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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

APR 26 2024

SC Court of Appeals

Appellate Case No. 2021- 000804

Johnnie Cordero Appellant

v.

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

Respondents.

**APPELLANT'S MOTION FOR LEAVE TO (1) AMEND STATEMENT OF ISSUES ON
APPEAL; (2) TO SUPPLEMENT THE RECORD ON APPEAL; AND (3) TO
SUBSTITUTE PRESENT DEFENDANTS SUED IN THEIR OFFICIAL CAPACITY FOR
PERSONS NOW HOLDING THOSE OFFICES AND FOR SUCH OTHER RELIEF AS
TO THIS COURT MAY SEEM PROPER PURSUANT TO SCACR 212(b)**

Comes Now, Johnnie Cordero Appellant in the above-entitled appeal, acting on
his behalf, who moves this Honorable Court for Leave to amend Final Brief to add the
following information pertinent to the issues upon which this appeal is based under
SCACR 212(b). The argument has not yet commenced.

PROCEDURAL BACKGROUND

1. Notice of Appeal was filed in this matter on July 27, 2021.
2. Appellant filed an Amended Record on Appeal on August 18, 2022
3. Final Briefs have been filed by Appellant and Respondents on March 6, 2023, and February 27, respectively.
4. Appellant now files the Proposed Amendment to pending appeal before commencement of argument under SCACR 212(b)

Motion to Amend Statement of Issues on Appeal

The appellant requests leave to amend the Final Brief to add an additional Issue on Appeal for this court's review. The question sought to be added relates to the primary issue in the underlying cause of action of which all parties had notice and which the circuit court failed to directly address.

The appellant contends that the resolution of this question by the circuit court would have resulted in the resolution of this matter in his favor. The complaint sought only a declaration that the Defendants violated the South Carolina State Election Law. No monetary damages were requested.

The violation(s) alleged were found by the circuit court to have occurred and were conceded by the Respondents. Appellant also submits that had the circuit court addressed this question it would have been resolved in his favor and would have disposed of this matter in its entirety, conserving judicial resources and unnecessary expense.

Motion to Supplement the Record

South Carolina Democratic Party v. South Carolina Labor Party, et al. Docket No. 2022-CP-40-04077

The appellant also seeks leave to supplement the record to bring to the attention of this court a decision that while admittedly not dispositive is certainly informative of the issue before this court. The matter entitled *South Carolina Democratic Party v. South Carolina Labor Party, et al. Docket No. 2022-CP-40-04077* was commenced by the defendant South Carolina Democratic Party and authorized by defendant Norman T. Robertson, Jr. (aka Trav Robertson). The lawsuit relied on the same statute as relied upon by the appellant in this matter and was decided by the circuit court judge in this matter who found a violation of the statute in one case and apparently ignored it in the other. Appellant urges this court to resolve this anomalous result.

Motion to Substitute Parties

Finally, as a housekeeping matter, the appellant seeks leave to substitute the names of the defendants sued in their official capacity for persons who now hold those positions, i.e., Valerie Moore in the place and stead of Matthew Kisner as Chair of the Richland County Democratic Party, and Christale Spain in the place and stead of Trav Robertson as Chair of the South Carolina Democratic Party.

Proposed Amendment to Final Brief

STATEMENT OF ISSUES ON APPEAL

IV. WHETHER THE CIRCUIT COURT ERRED AND ABUSED ITS DISCRETION WHEN IT DID NOT ADDRESS PLAINTIFF'S REQUEST FOR DECLARATORY JUDGMENT PURSUANT TO THE UNIFORM DECLARATORY JUDGMENT ACT S.C. CODE §15-53-20

Standard of Review

The rules of statutory construction are now settled. The South Carolina Supreme Court has noted that “[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Bankers Trust of South Carolina v. Bruce*, 275 S.C. 35, 267 S.E.2d 424 (1980). See also, *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993).

The South Carolina Supreme Court has also concluded that “... “It is not the court’s place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998). And finally, “[w]here the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory *interpretation are not needed and the court has no right to impose another meaning. Id. at 233, 509 S.E.2d at 262 (citing Paschal v. State Election Comm’n, 317 S.C. 434, 454 S.E.2d 890 (1995)).*

A. The circuit court found that the language of S.C. Code Ann. §§ 7-9-70 and 7-9-100 is clear and unambiguous and has no need of interpretation.

