THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2018-001520

Bucky Mock, Respondent-Appellant,

v.

Clarendon County Board of Voter Registration & Elections, Clarendon County Democratic Party, LaNette Samuels-Cooper, South Carolina Democratic Party, and South Carolina Election Commission, Defendants,

Of whom LaNette Samuels-Cooper is Appellant-Respondent,

And Clarendon County Board of Voter Registration & Elections, Clarendon County Democratic Party, South Carolina Democratic Party, and South Carolina Election Commission are Respondents.

RESPONDENT–APPELLANT MOCK'S SUPPLEMENTAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON CROSS-APPEAL

I. Did the circuit court err in concluding Bucky Mock was required to exhaust his administrative remedies prior to filing this action for a declaratory judgment and injunction challenging LaNette Samuels-Cooper's statutory qualifications in circuit court?

II. In the alternative, did the circuit court err in failing to find that filing a protest with the Clarendon County Democratic Party and South Carolina Democratic Party executive committees would have been futile?

STATEMENT OF THE CASE

This cross-appeal arises out of Respondent–Appellant Bucky Mock's successful challenge to Appellant–Respondent LaNette Samuels-Cooper's qualifications to serve as coroner of Clarendon County. On August 3, 2018, the circuit court issued an order granting Samuels-Cooper's Rule 12(b)(6), SCRCP, motion to dismiss based upon its determination that Mock was required to exhaust administrative remedies prior to challenging her qualifications as a candidate in circuit court. (R. pp. 9–14). The circuit court, however, retained jurisdiction over the question of whether Samuels-Cooper met the statutory qualifications to serve as coroner of Clarendon County and properly issued a declaratory judgment holding she did not. (R. pp. 10, 14–18). The sole issues raised in this cross-appeal are whether Mock was required to exhaust administrative remedies prior to filing this action in circuit court and, if so, whether it would have been futile to do so in this case. For the reasons set forth below, the Court should reverse the circuit court's determination on this ground.[1]

STANDARD OF REVIEW

This "Court has indicated that dismissal may be proper under Rule 12(b)(6), SCRCP, for failure to state a claim where the opposing party is required to exhaust its administrative remedies as a matter of law, but failed to do so." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 101, 674 S.E.2d 524, 529 (Ct. App. 2009); see also Unisys Corp. v. S.C. Budget & Control Bd., 346 S.C. 158, 176, 551 S.E.2d 263, 273 (2001) (stating the exhaustion of remedies precludes original resort to courts where an administrative agency is granted exclusive jurisdiction by the express terms of a statute). "Determining the proper interpretation of a statute is a question of law, and

[1] Mock respectfully reserves the right to present a more complete Statement of the Case and Facts section in his forthcoming Final Brief of Respondent addressing Samuels-Cooper's lack of qualifications. He would incorporate these sections by reference as if set forth verbatim herein.

this Court reviews questions of law de novo." Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). "[T]he question of whether to require the plaintiff to exhaust administrative remedies [is] a matter within the sound discretion of the [circuit court]" and is reviewed for "an abuse of discretion." Stanton v. Town of Pawleys Island, 309 S.C. 126, 128, 420 S.E.2d 502, 503 (1992). "An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

ARGUMENT

The Court should reverse the circuit court's grant of Samuels-Cooper's motion to dismiss because its decision was controlled by an error of law. Specifically, the circuit court (1) erred in concluding sections 7-17-520 and -530 of the South Carolina Code (Supp. 2017) required Mock to exhaust administrative remedies prior to filing this action in circuit court; and (2) in the alternative, abused its discretion in finding the futility exception to the exhaustion of remedies requirement did not apply.

I. The circuit court erred in concluding Mock was required to exhaust administrative remedies prior to filing this action in circuit court.

Initially, the circuit court erred in finding Mock was required to exhaust administrative remedies prior to filing this action for a declaratory judgment and injunction in circuit court. Filing a protest with the county party executive committee was not the exclusive remedy available to Mock, and the exhaustion requirement is inapplicable. Therefore, the Court should reverse the circuit court's grant of Samuels-Cooper's motion to dismiss on this ground.

