention, originally scheduled for mid-July 2020, by more than a month and adopted an almost entirely virtual format, due to the still-raging coronavirus pandemic.

Plaintiff's lawsuit stems from the necessary actions of Defendants in these unprecedented times.

² The Governor's Executive Orders upon which Defendants' actions were based have been held to be lawful by another court in this state. (Ex. A, Order Denying Request for Preliminary Injunction, Ike's Korner Grille v. South Carolina, 2020-CP-42-03211 (Spartanburg Cty. Ct. Com. Pl. Nov. 10, 2020).)

FACTS ALLEGED IN THE COMPLAINT

In his First Amended Complaint ("FAC"), Plaintiff alleges that he is chair of the Affirmative Action Committee for the South Carolina Democratic Party's 2020 Delegate Selection Plan (for selection of delegates to the 2020 Democratic National Convention) and a member of the Richland County Democratic Party Executive Committee as alternate committeeman thereof. (FAC ¶ 1.) Plaintiff alleges he "may have had intentions of running for Richland County [Democratic Party] Chair" in 2020. (*Id.* ¶ 11.)

The FAC alleges that, after the March 21 SCDP announcement directing county party committees to hold their conventions remotely by April 25, RCDP chairperson Defendant Matthew Kisner decided to hold a virtual county convention. (*Id.* ¶ 14.) Defendant Kisner issued a public statement notifying those intending to run for RCDP office to email a short biographical statement to the RCDP nominating committee by March 31. (*Id.* ¶ 16.) According to the FAC, on April 17, the RCDP mailed an "official ballot" to county convention delegates for election to RCDP offices but included only candidates selected by the RCDP nominating committee. (*Id.* ¶ 33.) On April 18, 2020, the RCDP sent mail-in ballots to county party convention delegates, again supposedly including only the names of the slate of candidates selected by the nominating committee. (*Id.* ¶ 35.) On April 18, 2020, the RCDP held a virtual convention. (*Id.* ¶ 17.)

Plaintiff then alleges that on April 19, 2020, SCDP chairperson Defendant Trav Robertson, Jr., called a meeting of the SCDP Executive Committee for the next day but failed to notify Plaintiff of the meeting. (*Id.* ¶¶ 25-26.) According to the FAC, at this meeting, the Executive Committee voted to remove Plaintiff as Chair of the Affirmative Action Committee for Delegate Selection. (*Id.* ¶ 28.)

The FAC asserts three causes of action: (1) violation of the state statutes governing party organization, specifically S.C. Code Ann. sections 7-9-70, -80, and -100; (2) violation of the Voting Rights Act; and (3) violation of the First, Fourteenth, and Fifteenth Amendments to the U.S. Constitution, under 42 U.S.C. § 1983. Plaintiff seeks declaratory and injunctive relief.

PROCEDURAL HISTORY

Pro se³ Plaintiff Johnnie Cordero ("Plaintiff") filed this action in this Court on April 16, 2020. Plaintiff filed his FAC on May 29, 2020, after the SCDP announced that its State Convention would be held virtually due to the coronavirus pandemic.

Defendants SCDP and Robertson, with the consent of Defendants RCDP and Kisner, removed the action to the U.S. District Court for the District of South Carolina, Columbia Division, on June 9, 2020, based on federal question jurisdiction. (C/A No. 3:20-cv-012195-JFA-PJG ("Fed."), ECF 1.)

On June 16, 2020, Defendants filed a Motion to Dismiss Plaintiff's First Amended Complaint in its entirety, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief can be granted. (Fed. ECF 9.)

On September 25, 2020, the federal district court granted Defendants' Motion to Dismiss as to Plaintiff's Voting Rights Act and § 1983 claims and remanded Plaintiff's state election law claim to this Court, finding the attendant state law issues more appropriate for consideration by this Court. (Fed. ECF 40.) Thus, the only claim before this Court is Plaintiff's first cause of action, violation of the state statutes governing party organization, specifically S.C. Code Ann. sections 7-9-70, -80, and -100.

Defendants filed this Motion on October 26, 2020, seeking dismissal of Plaintiff's only remaining claim. This Court should grant Defendants' Motion for the reasons below.

LEGAL STANDARD

Rule 12(b)(6), SCRCP, allows the court to dismiss a party's claim for "failure to state facts sufficient to constitute a cause of action." In evaluating a motion to dismiss pursuant to this rule, the circuit court must view the facts alleged in the complaint and any reasonable inferences to be

³ Defendants would note that although Plaintiff is a pro se litigant, his litigation experience is vast, both as a formerly licensed attorney in the State of New York and through the numerous pro se lawsuits he has filed in this state.

drawn therefrom in the light most favorable to the plaintiff. Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). "The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief under any theory of law." Flateau v. Harrelson, 355 S.C. 197, 202, 584 S.E.2d 413, 416 (Ct. App. 2003).

"[N]ovel questions of law should not ordinarily be resolved on a Rule 12(b)(6) motion." Chestnut v. AVX Corp., 413 S.C. 224, 227, 776 S.E.2d 82, 84 (2015). "Where, however, the dispute is not as to the underlying facts but as to the interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss." Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office, 346 S.C. 158, 165, 551 S.E.2d 263, 267 (2001).

In this case, the determinative facts are not in dispute, the question is one of statutory construction, Plaintiff has failed to state a claim for relief under any theory of law, and Plaintiff's claims for relief are moot.

ARGUMENT

I. THERE IS NO PRIVATE RIGHT OF ACTION TO ENFORCE THE STATE STATUTES AT ISSUE.

Plaintiff's only remaining claim alleges that Defendants violated three provisions of the South Carolina Election Law: (1) section 7-9-70, which requires that a county party convention be held "during the twelve-month period ending March thirty-first of each general election year"; (2) section 7-9-100, which provides that any county party "failing or refusing to organize under the provision of this title may not have representation in the state convention"; and (3) section 7-9-80, which provides that each county convention "shall be called to order by the county chairman." However, these statutes do not create a private right of action, express or implied.

Dismissal is appropriate on a Rule 12(b)(6), SCRCPP, motion where there is no private right of action to pursue the statutory violations alleged in the complaint. See Kubic v. MERSCORP Holdings, Inc., 416 S.C. 161, 785 S.E.2d 595 (2016); Dema v. Tenet Physician

Servs.-Hilton Head, Inc., 383 S.C. 115, 678 S.E.2d 430 (2009); Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007).

"The main factor in determining whether a statute creates a private cause of action is legislative intent." Overcash v. S.C. Elec. & Gas Co., 364 S.C. 569, 576, 614 S.E.2d 619, 622 (2005). "Legislative intent to grant or withhold a private right of action for a violation of the statute is determined primarily from the language of the statute." Georgetown Cty. League of Women Voters v. Smith Land Co., 393 S.C. 350, 353, 713 S.E.2d 287, 289 (2011).

"When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party." Doe v. Marion, 373 S.C. 390, 397, 645 S.E.2d 245, 248 (2007) (citing Citizens of Lee Cty. V. Lee Cty., 308 S.C. 23, 416 S.E.2d 641 (1992)). "If the overall purpose of the statute is to aid society and the public in general, the statute is not enacted for the special benefit of a private party." Dema, 383 S.C. at 121-22, 678 S.E.2d at 433 (citing Adkins v. S.C. Dep't of Corr., 360 S.C. 413, 419, 602 S.E.2d 51, 54 (2004)).

Significantly, if a state statute does not provide for a private cause of action, express or implied, "it is not for this court to create such an action when the legislature has specifically declined to do so." Palmer v. State, 427 S.C. 36, 46, 829 S.E.2d 255, 261 (Ct. App. 2019); see also Kubic, 416 S.C. at 170, 785 S.E.2d at 600 ("It is not the province of this Court to legislate or imply remedies not specified by the legislature.").

The three statutes in question are found in a chapter of the South Carolina Code denominated "Party Organization," which regulates the organization and certification of political parties. See S.C. Code Ann. §§ 7-9-10 to -110. Nothing in this chapter, nor specifically sections 7-9-70, -80, and -100, indicates any intent by the South Carolina Legislature to create a private right of action to enforce these statutes.

There neither is a private right of action created by the plain language of the statutes nor was the legislation enacted for the special benefit of a private party. Rather, the statutes' purpose

is to provide for the organization and certification of political parties, as defined by S.C. Code section 7-1-20(7), which can nominate candidates for public office. To that end, the Party Organization statutes' sole enforcement mechanism is the State Election Commission's authority to decertify a political party, as expressly provided in section 7-9-10, and not civil liability. See Dema, 383 S.C. at 121, 678 S.E.2d at 434 (finding "the enforcement mechanism of the CON Act is DHEC's authority to impose sanction and not civil liability").

Further, our federal district court previously found that an individual and political party plaintiff lacked standing to challenge the State Election Commission's failure to enforce the Party Organization statutes pursuant to section 7-9-10. Moultrie v. S.C. Election Comm., C/A No. 3:06-CV-3073-CMC, 2007 U.S. Dist. LEXIS 10777 (D.S.C. Feb. 7, 2007). Though the plaintiffs in Moultrie did not bring a claim under the Party Organization statutes directly, the court observed, "The underlying statute at issue here [section 7-9-80] does not provide for a cause of action in favor of any person or party, much less persons or parties such as Plaintiffs." Id. at *17 n. 9.

Since Plaintiff has no private right of action under the state election statutes at issue, this Court must dismiss Plaintiff's only remaining claim and dispose of this action in its entirety.

II. PLAINTIFF'S CLAIMS FOR RELIEF ARE MOOT.

Additionally, or alternatively, the Court should dismiss this action because Plaintiff's claims for relief are moot.

"A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court. Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (citing Mathis v. S.C. State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)). If there is no actual controversy, the court will not decide moot or academic questions. Id.

In his prayer for relief, Plaintiff seeks a declaratory judgment that the RCDP's virtual convention violated state law; that Defendant Robertson's and the SCDP's authorization of

remote conventions violated state law; that Defendant Kisner's and the RCDP's failure to provide notice of RCDP executive committee meetings violated state law and internal rules; and that Plaintiff's removal as Affirmative Action committee chair violated his constitutional rights. (FAC p. 15.) Plaintiff also seeks an injunction barring Defendants from holding any more conventions virtually or using mail-in ballots; prohibiting Defendants from removing Plaintiff as Affirmative Action committee chair; and requiring Defendants to reschedule their conventions. (*Id.* pp. 15-16.)

As disclosed in the FAC, all events challenged by Plaintiff already have occurred. The SCDP authorized remote county conventions in March 2020 and set a deadline of April 25, 2020, for counties to hold such conventions. (FAC ¶ 13.) The RCDP held its convention virtually and elected county party officers on April 18, 2020. (*Id.* ¶ 17.) Plaintiff was removed as chair of the Affirmative Action committee on April 20, 2020. (*Id.* ¶ 28.) Moreover, the SCDP held its convention virtually on June 6, 2020. Therefore, all of Plaintiff's claims for relief are moot, leaving no actual controversy for the Court to decide.

There are three exceptions in which a court may address an issue despite mootness: (1) "the issue raised is capable of repetition but evading review"; (2) "questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest"; and (3) "a decision by the trial court may affect future events, or have collateral consequences for the parties." *Shah v. Richland Mem'l Hosp.*, 350 S.C. 139, 150-151, 564 S.E.2d 681, 687 (Ct. App. 2002) (citing *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001)).

* Plaintiff will argue that the first exception to mootness—"capable of repetition but evading review"—applies here because of the limited duration of elections. However, the U.S. Supreme Court explicitly addressed the limited context in which this exception applies to election cases. "[T]he 'capable of repetition, yet evading review' doctrine, in the context of election cases, is appropriate when there are 'as applied' challenges as well as in the more typical case involving

only facial attacks." FEC v. Wis. Right to Life, Inc., 551 U.S. 449, 463 (2007) (internal citation omitted). This case involves neither.

Moreover, not every action that is capable of repetition necessarily evades review. "[T]he action must be one which truly will evade review." Sloan, 369 S.C. at 27, 630 S.E.2d at 478. In Seabrook v. City of Folly Beach, 337 S.C. 304, 523 S.E.2d (1999), the plaintiffs brought an action against the city alleging the city imposed unlawful conditions on a residential development, which the city subsequently removed. The court found the issue of the conditions moot and that although the scenario was capable of repetition, it did not evade review. Id. Likewise, in Sloan, an action for a FOIA violation, the court held that although the challenged action was capable of repetition, i.e., the defendant again could fail to produce requested documents under FOIA, it did not evade review because the court would have an opportunity review the issue upon challenge by an aggrieved party. Sloan, 369 S.C. at 27, 630 S.E.2d at 478.

While the actions Plaintiff complains of here theoretically are capable of repetition, they arose from extraordinary circumstances created by a global pandemic and, thus, are unlikely to occur again. More importantly, should Defendants again authorize and conduct remote conventions beyond the deadline set by South Carolina Election Law, the Court will have an opportunity to review the issue upon challenge by a proper party at that time.

The latter two exceptions to the mootness doctrine similarly are inapplicable to this case. As to the second exception, even assuming that remote conventions present a matter of public importance, no imperative or manifest urgency exists in light of not only the two challenged conventions already occurring, but also the Democratic National Convention, presidential election, and inauguration already occurring. As to the third exception, Plaintiff cannot show that dismissal of moot claims by this Court would affect future events or have collateral consequence for the parties.

Because Plaintiff's claims for relief are moot and no exception to the mootness doctrine applies, this action should be dismissed in its entirety.

III. PLAINTIFF HAS NO RIGHT TO A JURY TRIAL BECAUSE HE SEEKS EQUITABLE RELIEF ONLY.

Plaintiff demands a jury trial in the caption of his FAC; however, Plaintiff does not have a right to a jury trial because this is an equitable action.

"Whether a party is entitled to a jury trial is a question of law." Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010). "[T]he relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." Lester v. Dawson, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). "The nature of the issues raised by the pleadings and character of relief sought under them determines the character of an action as legal or equitable." Verenes, 387 S.C. at 15, 690 S.E.2d at 772 (citing Bell v. Mackey, 191 S.C. 105, 119-20, 3 S.E.2d 816, 822 (1939)).

Here, the issues raised by the FAC and nature of the relief sought by Plaintiff are purely equitable. Therefore, Plaintiff's demand for a jury trial should be denied and dismissed.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that this Court grant their Motion and dismiss Plaintiff's First Amended Complaint as to all causes of action, with prejudice.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

February 3, 2021

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Johnnie Cordero,

Plaintiff (pro se),

vs.

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; and, The South Carolina
Democratic Party,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C/A No. 2020-CP-40-01980

**DEFENDANTS' JOINT MEMORANDUM IN
OPPOSITION TO PRO SE PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT
PURSUANT TO RULE 55, SCRCP**

Defendants Matthew Kisner, the Richland County Democratic Party, Trav Robertson, Jr., and the South Carolina Democratic Party (collectively, "Defendants") respectfully submit this Memorandum in Opposition to pro se Plaintiff's Motion for Default Judgment Pursuant to Rule 55, SCRCP. For the reasons set forth below, Plaintiff's Motion should be denied.