The circuit court and Respondents have not disputed that S.C. Code Ann. §§ 7-9-70 and 7-9-100 is clear and unambiguous and therefore has no need of

interpretation. It follows that the circuit court erred (1) by not applying the statute according to its plain meaning and (2) by failing to declare that the actions of the defendants complained of by the plaintiff were taken in violation of S.C. Code Ann. §§ 7-9-70 and 7-9-100.

B. Having found S.C. Code Ann. §§ 7-9-70 and 7-9-100 to be clear and unambiguous the circuit court erred by proceeding to render an interpretation in derogation of the statute's plain meaning.

In the case at bar, the circuit court, after citing *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581(2000) (Order, p.6) favorably, proceeded to do what according to *Hodges* it had no right to do, i.e., *change the meaning of the statute or impose another meaning* on an admittedly unambiguous statute.

The circuit court, in effect, interpreted the statute to include an exception in the case of a pandemic or an executive order of the governor. Again, the statute in clear, unambiguous and plain language states the convention must be held by March 31. The statute permits no such exception and none can be implied.

C. The Circuit Court violated the established legal concept of *expressio unius est exclusio alterius* when it interpreted the Statute by relying on what the statute does not prohibit.

The legal concept *expressio unius est exclusio alterius* seems to undermine any argument that something that was not mentioned can be dispositive because "... [a]n implied exclusion argument lies whenever there is reason to believe that if the legislature had meant to include a particular thing within the ambit of its legislation, it would have referred to that thing expressly. *Because of this expectation, the legislature's failure to mention the thing becomes grounds for inferring that it was*

deliberately excluded. Although there is no express exclusion, exclusion is implied."

Ruth Sullivan, Sullivan and Driedger on the Construction of Statutes, 4th ed. (Markham: Butterworths, 2002) at 186-187. (Italics added).

In the case at bar the circuit court concluded that "... the statutes do not restrict political parties from holding virtual conventions or elections." Whether this is true or not it is irrelevant because the statute requires that conventions be held by March 31. It is not disputed that the convention was not held by the statutory deadline.

Moreover, the statutes require that conventions be held in *physical locations that accommodate groups*. Virtual conventions do not and cannot have a physical location. Appellant argues and would urge this court to find that when a court concludes that a statute does not restrict or include something it is *ipso facto* interpreting the statute. *According to the South Carolina Supreme Court, the circuit court had no right to interpret an unambiguous statute. In re Vincent, supra.*

D. The Circuit Court's failure to grant the declaratory relief to which Plaintiff was entitled was an abuse of discretion that this court can and should remedy.

In the case at bar, the Appellant, plaintiff below, sought declaratory and injunctive relief under the Uniformed Declaratory Judgment Act. The Appellant sought a declaration that the Respondents, defendants below, were not authorized to hold conventions after the date set in the statute. Defendants conceded that both the state and county conventions were held after the statutory deadlines. The plaintiff's initial Complaint and First Amended Complaint are captioned *Complaint for Declaratory and Injunctive Relief Pursuant to SC Code §§15-53-10 and 15-53-90 and Rule 65 SC Rules*

of *Civil Procedure*. The appellant contends that the Uniformed Declaratory Judgment Act should have governed.

The Uniform Declaratory Judgments Act (hereinafter UDJA) S.C. Code §15-53-20 provides in pertinent part that:

“Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.”

The circuit court had the “power to declare rights, status, and other legal relations” and could do so whether or not further relief is or could be claimed. And most importantly the declaration, either affirmative or negative would have the force and effect of a final judgment.

In *Silverman v Campbell, et al*, 326 S.C. 208, 211 (1997) the Appellants argued that “. . .the trial judge abused his discretion in deciding the declaratory judgment question [and] the judge should have declined to address the issue.”

The *Silverman* court, however, concluded that although the UDJA gives the judge “. . . discretion to refuse to render a declaratory judgment where the decree “would not terminate the uncertainty or controversy giving rise to the proceeding.”

In that case, the court found that “. . . *while the ruling [declaratory judgment] does not terminate the entire controversy, it does remove uncertainty and the case presents a justiciable controversy.* There is no abuse of discretion here.” *id.* 211-212.

In short, the South Carolina Supreme Court found no abuse of discretion because *the declaratory judgment served to remove uncertainty.* (Italics added).