The South Carolina Constitution vests circuit courts with original jurisdiction over all civil matters in which exclusive jurisdiction has not been given to another inferior body. S.C. CONST. art. V, § 11. "Subject matter jurisdiction is 'the power to hear and determine cases of the general

class to which the proceedings in question belong.'" Skinner v. Westinghouse Elec. Corp., 380 S.C. 91, 93–94, 668 S.E.2d 795, 796 (2008) (quoting Dove v. Gold Kist, Inc., 314 S.C. 235, 237–38, 442 S.E.2d 598, 600 (1994)). The circuit court, of course, had subject matter jurisdiction over the present dispute. See S.C. Code Ann. § 15-53-20 (2005) (giving courts the "power to declare rights, status and other legal relations" via declaratory judgment). But a party's "failure to exhaust administrative remedies goes to the prematurity of a case, not subject matter jurisdiction." Capital City Ins. Co., 382 S.C. at 100, 674 S.E.2d at 529 (quoting Ward v. State, 343 S.C. 14, 17 n.5, 538 S.E.2d 245, 246 n.5 (2000)).

"The doctrine of exhaustion of administrative remedies is generally considered a rule of 'policy, convenience and discretion, rather than one of law, and is not jurisdictional.'" Vaught v. Waites, 300 S.C. 201, 205, 387 S.E.2d 91, 93 (Ct. App. 1989) (quoting Andrews Bearing Corp. v. Brady, 261 S.C. 533, 536, 201 S.E.2d 241, 243 (1973)). Although our appellate courts have "rather consistently applied the doctrine of exhaustion of administrative remedies to avoid interference with the orderly performance of administrative functions," the Court has "recognized that it is not an invariable rule." Andrews Bearing Corp., 261 S.C. at 536, 201 S.E.2d at 243. Indeed, this Court's "adoption of the view that the rule is discretionary in nature is a recognition that situations can exist where failure to exhaust administrative remedies may be excused." Id.

The statutory provisions regulating elections "are mandatory in two instances: when the statute expressly declares that a particular act is essential to the validity of an election, or when enforcement is sought before an election in a direct proceeding." George v. Municipal Election Comm'n of Charleston, 335 S.C. 182, 186, 516 S.E.2d 206, 208 (1999). Nevertheless, "[a]fter an election in which no fraud is alleged or proven, . . . such provisions are merely directory even

though the [General Assembly] used seemingly mandatory terms such as 'shall' or 'must' in establishing the provisions." Id.

Samuels-Cooper contends Mock was required to file this challenge with the Clarendon County Democratic Party executive committee pursuant to sections 7-17-520 and -530 of the South Carolina Code. Both statutes govern the manner in which a candidate must file an election protest or contest following a political party's primary election. Section 7-17-520 provides that "[t]he protests and contests in the case of county officers and less than county officers shall be filed in writing with the chairman of the county party executive committee, together with a copy for each candidate in the race not later than noon Monday following the day of the declaration by the county committee of the result of the election." S.C. Code Ann. § 7-17-520. Likewise, section 7-17-530 outlines the timeframe within which "[t]he executive committee shall hear the protest or contest." S.C. Code Ann. § 7-17-530.

Here, the question is whether the above statutes gave the county party executive committee exclusive jurisdiction to decide challenges to statutory qualifications such that Mock was required to exhaust his administrative remedies prior to filing this action in circuit court. See Unisys Corp., 346 S.C. at 176, 551 S.E.2d at 273 (stating the exhaustion of remedies precludes original resort to courts where an administrative agency is granted exclusive jurisdiction by the express terms of a statute); Gantt v. Selph, 423 S.C. 333, 340, 814 S.E.2d 523, 527 (2018) ("In determining whether the [General Assembly] has given another entity exclusive jurisdiction over a case, a court must look to the relevant statute." (quoting Rainey v. Haley, 404 S.C. 320, 323, 745 S.E.2d 81, 83 (2013))). The answer is no.