PROCEDURAL HISTORY

Pro se Plaintiff Johnnie Cordero ("Plaintiff") commenced this action by filing a Summons and Complaint in this Court on April 16, 2020.

Defendant Matthew Kisner and Defendant Richland County Party were served with a copy of the Summons and Complaint on or about April 17, 2020. Nekki Shutt, Esq., as counsel for Defendants, accepted service for Defendants Trav Robertson, Jr. and the South Carolina Democratic Party ("SCDP") on May 14, 2020. Upon acceptance of service by Shutt, Plaintiff consented to a thirty-day extension of time for Defendants to answer, move, counterclaim, or otherwise respond to the Complaint through June 17, 2020. Confirmation of the extension through June 17, 2020, was filed with the Court on May 18, 2020.

On May 29, 2020, Plaintiff filed a First Amended Complaint, which he served on Defendants via counsel by U.S. Mail.

On June 9, 2020, Defendants SCDP and Robertson, with the consent of Defendants RCDP and Kishner, removed the action to the U.S. District Court for the District of South Carolina, Columbia Division, based on federal question jurisdiction. (C/A No. 3:20-cv-02195-JFA-PJG ("Fed."), ECF 1.)

On June 16, 2020, Defendants filed a Joint Motion to Dismiss Plaintiff's First Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6). (Fed. ECF 9.)

On September 25, 2020, the federal district court granted Defendants' Motion to Dismiss as to Plaintiff's two federal law claims and remanded Plaintiff's state law claim to this Court. (Fed. ECF 40.)

The Richland County Clerk of Court filed the certified copy of the remand order on September 30, 2020.

On October 26, 2020, Defendants filed and served a Notice of Motion and Motion to Dismiss Plaintiff's only remaining claim pursuant to Rule 12(b)(6), SCRPC.

Plaintiff filed the instant Motion on November 11, 2020, asserting that Defendants' Motion to Dismiss filed on October 26, 2020, is untimely and moving for default judgment pursuant to Rule 55(b)(2), SCRPC.

Plaintiff's Motion should be denied because Defendants' Motion to Dismiss was timely, as shown below.

ARGUMENT

Rule 55(a), SCRPC, allows entry of default against a party that fails to timely answer or "otherwise defend" a claim for affirmative relief. In cases not involving liquidated damages or a sum certain, the party seeking a judgment by default must apply to the court for such, in accordance with Rule 55(b)(2), SCRPC.

Rule 12(a), SCRCP, requires a defendant to serve an answer or Rule 12 motion within thirty days after service of the complaint. Rule 15(a), SCRCP, requires a party to respond to an amended pleading "within the time remaining for response to the original pleading or within fifteen days after service of the named amended pleading, whichever period may be the longer."

Once a case is removed to federal court, the state court's jurisdiction is suspended or held in abeyance until the case is properly remanded. Limehouse v. Hulsey, 404 S.C. 93, 113, 744 S.E.2d 566, 577 (2013). "When the state court resume[s] jurisdiction, it ha[s] a duty to 'proceed as though no removal had been attempted.'" Id. (citing State v. Columbia Ry., Gas & Elec. Co., 112 S.C. 528, 537, 100 S.E. 355, 257 (1919)). Therefore, removal of a state court case to federal court operates to toll the parties' state court time periods computed from an event occurring prior to removal. Id.

Significantly, section (c)(9)(A) of the Supreme Court of South Carolina's Order RE: Operation of the Trial Courts During the Coronavirus Emergency, as amended April 22, 2020, ("Coronavirus Emergency Order") automatically extended the due dates for all trial court filings by thirty days. This automatic extension was in effect from April 3, 2020, until January 15, 2021. See Order RE: Operation of the Trial Courts During the Coronavirus Emergency, as amended December 16, 2020.

I. DEFENDANTS TIMELY FILED THEIR MOTION TO DISMISS IN THIS COURT ON OCTOBER 26, 2020.

Nekki Shutt, Esq., as counsel for Defendants, formally accepted service of the Summons and Complaint for Defendants Robertson and SCDP on May 14, 2020. At that time, the parties agreed to a deadline of June 17, 2020, for all Defendants to answer, move, counterclaim, or otherwise respond to the Complaint.

On May 29, 2020, Plaintiff filed his First Amended Complaint ("FAC").

With the automatic thirty-day extension of trial court deadlines pursuant to the Coronavirus Emergency Order, Defendants' deadline to answer or otherwise respond to the FAC was July 17, 2020.

Defendants timely removed this action to federal court on June 9, 2020, which suspended this Court's jurisdiction and tolled the parties' state court timelines. Upon removal, Defendants had thirty-eight days remaining to answer or otherwise respond to the FAC.

Therefore, when the federal court remanded Plaintiff's state law claim to this Court on September 25, 2020, and this Court resumed jurisdiction, Defendants had thirty-eight days remaining, or a deadline of November 2, 2020, to answer or otherwise respond to the FAC.

Defendants filed, and served upon Plaintiff, their Joint Motion to Dismiss Pursuant to Rule 12(b)(6), SCRCP, on October 26, 2020. Thus, Defendants' motion was timely.

Because Defendants have not "failed to plead or otherwise defend as required by [the South Carolina Rules of Civil Procedure]," Plaintiff is not entitled to a default judgment pursuant to Rule 55, SCRCP, and his Motion must be denied.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court deny Plaintiff's Motion for Default Judgment, hear Defendants' Joint Motion to Dismiss, and dismiss Plaintiff's only remaining claim with prejudice.

[Signature on following page.]

Respectfully submitted,

s/ Grant Burnette LeFever
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ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

February 3, 2021

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

JOHNNIE CORDERO,

Case No.: 20-CP-40-1980

Plaintiff,

-vs-

TRANSCRIPT OF RECORD
(VIA WEBEX)

MATTHEW KISNER, et al.,

Defendants.)

February 9, 2021
Columbia, South Carolina

BEFORE:

HONORABLE Alison R. Lee, Judge

A P P E A R A N C E S:

Johnnie Cordero
The Plaintiff

Nekki Shutt, Esq.
Grant B. LeFever, Esq.
Attorneys for the Defendants

T. Dayton Grainger, Jr.
Court Reporter

INDEX

WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

Certificate p. 40

EXHIBITS

NO.

DESCRIPTION

ID.

EV.

(There were no exhibits marked.)

1 THE COURT: We are here on three motions filed by Johnnie Cordero
2 versus Matthew Kisner, et al. It's docket number 2020-CP-40-01980. Mr.
3 Cordero is pro se. Representing the Defendants are Grant LeFever and
4 Nekki Shutt.

5 I initially had planned to take up the motions in the order in which
6 they were filed, but after looking at some of the memoranda I think I'm
7 going to take them in order of which they are listed on the roster. So, the
8 first motion would be the motion for default judgment filed by Mr. Cordero,
9 and so, I'll ask that you keep your devices muted until it's time for you to
10 speak. That way we won't have any feedback or we get less feedback, and
11 so, Mr. Cordero, I'll hear from you first relating to your motion for default.

12 (Mr. Cordero began to speak but was muted.)

13 THE COURT: I cannot hear you, sir. You need to turn on ---

14 MR. CORDERO: Can you hear me now?

15 THE COURT: Yes, sir.

16 MR. CORDERO: Okay. Thank you, Your Honor. First of all, may it
17 please the Court? This motion is a very simple motion, and I think that the
18 initial filings by both myself and by the Defendants agree on one thing that
19 remains undisputed, and that is that there were eight days after this case
20 was remanded from the district court, that there were eight days left for
21 them to file their motions.

22 When the dispute arises at this point as far as I can tell, the dispute is
23 simply that they are saying that it's eight days plus an additional thirty days
24 as a result of the order of the -- of the supreme -- not the supreme -- yes, the
25 Supreme Court Order dated I think April 3.

1 The interesting thing about this, Your Honor, and I think the most
2 important thing, is that we both agree on the eight days. The thirty days
3 that are added are added, -- if I understand the motion by the Defendant,
4 the eight days -- the thirty days added is as a result of the supreme court
5 order.

6 Now, that order was done in April of -- April some time, the emergency
7 order I'm referring to now. That added thirty days to the filing dates, to the
8 statutory filing dates; however, in our case there was a consent order -- a
9 consent between myself and the Defendants extending their time to reply
10 until the 17th of June I believe it was, but in any event, at the time of that
11 consent agreement the Supreme Court's Order was in effect. That
12 emergency order was already in effect.

13 Now, the Defendants are arguing that the agreement that we made,
14 that that agreement should not hold, and they should add an additional
15 thirty days to it.

16 Of course, the order of the -- of the -- of the judge's order -- rather, the
17 emergency order, provides an extension for filing, okay, which extends it
18 from -- technically from thirty days to sixty days, but that is the outside, and
19 as Your Honor I'm sure will agree, that is the outside. It's not the minimum.
20 We don't have to go to sixty days. We could -- just in the case of a thirty-day
21 filing -- filing, we could do it in twenty-eight days. We could do it in fifteen
22 days. We could do it in two days if there is an agreement to do so. So, all it
23 did was extend it, but our agreement set that which I think is now binding.

24 Again, the Defendants can't come back now after they have already
25 made the agreement and say, oh, our mistake, do-over, and they want to

1 add thirty days to it. That's not available to them. So, I would say that the
2 agreement that we made was binding, and particularly because it was made
3 during the time that that order was in effect, and of course, as officers of the
4 court the Defendants are charged -- must be charged with recognizing or
5 knowing the existence of that court order. So, our agreement was made
6 when that court order was in effect, and it was in derogation to that court
7 order or at least -- at least it had -- it stood in the simple case that it enabled
8 them a period of time less than those thirty-eight days.

9 In short, -- and I'm sorry, Your Honor. I don't mean to be redundant.
10 In short, the -- the consent between the parties should be binding in this
11 matter, and they should not be now at this late date able to come back and
12 add thirty days on it when based on an order that was already in place
13 when our agreement was made.

14 THE COURT: Thank you. Ms. LeFever, Ms. Shutt?

15 MS. SHUTT: Thank you, Your Honor. May it please the Court? This
16 is Nekki Shutt along with Grant Burnette LeFever from Burnette, Shutt and
17 McDaniel. We represent the South Carolina Democratic Party, the Richland
18 County Democratic Party and their two chairs.

19 Your Honor, this case is not quite as simple as Mr. Cordero
20 represents. There was a service issue. So, we agreed to an extension as to
21 service, and in that process we were moved to federal court. Judge
22 Anderson had the case. Judge Anderson dismissed all of the federal causes
23 of action, and then, it was remanded.

24 At that point, Your Honor, we weren't sure that Mr. Cordero was going
25 to pursue the case. It wasn't until he wrote you, Judge Lee, and that was

1 filed on 10/26, that he indicated that he was pursuing this. At the same
2 time we filed our motion to dismiss we filed a response. Rule 15(a) generally
3 governs this and gives us either the time remaining, so the eight days Mr.
4 Cordero is talking about, or fifteen days, whichever is later, but of course,
5 Chief Justice Beatty in his April 22, 2020 order about the pandemic under
6 C(9) extended all deadlines for thirty days, Your Honor. So, this is timely,
7 and you know there's no prejudice to the pro se Defendant. He is not
8 seeking any type of damages. There was nothing done in the interim that
9 prejudiced him. So, Your Honor, we properly filed and timely filed our
10 motion to dismiss, and we'd ask to be heard on that today.

11 THE COURT: So, are you discussing -- are you relating your time
12 periods, particularly with respect to Rule 15(a), as to the amended
13 complaint because ---

14 MS. SHUTT: Yes, Your Honor.

15 THE COURT: --- the amended complaint was filed within the time
16 period in which you had to answer the original complaint, and so, I'm just
17 trying to figure out which one we're actually referring to.

18 MS. SHUTT: I think 15(a) would govern, Your Honor. So, any time
19 there is -- I mean, Mr. Cordero filed his complaint and then, amended his
20 complaint, and then, we went to federal court. So, by the time it was
21 remanded we got an order on the dispositive motions in federal court.
22 Under 15(a) we had fifteen days to respond. Again, we weren't sure that Mr.
23 Cordero was going to pursue this, and when he wrote you on 10/26 we filed
24 our motion the same day.

25 THE COURT: And you're saying fifteen days from the time that it was

1 returned to state court?

2 MS. SHUTT: Yes, Your Honor, fifteen days, because that would have
3 been September 30. So, fifteen days would have been October 15, but
4 again, Chief Justice Beatty's order extended all deadlines by thirty days.

5 THE COURT: Okay. Let me just make sure I understand. So,
6 although, there was some issue about another date in September when the
7 jurisdiction may have been returned to the state court, I gather from your
8 statement of September 30, that it's the time period when the Clerk of Court
9 officially receives the notice and files the notice from the federal court
10 indicating that the matter had been remanded back to the state court, and
11 then, under Rule 15 you would have fifteen days to be able to respond to the
12 amended complaint, and because of the order issued by the Chief Justice,
13 that that would be extended for an additional thirty days; is that correct?

14 MS. SHUTT: Yes, Your Honor, and just so there's no confusion,
15 Judge Anderson issued his order on the dispositive motions on September
16 30 and simultaneously something was filed with the state court on the same
17 day, but those dates are one and the same.

18 THE COURT: Okay. Thank you.

19 MS. SHUTT: Thank you, Your Honor.

20 MR. CORDERO: Your Honor, the order of Judge Anderson was dated
21 - was dated September 25; not September 30. It may have been sent - the
22 order from the Clerk of Court may have come down on September 30, but I
23 would argue that September 25 is the dispositive date.

24 THE COURT: When was it filed with the federal court?

25 MR. CORDERO: When was it filed - when was it filed with the state

1 court?

2 THE COURT: No, sir. I'm assuming that you're telling me that he
3 signed it on the 25th, but it may not have been filed. So, I'm looking for the
4 date it was filed with the Clerk of Court, and notice would have been
5 provided to all of the individuals at that particular point.

6 MR. CORDERO: Would be the 30th. It would be that date, but at the
7 same time, Your Honor, I think the law is certainly unclear, at least a gray
8 area, as to when the federal court's order takes force. I would argue that it's
9 from the 25th, but in any event, whether it's the 25th or the 30th, their filing
10 is still untimely.

11 THE COURT: I have had a chance to review those documents. I have
12 not seen the federal court order, and I did not look through the file to
13 determine whether that had actually been filed with the court, and so, I
14 have to go off of the dates that you provided me.

15 I'll just say at this particular point I am inclined to rule that it was
16 timely, but just in an effort to be able to hear all of the matters at one
17 particular time I am going to go ahead and move to the motion to dismiss at
18 this particular point and hear the arguments on that and consider all of the
19 matters together when I have a little bit more time to spend with the file and
20 those particular documents. So, I'll go ahead and hear the Defendants'
21 motion to dismiss at this time.