The appellant herein contends that the same result should have been reached in the case at bar and that the circuit court abused its discretion by not addressing the request for declaratory judgment as the gravamen of the action.

Finally, if the circuit court had addressed the issue that was the basis and gravamen of the complaint this could have been resolved in a few months if not days.

For the foregoing reasons the appellant respectfully requests that he be granted leave to amend the final brief to add the above question for review.

**MOTION TO SUPPLEMENT RECORD ON APPEAL
PURSUANT TO S.C. APP. R 212(b)**

Standard of review

Rule 212 - Supplemental Record (b) By a Party. With the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences. Without such consent or after argument commences, a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so.

The Appellant respectfully requests that he be allowed to supplement the record on appeal to add the following decision of the circuit court (Lee, J) brought by the Respondent South Carolina Democratic Party in which it, like the appellant, sought declaratory relief based on the alleged violation of the same statute and decided by the same circuit court judge.

FACTS

On August 9, 2023, Respondent South Carolina Democratic Party filed a Summons and Complaint in the Court of Common Pleas Fifth Judicial Circuit, *entitled*

South Carolina Democratic Party, v South Carolina Labor Party, Gary Votour, Harold Geddings, III, Lucus Faulk, and South Carolina Election Commission, bearing Case#2022CP4004077. (Hereinafter SCDP V.SCLP).

On August 15, 2023, the Appellant herein, filed a Notice of Motion and Motion for Leave to Intervene and a Memorandum in Support of the Motion.

On August 18, 2023, the court, (Lee, J) resolved the matter without ruling on the Appellant's Motion. It should be noted here that the Hon. Alison Lee is the same judge from whom the matter now before this Court is presently on appeal.

Moreover, although the decision in *SCDP v SCLP* is not dispositive of the matter now before this Court it should be brought to the attention of this Court and considered by it as informative if not persuasive.

The respondent herein, Plaintiff in *SCDP V.SCLP*, raised the same issue as raised by the Appellant in this matter, i.e., conventions must be held as set forth by the mandatory provision of the South Carolina Elections Law. The circuit court judge ignored the issue in one case and found it dispositive in the other.

In *SCDP V.SCLP*, the Plaintiffs', Respondents herein, posited that:

- a. Holding an untimely nomination convention in violation of South Carolina Code §7-9-100;
- b. Violating its own party rules in convening an untimely nominating convention in violation of South Carolina Code §7-9-1007-11-20(A);
- c. Acting ultra vires and without legitimate process authorizing the convening a convention or nominating candidates;" (See, Exhibit A. *Petition for An Ex Parte Temporary Restraining Order, First Cause of Action, p. 8.*)

Moreover, the Appellant herein submitted a timely request for permission to intervene in *SCDP V.SCLP* which request, though timely, was not denied but rather was completely ignored. (See Exhibit B. Notice of Motion and Motion for Leave to Intervene, and Memorandum in Support dated 8/15/23).

On September 16, 2024, out of an abundance of caution, the Appellant wrote a letter to the Chief Administrative Law Judge to schedule the matter for hearing, and that too was never responded to. (See Exhibit C. Letter to Hon. Jocelyn Neuman, Chief Administrative Judge dated (9/6/22).

In SCDP V.SCLP the circuit court (Lee, J.) held that:

“Plaintiff [South Carolina Democratic Party] argues, Defendant South Carolina Labor Party (Labor Party) failed to hold a nominating convention by the deadline set forth at S.C. Code Ann. § 7-9-100. (See Exhibit D Order Granting Plaintiff’s Motion for A Preliminary Injunction, 8/18/22 p.1 para.1).

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

39. S.C. Code Ann. § 7-9-100 is unambiguous and states: The state convention shall meet at a location in this state determined by the state committee to have adequate facilities during a thirteen month period ending May fifteenth of every general election year on a day and at a time fixed by the state committee and announced publicly at least ten days before the meeting. (Emphasis added).

40. “Under the rules of statutory interpretation, use of words such as ‘shall’ or ‘must’ indicates the legislature’s intent to enact a mandatory requirement.” *Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002).” (See Exhibit D Order Granting Plaintiff’s Motion for A Preliminary Injunction, 8/18/22 p. 8).

In Count One of the Appellant's initial complaint in this matter, he argued that SC Code Section 7-9-70 and 7-9-100 were mandatory and therefore dispositive. (See Complaint p. 7).

