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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 BUCKY MOCK'S FINAL REPLY BRIEF

Robert E. Tyson, Jr.
SC Bar No. 10820
rtyson@robinsongray.com
Vordman Carlisle Traywick, III
SC Bar No. 102123
ltraywick@robinsongray.com
ROBINSON GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Counsel for Respondent-Appellant Bucky Mock

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Counsel for Respondent-Appellant Bucky Mock

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ARGUMENT

Respondent–Appellant Bucky Mock writes this Reply only to clarify a few points raised by Respondents South Carolina Democratic Party and Clarendon County Democratic Party (collectively “the Democratic Party”) regarding the exhaustion of administrative remedies requirement. For the reasons set forth below, as well as those raised in Mock’s Supplemental Final Brief of Appellant, the Court should reverse the circuit court’s order granting Appellant–Respondent LaNette Samuels-Cooper’s and the Democratic Party’s motions to dismiss because the circuit court’s decision was controlled by an error of law.¹

First, the cases upon which the Democratic Party relies are distinguishable from the present case because both cases involved state agencies with established administrative procedures for handling questions of fact that arose in the regulatory context. See Garris v. Governing Bd. of S.C. Reinsurance Facility, 319 S.C. 388, 461 S.E.2d 819 (1995) (noting section 1-23-370(c) of the South Carolina Code, found within the state Administrative Procedures Act, applied to a license revocation matter in which “[t]he hearing before the Board of Governors [was to] determine the factual issues surrounding the violations found by the Facility,” but the plaintiff failed to exhaust administrative remedies because “no final order” had been entered nor had the plaintiff made “any showing that a final agency decision will not provide an adequate remedy” (emphasis added)); Hyde v. S.C. Dep’t of Mental Health, 314 S.C. 207, 442 S.E.2d 582 (1994) (noting the State Employees Grievance Procedure Act, S.C. Code Ann. §§ 8-17-310 through -380, applied in a whistleblower case filed by an employee against a state agency and “provide[d] an adequate remedy to determine factual issues” such that the plaintiff was required to exhaust his administrative remedies (emphasis added)).

¹ Mock relies in full upon his Supplemental Final Brief of Appellant for any matters not addressed herein.

Unlike the entities in Garris and Hyde, the Democratic Party is not a state agency. Cf. S.C. Code Ann. § 1-23-10(1) (2005) (defining an agency or state agency, in relevant part, as “each state board, commission, department, executive department or officer, other than the legislature, the courts . . . authorized by law to make regulations or determine contested cases”); S.C. Code Ann. § 8-17-320(1) (Supp. 2017) (defining agency as “a department, institution of higher learning, board, commission, or school that is a governmental unit of the State of South Carolina” and excluding “[s]pecial purpose districts, political subdivisions, and other units of local government from this definition”). It is beyond dispute that the Democratic Party is not a governmental unit or an arm of the state. The Democratic Party’s makeup is not provided for by state statute, its day-to-day operations are not regulated or carried out pursuant to any particular state law, and it has no authority to promulgate regulations that have the force of law. Thus, the concerns with “avoid[ing] interference with the orderly performance of administrative functions” are not present here.² Andrews Bearing Corp. v. Brady, 261 S.C. 533, 536, 201 S.E.2d 241, 243 (1973).

Further, both Garris and Hyde involved purely factual issues. Contrary to the Democratic Party’s assertions, the circuit court was not presented with a question of fact in this case—it was presented with a question of law. Specifically, the question is whether Samuels-Cooper meets the statutory qualifications to serve as coroner of Clarendon County under section 17-5-130 of the South Carolina Code (2014). See Anderson v. S.C. Election Comm’n, 397 S.C. 551, 555, 725 S.E.2d 704, 706 (2012) (per curiam) (“The construction of a statute is a judicial function and responsibility.”). Although some factual development was necessary, the circuit court was ultimately required to interpret a statute and make a legal determination as to whether Samuels-

² Notably, the Democratic Party did not address this point in its brief. To the extent the exhaustion doctrine even applies, the Democratic Party cannot demonstrate how filing an action in circuit court would interfere with the party’s “orderly performance of administrative functions.”

Cooper was qualified. See Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) (“Determining the proper interpretation of a statute is a question of law”). As the circuit court noted, the present case does not involve an election protest or contest of the results of the election. See (R. p. 355). The circuit court, for example, was not asked to count votes, scrutinize the legitimacy of absentee ballots, or look at a map to determine whether a voter lived in Clarendon County. Those matters present questions of fact, the resolution of which is commanded to the discretion of the Clarendon County Democratic Party executive committee. S.C. Code Ann. §§ 7-17-520 & -530 (Supp. 2017). Here, the circuit court was asked to interpret a statute, which presents a question of law for the Court. Accordingly, Garris and Hyde are both readily distinguishable from the present case.