22 MS. LEFEVER: Yes, Your Honor. May it please the Court?

23 THE COURT: Yes, Ms. LeFever.

24 MS. LEFEVER: All right. The Defendants have moved to dismiss Mr.
25 Cordero's only remaining claim pursuant to Rule 12(b)(6). His first

1 amended complaint asserts three causes of action. The first is violation of
2 the party organization statutes. Those are state statutes. The second is
3 violation of the Voting Rights Act, and the third is violation of the 1st, 14th
4 and 15th Amendments under Section 1983.

5 The federal court – Federal District Court previously dismissed Mr.
6 Cordero's two federal law claims voting rights act, the Section 1983 claims
7 and remanded the state law claims to this Court. So, we have now moved
8 here to dismiss his only remaining claims, which are the state law claims,
9 and those are for violations of Section 7-9-70, 7-9-80 and 7-9-100 of the
10 South Carolina Election Law. These are the statutes governing political
11 party organization.

12 The determinate facts here are not in dispute. On March 21
13 Defendant South Carolina Democratic Party directed thirty-three county
14 democratic committees, including the Richland County one, throughout
15 their convention scheduled for the end of March to hold their conventions
16 remotely by April 25.

17 This was because of the global pandemic, the Coronavirus pandemic
18 which was declared a global pandemic on March 11; so, just ten days prior
19 and the subsequent executive orders of Governor McMaster as well as local
20 orders that were passed restricting social gatherings.

21 In accordance with the State Party's direction the Defendant, Richland
22 County Democratic Party held a virtual convention on April 18. The
23 Plaintiff, Mr. Cordero, contends that the Defendant has violated Section 7-9-
24 70 by not holding their convention by March 31, that they violated Section
25 7-9-80 by holding a remote convention, and then, that the State Party

1 violated Section 7-9-100 by allowing the Richland County Democratic Party
2 to have representatives at the State Convention, which also was held
3 remotely due to the pandemic.

4 So, this motion comes down to a matter of law, whether there is a
5 private right of action to enforce the State statutes that Mr. Cordero seeks to
6 enforce here. There is not a private right of action to enforce them.

7 The case law is clear which we cited in our memorandum that in
8 determining whether a statute provides a private cause of action, the main
9 factor is legislative intent. To determine legislative intent the Court first
10 looks to the plain language of the statutes.

11 So, here looking at the – first of all, three statutes, 7-9-70, 80 and 100
12 that Mr. Cordero cites as violations, there is nothing in the plain language of
13 the statutes that creates an express private right of action. There is nothing
14 in that entire chapter of the law that – party organization, there's nothing in
15 that that creates any express private right of action, and there is nothing in
16 that chapter of law that creates an express private right of action to enforce
17 the statutes at issue.

18 When there is no express private right of action created one can be
19 implied only if the legislature – the legislation was enacted for the special
20 benefit of a private party.

21 Again, looking to the language of the statutes and the purpose of the
22 statutes, they do not go to the benefit of the private party. The purpose of
23 the statutes is to govern political party organization and certification.

24 The only enforcement mechanism that is found in these statutes is at
25 7-9-10, which provides for the State Election Commission to decertify a

1 political party that is not in compliance with the statutes. That is not a
2 private right of action, and our Federal District Court has ruled that an
3 individual or a political party cannot – there is no right of action to make the
4 election commission enforce these statutes, and I recognize that generally
5 the Court cannot rule on a novel issue of law on a 12(b)(6) motion; however,
6 the intention of that is when it's a matter of statutory construction, and
7 here no further development of the record would lead to a different decision.
8 It comes down to statutory interpretation and whether these statutes that
9 Plaintiff bases his action on create a private right of action, and they do not.

10 As a second ground for our motion to dismiss we believe Plaintiff's
11 claims are moot, and here the relief he seeks, he seeks to have the
12 conventions rescheduled, and among other things he – what is relevant
13 exactly to the state claiming – but the fact of the matter is that these events
14 already have occurred.

15 The county convention has occurred. The state convention has
16 occurred. The delegates were selected. The officers were selected,
17 candidates were nominated. We have a new president; therefore, Plaintiff's
18 claims for relief here are moot.

19 Lastly, so that we don't belabor the issue at all, be included that Mr.
20 Cordero demands a jury trial, but he does not have a right for one. This is
21 an equitable action, and there is no right to a jury for purely equitable
22 actions, and that's all I have.

23 THE COURT: Yes, sir, Mr. Cordero.

24 MR. CORDERO: Yes, Your Honor.

25 THE COURT: If you can adjust your camera just a little bit.

1 (Mr. Cordero adjusts his camera.)

2 THE COURT: Thank you.

3 MR. CORDERO: Okay. May I be heard?

4 THE COURT: Yes, sir.

5 MR. CORDERO: Okay. First of all, I think almost by way of motion in
6 limine, the Court should recognize as I'm sure you will, the Plaintiff is the
7 master of the complaint and not the Defendants, and with all due respect to
8 the Defendants, I would argue that they don't get to determine what this
9 lawsuit is about, just as an initial proposition.

10 More importantly, perhaps, this order was removed from state court
11 where it was filed. I filed this lawsuit in state court. They then removed it
12 to federal court. The issues that were raised in federal court were issues
13 that could have been handled in state court. So, there's a reason, Your
14 Honor, why this matter was taken to federal court.

15 What happened was, when it got to federal court they found out that
16 it didn't work out the way they intended it to. So, the issues that were
17 originally filed in state court were remanded to state court, and that's where
18 – that's where they stand now.

19 It's important to understand also since Defendants saw fit to take this
20 into federal court it's also important that we understand what the federal
21 court determined. The federal court sent this case back in – and I'm reading
22 from the – from the order and recommendation of the magistrate, adopted
23 by the district court, and I'm arguing, Your Honor, that this should be
24 adopted by this Court, and although, not dispositive but certainly
25 persuasive with regard to what these matters are about.

1 In the order and recommendation the magistrate adopted – adopted
2 by the district court in its entirety the magistrate concluded in part that,
3 “...Cordero raises numerous law claims that in the interest of comity, are
4 more appropriate for consideration in South Carolina’s courts because they
5 include complex issues of state law and that the state law claims involve
6 interpretations of complex state statutes on which there is no state
7 precedent.”

8 Now, the district judge, Judge Anderson, also noted that here – I’m
9 again reading from – from Judge Anderson’s order, “Here litigation is in its
10 earliest stages. Although, all parties prepared argument pertaining to the
11 dismissal of the state law claims little else has been done to advance this
12 case towards trial. Indeed, all Defendants have yet to prepare an answer to
13 the complaint. Accordingly, it does not appear that any party has expended
14 time or resources engaging in any discovery. Similarly, motions of comity
15 weigh in favor of declining jurisdiction so that a state judge with a greater
16 familiarity with the remaining state law claims can preside over this matter,”
17 and that in effect, Your Honor, is the federal court – that they took it to the
18 federal court – it’s the federal court finding that these are issues that go
19 directly to the motion to dismiss and that – and that perhaps the Court
20 would have held that the motion to dismiss was not warranted, but – and of
21 course, I recognize fully that this is not dispositive as regards this matter,
22 but I think because they took it to federal court it should be – it should be
23 at least persuasive for the proceedings in this court. The other thing is that
24 – I’m sorry, Your Honor. I don’t mean to cut you off.

25 THE COURT: No. The only thing I was going to tell you ---

1 MR. CORDERO: Yes, sir. Yes, ma'am.

2 THE COURT: --- was, I don't have access to any of these federal
3 documents. So, you will need to make sure that they're filed in state court
4 so that there's a record of them here in state court.

5 MR. CORDERO: Yes.

6 THE COURT: And I can review them.

7 MR. CORDERO: And since you mentioned that, Judge, I have a - I
8 didn't get to file it today - and by the way, all of these documents,
9 particularly the memorandum and law, all of these just got to me on
10 Saturday evening with the mail. So, I haven't had a chance to respond to
11 them.

12 The other thing is that in the district court's order, Judge Anderson's
13 order, Judge Anderson required the parties to file all documents filed in the
14 federal court, with the district court (sic). I have mine prepared to file, and I
15 will file them this afternoon, but my point is that all of this information
16 needs to be before Your Honor before Your Honor can make that decision,
17 and I know that that will be handled, but more importantly, I think the
18 other issue that's here is about private right of action.

19 There is a - there is a - what the South Carolina Supreme Court has
20 recognized as a - a right of a Defendant - right of a Plaintiff to bring an
21 action when that Plaintiff is an elector, a resident of the State of South
22 Carolina and that in those instances - I'm looking for the case that states it
23 specifically - the Court - the South Carolina Supreme Court in Sloan v.
24 Sanford decided in 2004, the Court noted that - I'm trying to find the exact
25 reading. I'm reading from the Court - from the decision. "Under certain

1 circumstances standing may be conferred upon a party when an issue of
2 such public importance as to require its resolution for future guidance," and
3 this Court pointed out that - in that case it is those people who are
4 residents and electors who have - who can be - who can be heard, and this
5 case was a case against - or brought by the Governor of South Carolina,
6 and I would say that that case is more dispositive - is dispositive of the
7 issues that are before us now.

8 What is going on here, Your Honor, -- please forgive me, but I have to
9 get this on the record. What is going on here, Your Honor, is this is a
10 simple attempt to sandbag and to prevent this matter from being heard.

11 This case was filed on April 7. For some reason it got lost in the court
12 and didn't get actually docketed until April 16, and this matter -- there's
13 been no answer in this case. They have - they have refused to - to follow
14 discovery issues. They have - they have interfered with witnesses,
15 interfered with my getting depositions taken, and the reason is very simple,
16 Your Honor.

17 They don't want to answer this lawsuit, because they understand
18 what this lawsuit is about, and this is important for the record that Your
19 Honor must - and I hope Your Honor will understand this. This issue is not
20 about the South Carolina laws. This issue is about the disenfranchisement
21 of a whole host of Africa-Americans in Richland County and the - and the
22 South Carolina Democratic Party's continued refusal to acknowledge and -
23 to acknowledge the importance of the African-American vote in South
24 Carolina and within the Democratic Party and to do everything that they
25 can to prevent the majority electorate in the South Carolina Democratic

1 Party from getting a leadership role in the South Carolina Democratic Party,
2 and I would argue, Your Honor, that this is no more than Elmore v. Rice
3 revisited, the case that overturned the white primary in South Carolina.
4 They're doing the same thing now that they did then. In fact, they're
5 making the same arguments; fait accompli, there's nothing you can do.
6 We've taken care of it. That's what their argument is about.

7 You cannot do anything because the law doesn't provide a remedy for
8 you, and I'm saying to you, Judge, an equity -- and Your Honor has equity
9 jurisdiction as well; Your Honor can look at this matter, and I would ask
10 that Your Honor do at least one thing, and that is to allow us to get in and
11 to get the information that we require to make this.

12 I can't -- I can't -- I can't move for a second amended complaint
13 because I can't get the information I need to make that happen. All they're
14 doing is stonewalling, and this has been the characteristic, this has been
15 the technique in the south and particularly in South Carolina since the '40s
16 and beyond, and I hate to put it this way, but this is the fact -- this is just a
17 fact of history, and if Your Honor will give us the opportunity to depose
18 witnesses and to find out what was really going on we will show this Court
19 that our claims have merit and that our claims should be heard.

20 Please, Your Honor, this Court should not allow them to sandbag us
21 and not allow -- allow them to undermine a valid case as they have done for
22 literally centuries, Your Honor, and I don't want to go that far back, but if
23 Your Honor would look at Elmore v. Rice you will see that the finding in
24 Elmore v. Rice in 1947, that in that finding Judge Waring stated that -- that
25 the things that were complained of in that complaint, that in his motion for

1 injunctive relief -- and -- rather, in his order for injunctive relief he says
2 specifically that this -- this is enjoined upon not only the current South
3 Carolina Democratic Party leadership but its successors in interest.

4 These are successors in interest, and number two, -- and I would also
5 remind Your Honor that the -- the Defendants in Elmore v. Rice were the
6 South Carolina Democratic Party and the Richland County Democratic
7 Party, the same Defendants in this suit.

8 This is -- into position and nullification as alive today as it was when --
9 forty years ago, and I don't mean to make light of it, Your Honor, but this is
10 -- this is a time when the African-American electorate in South Carolina is
11 66.7 percent. I was the -- the -- the affirmative action committee chair for the
12 South Carolina Democratic Party.

13 They moved to remove me because I started complaining about what
14 they were doing and how they were treating African-Americans and how
15 they were disenfranchising African-Americans.

16 The first thing they did was to call a meeting, and in that meeting they
17 did not notify me as a member of the executive committee. They did not
18 notify me of that meeting. They had a meeting and at the meeting they
19 removed me as affirmative action committee chair.

20 They also attempted to remove me as the chair of the Democratic
21 Black Caucus. This is racism plain and simple, Judge, and I can't put it
22 any -- any other way, and I'm talking about, African-Americans are the
23 experts on racism, and when we call this -- when we call this out as racist
24 that's what it is, and that, Your Honor, is what they don't want to come out,
25 and that's why they have not answered the complaint. That's why they have

1 not responded to any of the claims.

2 My complaint begins with -- with setting forward the background and
3 the history and how they are disenfranchising African-Americans. They
4 have yet to answer that. They didn't answer it in federal court. They did
5 not answer it in this court, and Your Honor, the only place that we can turn
6 is to this Court and its equity jurisdiction to ensure that these matters are
7 resolved.

8 The simple way to do this is very simply for them to go ahead, answer
9 the complaint. Let us get out discovery and then, dismiss it. They are --
10 they are intent upon ensuring that we do not get a hearing, no different
11 than it has been in South Carolina for two or three generations. I think I
12 have one more for you, Judge, if I may.

13 MS. SHUTT: Your Honor, may I make a statement for the record?

14 THE COURT: Yes, ma'am. I'll give you a chance to do that. Let me
15 finish hearing his comment.

16 MS. SHUTT: Thank you, Judge.

17 MR. CORDERO: Your Honor, the South Carolina Democratic Party
18 has done more in the history of this country than perhaps any other of the
19 eleven confederate states to disenfranchise African-Americans, and they
20 have done so with malice. They have done so for the singular purpose of
21 ensuring as the governor -- as the Governor of South Carolina said in 1944,
22 of ensuring that -- the continued control of white supremacists in South
23 Carolina.

24 Today in 2021, Your Honor, we have finally reached the point where
25 we are the majority democratic electorate. There are those who continue to

1 ensure that we do not get – that we do not get leadership roles in the party,
2 because that means that we would be able to determine the – the platform
3 and we would be able to effectively make rules for the South Carolina
4 Democratic Party.

5 It was South Carolina and African-Americans in South Carolina, the
6 primary reason why President Biden – Joe Biden is President of the United
7 States, and all we're saying, Judge, is that the days when they have
8 manufactured and created rules to ensure that we did not get control or we
9 were not able to exercise our rights fully and completely, because there are
10 three levels of this.

11 The first level was the 15th Amendment. The second level was the –
12 the overruling of the white primaries, and the final – the final part of this
13 continued quest for control – I don't want to say control – continued quest
14 for recognition in the Democratic Party, the last level of it is leadership.
15 Without leadership we do not – we are not able to control what the
16 Democratic Party stands for, and it now must stand for its majority voters. I
17 think that's all I have.