**“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 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.”

The circuit court noted:

“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). (Order p. 6).”

After which the circuit court concluded:

“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.*" (Order p. 6). (Italics added).

"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 Plaintiff alleges Defendants violated the statute by failing to conduct county and state party conventions by the designated dates." (Order p. 2).

"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." (Order, p.6).

"Moreover, the statutes do not restrict political parties from holding virtual conventions or elections. . . . These issues are more appropriately addressed within the organization." (Order, p.6).

Finally, and unbelievably, the circuit court concluded, in effect, that it is the defendant organization that is best suited to determine if it has violated state election law. (Order, p.6).

The appellant's purpose in raising this issue is that both parties *sought declaratory and injunctive relief based on the alleged violation of the same statute(s).* The same circuit court judge found the statute(s) had been violated in both cases. Both cases involved the same fundamental question - *must a certified political party's convention* be held by March 31 as required by law? And if it is not held according to statute is a moving party at least entitled to a declaration from a court of competent jurisdiction that a party has violated the mandatory requirements of the statute in question? And it must follow therefrom that any actions taken during such unlawful convention are as a matter of law void *ab initio*. Yet *the circuit court* granted injunctive

relief when the South Carolina Democratic Party was the plaintiff but ignored it when the party was the defendant.

For the foregoing reasons, the appellant requests leave to supplement the record on appeal as set forth above.

**MOTION TO SUBSTITUTE DEFENDANTS NAMED IN THEIR OFFICIAL
CAPACITY FOR PERSONS NOW HOLDING THEIR RESPECTIVE
OFFICES PURSUANT TO S.C. R. Civ. P. 25(e).**

Standard of Review

Rule 25 (e) of the South Carolina Rule of Civil Procedure provides in pertinent part:

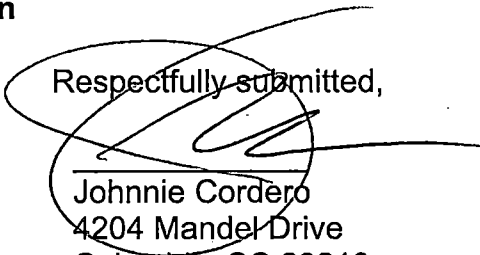
“(e) Substitution at Any Stage. Substitution of parties under the provision of this rule may be made by the trial court either before or after judgment, or pending appeal, by the appellate court.” *Rule 25 - Substitution of Parties*, S.C. R. Civ. P. 25

Appellant respectfully requests leave to substitute Valerie Moore, in her official capacity as Chair of Defendant Richland County Democratic Party for former Chair Matthew Kisner, and Christale Spain in her official capacity as Chair of Defendant South Carolina Democratic Party for former Chair Trav Robertson.

Conclusion

Dated: April 18, 2024
Columbia, South Carolina

Respectfully submitted,



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APPELLANT, pro se

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NO.: _____

South Carolina Democratic Party,

Plaintiff,

v.

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

Defendants.

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

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

PARTIES, JURISDICTION, AND VENUE

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

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

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

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

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

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

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

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

FACTS

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

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

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

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

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

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

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

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

general election year” and the state party “shall hold its state convention prior to May 15 in each general election year at a publicly announced time and place designated by the state committee.

Labor Party CONST. & BYLAWS art. V ¶ 2 & art. VI ¶ 1.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

37. Each of the foregoing paragraphs are incorporated herein.

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

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

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

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

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

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

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

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

45. Each of the foregoing paragraphs are incorporated herein.

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

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

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

47. Each of the foregoing paragraphs are incorporated herein.

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

MOTION FOR EXPEDITED DISCOVERY

33. Each of the foregoing paragraphs are incorporated herein.

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

a. The Labor Party should be ordered to produce:

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

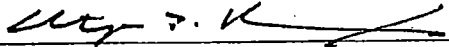
- vii. All communications (letters, emails, text messages, etc.) regarding the decision whether to hold or not hold a convention in 2022.
 - viii. All communications (letters, emails, text messages, etc.) with Votour, Geddings, and Faulk regarding their candidacy to be nominees for the Labor Party on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

PRAYER

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

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

Respectfully submitted,

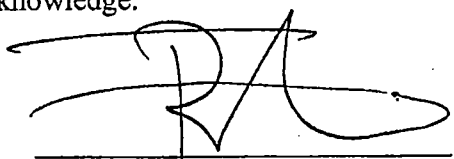

Christopher P. Kenney (S.C. Bar No. 100147)
RICHARD A. HARPOOTLIAN P.A.
1410 Laurel Street
Post Office Box 1090
Columbia, South Carolina 29202
Phone (803) 252-4848
Facsimile (803) 252-4810
cpk@harpootlianlaw.com

ATTORNEY FOR PLAINTIFF
SOUTH CAROLINA DEMOCRATIC PARTY

August 9, 2022
Columbia, South Carolina.