At the outset, because section 7-17-530 governs procedures following an election and no party has alleged fraud in this case, the statute is merely directory. See George, 335 S.C. at 186,

516 S.E.2d at 208. More importantly, though, Mock was not contesting or protesting the results of the primary election. See (R. p. 355) (noting the circuit court's understanding that "this question has nothing to do with a protest"). This is not a disputed election. As this Court has recognized, when it is "not asked to judge a disputed . . . election but rather to interpret a statute," it has the power to hear the case because "[t]he construction of a statute is a judicial function and responsibility." Anderson v. S.C. Election Comm'n, 397 S.C. 551, 555, 725 S.E.2d 704, 706 (2012) (per curiam). Mock merely sought a declaration that Samuels-Cooper does not meet the statutory qualifications to run for or serve as coroner of Clarendon County.[2] See id.

In Anderson, this Court acknowledged that the statute at issue "contemplate[d] a post-election primary remedy prohibiting a person whose name inadvertently appears on the ballot from being certified as a candidate for the general election," but "discern[ed] no legislative intent that such remedy is exclusive." 397 S.C. at 556, 725 S.E.2d at 706. The same is true here. Nothing in sections 7-17-520 and -530—both of which are directory, not mandatory—evidences an intent of the General Assembly that a political party would be the sole arbiter of a question of statutory interpretation. As the Court recently noted, "[i]n the absence of exclusive authority vested in another branch of government," an individual is "entitled to pursue relief pursuant to the Uniform Declaratory Judgment Act." Gantt, 423 S.C. at 340, 814 S.E.2d at 527 (citing S.C. Code Ann. § 15-53-20); see also Rule 57, SCRCP (asserting that "[t]he existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate").

It is worth noting that the entity before whom Samuels-Cooper contends Mock was purportedly supposed to exhaust his administrative remedies is not within another branch of

[2] Further, after his request for a temporary restraining order was granted, (R. pp. 1–2), Mock sought an order enjoining the appropriate entities from placing Ms. Samuels-Cooper's name on the ballot due to her failure to meet the statutory qualifications, (R. pp. 34–35). See Rule 65, SCRCP.

government. Cf. Gantt, 423 S.C. at 340, 814 S.E.2d at 52. The Clarendon County Democratic Party executive committee is not a state administrative agency, the state election commission, or a county election commission. Nor is the South Carolina Democratic Party executive committee an arm of the state. Thus, the concerns about "avoid[ing] interference with the orderly performance of administrative functions," Andrews Bearing Corp., 261 S.C. at 536, 201 S.E.2d at 243, are simply not present here.

Political parties are not experts in statutory interpretation, and the General Assembly has not expressed an intent to have them receive the only bite at the apple on questions similar to that which is before the Court. Rather, the General Assembly intended for all candidates protesting or contesting the results of the election to file their challenges with the party.[3] Because that is not at issue in this case, the county party executive committee did not have exclusive jurisdiction over the present dispute. Although Samuels-Cooper contends Mock was required to contest her statutory qualifications before a county party executive committee prior to filing any action in circuit court, this respectfully is not a faithful interpretation of the statute.

In sum, the circuit court had jurisdiction to decide this issue, and Mock was not required to ask a political party to rule upon this question of statutory interpretation prior to filing an action in circuit court. Rather, the party and the circuit court retained concurrent jurisdiction over this issue. Although Mock could have potentially filed this action with the county executive committee, that is not dispositive. What is important for purposes of the present cross-appeal is that he was not required to do so. See Gantt, 423 S.C. at 340, 814 S.E.2d at 527 (asserting that, "[i]n the absence of exclusive authority vested in another branch of government," an individual is

[3] While Mock certainly could have filed his challenge with the county party executive committee, he was not required to do so. As explained in greater detail below, he had good reason for choosing not to have the Democratic Party rule upon this dispute because the party already made up its mind on Samuels-Cooper's qualifications.

"entitled to pursue [declaratory] relief" (citing S.C. Code Ann. § 15-53-20)); Rule 57, SCRCP (stating that "[t]he existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate").