18 THE COURT: Thank you. Ms. Shutt, Ms. LeFever?

19 MS. SHUTT: Thank you, Your Honor. I'm going to let Ms. LeFever
20 address the substance of the argument, but I do have to strenuously object
21 to Mr. Cordero's ad hominem attack on my clients and on this law firm.
22 Our firm is known for taking on civil rights litigation and has been since the
23 history of Malissa Burnette starting practicing and me practicing for the last
24 25 years. So, this is nothing about racism and is nothing about Mr.
25 Cordero. Mr. Cordero is a disbarred New York lawyer who when he came to

1 South Carolina has made it a hobby filing pro se cases against parties all of
2 which have been dismissed after a lot of resources have been spent on
3 them.

4 He's done eight of those now in this jurisdiction, and when Judge
5 Anderson got the case in federal court Mr. Cordero filed five motions before
6 the case was dismissed on its merits, and one of those, which was to try to
7 remove Judge Anderson from the case because he had ruled against Mr.
8 Cordero before.

9 So, I strenuously disagree with Mr. Cordero's statement of the facts,
10 and this is - all procedural arguments are properly made in this case, Your
11 Honor. We have not filed an answer yet, because we were not required to.
12 In federal court we prevailed completely in federal court on all federal court
13 causes of action, and now, we're before this Court because there is no
14 private cause of action at all for Mr. Cordero to air his grievances.

15 He is making this into a bully pulpit for himself to try to make himself
16 famous in South Carolina. I'm going to now turn it to Ms. LeFever to
17 respond to the merits.

18 THE COURT: And let me just say, I will consider the arguments that
19 have been made. I will focus on those legal arguments. I would encourage
20 the parties - I don't consider any personal attacks, and I don't think I heard
21 any personal attacks, and to the extent that you perceived them as such, I
22 did not take them as such, and so, I understand that Mr. Cordero has very
23 strong feelings and has some knowledge of some history which we all are
24 aware of through various litigation that's been over the years going back to
25 Elmore v. Rice. I think we're all familiar with that particular case and the

1 historical nature of it and what it represents.

2 So, I'm just here to consider – and I will consider and only consider
3 what's in his complaint and what the motions are as it relates to why it
4 should be dismissed, but I am encouraging everyone not to make it
5 personal, because I don't consider it to be personal.

6 I do understand that Mr. Cordero is very passionate about what he
7 sees as an injustice, and he's entitled to express that, but please, for
8 everyone, just make sure that it's not a personal attack, and it should not
9 be a personal attack for either the attorneys, the law firms or the parties
10 and including the Plaintiff. So, I'll hear from Ms. LeFever at this time.

11 MS. LEFEVER: Thank you, Your Honor. Just a few brief points, and
12 I do appreciate Mr. Cordero's passion, but again, the only legal issue before
13 this Court is whether there is a private right of action in the statutes at
14 issue. So, these are the statutes about party organization. They set forth
15 the date by which county conventions must occur and the way they occur.

16 The federal court already dismissed Mr. Cordero's constitutional
17 claims and Voting Rights Act claims. So, the only issue is whether he has a
18 private right of action to enforce the state statutes governing party
19 organization, specifically just the one that generally requires county parties
20 to hold their conventions by March 31, which we all know was in the middle
21 of a pandemic.

22 I did not catch Mr. Cordero's cite on the case. I believe he said it was
23 a Supreme Court case that gave – that recognized the right of a Plaintiff to
24 bring an action as an electorate. I am not familiar with that case, but if
25 anybody as an electorate could bring a claim, I mean, there could be a claim

1 under any statute, and we know that's not the case. There is still, when it
2 comes down to it, no private right of action here, and there's not relief to be
3 granted from these statutes.

4 As for discovery, there has been no discovery in the case because
5 there was no scheduling order in federal court. Here we had the pending
6 motion to dismiss, and discovery and further development of the record
7 would not change the case here, because as I pointed out, this is purely a
8 matter of law, and we would urge you to dismiss this case in looking at the
9 limited legal thing before the Court and the fact that his claims for relief are
10 moot.

11 THE COURT: So, in essence, what I also – what I hear from your
12 argument is that if there's no private right of action, then, it sounds like
13 what you're saying, that it would be the election commission that would
14 have to pursue any violations of any statutory provisions, and if he – if Mr.
15 Cordero wanted to make some type of complaint that he would have to go
16 through the election commission in order to do that?

17 MS. LEFEVER: Yes, Your Honor. I believe that's in Section 7-9-10,
18 gives the State Election Commission the authority to decertify political
19 parties who are not in compliance with the statutes.

20 Again, based on authority by our federal district court in Moultrie v.
21 South Carolina Election Commission held that both an individual Plaintiff
22 and the political party, which in that case was the Libertarian Party, lacked
23 standing to challenge the State Election Commission's failure to enforce the
24 party organization statutes.

25 THE COURT: So, if there is a dispute between any member or officer

1 or elector within the particular political party how would any disputes be
2 resolved involving those two groups of individuals? If they can't go through
3 the Election Commission how would they be resolved?

4 MS. LEFEVER: So, you said between the political party and the
5 member of the -- I'm sorry. Who ---

6 THE COURT: Yes, between the actual political party and either a
7 member or officer or director or an elector within that particular party, if
8 there's some dispute about the manner in which the party is run that -- how
9 would those disputes be resolved, through what processes? Is it through a
10 process the political party has to set up or is it a process by which they can
11 make a complaint to the Election Commission that their rights have been
12 abridged?

13 MS. LEFEVER: Well, I think it would depend on the nature of the
14 dispute; if the state party and the national party have bylaws that govern,
15 then, you know depending on the nature of the dispute I'm sure a complaint
16 could be filed with the State Election Commission. I think there's a
17 difference between how committee assignments go versus here where we're
18 talking about violation of the state laws that set forth various deadlines,
19 which isn't as much an internal dispute. So, Mr. Cordero is a member of
20 the Democratic Party, but you know somebody who is not a member of the
21 Democratic Party could also, you know, file a complaint with the State
22 Election Commission for a party not complying with these rules, and that
23 was the case in Moultrie v. South Carolina Election Commission. The
24 Libertarian Party was seeking to enforce the rules against I believe the
25 Republican Party.

1 THE COURT: So, as to the statutory provisions, those statutes that
2 govern how the state parties are to operate, those could only be challenged
3 through the State Election Commission, and the State Election Commission
4 would then be able to use its authority to say that this particular party is
5 not operating within the rules as provided by the statute and raise that
6 claim?

7 MS. LEFEVER: Yes, Your Honor, in this context. That is correct.

8 THE COURT: Okay, and is there anything further, Mr. Cordero, you
9 would like to say at this time as to this particular motion?

10 MR. CORDERO: I think -- I think -- I'm sorry.

11 THE COURT: Go ahead.

12 MR. CORDERO: Am I unmuted? Okay. Yeah, Your Honor. I think
13 the important thing here to remember is that at a historical context what
14 we're looking at is a party removing an individual -- it happens to be me, but
15 it didn't have to be me, Judge, -- removing a party who expressed and
16 supported the interests of the African-Americans electorate within South
17 Carolina and the Democratic Party. I was elected to do that. The caucus
18 that we started was created for that purpose.

19 When they disagreed with my -- with the points that we expressed
20 through that caucus, the first thing they did was disinvite me to a meeting
21 of the executive committee and then, voted me out as affirmative action
22 committee chair. That is solely because of the -- of my strong and
23 unrelenting advocacy on behalf of African-Americans within the Democratic
24 Party.

25 I'm a dyed in the wool democrat. My family were democrats all of

1 their life. I don't know anything but a democrat, but I refuse to be
2 manipulated and to move around and to sit around and watch our people be
3 disenfranchised, and that is what this boils down to.

4 So, if -- in the end, Your Honor, -- and I said it before, but I want to
5 say it again, because I'm not sure I said it accurately before. The case that I
6 mentioned and I cited and I would ask Your Honor to review is Sloan v.
7 Sanford, okay, and in that case ---

8 THE COURT: Do you have a citation, please?

9 MR. CORDERO: I certainly do, Judge. It's 357 S.C. 431 (2004). Do
10 you want the multiple citation?

11 THE COURT: Yes, if you have it.

12 MR. CORDERO: 593 S.E. 2d 470, and in that ---

13 THE COURT: I'm sorry, 470?

14 MR. CORDERO: 593 S.E. 2d 470.

15 THE COURT: Thank you.

16 MR. CORDERO: Okay, and in that what I'm arguing is that the Court
17 -- the South Carolina Supreme Court held that if there is a public -- and a
18 person may have a public -- what it referred to as a public interest standing
19 to challenge the election laws as a citizen, resident, taxpayer and registered
20 elector of the State of South Carolina, all of which applies to me and which
21 gives me standing to bring this lawsuit, whether there is a cause of action --
22 whether there is a right of action or not, okay, and the last thing is that they
23 mentioned -- they referred to the Eric Moultrie case. I would only point out
24 to Your Honor that Moultrie was not even about this. Moultrie -- their
25 citation is a mere aside by the Court, but the issue that the aside was about

1 was not – it was not – was not even part of the lawsuit. So, that case is not
2 dispositive, and the other thing is that the only reason they raised that is
3 because they can't find another one, and I have to – I have to defend myself,
4 Your Honor.

5 These – papers were filed which referred to me as a vexatious litigant.
6 That is – out of all of the things that happened that's the only thing that
7 disturbs me somewhat, and by that I only mean – and I'm sure the Court
8 will understand this, and I say this for the record, I have never been held in
9 contempt of court. I have never missed a deadline. I have never been
10 determined – found to be a vexatious litigant. I have never had a prefiling
11 requirement placed against me by any court anywhere, and I take exception
12 to them – to them even making that argument, and that's it for that one,
13 Judge.

14 THE COURT: And to be honest, those are statements that I don't – I
15 guess I read them, but I don't spend my time giving them a lot of credence
16 as long as they are legitimate arguments that are being made otherwise.

17 MR. CORDERO: Thank you, Your Honor.

18 THE COURT: And I understand that in every litigation, you know,
19 that there are – each party holds their views, and they express them, and
20 the question is not whether there's merit to it but whether there's evidence
21 that indicates that their claims are totally frivolous and have no standing
22 and whether the claims that they're raising in the particular action are
23 frivolous. So, I only look to see what the merits are of the claim and what
24 the factual circumstances are surrounding those particular claims might be.

25 So, certainly, I understand, you know, that there is a lot of passion

1 and a lot of advocacy as it relates to the issues in this particular case and
2 the positions of the parties, but I have to -- I get the benefit of stepping back
3 from that and reading the legal issues and addressing them on the legal
4 issues, no matter what the relationship between the parties may be, and so,
5 that's how I'll consider this particular case.

6 Now, I believe we have one further motion that needs to be discussed.
7 It says it relates to protection from discovery. What I gather -- that was filed
8 by the Defendants. What I gathered from that is that because there were
9 pending motions to dismiss they were looking for protection from engaging
10 in any discovery until such time as the issue on whether the motion to
11 dismiss had been ruled upon, and if I'm not -- if I'm incorrect on that, I don't
12 know whether Ms. LeFever or Ms. Shutt will argue that particular motion,
13 but that's what I got from reading the documents.

14 MS. SHUTT: Your Honor, that's accurate. Since we have been back
15 in state court, Your Honor, we had a status conference with you in late
16 October, and Mr. Cordero said he could wait on these issues to be heard,
17 and so, once we -- then, he started noticing depositions.

18 He noticed the head of the South Carolina Democratic Party, and
19 then, Dr. Kisner, who is the volunteer head of the Democratic Party. He is a
20 professor at USC, and he noticed both of those depositions without asking
21 that we were available or our clients were available. We called him to try to
22 work it out. When he was not amenable to trying to work it out we filed the
23 motion for protective order.

24 Then, Your Honor, when you scheduled this hearing he tried to
25 schedule two more depositions, one of Carol Fowler, who is the former head

1 of the State Democratic Party, whose husband just passed and Ms. Maddy
2 Thomas, and we filed a motion to quash those subpoenas. He issued
3 subpoenas for depositions, because again, he did not consult us. He didn't
4 ask if the deponents were available. He did not send proper deposition
5 notices. He did not serve us with the subpoenas. So, you know we don't
6 think this case should go forward on the merits.

7 If it does, Your Honor, we're happy to sit down with Mr. Cordero and
8 work out a scheduling order, but because of his history of pro se litigation
9 and because we won on the merits in federal court and because there is no
10 private cause of action we would ask this Court to rule on the dispositive
11 motions before we go forward with time-consuming, burdensome discovery.

12 THE COURT: Any response to that, Mr. Cordero, and I'll just tell you
13 that generally it has been that if there's a pending motion to dismiss or a
14 pending dispositive motion that generally the parties do not engage in
15 discovery, and so, I'm inclined to agree until such time as there's a ruling on
16 the motions as it relates to the motion to dismiss, discovery should be held
17 in abeyance, but I'll be happy to hear from you.

18 (Mr. Cordero began to speak but was muted.)

19 THE COURT: I can't hear you.

20 MR. CORDERO: I'm sorry. Can you hear me now?

21 THE COURT: Yes.

22 MR. CORDERO: Sorry. Thank you, Your Honor. A couple of things I
23 think are missed here, and I certainly am not in a position to argue with
24 Your Honor. That's not what I'm doing, but first of all, in October we had a
25 hearing before Your Honor, okay, and as Ms. Shutt has pointed out, there

1 was some information taken with -- regarding discovery, and I asked Your
2 Honor whether or not I could proceed with discovery, and Your Honor's
3 response was, yes, go right ahead along with Rule 26, and that's my
4 recollection.

5 I know that there was no court reporter, but that was what was said,
6 and I proceeded under that, but more importantly, I think, -- and I think
7 this is something that the Court has to consider, -- although, I recognize the
8 importance of what Your Honor has just stated -- if we allow Defendants to
9 stop discovery simply because they filed a Rule 12(b)(6) motion, okay, then,
10 what we in effect do is prevent the lawsuit from moving forward.

11 That to me seems to be unfair, Judge, and I don't care -- I don't mind
12 how we look at that. That's what it amounts to, but perhaps more
13 importantly, what -- because I had -- because I had raised the issue with
14 Your Honor and with Defendants' counsel present, I was given the authority
15 to go ahead.

16 When I filed those motions I filed them in order to get this out of the
17 way so that we could start the discovery process. It seems to me unfair to
18 allow them to stop discovery in its tracks simply because they filed a
19 12(b)(6) motion, and in this particular case -- remember, too, Your Honor,
20 that the same 12(b)(6) motion that they filed in this court they filed in the
21 federal court, okay, what they did on the federal court, they won on two
22 issues that were federal issues that never should have been in the federal
23 court in the first place.

24 When we first spoke the initial conversation I had with these
25 Defendants, with the counsel for the Defendants, was them asking me

1 whether or not I would consent to give them an extension of time to answer.
2 I said yes. They then turned around and removed the matter to federal
3 district court. I consider that sandbagging; where I come from that's what
4 they do, but be that as it may, they raised the same issue in federal court,
5 and the federal court sent the state court matters, which were the only ones
6 here, sent it back down. So, there was no dispositive action on the state
7 court matters.