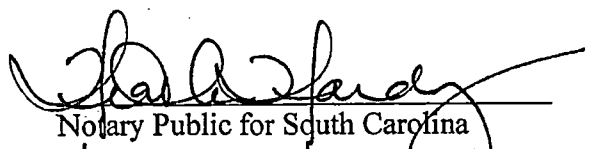
VERIFICATION

I, Norman T. Robertson, Jr. am the duly elected Chair of the South Carolina Democratic Party. I have read the petition for a temporary restraining order, motion for a temporary injunction, complaint for declaratory and injunctive relief, and motion for expedited discovery and verify that its contents are true and correct to the best of my knowledge.



Norman T. Robertson, Jr. on behalf of
Plaintiff South Carolina Democratic Party

Sworn before me on August 9, 2022,


Notary Public for South Carolina

Heather Hardy
(print)

My commission expires 11/23/2030

EXHIBIT B

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

SOUTH CAROLINA DEMOCRATIC PARTY)
Plaintiff,)

vs.)

SOUTH CAROLINA LABOR PARTY et al)
Defendant.)

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2022 CP- 40-4077

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

RICHLAND COUNTY
FILED
2022 AUG 15 PM 12:20
JEANETTE W. MORRIS
C.C.P., G.S., & F.C.

Plaintiff's Attorney: PROSECUTOR J. ANDIE CORDON
Bar No. _____
Address: 4204 MANDEL DRIVE
COLUMBIA SC 29210
Phone: _____ Fax _____
E-mail: _____ Other: _____

Defendant's Attorney:
Bar No. _____
Address: _____
Phone: _____ Fax _____
E-mail: _____ Other: _____

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: INTERVENTION
Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.
Signature of Attorney for Plaintiff / Defendant [Signature] Date submitted 8/15/22

SECTION III: Motion Fee

PAID - AMOUNT: \$ 25.00
 EXEMPT: (check reason)
 Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____ JUDGE CODE _____
Date: _____

CLERK'S VERIFICATION

Collected by: [Signature] Date Filed: 8/15/22
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 South Carolina Democratic Party,)
)
 Plaintiff,)
)
 V.)
)
 South Carolina Labor Party, Gary Votour,)
 Harold Geddings, III, Lucas Faulk, and)
 South Carolina Election Commission,)
)
 Defendants.)
)
 Johnnie Cordero,)
)
 Proposed Intervenor.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

C/A No.: 2022-CP-400-4077

JEANNETTE W. MOSRIDE
 C.C.P., G.S., & F.C.

2022 AUG 15 PM 12: 23

RICHLAND COUNTY
 FILED

**NOTICE OF MOTION AND MOTION FOR LEAVE
 TO INTERVENE AND FILE INTERVENOR COMPLAINT
 PURSUANT TO RULE 24(b)
 SOUTH CAROLINA RULES OF CIVIL PROCEDURE**

Comes Now, Johnnie Cordero, acting on his own behalf who respectfully moves this Honorable Court for leave to intervene in this matter as of right or permissively pursuant to Rule 24(a) and/or 24(b) of the South Carolina Rules of Civil Procedure on the grounds set forth more particularly hereinafter.

Procedural Background

This action for Declaratory Judgment and Injunctive relief was commenced by Plaintiff South Carolina Democratic Party on or about August 9, 2022, by Petition for ex parte Temporary Restraining Order and Motion for Temporary Injunction, Declaratory and Injunctive Relief and Expedited Discovery.

The hearing on Plaintiff's motion for temporary injunction is set for Tuesday, August 16, 2022, at 9:00 a.m. and Plaintiff's motion for discovery has been granted.

