

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas

S.C. SUPREME COURT

Jean Hoefer Toal, Acting Circuit Court Judge

Appellate Case No. 2020-000851

Jonathan Hill and Jonathan Hill for SC House District 8 Appellants,

v.

The South Carolina Republican Party and Vaughn Parfitt Respondents.

RESPONDENTS' MOTION TO DISMISS

Pursuant to Rule 240(a), SCACR, as well as Rule 12(h)(3), SCRCR, Respondents South Carolina Republican Party (SCGOP) and Vaughn Parfitt, by and through the undersigned counsel, move to dismiss this action, in full, for want of subject matter jurisdiction. For the reasons that follow, the Court should grant Respondents' motion.

I. BACKGROUND

This action arises out of a series of communications the SCGOP disseminated in the final weeks leading up to the June 9, 2020 Republican primary for South Carolina House District 8.

Appellants Jonathan Hill and Jonathan Hill for SC House District 8 filed a lawsuit in the Court of Common Pleas for Richland County on June 3, 2020, seeking to enjoin the Party from engaging in political speech detrimental to Hill's reelection campaign for House District 8 because it purportedly violated the South Carolina Ethics, Government Accountability, and Campaign

Reform Act (the State Ethics Act).¹ Appellants also named Hill's opponent, Vaughn Parfitt, as a defendant. Appellants filed a verified petition, motion for temporary injunction, complaint for declaratory and injunctive relief, and motion to expedite discovery pertaining to the House District 8 race. See Ex. A. That same day, the circuit court issued an order setting a hearing on the petition and motion for preliminary injunction for June 5, 2020. See Ex. B. The circuit court also granted the plaintiffs' motion to expedite discovery and ordered the Party to bring all invoices for expenditures made relating to House District 8.

Two days later, the parties appeared before the Honorable Jean Hoefler Toal, Chief Justice, Retired, an acting circuit court judge, for a hearing on Appellants' motion. Respondents filed a memorandum in opposition prior to the hearing. See Ex. C. The parties stipulated at the beginning of the hearing that the SCGOP spent over \$5,000 in favor of Parfitt in the 45-day period before the Republican primary. During the hearing, the circuit court heard testimony from Representative Hill, SCGOP Chairman Drew McKissick, and Parfitt. See Ex. D. And the court received 14 exhibits into the record without objection. Following closing arguments and a brief recess, the circuit court issued a ruling from the bench. See Ex. E.

The circuit court held that the SCGOP was a "committee" as that term is defined in subsection 8-13-1300(6) of the South Carolina Code. As such, it would normally be subject to the per-cycle limitations on campaign donations set forth in section 8-13-1316(A)(2) of the South Carolina Code. But in two previous orders, the circuit court noted, the U.S. District Court for the District of South Carolina struck down the definition of "committee" as overbroad and facially unconstitutional. See S.C. Citizens for Life, Inc. v. Krawcheck, 759 F. Supp. 2d 708, 720 (D.S.C. 2010) (Krawcheck I); S. Carolinians for Responsible Gov't v. Krawcheck, 854 F. Supp. 2d 336,

¹ S.C. Code Ann. §§ 8-13-100 through -1520 (2019).

343–44 (D.S.C. 2012) (Krawcheck II). What is more, the circuit court found it critical that the district court had declined to “limit[] the application of [section] 8-13-1300(6) only to groups that have the major purpose of influencing the outcome of the election” because that “would be tantamount to rewriting the state statute.” Krawcheck I, 759 F. Supp. 2d at 720; see also Krawcheck II, 854 F. Supp. 2d at 343 (reaching “the same conclusion as Judge Wooten on this issue”). Instead, the district court found that revising “a statutory scheme is a task best suited to the state legislature.” Krawcheck I, 759 F. Supp. 2d at 720; Krawcheck II, 854 F. Supp. 2d at 343 n.4 (noting the defendants failed to “suggest any type of limiting construction that could be applicable to the definition”).

According to the circuit court, “[i]f the definition of committee is struck from the South Carolina Ethics Act, then the regulations and restrictions of section 8-13-1316 on accepting or giving of candidate contributions of more than \$5,000 are invalidated.” The State Ethics Act therefore “contains no valid provisions which restrict the giving or receiving of the political contribution at issue in this matter.” Because Appellants could not succeed on the merits, the circuit court denied their motion for preliminary injunction.