8 So, now, we're back here. We're back here doing the same thing
9 again, and again, Your Honor, this matter was filed on April 7, okay? Here
10 we are already in February, and we haven't heard anything. They're talking
11 about somebody being a vexatious litigation. What they're doing is
12 everything they possibly can to prevent this matter from being heard.

13 Now, as to the -- as to whether or not I conferred with counsel, they
14 have mentioned in their motions, -- and I'm sure Your Honor has read this;
15 they mentioned in their motion numerous occasions, we have no -- we have
16 -- there's no obligation for us to confer with a pro se litigant.

17 Well, obviously, it stands to reason that if there's no obligation for
18 them to confer with me, there's no obligation for me to confer with them,
19 and I think -- I think that -- I think that that should be taken into
20 consideration.

21 Now, as far as -- as far as the -- the last set of depositions, the
22 subpoenas that I issued, those issues, they interfered. In my view they
23 interfered. They went to -- they went to both of the -- on information and
24 belief they contacted both of the persons who had been subpoenaed, and I
25 believe that they advised them or encouraged them not to appear for the

1 depositions.

2 There was no order from this Court in place at the time that
3 prohibited those depositions or the issuance of those subpoenas. So, -- and
4 as far as I'm concerned that's witness tampering, and I -- what I mean by
5 that, Judge, is, as Your Honor well knows, you don't go to a witness and tell
6 a witness not to appear for a subpoena, not to mention that they don't
7 represent either of those parties.

8 So, now, whether or not the subpoenas should be -- should be
9 quashed, -- and they filed a motion to do that. Whether or not the
10 subpoenas should be quashed should not be based upon -- should not be
11 based upon their consult with -- with the persons who were subpoenaed, but
12 rather, it should be on whether or not these members have something to
13 say, and of course, since that is extremely broad, and even if it's something
14 that's not admissible at trial, I can still do that as far as the depositions and
15 the discovery is concerned, and I guess what I'm really saying, Your Honor,
16 and the bottom line argument is simply this: When we allow a Defendant to
17 stop a deposition, not answer a complaint for nearly a year by various
18 machinations that they use to make -- to make this happen, I think that that
19 undermines access to the Court, and it undermines a Plaintiff's ability to
20 bring a lawsuit, bring the lawsuit, answer the charges and let's get this --
21 and let's get this going, but here's the thing that they don't want, Judge,
22 and they will not admit, they don't want us -- they don't want me to depose
23 the witnesses and get to the heart of this, and that I believe is denial of my
24 access to the courts, and I believe that that -- I believe that is an egregious
25 effort to prevent me from me and this lawsuit being heard. Thank you.

1 THE COURT: Let me just say, Mr. Cordero, I think at the time that
2 we had our telephone conference that may have been prior to the filing of
3 any motions. Apparently - I think there's a letter that you had sent directed
4 to my attention related to this particular case, ---

5 MR. CORDERO: Yes.

6 THE COURT: --- and I think we had a status conference as a result of
7 that. As I recall at that particular time there had not been any motions
8 filed, and so, whatever my statements made to everyone at that particular
9 point were based upon the posture of the case as it stood at that particular
10 point.

11 I was Chief Administrative Judge, and I think you - I guess my
12 thought process was that if it's in state court and you were asking me for a
13 status conference and we talked about those things and what would be
14 proceeding, I had no knowledge at that particular time as to whether there
15 were motions filed, whether the answer had been filed. I was under the
16 impression that it had been returned from federal court and was aware of
17 that particular posture at that point, and I believe also that I understand - I
18 don't know when the depositions were noticed, but I did see in the file that
19 there was a motion for protective order that was filed in the past couple of
20 weeks. So, I'm not going to comment one way or the other as it relates to
21 your particular thoughts about whether there was witness tampering;
22 certainly to the extent that those were people who either were employed or
23 had a position with the Democratic Party, whether it's Richland County
24 Democratic Party or the South Carolina Democratic Party, certainly since
25 they represent those entities they would also be representing those officers

1 or directors or other persons with leadership, and so, they would have the
2 opportunity to be able to consult with them, at least in determining whether
3 they would be available and not so much with the substance of their
4 testimony but certainly whether they're available for the deposition.

5 So, I follow the longstanding rule that we have, generally, that when
6 there is a pending motion to dismiss that generally the discovery is
7 suspended or there's the opportunity to suspend discovery unless the
8 parties agree to engage in it voluntarily, and so, I will consider that.

9 What I'll say at this particular point is, given the fact that I now have
10 heard the motions and that I need to review some additional information,
11 look at the case law that's been cited and also, receive the information from
12 federal court, the federal orders that you're relying upon or that you want as
13 part of this argument, I would ask that you not engage in any discovery
14 until such time as there has been a final order issued as it relates to the
15 motion to dismiss as well as the motion for default.

16 I will review that since I have not officially made a ruling on that
17 particular part, and so, I will grant a protective order for the time-being, and
18 that may be lifted once the orders have been issued. Is there anything else
19 we need to take up at this point?

20 MR. CORDERO: Yes, Your Honor. At this point - let me see. I
21 understand Your Honor's ruling. Obviously, I accept. What I did want to
22 make clear is that I did - I did send a subpoena to Carol Fowler, who did not
23 appear yesterday, okay? I did send a subpoena to Maddy Thomas, who did
24 appear and was deposed yesterday, okay, and so, I just wanted Your Honor
25 to be aware of that.

1 As far as the other statement was concerned, Your Honor, with regard
2 to the status of things when we had that hearing and the status conference
3 on the 26th I think it was or at least in October, I just want the record to
4 reflect that I agree with your assessment of that completely. I mean, there's
5 no question there that that's -- that that's the way -- that that's the way that
6 played out, and finally, because -- because the issues -- the memorandum of
7 law for the 12(b)(6) motion and the motion to quash and all of those things
8 just got to me, will Your Honor give me sufficient time to respond to those
9 and to also supply the other information in compliance with the federal
10 court's order?

11 THE COURT: Yes. You have got the opportunity to be able to
12 respond to their memorandum, and if you could do so by the 16th. Monday
13 is a holiday; so, the 16th, if you will file it, and Mr. Cordero, you don't have
14 an email address whereby you could do things by electronic filing?

15 MR. CORDERO: Well, I wanted to, Your Honor, but it was my
16 understanding -- correct me if I'm wrong. It's my understanding that, not
17 being a licensed attorney in South Carolina, that's not available to me.
18 That's how I read the -- read the ---

19 THE COURT: Okay, and I don't really keep up with that particular
20 part of it, but I think that -- but if you provide an email address when
21 documents are filed they can be sent to you by email instead of by snail
22 mail, and ---

23 MR. CORDERO: Okay. So, are you authorizing me to -- to file by
24 email if only for this case?

25 THE COURT: I'm not going that far.

1 MR. CORDERO: Okay.

2 THE COURT: If the rules -- or the electronic filing rules indicate that
3 pro se individuals cannot e-file, then, what I would say to you is, I would
4 encourage you to provide an email address to the Clerk of Court, because
5 what the Clerk of Court does is generally when documents are filed, when
6 we have access to them, they can be sent to you by email versus sending
7 them to you by snail mail. Also, in addition, since that would be the
8 address that would be on file, if the attorneys have your email address they
9 can send the documents to you in that format as well. So, ---

10 MR. CORDERO: You know, Your Honor, -- I'm sorry. I didn't mean to
11 interrupt.

12 THE COURT: I think that would speed up your ability to be able to
13 keep up with what is going on.

14 MR. CORDERO: I agree.

15 THE COURT: Because we all understand that the mail service is
16 rather slow, and it's difficult to get things in either a timely manner or in
17 time in order to be able to respond adequately, and if you have that on file --
18 I mean, we don't make it public to the general public. So, if the Clerk of
19 Court's office has it in the file, then, they can be sent to you, and then, you
20 all can exchange by email as necessary. You can -- and with a computer you
21 can access anything that's in the public index, that's in the public file; so,
22 you'll know -- it will have a filing date on it, and you'll know when it was
23 filed, and you will have a copy of it that way as well.

24 MR. CORDERO: All right. Thank you, Your Honor, and just as part --
25 I'm partially being facetious here, but -- but you know Your Honor can

1 always admit me for the purposes of this case.

2 THE COURT: I don't think I can. I think you would have to go
3 through the Supreme Court in order to do that. As a pro se individual you
4 are certainly entitled to represent yourself. To the extent you are licensed, if
5 you are licensed, then, that's a South Carolina Bar - South Carolina
6 Supreme Court function, not a function I can do.

7 MR. CORDERO: Understood, Your Honor. I was only being facetious.

8 THE COURT: I understand that. I understand. If there's nothing
9 else, then, I will ---

10 MS. SHUTT: Your Honor, ---

11 THE COURT: Yes.

12 MS. SHUTT: I'm sorry, Your Honor. I never had the case where
13 someone has gone on with a deposition with the other side objecting. So,
14 I'm not quite sure what to do. We were not present at Ms. Thomas'
15 deposition. We filed a motion to quash and motion for protective order. I'm
16 not even sure who the Court Reporter was. Mr. Cordero, can you provide
17 that information?

18 MR. CORDERO: Yes, certainly. The Court Reporter was - oh -
19 Capital Court Reporting, and Jennifer Cash was the reporter.

20 MS. SHUTT: Tass, T-a-s-s?

21 MR. CORDERO: C-a-s-h, and they're at 1708 Main Street in
22 Columbia.

23 MS. SHUTT: And Your Honor, I'm not sure what to do about that
24 since, you know, we had told Mr. Cordero - we had been communicating
25 with him by email and by telephone as well, Your Honor.

1 THE COURT: I know that you filed -- I saw that you filed a motion on
2 February 3, and I haven't looked at that since it wasn't something that was
3 before me at that particular point. So, I would encourage you all to have a
4 discussion about it, and if you cannot come to a rational conclusion, then,
5 you can file whatever motions you need to file.

6 MS. SHUTT: So, he went forward with the deposition yesterday, Your
7 Honor. I mean, can we have that marked confidential until we have a
8 resolution on that?

9 THE COURT: What, the deposition?

10 MS. SHUTT: Yes, Your Honor. I mean, basically, I think it was a
11 statement rather than a deposition but -- since we did not participate but ---

12 MR. CORDERO: How would you know that?

13 THE COURT: We're not going to go back and forth here.

14 MR. CORDERO: Okay. Yes, Your Honor.

15 THE COURT: You can request a copy of the deposition from the Court
16 Reporter, and then, once you receive it -- I assume that the original will go to
17 Mr. Cordero along with whatever copy he pays for. You are certainly
18 entitled to get a copy of it, since you are representing a party to the case,
19 and once you receive it and you read it, then, you can decide otherwise --
20 you can go into the rules and look to see whether you can reschedule it,
21 retake it or whatever steps you think would be appropriate once you have
22 got a chance to look at it.

23 MS. SHUTT: And I guess, Your Honor, since Mr. Cordero's trying his
24 case in the media at this point, I would ask that he not release this
25 transcript of this deposition that was improperly taken yesterday until we

1 can have a further hearing on that.

2 THE COURT: I don't think the deposition should be released outside
3 of the litigation itself. So, you know I don't have a problem indicating - the
4 original is sealed and only can be unsealed by the Court, and so, if there's
5 some danger of communicating what's in the deposition to the general
6 public, you know, we can certainly take up those issues, but I ask that it - I
7 ask that there not be any further discovery or any sharing of the contents of
8 the deposition outside of this particular lawsuit at this particular point.

9 MS. SHUTT: Thank you, Your Honor.

10 THE COURT: Okay. We're on the same page, and we all understand
11 what the parameters are?

12 MR. CORDERO: My - one question, if I may, Your Honor, and that is,
13 this amounts to - I'm not trying to be facetious here. This doesn't amount
14 to a gag order; does it? That's what they're asking for.

15 THE COURT: What I'm saying is that the contents of that particular
16 deposition should not be released until such time as it comes before the
17 Court for a ruling. Now, I ---

18 MR. CORDERO: Understood.

19 THE COURT: --- am giving her the opportunity to get a copy of it. If
20 there's something in the deposition that she wishes to object to, then, the
21 Court can take up those objections. It may not be me, but they can
22 certainly take those up, but what I'm also saying is that there should be no
23 further discovery or - there should not be any discussion or disclosure of
24 the contents of the deposition until the Defendants have had an opportunity
25 to get a copy of it and until they can decide what they wish to do, whether

1 they wish to take any steps or not, and I think the lines of communication
2 need to stay open between you and the attorneys to address any issues that
3 may come up in that regard. If you cannot agree, then, you need to file the
4 appropriate motion and have the Court take it up.

5 MR. CORDERO: Thank you, Your Honor.

6 THE COURT: Is that clear?

7 MR. CORDERO: That's clear.

8 MS. SHUTT: Thank you, Your Honor.

9 THE COURT: All right. Thank you all very much. I appreciate your
10 arguments today and appreciate hearing from you. I will rule on these as
11 quickly as possible. I will just do - in light of what I have said here, I will
12 just do a form order as it relates to the protective order, and I will get that
13 filed, and you should be able to get copies of it. Okay. Thank you.

14 MS. SHUTT: Thank you, Your Honor.

15 MR. CORDERO: Thank you.

16 MS. LEFEVER: Thank you, Your Honor.

17 --- END OF TRANSCRIPT OF RECORD ---
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25

1 I, the undersigned, T. Dayton Grainger, Jr., Official Court Reporter for
2 the Fifth Judicial Circuit of the State of South Carolina, do hereby certify
3 that the foregoing is a true, accurate and complete Transcript of Record of
4 all the proceedings had and evidence introduced in the trial of the captioned
5 case via WebEx, on the 9th Day of February, 2021.

6 I do further certify that I am neither of kin, counsel or interest to any
7 party.

8
9
10 March 19, 2021

11 
12 _____

13 T. Dayton Grainger, Jr.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4001980

Johnnie Cordero
PLAINTIFF(S)

Matthew Kisner et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court upon Defendants' Motion for Protection from Discovery. This Court hereby GRANTS the the Motion for Protection and the parties should not engage in any further discovery until the Motion to Dismiss and Motion for Default Judgment have been decided. Any depositions taken by the parties should not be released and should be sealed until they are properly before the Court. Parties may review and make objections to any depositions that have already taken place. The remaining motions are under advisement. Plaintiff is granted until February 16, 2021 to file a response to Defendants' memoranda on motion to dismiss.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/09/2021 . . .

Johnnie Cordero for Johnnie Cordero
Johnnie Cordero for Johnnie Cordero

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

Case Caption: Johnnie Cordero vs Matthew Kisner
Case Number: 2020CP4001980
Type: Order/Electronic Form 4

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2021-02-09 16:50:34 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Johnnie Cordero,

Plaintiff,

vs.

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; and The South Carolina
Democratic Party,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2020-CP-40-1980

RICHLAND COUNTY
FILED
2021 FEB 16 AM 11:40
JEANETTE W. MCGRIDE
C.C.R. Clerk & CO.