STANDARD OF REVIEW

Rule 24(b) SCRPC

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

It follows that upon timely application anyone may be permitted to intervene in an action . . . (2) when an applicant's claim or defense and the main action have a question of law or fact in common In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

An intervenor seeking permissive intervention must: (1) establish timely intervention; (2) assert a claim or defense that has a question of law or fact in common with the underlying action; and (3) prove his participation in the underlying action will not delay or prejudice the adjudication of the rights of the original parties.

(1) Timely Intervention

Plaintiff-Intervenor moves for leave to intervene within six (6) days of the commencement of this action on August 9, 2022.

(2) Common Question of Law and Fact

Plaintiff - Intervenor asserts that there exists a common question of law that cannot and will not be adequately addressed by the Plaintiff in light of their longstanding, repeated position taken in state and federal courts to the contrary.

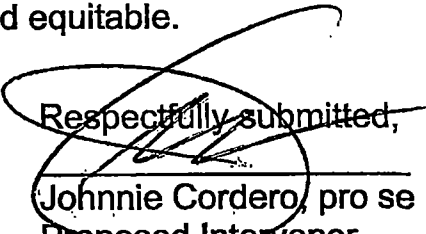
(3) No delay or prejudice will not result.

Because this action was filed only six days ago Your Proposed Intervenor's motion to intervene will not result in undue delay or foreseeable prejudice to any of the original parties.

For the foregoing reasons Plaintiff respectfully requests that the within Motion to Intervene be granted in its entirety and for such other and further relief as to this court may seem just proper and equitable.

Dated: August 15, 2022
Columbia, South Carolina

Respectfully submitted,


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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 South Carolina Democratic Party,)
)
 Plaintiff,)
)
 V.)
)
 South Carolina Labor Party, Gary Votour,)
 Harold Geddings, III, Lucas Faulk, and)
 South Carolina Election Commission,)
)
 Defendants.)
)
 Johnnie Cordero,)
)
 Proposed Defendant - Intervenor.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

C/A No.: 2022-CP-400-4077

LEANNETTE W. McBRIDE
 C.C.P., G.S., & F.C.

2022 AUG 15 PM 12: 23

RICHLAND COUNTY
 FILED

**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE
 PURSUANT TO RULE 24(b) SCRPC**

Comes Now, Johnnie Cordero, acting on his own behalf who hereby submits the following Memorandum in support of his Motion to Intervene.

"Upon timely application anyone may be permitted to intervene in an action ... (2) when an applicant's claim or defense and the main action have a question of law or fact in common In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. "A reversal of the denial of permissive intervention has been termed 'so unusual as to be almost unique.'" *Ex parte Builders Mut. Ins. Co.*, 431 S.C. 93 (S.C. 2020).

In the case at bar your proposed intervenor contends and urges this court to find that he meets the requirements for permissive intervention and should therefore be permitted to intervene as a matter of law.

1. MOTION TO INTERVENE IS TIMELY FILED SO AS TO NOT CREATE UNDUE DELAY OR PREJUDICE.

Your Proposed Intervenor moves for leave to intervene within six days of the commence of this action which was filed on August 9, 2022. Your Proposed Intervenor will, of course comply with all requirements and deadlines incumbent upon parties to this action in a timely manner if leave to intervene is granted.

2. THERE IS A COMMON QUESTION OF LAW THAT RENDERS INTERVENTION APPROPRIATE IN THIS MATTER.

Plaintiff SCDP argues that the Defendants violated state election laws and their own party rules by holding a convention outside the time frame indicated by the State Election law. The Plaintiff also argues this court can overturn the results of the Labor Party election and remove persons certified by the Defendant Labor Party and Defendant State Election Commission from the ballot for the upcoming November general election because of the alleged violation.

Your Proposed Intervenor urges this court to consider that Plaintiff SCDP is a Defendant in a matter now pending in the South Carolina Court of Appeals entitled *Cordero v. Kisner, et al.* (Appellate Case No.2021-000804). In that matter SCDP argues that: "Upon reviewing the three statutes at issue, the trial court correctly found that the statutes do not provide for a private right of action, express or implied, and that the State Election Commission possesses the sole authority to enforce them, pursuant to S.C. Code Ann. section 7-9-10. (Order pp. 4-5, R. p. __.)

Defendants also argue that "[t]he 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 Organizations 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. (citation omitted).