Appellants then filed a timely Rule 59(e), SCRCPC, motion to alter or amend judgment. See Ex. F. In their motion, Appellants again curiously argued that the SCGOP is a “person” under the State Ethics Act, and contributions were not made through a committee. In any event, according to Appellants, the narrower term “party committee” should apply to the SCGOP. For the first time, Appellants then sought to rely upon an order entered by the Honorable L. Casey Manning in Harpoottlian v. S.C. Senate Republican Caucus, No. 2018-CP-40-05370) (S.C. Ct. Comm. Pl. filed Oct. 19, 2018), ended by writ of prohibition, Order, App. Case No. 2019-001404 (S.C. Sup. Ct. filed Dec. 12, 2019), reh’g denied (Mar. 12, 2020).

Respondents opposed the motion in a brief response, arguing Appellants' motion was improper because they (1) simply rehashed prior arguments on the applicability of the definition of committee and (2) sought to raise new arguments regarding the applicability of Krawcheck I & II by attaching Judge Manning's Order to their motion. See Ex. G. The latter issue, Respondents argued, was not properly before the Court because Appellants raised it for the first time in their motion to reconsider. Upon review of the briefs, the circuit court denied the motion to reconsider. See Ex. H.

Thereafter, Appellants filed a notice of appeal in the Court of Appeals, which transferred the case to this Court under Rule 204(a), SCACR, given that it pertains to elections and election procedures as contemplated by Rule 203(d)(1)(A)(iv), SCACR. On July 20, 2020, Appellants filed their initial brief and designation of matter with the Court. This matter, however, comes before the Court on the Caucus's motion to dismiss.

II. STANDARD

Subject matter jurisdiction “refers to a tribunal’s constitutional or statutory power to decide a case,” and it “is a question of law” for the Court. Brown v. S.C. Dep’t of Health & Human Servs., 393 S.C. 11, 16, 709 S.E.2d 701, 704 (Ct. App. 2011) (quoting Chew v. Newsome Chevrolet, Inc., 315 S.C. 102, 104, 431 S.E.2d 631, 631 (Ct. App. 1993)). A challenge to subject matter jurisdiction should be raised by a motion to dismiss. Posey v. Proper Mold & Eng’g, Inc., 378 S.C. 210, 217, 661 S.E.2d 395, 399 (Ct. App. 2008); Rule 12(b)(1), SCRCP. Under the rules, “[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” Rule 12(h)(3), SCRCP (emphasis added). In other words, “[t]he lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court.” McCain v. Brightharp, 399

S.C. 240, 247, 730 S.E.2d 916, 919 (Ct. App. 2012) (quoting Town of Hilton Head Island v. Godwin, 370 S.C. 221, 223, 634 S.E.2d 59, 60–61 (Ct. App. 2006)); see also In re Nov. 4, 2008 Bluffton Town Council Election, 385 S.C. 632, 637, 686 S.E.2d 683, 686 (2009) (holding “[i]ssues related to subject matter jurisdiction may be raised at any time” and “may not be waived”).

III. ARGUMENT

A. Subject Matter Jurisdiction

Because this matter falls outside the fifty-day window within which Appellants were allowed to petition the courts for the limited relief provided for by statute, the Court no longer has subject matter jurisdiction over the dispute. The State Ethics Commission does.

Our courts have long held that, “[i]n determining whether the [General Assembly] has given another entity exclusive jurisdiction over a case, a court must look to the relevant statute.” Gantt v. Selph, 423 S.C. 333, 340, 814 S.E.2d 523, 527 (2018) (quoting Rainey v. Haley, 404 S.C. 320, 323, 745 S.E.2d 81, 83 (2013)). Under the State Ethics Act, the State Ethics Commission is the “[a]ppropriate supervisory office” for both the SCGOP and Parfitt. See S.C. Code. Ann. § 8-13-1300(1)(a) (providing the State Ethics Commission is the appropriate supervisory office for “all candidates for public office in this State); § 8-13-1300(1)(c) (providing the State Ethics Commission is the appropriate supervisory office “for all committees”). And the relevant statutes mandate that “[a] violation other than an inadvertent or unintentional violation must be considered by the appropriate supervisory office for appropriate action.” S.C. Code. Ann. § 8-13-1372(B) (emphasis added).