Because Mock was not required to exhaust any administrative remedies, the Court should reverse the circuit court's grant of Samuels-Cooper's motion to dismiss.[4] The Clarendon County Democratic Party executive committee did not have exclusive jurisdiction over this dispute.

II. The circuit court erred in finding the futility exception to the exhaustion of administrative remedies requirement was not applicable.

In the alternative, even if Mock were required to exhaust his administrative remedies prior to challenging Samuels-Cooper's qualifications as a candidate in circuit court, the Court should reverse the circuit court's finding that the futility exception did not apply. Respectfully, the circuit court abused its discretion in finding the futility exception did not apply because its decision is without evidentiary support. See Clark, 339 S.C. at 389, 529 S.E.2d at 539.

"[A] generally recognized exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that pursuit of them would be a vain or futile act." Ward, 343 S.C. at 19, 538 S.E.2d at 247. A party must demonstrate futility "by a showing comparable to the administrative agency taking a 'hard and fast position that makes an adverse ruling a certainty.'" Brown v. James, 389 S.C. 41, 54, 697 S.E.2d 604, 611 (Ct. App. 2010) (quoting Law v. S.C. Dep't of Corr., 368 S.C. 424, 438, 629 S.E.2d 642, 650 (2006)).

In the present case, filing a challenge with the Clarendon County Democratic Party executive committee would have been futile because both the South Carolina Democratic Party and the Clarendon County Democratic Party already certified Samuels-Cooper to appear on the

[4] For the same reasons set forth above, the Court should likewise reverse the circuit court's grant of the motions to dismiss filed by the Clarendon County Board of Voter Registration & Elections, the South Carolina Democratic Party, and the Clarendon County Democratic Party.

general election ballot. (R. p. 452). To this day, the parties have continued to take the firm—but erroneous—position that Ms. Samuels-Cooper is qualified. In any event, bringing the issue before the party would have been futile because Mock had already raised this issue to the chairmen of both the county and state parties.

On April 4, 2018, the same day Samuels-Cooper filed a late affidavit[5] indicating her purported qualifications for coroner, Mock emailed the chairman of the state party, Trav Robertson, and raised concerns regarding Samuels-Cooper's lack of qualifications. (Supp. R. p. 10).[6] Mock attached a letter from the South Carolina Coroners Association that outlined the qualifications to run and hold office. (Supp. R. pp. 11–13). In his email, Mock asked Robertson to review the attached qualifications because he was concerned that a candidate running for coroner of Clarendon County was not qualified according to state law. (Supp. R. p. 10). Robertson replied to Mock two days later and informed him that, "after consulting legal counsel and based on the advice of legal counsel, we certified all Democratic candidates seeking the position of coroner of Clarendon County." Id.

Additionally, Mock raised concerns regarding Samuels-Cooper's qualifications to Patricia Pringle, chairwoman of the Clarendon County Democratic Party, at or near the time of filing. (Supp. R. p. 14). During the hearing, Pringle confirmed that she was concerned that Samuels-

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[5] By way of background, Samuels-Cooper filed her first affidavit on March 19, 2018. (R. p. 448). But her affidavit was deficient because it failed to list any reasons why she was qualified to run for coroner of Clarendon County. After party officials realized her error, instead of rejecting the application, they allowed Samuels-Cooper to submit a new affidavit beyond the filing deadline. See (R. p. 449).

[6] Mock was forced to file a Motion to Supplement the Record on Appeal because the exhibits to his response in opposition to Samuels-Cooper's motion to dismiss, among other things, were not included in the Record on Appeal, and these exhibits are relevant to the futility analysis. The Clerk of Court's office granted an extension to Mock to file this brief pending resolution of the issues with the Record on Appeal. Because these issues are still not resolved, Mock is filing the present brief without waiving any right to cite and rely upon portions of the record that are relevant but were included in the Record on Appeal compiled by Samuels-Cooper's counsel.