"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." (Cordero v. Kisner, Case#2022CP4004077, pgs. 6-7, 2/3/22).

In the United States District Court defendants argued as follows:

I. PLAINTIFF FAILS TO STATE A CLAIM FOR VIOLATION OF THE STATE STATUTES GOVERNING COUNTY PARTY CONVENTIONS.

In Count One, Plaintiff asserts that the RCDP violated three provisions of South Carolina law: (i) S.C. Code Ann. 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;" (ii) S.C. Code Ann. 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 (iii) S.C. Code Ann. section 7-9-80, which provides that each county convention "shall be called to order by the county chairman...."

Plaintiff alleges that the RCDP violated these statutes by holding a convention virtually (online), rather than in-person, and by holding it on April 18, 2020, after the March 31 deadline set by statute. (FAC ¶¶ 18-20). A. The statutes cannot be constitutionally enforced. The statutes at issue do not concern the use of any state authority or process by the political parties. They purport solely to govern their internal affairs. It is therefore likely that these statutes could not be constitutionally enforced at all. State laws that purport to govern the internal affairs of parties and "prevent[] the political parties from governing themselves with the structure they think best" infringe the parties' freedom of association protected by the First Amendment; such statutes cannot withstand constitutional scrutiny unless they serve a compelling state interest.

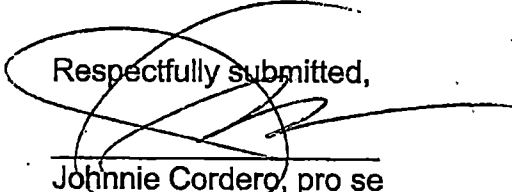
Eu v. San Francisco County Dem. Central Comm., 489 U.S. 214, 230 (1989). (Cordero v. Kisner, 3:20-cv-02195-JFA-PJG, 6/16/20, p.4 of 10).

It follows from the above that your Proposed Intervenor should be allowed to be heard on this important common question of law.

For the foregoing reasons your Proposed Intervenor respectfully requests that the Motion to Intervene be granted in its entirety and for such other and further relief as to this court may seem just and equitable.

Dated: August 15, 2022
Columbia, South Carolina

Respectfully submitted,



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

Certificate of Service

I, Johnnie Cordero, hereby certify that I served an exact copy of the NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE AND FILE INTERVENOR COMPLAINT and MEMORANDUM IN SUPPORT OF MOTION by hand delivery to:

Christopher P. Kenney, Esq.
RICHARD HARPOOTLIAN, PA
1410 LAUREL STREET,
COLUMBIA, SC 29202

Dated: August 15, 2022
Columbia, South Carolina



Johnnie Cordero

EXHIBIT C

Johnnie Cordero, B.A., J.D.

4204 Mandel Drive
Columbia, SC 291210
(803) 753-8091
cordero1018@att.net

6 September 22

The Honorable Jocelyn Neuman,
Chief Administrative Judge
P O Box 192
1701 Main St., Room 324
Columbia, SC 29202-0192

RECEIVED
2022 SEP 16 PM 2:45
JOCYLYN NEUMAN
S. P. A. S.

**RE: South Carolina Democratic Party vs. South Carolina Labor Party,
defendant, et al, C/A No.: 2022-CP-40-4077**

Your Honor:

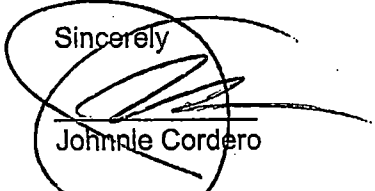
On or about August 15, 2022, I filed a Motion to Intervene in the above referenced matter. The motion was filed before the emergency hearing scheduled for August 16, 2022, was held. The court (Lee, J.) did not hear the motion and has still not granted or denied it. It is my contention that I was and remain entitled to a ruling on my Motion to Intervene. Moreover, I am unable to seek appellate review, if necessary, without a decision.

I also note that the matter in which I request intervention involves the perhaps unprecedented removal of the certified candidates of one certified party at the behest of another certified party based on allegations of disagreement over the internal affairs of that party. In any event it is my contention that the court should have ruled on my motion because of the emergency nature of the underlying action.

I respectfully request that this matter be scheduled for hearing as soon as possible or in the alternative the Motion be denied so that I may appeal. Time is of the essence.

Thank you for your kind attention to this matter.