The Act, however, provides a limited exception for this otherwise exclusive jurisdiction:

No complaint may be accepted by the commission concerning a candidate for elective office during the fifty-day period before an election in which he is a candidate. During this fifty-day period, any person may petition the court of common pleas alleging the

violations complained of and praying for appropriate relief by way of mandamus or injunction, or both. Within ten days, a rule to show cause hearing must be held, and the court must either dismiss the petition or direct that a mandamus order or an injunction, or both, be issued. A violation of this chapter by a candidate during this fifty-day period must be considered to be an irreparable injury for which no adequate remedy at law exists. The institution of an action for injunctive relief does not relieve any party to the proceeding from any penalty prescribed for violations of this chapter

S.C. Code Ann. § 8-13-320(9)(b)(1). In other words, the Act gives parties a small window within which to petition the circuit court for limited relief in the 50-day period leading up to the election. As our supreme court has recognized, “the necessity of the circuit court’s fifty-day window is self-evident during the final days of an election, where time is of the essence and an immediate remedy may be warranted.” Haley, 404 S.C. at 325, 745 S.E.2d at 84. But we are two months past that now, and the circuit court declined to issue an injunction. Thus, the only available remedy for Appellants now lies exclusively in the State Ethics Commission.

As a plurality of our supreme court has held, “[t]he Uniform Declaratory Judgment[s] Act is not an independent grant of jurisdiction.” Tourism Expenditure Review Comm. v. City of Myrtle Beach, 403 S.C. 76, 81, 742 S.E.2d 371, 374 (2013) (quoting Brown v. Or. State Bar, 648 P.2d 1289, 1292 (Or. 1982)). The Act “is remedial and procedural in nature and does not create substantive rights or duties.” Felts v. Richland Cty., 299 S.C. 214, 216, 383 S.E.2d 261, 262–63 (Ct. App. 1989). Indeed, “[d]espite the Act’s broad language, it has its limits.” Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004). And it “may not be invoked to avoid or circumvent the [General Assembly]’s exclusive method for challenging” certain practices. Tourism Expenditure Review Comm., 403 S.C. at 82, 742 S.E.2d at 374.

As Appellant Hill is well aware, the General Assembly has established a robust statutory scheme that specifically defines the appropriate forum for resolution of ethics complaints—

including those related to campaign finance. Notwithstanding this detailed scheme for investigating alleged violations of the statutes governing campaign finance, Appellants contend they are entitled to a declaratory judgment from this Court that Respondents' spending violated the State Ethics Act. A plain reading of the Ethics Act, however, compels a finding that the Court lacks subject matter jurisdiction over this dispute. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [General Assembly].”); Miller v. Doe, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994) (“If a statute’s language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has not right to look for or impose another meaning.”). Notably, the statute upon which Appellants were initially permitted to invoke the circuit court’s jurisdiction says nothing about obtaining a declaratory judgment. See S.C. Code Ann. § 8-13-320(9)(b)(1). Nor does it indicate the Court retains jurisdiction outside the 50-day window. See id.

In Rainey v. Haley, our supreme court rejected the plaintiff’s general reliance upon article V, section 11 of the South Carolina Constitution to invoke the jurisdiction of this Court, finding the General Assembly had given exclusive jurisdiction over ethics complaints to the legislative ethics committees and the State Ethics Commission. Indeed, “[a]bsent th[e] one narrow situation within the fifty-day period before an election, the [General Assembly] has granted exclusive authority over ethical complaints to the appropriate Ethics Committee.” Id. at 325, 745 S.E.2d at 84. The same is true of ethics complaints arising under the exclusive jurisdiction of the State Ethics Commission. See S.C. Code Ann. § 8-13-320(9)–(10); Order, Harpoottlian v. S.C. Senate Republican Caucus, App. Case No. 2019-001404 (S.C. Sup. Ct. filed Dec. 12, 2019) (issuing “a writ of prohibition to prevent the circuit court from improperly exercising jurisdiction” in a case

involving a legislative caucus committee because while it “was properly commenced in the circuit court” under subsection 8-13-530(5), which is identical to subsection 8-13-320(9)(b)(1) here, the respondent needed to “seek a determination by the State Ethics Commission” if he “wish[ed] to pursue this matter further”), reh’g denied (Mar. 12, 2020).