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS'
JOINT MOTION TO DISMISS PURSUANT TO RULE 12(b)(6) SCRCP**

Plaintiff, Johnnie Cordero, acting on his own behalf, hereby submits as and for
his Memorandum In Opposition to Defendants' Motion to Dismiss the following:

INTRODUCTION

Defendants begin their Motion to Dismiss as they did in Federal District Court
with an Introduction that blames the undisputed violation of the South Carolina State
Election Law on the global pandemic. As tragic as the pandemic is it cannot supersede
the Constitution or State law for that matter. Nor do the Governor's Executive Orders.
Even the judiciary recognizes it must defer to the legislature to change the law before it
can act. As trite as it may sound no person or disease for that matter is above the law.

Plaintiff therefore, rejects Defendants' Introduction (as should this Court) which
advances the meritless argument that the existence of a *global pandemic* justifies the
actions and omissions of the Defendants alleged in Plaintiff's lawsuit. Plaintiff also

rejects the notion that his "lawsuit stems from the necessary actions of the Defendants in these unprecedented times." (Defendants' Introduction at page 2, last paragraph.).

On the contrary this lawsuit stems from the blatant, intentional disregard of the rights of the Plaintiff and similarly situated Democratic electors in Richland County and throughout the State of South Carolina who are predominately African American.

Moreover, neither the Governor nor the Defendants can ignore the law no matter what the circumstances as the South Carolina Constitution Section 7 provides:

"Suspension of laws. The power to suspend the laws shall be exercised only by the General Assembly or by its authority in particular cases expressly provided for by it. (1970 (56) 2684; 1971 (57) 315.)

Finally, the Supreme Court of the United States has opined in a slightly different context "... even in a pandemic, the Constitution cannot be put away and forgotten."

see, *Roman Catholic Diocese of Brooklyn, New York, v Andrew M. Coumo, Governor of New York*, 592 U. S. ____ (2020) *Per Curiam* No. 20A87. Nor can the Constitution of the State of South Carolina.

What This Case is Really About.

Historical Background

This case is about the generational, incremental, continued disenfranchisement of the African American Democratic Electorate of South Carolina in an attempt to maintain white supremacy.

The background is best stated by Defendant South Carolina Democratic Party in its lawsuit entitled *Middleton, et. al., v Andino, et al*, 3:20-cv-01730-JMC (D.S.C. 2020). The following is from their complaint at pages 26-29, in which they admit the racist

history of the State of South Carolina and by implication Defendants South Carolina Democratic Party which has controlled politics in South Carolina for generations. To wit:

"90. South Carolina has a lengthy history of discrimination that has made it more difficult for African Americans to participate in the political process and elect candidates of their choice.

91. Around 40 percent of all enslaved Africans forcibly brought to the United States arrived in Charleston harbor. Although many enslaved Africans who arrived in Charleston were sold and transported away from the State, a great many stayed in South Carolina. By 1860, enslaved Africans made up more than 55% of the population of South Carolina.

92. In the period immediately following the Civil War, South Carolina's sizeable (sic) African-American population exercised its newfound freedom at the ballot box by electing a significant number of African Americans to state political offices. S.C. H. Con. Res. 3695 (Mar. 13, 2007) (identifying "former slaves and their descend[a]nts [who] took their rightful seats in the highest offices of the state and federal governments").

93. But when Reconstruction ended and federal troops left the State, so, too did hopes for African-American political opportunity and equality.

94. White South Carolinians enacted legislation to quell African-American political participation after Reconstruction. In 1895, South Carolina adopted a literacy test that effectively disenfranchised the majority of African American voters. That same year, South Carolina instituted a poll tax, which it kept in place through 1950. And from 1896 until 1947—three full years after the Supreme Court decided the issue in *Smith v. Allright*—South Carolina maintained an all-white primary. *Elmore v. Rice*, 72 F. Supp. 516 (D.S.C. 1947).

95. Segregated education was de jure throughout South Carolina until the Supreme Court's decision in *Brown v. Board of Education*, a consolidated case that included *Briggs v. Elliot*, a challenge to school segregation in Clarendon County, South Carolina."

The foregoing is the history admitted by Defendant SCDP. This Court should also take note of the fact that change in South Carolina has always come by judicial

intervention. And that at each step of the way the SCDP has done everything it could to prevent the advancement of African Americans toward equality and political empowerment. Frederick Douglass perhaps said it best: "Power concedes nothing without a demand. It never did. It never will."

Plaintiff contends that there have been three phases in our quest for political empowerment in South Carolina.

Phase One:

The Right to Vote (1870)

The 15th Amendment, which gave the right to vote to newly freed male slaves was passed in 1870. It represented Phase One of our quest for political empowerment. In 1876, the United States Supreme Court held that the Fifteenth Amendment did not confer suffrage on anyone and simultaneously opened the door to poll taxes, literacy tests and grandfather clauses. *United States v. Reese*, 92 U.S. 214 (1876), South Carolina led the way.

Phase Two:

Defeat of the All White Primary (1947)

Phase Two was the defeat of the All White Primary. The All White Primary was the invention of the South Carolina Democratic Party in 1896. All White Primaries under the rules of the South Carolina Democratic Party were in place for 51 years until 1947.

In 1946, George Elmore, a Richland County resident, sued the South Carolina Democratic Party and the Richland County Democratic Party (both Defendants in this matter). (see, *Elmore v. Rice, et. al*, 72 F. Supp. 516 (1947)). Mr. Elmore was represented by Harold Boulware, Thurgood Marshall and Robert L. Carter.

Phase Three:

Democratic Party Leadership (2021)

Phase Three of our quest for political empowerment is party leadership. This is the last bastion of white control. The Voting Rights Act recognized this in Section 14 where it defines the terms "vote" or "voting" to include "all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this subchapter, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate *totals of votes cast with respect to candidates for public or party office and propositions* for which votes are received in an election." (italics added). 42 U.S.C. § 19731(c)(1).

Since its founding in 1828 by Andrew Johnson, there has only been one African American Chair of the South Carolina Democratic Party - 193 years. The Defendants have spent hundreds of thousands if not millions of dollars to get out the vote - that is to get African Americans to vote democratic but not a penny to recruit African Americans to join the Democratic Party itself. All they want is our output (our vote) - but not our input. For example, how is it possible that African Americans who are overwhelmingly Democrats and who form the core constituency of the Party and 75% of whom are in favor of reparations for slavery and discrimination since the end of slavery yet this issue is not part of the Democratic Platform at the National or state level.

As history clearly indicates the third phase of the struggle for African American political empowerment can only be accomplished by judicial intervention. History also shows that Defendants' will do whatever they can to prevent this lawsuit from going

forward. It has been more than 300 days and Defendants have not answered the complaint.

The Affirmative Action Plan

The Defendant SCDP was required by the Democratic National Committee to develop and implement an Affirmative Action Plan for South Carolina. As Chair of the Affirmative Action Committee it was my responsibility to see that the Plan was implemented. When I submitted a budget to fund the implementation of the Plan I was told that no funding had ever been earmarked for that purpose and none would be forthcoming. I was thereafter illegally removed as Affirmative Action Committee Chair.

When it is realized that the Democratic electorate in South Carolina is majority African American it becomes crystal clear why no money is spent to recruit African Americans to the party.

Finally, Plaintiff alleged in his First Amended Complaint at page 14, paragraphs 34 and 35 thereof that:

"34. On or about April 18, 2020, Defendant Kisner and RCDP mailed out mail-in ballots to 416 delegates. There are 150 precincts in Richland County with a total of 265,897 registered voters of whom 143,632 are non-white. All registered voters who reside in Richland County are eligible to vote for county officers and to run for county office in the appropriate categories"

"35. The aforesaid official mail in ballot contains the names of the slate of candidates selected by the "nominating committee" without input from the Richland County Executive Committee of which Plaintiff is a member. The mail in ballots did not contain information about write-ins, or the duties of the officers to be elected. Or that the only qualification to hold office is that you are a registered voter who resides in Richland County. Moreover, you do not have to be a member of the Richland County Democratic Party."

The Defendant RCDP mailed 416 ballots when there were more than 250,000 eligible voters in the County of whom nearly 150,000 are African American. Defendant SCDP was aware of this fact and took no action to correct or even investigate. When Plaintiff complained, Defendants acting in concert conspired to have him unlawfully removed as Affirmative Action Committee Chair and Chair of the Democratic Black Caucus of South Carolina an official Caucus of the Defendant SCDP.

Plaintiff restates his original introduction to this lawsuit and notes that he and not the Defendants is master of the complaint.

Original Introduction

"Political parties represent the voice of the people. It is for this reason that they have significant protection under the First Amendment. But the voice cannot be representative and authentic if political parties are able to circumvent the rules put in place to ensure that minorities are heard not only in the voting booth but also in the party activities at every level including counties. State rules that govern political parties exist against the backdrop of a racist history that has once again reared its ugly head in the wake of the Supreme Court decision in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). The *Shelby* decision has given rise to a veritable tsunami of legislation ostensibly passed to prevent voter fraud but that has actually served to make it difficult for African Americans and other minorities to exercise their right to vote.

Many and varied have been the dilutive techniques used to suppress the African American vote. Everything from literacy tests to poll taxes and grandfather clauses have successfully been used. Over the years the methods have changed but the goals have not. African Americans represent 66.7% of the Democratic electorate in

South Carolina. African American registered voters in South Carolina are more than one million strong. African Americans represent 51% of the Richland County population. The right to vote and more particularly to participate in political party activities has been the bedrock of the fight for political recognition and empowerment of minorities both in South Carolina and throughout the United States since the 1960's.

In 1964 the Mississippi Freedom Democratic Party was organized under the leadership of the late Mrs. Fannie Lue Hammer and others who had been excluded by Democratic Party rule from participation in the Mississippi Democratic Party. During this same period the South Carolina Democratic Party also excluded African Americans from participation in the Party.¹ As a direct result of such exclusionary and discriminatory practices the Democratic National Committee (hereinafter "DNC") instituted its *Six Basic Elements*² that have been adopted by the Defendant SCDP and

¹ <https://www.thestate.com/news/special-reports/state-125/article43721457.html>

² Six Basic Elements The six basic elements adopted by the Democratic National Committee as official policy statements, January 1968, shall be implemented at all levels of the South Carolina Democratic Party. (1) All public meetings at all levels of the Democratic Party in each State should be open to all members of the Democratic Party regardless of race, color, creed, national origin, age, gender, or sexual orientation. (2) No test for membership in, nor any oaths of loyalty to, the Democratic Party in any State should be required or used which has the effect of requiring prospective or current members of the Democratic Party to acquiesce in, condone, or support discrimination on the grounds of race, color, creed, national origin, age, gender or sexual orientation. (3) *The time and place for all public meetings of the Democratic Party on all levels should be publicized fully and in such a manner as to assure timely notice to all interested persons.* Such meetings must be held in places accessible to all Party members and large enough to accommodate all interested persons. (4) The Democratic Party on all levels should support the broadest possible registration without discrimination on grounds of race, color, creed, national origin, age, gender or sexual orientation. (5) The Democratic Party in each State should publicize fully and in such a manner as to assure notice to all interested parties a full description of the legal and practical procedures for selection of Democratic Party Officers and representatives on all levels. *Publication of these procedures should be done in such a fashion that all prospective and current members of each State Democratic Party will be fully and adequately informed of the pertinent procedures in time to participate in each selection procedure at all levels of the Democratic Party organization.* (6) *The Democratic Party in each State should publicize fully and in such a manner as to assure notice to all interested parties a complete description of the legal and practical qualifications for all officers and representatives of the State Democratic Party. Such publications should be done in a timely fashion so that all prospective candidates or applicants for any elected or appointed position within the State Democratic Party and each county will have full and adequate opportunity to compete for office.* SCDP Rules as amended April 29, 2017, Section III, pp. 4-5. (italics added).

incorporated by Defendant RCDP in its Bylaws by reference. Moreover, the Delegate Selection Rules For the 2020 Democratic National Convention³ state as follows:

"[T]he 1964 Democratic National Convention adopted a resolution which conditioned the seating of delegates at future conventions on the assurances that discrimination in any State Party affairs on the ground of race, color, creed or national origin did not occur." Rule 4(b) An Open Party.⁴

The said 2020 Delegate Selection Plan establishes an Affirmative Action Plan for each State Party. The intent of the Affirmative Action Plan is best stated in the plan itself.

"The promises of a democratically elected government and the right to vote have not always been extended equally to all Americans. Historically, certain groups of Americans have been explicitly denied the right to vote or have been subjected to discriminatory and exclusionary practices with the intended effect of denying them voting rights.

1. The goal of such affirmative action shall be to achieve participation in the delegate selection process and Party organization at all levels by the aforementioned groups *as indicated by their presence in the Democratic electorate.*"

Plaintiff was, until summarily and illegally removed, the Chair of the Affirmative Action Committee of the 2020 Delegate Selection Plan and along with the Affirmative Action Committee has the responsibility of monitoring the Defendant SCDP's implementation of the Affirmative Action Plan. Plaintiff is also a duly elected member of Defendant RCDP's Executive Committee as the Alternate male Committee- person.

In the instant case Plaintiff alleges and will show to this Court that the State Election Law governing party conventions as well as the The South Carolina

³ <https://scdn.org/wp-content/uploads/2014/05/Democratic-National-Convention-2020.pdf>

⁴ <https://scdn.org/wp-content/uploads/2014/05/Democratic-National-Convention-2020.pdf>

Democratic Party Rules, the Richland County Democratic Party Bylaws, the Democratic National Committee Delegate Selection Rules for the 2020 Democratic National Convention and the South Carolina Delegate Selection Plan and Affirmative Action Plan for the 2020 Democratic National Convention have been knowingly and intentionally violated by the above named Defendants in order disenfranchise African American voters in the ways set forth more particularly hereinafter.

FACTS ALLEGED IN THE COMPLAINT

Plaintiff Urges This Court To Disregard Defendants Facts Alleged in Complaint

The Federal District Court concluded the following Facts Alleged in the Complaint and accepted them as true. Plaintiff submits the findings of the Federal District Court verbatim: :

"Plaintiff Johnnie Cordero is a member of the South Carolina Democratic Party ("SCDP") and the Richland County Democratic Party ("RCDP") and holds various leadership positions within those organizations. (Am. Compl., ECF No. 1-3 at 5-6.) In February 2020, Defendant Matt Kisner, chairperson of the RCDP, appointed a nominating committee to recruit candidates for various positions in the RCDP, including the party chairmanship. (Id. at 7-8.) Cordero had intentions of running for the chairmanship of the RCDP but was not notified about the formation of the nominating committee or the date and times at which the nominating committee met. (Id.)

On March 21, 2020, the SCDP notified county parties that they could either hold their county party conventions virtually or by mail. (Id. at 7.) RCDP officials decided to hold a virtual convention, but Cordero was excluded from that decision-making process.

(Id. at 8.) On April 16, 2020, Cordero filed this action in the Richland County Court of Common Pleas seeking to have the virtual and mail-in conventions declared illegal under state law and the Voting Rights Act and to enjoin the defendants from holding the conventions. The RCDP convention was held on April 18, 2020. (Id.)