Sincerely



Johnnie Cordero

Cc: Christopher P. Kenny, Esq.
1410 Laurel Street
Columbia, SC 29202

EXHIBIT D

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 South Carolina Democratic Party,)
)
 Plaintiff)
)
 v.)
)
 South Carolina Labor Party, Gary Votour,)
 Harold Geddings, III, Lucus Faulk, and)
 South Carolina Election Commission,)
)
 Defendants)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Docket No. 2022-CP-40-04077

**ORDER GRANTING
PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION**

This matter came before the Court on August 16, 2022, through a verified petition and complaint for declaratory and injunctive relief filed by Plaintiff South Carolina Democratic Party seeking a preliminary injunction¹ barring Defendant South Carolina Election Commission (Election Commission) from placing Defendants Gary Votour, Harold Geddings, III, and Lucas Faulk on the 2022 general election ballot because, Plaintiff argues, Defendant South Carolina Labor Party (Labor Party) failed to hold a nominating convention by the deadline set forth at S.C. Code Ann. § 7-9-100.

At the hearing, Plaintiff and the Election Commission were represented by counsel. Present for the Labor Party were co-chairs Donna Dewitt and Willie Legette. Ms. Dewitt indicated the Labor Party was unable to obtain counsel and Mr. Legette testified for the Plaintiff.² Mr. Votour, Mr. Geddings, and Mr. Faulk appeared *pro se*. Mr. Votour also told the Court he was unable to find a lawyer and wanted a delay in the hearing; objected to Plaintiff bringing the action to

¹ By Order dated August 10, 2022, the Chief Administrative Judge denied Plaintiff's motion for a temporary restraining order (TRO), scheduled this matter for hearing, and granted Plaintiff's motion for expedited discovery.

² Plaintiff also attached an affidavit from Mr. Legette to the verified petition and complaint, which the Court has reviewed.

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

Dear Gary,

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

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

Please let me know if you have any questions.

Willie Legette, Co-chair
SC Labor Party

Pl. Ex. 6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

(Emphasis added).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

AND IT IS SO ORDERED.

SIGNATURE PAGE TO FOLLOW



Richland Common Pleas

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

IT IS SO ORDERED!

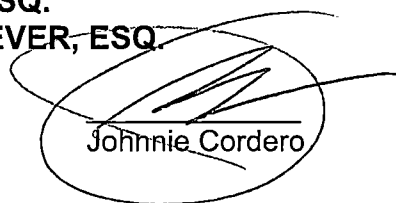
s/ Alison Renee Lee

CERTIFICATE OF SERVICE

I, Johnnie Cordero, hereby certify that I served an exact copy of APPELLANT'S MOTION FOR LEAVE TO (1) AMEND STATEMENT OF ISSUES ON APPEAL; (2) TO SUPPLEMENT THE RECORD ON APPEAL WHERE NECESSARY; AND (3) TO SUBSTITUTE PRESENT DEFENDANTS SUED IN THEIR OFFICIAL CAPACITY FOR PERSONS NOW HOLDING THOSE OFFICES AND FOR SUCH OTHER RELIEF AS TO THIS COURT MAY SEEM PROPER PURSUANT TO SCACR 212(b) on the attorneys for Respondents via USPS first-class mail postage prepaid and addressed as follows:

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

Dated: April 18, 2024
Columbia, South Carolina



Johnnie Cordero

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SC Court of Appeals

Johnnie Cordero, B.A., J.D.

4204 Mandel Drive
Columbia, SC 29210
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April 18, 2024

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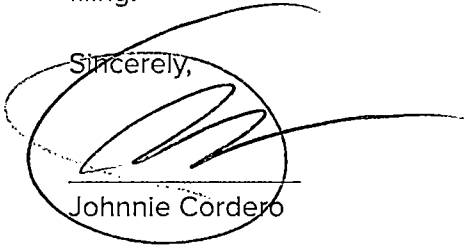
SC Court of Appeals

Re: Cordero v. Kisner, et., al.
Appellate Case No. 2021-000804

Dear Clerk of Court:

Please accept the enclosed Appellant's Motion for Leave to Amend Statement of Issues on Appeal for filing. I have enclosed check #761 in the amount of fifty dollars to defray the cost of filing.

Sincerely,



Johnnie Cordero

cc: Nekki Shutt, Esq.
Grant Burnett Lefever, Esq.

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