Second, the plain language of the statutes cited by the Democratic Party—sections 7-17-520 and -530—does not evidence any intent of the General Assembly that would require the exhaustion of administrative remedies before filing an action in circuit court. See Horn v. Davis Elec. Constr., Inc., 307 S.C. 559, 563, 416 S.E.2d 634, 636 (1992) (“The elementary and cardinal rule of statutory construction is that the Court ascertain and effectuate the actual intent of the [General Assembly].”). Further, given that the statutes in question are located in Title 7 of the South Carolina Code, the Court employs different rules of construction in determining what is required in this election-related setting. See George v. Municipal Election Comm’n of Charleston, 335 S.C. 182, 186, 516 S.E.2d 206, 208 (1999) (“After 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.”). Simply put, election cases are different. And the Democratic Party failed to cite a single reported case in which the exhaustion of administrative remedies doctrine was applied to an election-related challenge.

Third, the Democratic Party’s contention that Mock is seeking to depart from the appropriate exhaustion standard is misplaced. As the Democratic Party observed in its own standard of review section, “the exhaustion of administrative remedies precludes original resort to courts where an administrative agency is granted exclusive jurisdiction by the express terms of a statute.” Resp. Br. at 2 (citing Unisys Corp. v. S.C. Budget & Control Bd., 346 S.C. 158, 176, 551 S.E.2d 263, 273 (2001)). As noted above, the Democratic Party is not an administrative agency. Further, Mock did not contest the adequacy of the remedy—aside from arguing that the pursuit of it would have been futile given that the Democratic Party already made up its mind—because this case does not present a question of fact. In any event, the Democratic Party ignores the fact that the Court has twice addressed the precise issue of exclusive jurisdiction in election-related cases. See Gantt v. Selph, 423 S.C. 333, 340, 814 S.E.2d 523, 527 (2018); Anderson, 397 S.C. at 556, 725 S.E.2d at 706. The Democratic Party does not once mention the Gantt or Anderson decisions in its brief, nor does it attempt to counter Mock’s argument on this point. Instead, the Democratic Party simply contends Mock is seeking to change the standard. Respectfully, this argument is without merit.

Turning to the proper inquiry, the Democratic Party was not vested with exclusive jurisdiction to decide disputes regarding qualifications by statute or otherwise. Gantt, 423 S.C. at 340, 814 S.E.2d at 527; Anderson, 397 S.C. at 556, 725 S.E.2d at 706. Accordingly, Mock was entitled to pursue relief in the courts via a declaratory judgment action. See Gantt, 423 S.C. at 340, 814 S.E.2d at 527 (“In 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.” (citing S.C. Code Ann. § 15-53-20 (2005))); Rule 57, SCRCP (“The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is

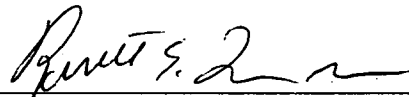
appropriate.”). As the Court held in Anderson, this is such a case “where it is appropriate” to issue a declaratory judgment to “ensure that only legally qualified candidates are included on the ballot[.]” because the Democratic Party was “ignoring [its] statutory gatekeeping role.” 397 S.C. at 556, 725 S.E.2d at 706. To hold otherwise would render Gantt, Anderson, the Uniform Declaratory Judgment Act, and Rule 57 meaningless.

CONCLUSION

Based upon the foregoing, the Court should reverse the circuit court’s order granting Samuels-Cooper and the Democratic Party’s motions to dismiss on the ground that Mock failed to exhaust his administrative remedies prior to filing this action in circuit court. No exhaustion was required in this case.

Respectfully submitted,

ROBINSON GRAY STEPP & LAFFITTE, LLC

By: 

Robert E. Tyson, Jr.
SC Bar No. 10820
rtyson@robinsongray.com
Vordman Carlisle Traywick, III
SC Bar No. 102123
ltraywick@robinsongray.com
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

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PROOF OF SERVICE

I certify that I have caused the service of Respondent-Appellant's Final Reply Brief of on Appellant-Respondents and Defendants by U.S. Mail and E-mail on October 10, 2018, to the attorneys of record at the following addresses:

Counsel Served: Ronnie A. Sabb, Esq.
 Kimberly V. Barr, Esq.
 Kimberly M. Hodge, Esq.
 Post Office Box 88
 Kingstree, South Carolina 29556
 Counsel for Appellant

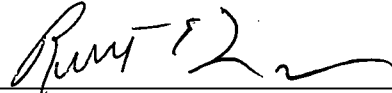
 Shaun Kent, Esq.
 Kent Law Firm
 19 Mill Street
 Manning, South Carolina 29102
 Counsel for Clarendon County Board of Voter Registration & Elections

J. Eric Cavanaugh, Esq.
Joseph Thickens, Esq.
Cavanaugh & Thickens
Post Office Box 2409
Columbia, South Carolina 29202
***Counsel for South Carolina Democratic Party and
Clarendon Co. Democratic Party***

Harrison D. Brant, Esq.
1122 Lady Street, Suite 500
Columbia, South Carolina 29201

T. Parkin C. Hunter, Esq.
SC Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211
Counsel for South Carolina State Election Commission

ROBINSON GRAY STEPP & LAFFITTE, LLC

By: 

Robert E. Tyson, Jr.
SC Bar No. 10820
rtyson@robinsongray.com
Vordman Carlisle Traywick, III
SC Bar No. 102123
ltraywick@robinsongray.com
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Respondent Bucky Mock