In April 2020, the SCDP Executive Committee met to discuss Cordero's lawsuit. (Id.) The SCDP Executive Committee did not provide Cordero notice of the meeting despite Cordero's membership on the Executive Committee, in violation of SCDP and Democratic National Committee rules. (Id.) In that meeting, the Executive Committee also removed Cordero from his chairmanship of the Affirmative Action Committee and discussed removing Cordero from his chairmanship of the Democratic Black Caucus.

3:20-cv-02195-JFA Date Filed 09/02/20 Entry Number 34 Page 2 of 8 Page 3 of 8

In the Amended Complaint, Cordero asserts that South Carolina Code § 7-9-70 prohibits the RCDP from holding its convention after March 31, 2020, and that South Carolina Code § 7-9-80 prohibits the RCDP from holding its convention virtually or by mail. Cordero also asserts that the defendants' actions violate Section Two of the Voting Rights Act and constitute retaliation against Cordero's First, Fourteenth, and Fifteenth Amendment rights." (Order and Recommendation, pg.2 para 1 through pg. 3 para 1).

PROCEDURAL HISTORY

Defendants' Procedural History is Inaccurate, And
Misleading And Should Not Be Relied Upon By This Court

Defendants state that the Federal District court dismissed the federal claims and remanded a single state law claim back to this court as the only issue to be resolved. This is inaccurate. First, Plaintiff, not Defendants, is the master of the complaint. see, *Johnson v. Advance America*, 549 F.3d 932, 937 (4th Cir. 2008) ("To be sure, the

plaintiffs in this case have taken care to restrict the scope of their allegations so as to avoid federal jurisdiction under CAFA. Yet the plaintiffs, as masters of their complaint, can choose to circumscribe their class definition in this way. “);

Defendants do not dictate what this lawsuit is about. Second, the Federal District Court does not remand *issues*; it remanded the lawsuit. Moreover, the dismissed causes of action were not dismissed *with prejudice*. It follows that in state court the claims could be reargued subject to objection on *res judicata* grounds. Even claims denied on the basis of a federal statute can still be raised on independent state grounds such as violation of the state constitution. The point here is that Defendants seem to think that they determine what this lawsuit is about. Plaintiff rejects the argument out of hand and would urge this Court to do the same.

LEGAL STANDARD

Rule 12(b)(6), SCRPC, allows the court to dismiss a party's claim for “failure to state facts sufficient to constitute a cause of action.” In evaluating a motion to dismiss pursuant to this rule, the circuit court must view the facts alleged in the complaint and any reasonable inferences to be drawn therefrom in the light most favorable to the plaintiff. *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). “The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief under any theory of law.” *Fleteau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 416 (Ct. App. 2003).

“[N]ovel questions of law should not ordinarily be resolved on a Rule 12(b)(6) motion.” *Chestnut v. AVX Corp.*, 413 S.C. 224, 227, 776 S.E.2d 82, 84 (2015). “Where, however, the dispute is not as to the underlying facts but as to the interpretation of the

law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss." *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office*, 346 S.C. 158, 165, 551 S.E.2d 263, 267 (2001).

Plaintiff contends that the issues raised in this lawsuit are novel and are therefore, not appropriate for resolution by Rule 12(b)(6) Motion to Dismiss. Defendants' argue and would also have this court believe that this lawsuit presents only legal issues while simultaneously arguing that the remedies it seeks are equitable. I would simply remind this court that of law. But this court should also

**The Order and Recommendation of the Magistrate
adopted by the District Judge Should be adopted by
this Court as impliedly dispositive of the 12 (b)(6) Motion**

This Court should take into consideration that Defendants' 12(b)(6) Motion to Dismiss is essentially the same Motion they submitted in Federal District Court. (Exhibit A). They have simply substituted South Carolina cases for federal cases. Of course, since the South Carolina Rules of Civil Procedure are almost exclusively based on the Federal Rules of Civil Procedure the findings of the Federal District Court on the matter of the application of the Rules of Civil Procedure should be persuasive if not controlling.

In the Order and Recommendation of the Magistrate adopted in its entirety by the District Judge, the Magistrate concluded in part that: "... Cordero raises numerous state law claims that, in the interest of comity, are more appropriate for consideration in South Carolina's courts because they include complex issues of state law." and that "... the state law claims involved interpretations of complex state statutes on which there

was no state precedent." (Mag. Order & Recommendation, p.8). While District Judge

Anderson in his Order noted that:

"Here litigation is in its earliest stages. Although all parties prepared arguments pertaining to the dismissal of the state law claims, little else has been done to advance this case towards trial. Indeed, all Defendants have yet to prepare an Answer to the Complaint. Accordingly, it does not appear that any party has expended time or resources engaging in any discovery. . . . Similarly, notions of comity weigh in favor of declining jurisdiction so that a state judge with a greater familiarity of the remaining state law claims can preside over this matter." (Order, pps. 5-6)

Plaintiff contends that although the Order and Recommendation of the Magistrate its adopted by the District Court is not dispositive it represents a finding by a Federal District Court of competent jurisdiction that there are (1) numerous state law claims; (2) that include complex issues of state law; (3) that there is no state precedent; (4) defendants have not filed an answer; and (5) there has been no discovery. These findings by a federal court seem sufficient reason to deny this motion to dismiss, require defendants to file an answer and proceed with discovery. Plaintiff respectfully urges this Court to so ind.

**Plaintiff has Public Interest Standing
to challenge the Election Laws**

Notwithstanding Defendants' private right of action argument Plaintiff contends and urges this Court to find that he has public interest standing to challenge the election laws as a citizen, resident, taxpayer and registered elector of the State of South Carolina.

In *Sloan v. Sanford*, 357 S.C. 431 (2004) 593 S.E.2d 470, the South Carolina Supreme Court opined:

"In *Culbertson v. Blatt*, 194 S.C. 105, 9 S.E.2d 218 (1940), we held a

plaintiff, suing in his capacity as a citizen and taxpayer, lacked standing to bring an action against several dual office-holding public officials. Since this Court's ruling in *Culbertson*, we have recognized, under certain circumstances, standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999) (citing *Thompson v. South Carolina Comm'n on Alcohol & Drug Abuse*, 267 S.C. 463, 229 S.E.2d 718 (1976)). An appropriate balance between the competing policy concerns underlying the issue of standing must be realized. Citizens must be afforded access to the judicial process to address alleged injustices. On the other hand, standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits. We conclude Petitioner has public interest standing because of the importance of the issue he raises. Our conclusion is consistent with prior case law. In *Baird*, *supra*, doctors sued Charleston County to enjoin the issuance of tax-exempt bonds to the Medical University of South Carolina (MUSC) for its purchase of St. Francis Hospital. We held the issuance of the hospital bonds clearly impacts a profound public interest; the public health and welfare. The eligibility of South Carolina's governor to serve in this State's highest elected office is at least as important as the proper funding for a clinical hospital for MUSC. Accordingly, we confer standing."

In Evins v. Richland County Historic Preservation Comm'n, 341 S.C. 15, 532 S.E.2d 876 (2000) cited in *Sloan*, *supra* the South Carolina Supreme Court held on the issue of standing in the context of a Motion to Dismiss as follows:

"County and City contend the trial judge erred in denying its motion to dismiss on the ground of standing. Appellants allege that since Evins failed to allege any personal stake in the action and there is no evidence in the record of a personal stake, she does not have standing. We disagree.

As a general rule, to have standing, one must generally have a personal stake in the subject matter of the lawsuit, i.e., one must be a real party in interest. *Glaze v. Grooms*, 324 S.C. 249, 478 S.E.2d 841 (1996). Additionally, a private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom. *Blandon v. Coleman*, 285 S.C. 472, 330 S.E.2d 298 (1985). *We have held standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance. Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999) (citing *Thompson v. South Carolina Comm'n on Alcohol & Drug Abuse*, 267 S.C. 463, 229 S.E.2d 718 (1976) (holding that the plaintiffs had standing because the

questions involved were of such wide concern, both to law enforcement personnel and to the public)).

Appellants attempt to distinguish *Baird* by arguing that its holding applies only to ultra vires acts and then only to those of immense public importance. We disagree. While in *Baird* there was an allegation of an ultra vires act, clearly in several cases, we have held a citizen has standing when ultra vires acts were not alleged. *Berry v. Zahler*, 220 S.C. 86, 66 S.E.2d 459 (1951) (holding that *questions of public interest originally encompassed in an action should be decided for future guidance*); *Ashmore v. Greater Greenville Sewer Dist.*, 211 S.C. 77, 44 S.E.2d 88 (1947) (same). In any event, we hold the actions of RCHPC were ultra vires as discussed above. Thus, the trial court correctly held Evins has standing. *Id.* at 20

In the case at bar Plaintiff is suing in his capacity as a citizen, resident, taxpayer and registered elector of the State of South Carolina and as such must be afforded access to the judicial process to address injustices. The issue involved is one of public importance and should be decided for future guidance. And as such has standing to bring this action.

The issues in this case are issues of such public importance as to require resolution for future guidance. Among the important issues raised in this lawsuit is the fact that a political party certified by the State Elections Commission and bound by its rules violated those mandatory rules by holding unlawful state and county conventions. The said unlawful conventions and attendant elections served to benefit only party loyalists the effect of which was to exclude registered Democrats who for a host of reasons are not dyed in the wool party loyalists.

Plaintiff further contends that the persons excluded were those who Defendant SCDP's Affirmative Action Plan was implemented to reach, i.e., African American, woman, people 36 years old and younger, LGBTQ and Hispanic, Asian Americans and Pacific Islander, Native Americans and people with disabilities.

The Federal District Court has found that the issues raised in this lawsuit are complex and that there is no state precedent making the issues raised by Plaintiff novel and not suitable for dismissal of 12(b)(6).

This court may take judicial notice of Defendants SCDP and RCDP have a long history of intentionally undermining the right to vote of African Americans and of utilizing questionable legal tactics to delay adjudication when lawsuits are brought to vindicate the rights of African Americans. See *Elmore v. Rice*, 72 F. Supp. 516 (E.D.S.C. 1947) the landmark case which struck down the all White Primary in South Carolina and in which both SCDP and the RCDP were named Defendants. It is also relevant here that the court also held that

"... the defendants *and their successors in office* will be enjoined from excluding qualified voters from enrollment and casting ballots by reason of their not being persons of the white race." *Id.*, at 528.

Defendants in this case are *successors in office* of the Defendants in *Elmore v Rice*.

This Court has Equity Jurisdiction.

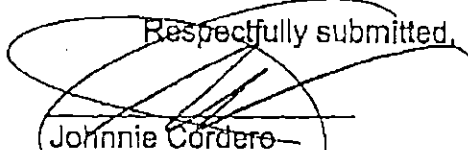
Even if the Court finds that no private right of action exists that does not conclude the matter. This court has equity jurisdiction upon which it can and should rely to avoid injustice. Defendants contend that the nature of the relief sought by Plaintiff is purely equitable. It goes without saying that an injunction is an equitable remedy. In *Doe v Marion*, 373 S.C. 390 (2007), a case cited by Defendants for the proposition that where there is no private cause of action dismissal is appropriate under Rule 12(b)(6) the *Doe* court cites *Weinberger v. Romero-Barcelo*, 456 U.S. 305 (1982). In *Weinberger*, the Court referring to its equity jurisdiction noted,

"... the comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a statute, in so many words or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction." (Citation omitted).

Conclusion

For the foregoing reasons Plaintiff requests that Defendants' Motion To Dismiss Pursuant to Rule 12(b)(6) be denied in its entirety and for such other and further relief as to this Court may seem just, equitable and proper.

Dated: 12 February '21
Columbia, SC

Respectfully submitted,

Johnnie Cordero—
Plaintiff, pro se
4204 Mandel Drive
Columbia, SC 29210
Tel.: (803) 753-8091
Email.: cordero191822@t.net

Certificate Of Service

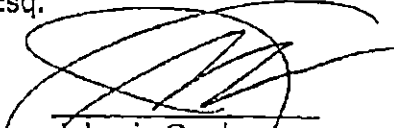
I, Johnnie Cordero, hereby certify that I have served a exact copy of PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' JOINT MOTION TO DISMISS PURSUANT TO RULE 12(b)(6) SCRCP on the Attorney for Defendants by depositing same in a depository of the United States Post Office, postage prepaid and addressed as follows:

Burnett Shutt & McDaniel, PA
912 Lady Street

FILED
2021 FEB 16 AM 11:40
JEANETTE W. McBRIDE
C.C.P., G.S., & F.C.
RICHLAND COUNTY

PO Box 1929
Columbia, SC 29202
Attn: Nekki Shutt, Esq.
Attn: Grant Burnett Lefever, Esq.

Dated: 4 November 2020
Columbia, SC



Johnnie Cordero

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Johnnie Cordero,

Plaintiff,

vs.

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; and The South Carolina
Democratic Party,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2020-CP-40-1980

**PLAINTIFF'S RESPONSE TO
MEMORANDUM IN OPPOSITION
TO MOTION FOR DEFAULT JUDGMENT
PURSUANT TO RULE 55 SCRPC**

RICHLAND COUNTY
FILED
2021 FEB 16 AM 11:39
JEANETTE W. MORRIS
C.C.P., G.S., & S.C.

Plaintiff, Johnnie Cordero, acting on his own behalf, hereby submits and his
Response to Defendants' Memorandum in Opposition to Motion for Default Judgment Pursuant
to Rule 55 SCRPC the following:

ARGUMENT

**Defendants' Motion to Dismiss
Filed on October 26, 2020
was and remains untimely**

Defendants' entire argument in opposition is not complicated; it is just wrong. Plaintiff contends and urges this Court to find that the Defendants' deadline to answer or otherwise respond was October 3, 2020, or at the latest October 8, 2020. (See Motion for Default Judgment, page 3, para. 3). Plaintiff's calculation is based on Defendants having eight days remaining to answer or otherwise respond after this matter was remanded. *The eight days remaining on the date of remand is not in dispute.*

Defendants contend, however, that on the date of remand they had 38 days to answer or otherwise respond. Their calculation is based on eight days plus 30 days added pursuant to the South Carolina Supreme Court Order ("Coronavirus Emergency Order") which automatically extended the due dates for all trial court filings by thirty days. Problem with that argument is

that the due date in this case was the result of a written consent of the parties agreed to on May 14, 2020 at which time the said Emergency Order was in effect.

The Order upon which Defendants now conveniently rely (as an afterthought) provided for an extension of 30 days. Making 30 day *deadlines now sixty days*. The key word here is *deadline*. The deadline is the last date by which an action may be taken and still be timely.

A deadline generally and that specified in the Emergency Order particularly does not prohibit the taking of the action at a date *earlier* than the deadline. Moreover, the parties may, by mutual consent, agree to any date they wish. The said Emergency Order also provides that "Counsel may agree to further extensions of time without seeking permission from the court, and the parties are strongly encouraged to do so upon request." (Emergency Order (9)(C) as amended April 22, 2021).