Cooper had not checked any boxes on the affidavit attached to her filing that indicated how she met the statutory qualifications for office. (R. p. 345). Rather than reject the filing, however, Pringle contacted Robertson, who then contacted Samuels-Cooper. (R. p. 353). Again, instead of rejecting the filing as insufficient on its face, Robertson helped Samuels-Cooper determine which box to check on the affidavit and then allowed her to file a late affidavit. Id.; cf. S.C. Code Ann. § 17-5-130(B)(1) (2014) (requiring candidates for coroner to file an affidavit "no later than the close of filing").[7] Even when putting aside the procedural deficiencies surrounding the affidavit, Mock had also raised his substantive concerns with Samuels-Cooper's lack of statutory qualifications. (R. pp. 348–49). Nevertheless, following the primary, Pringle emailed Mock to inform him that all candidates were certified for the 2018 election per the South Carolina Democratic Party. (R. p. 63).[8] Notably, when asked at the hearing whether Samuels-Cooper possessed the requisite qualifications to serve as coroner, Pringle indicated she believed Samuels-Cooper was qualified. (R. p. 370).

Against this backdrop, it is not surprising that Mock chose not to file a challenge with his own party because it was actively helping his opponent get on the ballot in contravention of the law. In Anderson, this Court "grant[ed declaratory] relief to require compliance with the law and ensure that only legally qualified candidates are included on the ballots" because "the political parties [were] ignoring their statutory gatekeeping role." 397 S.C. at 556, 725 S.E.2d at 706. Here, the South Carolina Democratic Party and the Clarendon County Democratic Party ignored their statutory gatekeeping roles by certifying Samuels-Cooper, an unqualified candidate, purportedly based upon the advice of counsel. Under these circumstances, particularly when it is perfectly

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[7] Under subsection 17-5-130(B)(1), Samuels-Cooper never should have been certified as a candidate in the first place.

[8] See note 6, supra, and accompanying text.

reasonable to assume that the chairmen and same legal counsel would be present for any protest hearings, it would have been futile for Mock to file a challenge with the county party executive committee.

Simply put, Mock alerted the relevant authorities within the state and county Democratic Party of Samuels-Cooper's lack of statutory qualifications, and they did nothing. Further, the Clarendon County Democratic Party—per the recommendation of the South Carolina Democratic Party—took final action by certifying Samuels-Cooper in the face of overwhelming evidence that she was unqualified to serve as coroner of Clarendon County. Because the party, at both the state and county level, already determined that Samuels-Cooper was qualified, appealing to these entities unquestionably would have amounted to an exercise in futility.

Accordingly, the Court should reverse the circuit court's grant of Samuels-Cooper's motion to dismiss because its determination that the futility exception to the exhaustion requirement did not apply is without evidentiary support.

CONCLUSION

Based upon the foregoing, the Court should reverse the circuit court's grant of Samuels-Cooper's motion to dismiss because Mock was not required to exhaust any administrative remedies prior to filing this action. The Clarendon County Democratic Party executive committee did not have exclusive jurisdiction to decide the question of whether Samuels-Cooper meets the statutory qualifications to run for Coroner of Clarendon County or hold that office, and Mock was entitled to bring a declaratory judgment action in circuit court. To the extent he was required to do so, Mock properly chose to pursue this action in circuit court because it would have been futile to convince the Democratic Party—which still takes the position that Ms. Samuels-Cooper is qualified—to reach the opposite conclusion and appropriately remove her from the ballot.

Respectfully submitted,

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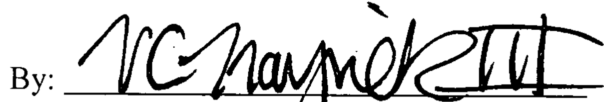
By: 

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I certify that I have caused the service of Respondent-Appellant's Supplemental Final Brief of Appellant on Appellant-Respondents and Defendants by U.S. Mail on October 5, 2018, to the attorneys of record at the following addresses:

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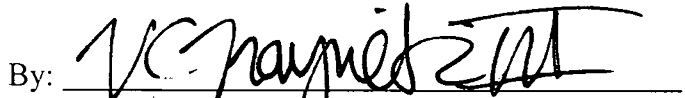
By: 

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