Defendants now wish to overturn the agreement because they have missed the deadline. Defendants knew or should have known of the existence of the Emergency Order when the agreement was made and must, as officers of the court, be charged with such knowledge. A copy of the consent is annexed as Exhibit A.

Conclusion

For the foregoing reasons Plaintiff respectfully requests this Court to find that the arguments raised in Defendants' Memorandum in Opposition are without merit and grant the relief requested in Plaintiff's Motion for Default Judgment in its entirety.

Dated: 12 February '21
Columbia, South Carolina

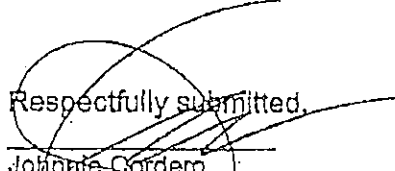
Respectfully submitted,

Johnnie Cordero
Plaintiff, pro se.
4204 Mandel Drive
Columbia, SC 29210
Tel.: (803) 753-8091
Email.: cordero1018@att.net

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Johnnie Cordero,

Plaintiff,

v.

Matthew Kisner, in his official capacity as
Chair of The Richland County Democratic
Party, and

The Richland County Democratic Party,
and

Trav Robertson, Jr., in his official capacity
as Chair of The South Carolina Democratic
Party, and

The South Carolina Democratic Party,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2020-CP-40-01980

EXTENSION OF TIME

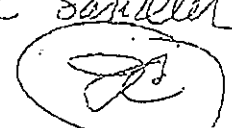
Plaintiff hereby grants all of the above-named Defendants a thirty-day extension of time through June 17, 2020, in which to answer, move, counterclaim, or otherwise respond to the Complaint in the within action.


Johnnie Cordero
4204 Mandel Drive
Columbia, SC 29210
Tel: (803) 753-8091
Email: johnnie.cordero@scbar.org

PLAINTIFF, PRO SE

Columbia, South Carolina

May 15, 2020

*also consent to Pro hac Vice
appearance of La Sandler, P.S.G.*


**AS DIRECTED BY ORDER OF THE COURT
PAGES 202 THROUGH 227 INCLUSIVE REMOVED**

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS)
FOR THE FIFTH JUDICIAL CIRCUIT)

Johnnie Cordero,)

Docket No.: 2020-CP-40-01980)

Plaintiff,)

v.)

ORDER)

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; and, The South Carolina)
Democratic Party,)

Defendants.)

This matter came before the Court upon Plaintiff's, Johnnie Cordero ("Plaintiff"), Motion for Default Judgment, and Defendants', Matthew Kisner ("Kisner"), The Richland County Democratic Party ("RCDP"), Trav Robertson, Jr. ("Robertson"), and The South Carolina Democratic Party ("SCDP") (collectively "Defendants") Motion to Dismiss. A hearing on these matters was held on February 9, 2021. Present at the hearing was Plaintiff, representing himself *pro se*, and Grant Burnette LeFever, Esq. and Nekki Shutt, Esq. representing Defendants.

BACKGROUND

Plaintiff filed a Summons and Complaint on April 16, 2020, seeking a permanent injunction to prohibit Defendants from holding county or statewide virtual conventions and mail-in ballot voting for delegates to the County, State, and National Party Convention. On March 21, 2020, SCDP directed the thirty-three county Democratic Party committees to hold their conventions remotely by telephone town hall or mail-in ballot by April 25, 2020, despite state law setting March 31 as the deadline to hold county conventions. These committees usually held conventions in late March, in compliance with state statute, and are typically in-person; however, Defendants chose to change to a virtual convention platform because of the global COVID-19 pandemic. RCDP sent mail-in ballots to the county party convention delegates and held a virtual convention on April 18, 2020. On May 19, 2020, the SCDP announced its decision to move the

State Convention, originally scheduled for May 30, to a remote platform, with a virtual convention on June 6, 2020.

On May 14, 2020, after Defendants' were served with the Summons and Complaint, all parties consented to an extension of time for Defendants to respond to the Complaint by June 17, 2020. On May 29, 2020, Plaintiff filed a First Amended Complaint, which he served on Defendants by U.S. Mail. On June 9, 2020, SCDP and Robertson, with the consent of RCDP and Kisner, removed the action to Federal Court. Subsequently, on September 25, 2020, the Federal District Court granted Defendants' Motion to Dismiss Plaintiff's federal law claims and remanded the state law claim to this Court. The Richland County Clerk of Court filed the certified copy of the remand order on September 30, 2020. The only remaining cause of action alleges violations of S.C. Code Ann. §§ 7-9-70 and 7-9-100 for failing to hold the RCDP Convention by the March 31 statutory deadline established by statute and the SCDP convention timely and in person. "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. "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." S.C. Code Ann. § 7-9-100. Plaintiff alleges Defendants violated the statute by failing to conduct county and state party conventions by the designated dates.

On October 26, 2020, Defendants filed and served a Motion to Dismiss the state claim pursuant to South Carolina Rules of Civil Procedure ("SCRCP") Rule 12(b)(6). Plaintiff filed a Motion for Default Judgment on November 16, 2020, asserting that Defendants' Motion to Dismiss filed on October 26, 2020, is untimely pursuant to SCRCP Rule 55(b)(2).

LEGAL STANDARD

In cases not involving monetary damages or a sum certain, the party seeking a judgment by default must apply to the court for such, in accordance with SCRCP Rule 55(b)(2). SCRCP Rule 12(a), requires a defendant to serve an answer or Rule 12 motion within thirty days after service of the complaint. SCRCP Rule 15(a), requires a party to respond to an amended pleading "within the time remaining for response to the original pleading or within fifteen days after service of the named amended pleading, whichever period may be the longer."

In considering a motion to dismiss, the trial court must base its ruling solely on allegations set forth in the complaint. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). SCRCP Rule 12(b)(6) permits a trial judge to dismiss a claim when the defendant demonstrates the plaintiff's "failure to state facts sufficient to constitute a cause of action" in the pleadings filed with the Court. *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct. App. 2002). The court "must base its ruling solely on allegations set forth in the complaint." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). When reviewing a Rule 12(b)(6) motion, a court must view the complaint in the light most favorable to the plaintiff and every doubt must be resolved in the plaintiff's favor. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). If the "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case," then the court may not grant a Rule 12(b)(6) motion. *Sloan Constr. Co. v. Southco Grassing Co.*, 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008).

ANALYSIS

I. Default Judgment

Plaintiff seeks default judgment asserting Defendants failed to file a responsive pleading within 30 days of service of the complaint. The parties consented to a deadline to file a responsive pleading by June 17, 2020. In response to the global pandemic, on April 22, 2020, the South Carolina Supreme Court issued an amended order automatically extending the due dates for all trial court filings by thirty days. The extension was in effect from April 3, 2020, until January 15, 2021. See Supreme Court of South Carolina's Order RE: Operation of the Trial Courts During the Coronavirus Emergency, as amended April 22, 2020, ("Coronavirus Emergency Order") section (c)(9)(A). Plaintiff filed this action on April 16, 2020, and a First Amended Complaint on May 29, 2020, prior to Defendants filing a response to the initial complaint. On June 9, 2020, Defendants removed the case to Federal Court prior to the deadline for filing a response. This matter was officially remanded to state court on September 30, 2020. Defendants filed their Motion to Dismiss on October 26, 2020.

Plaintiff argues the deadline to file a response was eight days after the remand. Plaintiff asserts the Supreme Court Order allows the parties to agree to filing dates earlier than the 30 day extension without approval of the Court. Plaintiff argues that because the parties agreed to the June 17, 2020 deadline, that date determines the remaining time to respond after remand.

Defendants argue they had 38 days to file a response to the Summons and Complaint once the case was remanded. Defendants assert that the Supreme Courts extension applies to the agreed upon date of June 17, 2020. Thus, Defendants argue had they not removed the matter to federal court the deadline to file a response was July 17, 2020 pursuant to the Coronavirus Emergency Order. Defendants assert the 38 days between June 9, 2020, and July 17, 2020 should be applied to their time to respond after September 30, 2020.

When a case is removed to federal court, the state court's jurisdiction is suspended or held in abeyance until the case is properly remanded. *See Limehouse v. Hulsey*, 404 S.C. 93, 112, 744 S.E.2d 566, 577 (2013). "Removal of a state court case to federal court tolls the time period for filing responsive pleadings." *Id.* Defendants timely removed the case to federal court; therefore the time to file a response pleading was tolled until the case was remanded to State court. *Id.*

Despite parties agreeing to a date of June 17, 2020, the Supreme Court Order applied to all statutory filing deadlines. This Court calculates the time to file a response pleading pursuant to SCRCP and the Supreme Court Order. Under SCRCP Rule 15, Defendants had 30 days to from May 14, 2020, to file a response plus an additional 30 days pursuant to the Supreme Court Order. Therefore, prior to Defendants removing the case to federal court they had at least until July 14, 2020, to file a response. When Defendants removed to Federal Court only 26 days expired between May 14, 2020, and June 9, 2020. Pursuant to Supreme Court Order, once the case was remanded back to State Court on September 30, Defendants had 34 days remaining to file a response pleading. The Motion to Dismiss was filed within the allotted to time granted by the Supreme Court. Defendants timely filed a responsive pleading and are not in default.

II. Motion to Dismiss

A. Plaintiff's Private Right of Action

Defendants claim their motion to dismiss should be granted because Plaintiff has no private right of action to pursue the statutory violations alleged in the complaint. Defendants assert there is neither a private right of action created by the plain language of the statutes nor was the legislation enacted for the special benefit of a private party. Defendants also argue the sole enforcement mechanism relating to the party organization statutes is the State Election Commission's authority to decertify a political party pursuant to S.C. Code Ann. § 7-9-10. *See*

Dema v. Tenet Physician Hilton Head, Inc., 383 S.C. 115, 121, 678 S.E.2d 430, 434 (2009). Thus, Defendants claim Plaintiff is barred from bringing this action.¹

Plaintiff argues that he has taxpayer standing to bring this action. Plaintiff asserts that as a taxpayer, citizen, resident and registered voter he is entitled to standing in this matter as it is an issue of public concern. Plaintiff further asserts that he has taxpayer standing because this matter is one that needs future guidance by the Court.

"Legislative intent to grant or withhold a private right of action for a violation of the statute is determined primarily from the language of the statute." *Georgetown Cty. League of Women Voters v. Smith Land Co.*, 393 S.C. 350, 353, 713 S.E.2d 287, 289 (2011). "When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party." *Doe v. Marion*, 373 S.C. 390, 397, 645 S.E.2d 245, 248 (2007). 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.

Further, this Court finds there is no need for future guidance on this issue. "Public importance" standing allows citizens in some limited instances to seek judicial resolution of an issue "of such public importance as to require its resolution for future guidance." *Davis v. Richland County Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007). However, the Supreme Court has recognized that courts "must be cautious with this exception, lest it swallow the rule." *Jowers v. S.C. Dep't Health & Envtl. Control*, 423 S.C. 343, 360, 815 S.E.2d 446, 455 (2018) (quoting *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 646, 744 S.E.2d 521, 524 (2013)). Indeed, "standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits." *Sloan v. Sanford*, 357 S.C.

¹ Defendants also rely on an order from the Thirteen Judicial Circuit, which ordered that the Plaintiffs failed to make a prima facie showing of irreparable harm and likelihood of success on the merits for the Court to order a preliminary injunction. See *Stutts v. S.C. Republican Party*, No. 2021-CP-23-02173 (Greenville Cty. C.P. May 6, 2021). While, the facts of this case are similar in nature, this Court finds the issues addressed in *Stutts* are different from those raised in this matter.

431, 434, 593 S.E.2d 470, 472 (2004). The key for finding that public importance standing is warranted is a need for future guidance. As the Supreme Court has stated:

For a court to relax general standing rules, the matter of importance must, *in the context of the case*, be inextricably connected to the public need for court resolution for future guidance.

ATC S., Inc. v. Charleston Cty., 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008) (emphasis added).

The language of S.C. Code Ann. §§ 7-9-70 and 7-9-100 is clear and unambiguous and there is no need for this Court to provide an interpretation of these statutes. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581(2000). Defendants conducted county and state conventions while also attempting to comply with Governor McMaster's executive orders and ensuring they would not endanger its members by placing them in environments that would increase their risk of contracting COVID-19. In March of 2020, Governor McMaster declared a state of emergency and issued more than a dozen executive orders implementing various safety measures, including prohibiting public gatherings and ordering law enforcement to disperse gatherings of three or more people due to the concerns of the COVID-19 pandemic. Pursuant to the Executive Orders issued by Governor McMaster, Defendants were prohibited from conducting a convention in person in the ordinary and traditional manner. Many State agencies and private organizations, including this Court, were forced to adjust the way it operates in response to COVID-19. Those adjustments included the use of virtual meetings and telecommunication as a means to fulfill tasks and duties. Further, the timing of these conventions was during the beginning stages of the pandemic when the entire world was still learning how to navigate through the pandemic. Many public venues and facilities were closed during this time. Public importance standing is inappropriate here because there is no ruling this Court might issue that would provide future guidance on these issues.

Moreover, the statutes do not restrict political parties from holding virtual conventions or elections. Plaintiff primarily challenges Defendants ability to verify the authenticity of the votes casts virtually or by mail-in. These issues are more appropriately addressed within the organization. Based on the pleadings, Defendants considered the impact of COVID-19, while balancing state statute and the Governor's executive orders in planning county and state conventions. Therefore, there is no need for future guidance on this issue.

B. Cause of Action is Moot

Defendants also claim Plaintiff's claims are moot. In the complaint, Plaintiff seeks a declaratory judgment to declare that Defendants violated state law, and he seeks an injunction barring Defendants from holding any more conventions virtually or using mail-in ballots. Defendants argue that the conventions have already occurred and there is no actual controversy.

"A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (citing *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)). If there is no actual controversy, the court will not decide moot or academic questions. *Id.*

The conventions and elections organized by Defendants which Plaintiff alleges violate the statutes have already occurred. Plaintiff alleges RCDP violated state statute by failing to hold an in-person county convention by March 31, 2020, and casting votes for executive positions within the county party after this date. Defendants argue these issues arose from extraordinary circumstances created by a global pandemic and are unlikely to occur again. This Court finds Defendants' actions to schedule conventions beyond the statutory date were due to the unprecedented global pandemic. It would be improper for this Court to prohibit Defendants from holding virtual conferences in the future because nothing in the statute prohibits Defendants from doing so.

ORDER

Based on the pleadings, Plaintiff has no private right of action and lacks standing to bring this action. Plaintiff's claims are moot. Therefore, **IT IS ORDERED** that Defendants' Motion to Dismiss is **GRANTED**. Plaintiff's Motion for Default Judgment is **DENIED**.

AND IT IS SO ORDERED.

[ELECTRONIC SIGNATURE TO FOLLOW]



Richland Common Pleas

Case Caption: Johnnie Cordero vs Matthew Kisner

Case Number: 2020CP4001980

Type: Order/Other

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2021-06-29 13:21:40 page 8 of 8

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