Because the State Ethics Commission has exclusive jurisdiction over the present dispute, which is outside the fifty-day window prior to an election, this Court lacks subject matter jurisdiction and should dismiss Appellants’ appeal and the complaint.

B. Justiciability

The Court should also dismiss this action on mootness and ripeness grounds because Appellants can no longer present a justiciable controversy. Before any action may be maintained, a justiciable controversy must exist. Byrd v. Irmo High Sch., 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). “A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical[,] or abstract character.” Sloan v. Greenville Cty., 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003). As the court of appeals has recognized, “[t]he concept of justiciability encompasses the doctrines of ripeness, mootness, and standing.” Id. at 547, 590 S.E.2d at 346.

1. Mootness

The case is now moot because Hill already won the election and a judgment, if rendered, would have no practical effect upon the existing controversy. It is well-settled that “[t]he court does not concern itself with moot or speculative questions.” Sloan v. Greenville Cty., 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). “A case becomes moot when judgment, if rendered, will have no practical effect upon existing controversy.” Byrd, 321 S.C. at 431, 468 S.E.2d at 864. “Mootness also arises when some event occurs making it impossible for the

reviewing court to grant effectual relief.” Sloan, 380 S.C. at 535, 670 S.E.2d at 667. Our courts “will not pass on moot and academic questions or make an adjudication when there remains no actual controversy.” Byrd, 321 S.C. at 431, 468 S.E.2d at 864.

Although Appellants insist on pressing forward, arguing they requested declaratory relief and a permanent injunction, the Republican primary is already over. Hill defeated Parfitt in the primary and is now the Republican nominee for House District 8. See Sloan, 380 S.C. at 535, 670 S.E.2d at 667 (“Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.”). Appellants nevertheless ask the Court to declare certain campaign practices violated the Ethics Act, short-circuiting the State Ethics Commission, and to award them damages. But Appellants have failed to point to a single statute that would entitle them to a declaratory judgment or damages for violations of the State Ethics Act. See Haley, 404 S.C. at 325 n.5, 745 S.E.2d at 84 n.5 (noting the General Assembly “has limited the remedy that the circuit court can impose,” and the court “is not authorized to issue the enumerated sanctions”). Indeed, none exist. As noted above, their general reliance upon the Uniform Declaratory Judgments Act is without merit.

Further, the Court has nothing left to enjoin. Cf. Allegro, Inc. v. Scully, 400 S.C. 33, 45, 733 S.E.2d 114, 121 (Ct. App. 2012) (asserting that an applicant must show that injunctive “relief is reasonably necessary to preserve the rights of the parties during the litigation”); Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010) (“A preliminary injunction should issue only if necessary to preserve the status quo ante.”). Respondents stopped spending money on the race before Appellants filed their complaint, and they certainly are not spending any money on the general election. The circuit court declined to issue

an injunction during the small window within which it had jurisdiction, and there is nothing left to litigate. This action is therefore moot, and the Court should dismiss the appeal and complaint.

2. Ripeness

To the extent Appellants seek a declaratory judgment and permanent injunction to prevent Respondents from engaging in certain conduct in the future, Appellants' claims are not ripe for adjudication because they depend upon a contingent future event that may not occur as anticipated or may not occur at all. And Appellants have failed to exhaust their administrative remedies.

As our supreme court has recognized, "an issue that is contingent, hypothetical, or abstract is not ripe for judicial review." Jowers v. S.C. Dep't of Health & Env'tl. Control, 423 S.C. 343, 353–54, 815 S.E.2d 446, 451 (2018) (quoting Colleton Cty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cty., 371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006)).

While it has been held that the declaratory judgment statute should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships without awaiting a violation of the rights or a disturbance of the relationships, it is uniformly held that the Declaratory Judgments Act does not require the court to give a purely advisory opinion as to the issues sought to be raised.

Power v. McNair, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970).

When the adjudication of a question would not settle the legal rights of the parties, any opinion would be purely "advisory and, therefore, beyond the intended purpose and scope of a declaratory judgment." Id. at 154–55, 177 S.E.2d at 553. Our appellate courts have long "refuse[d] to enter the field of advisory opinions." Id. at 155, 177 S.E.2d at 553. Indeed, the Act "'does not require the Court to give a purely advisory opinion which the parties might, so to speak, put on ice to be used if and when the occasion might arise,' or 'license litigants to fish in judicial ponds for legal advice.'" City of Columbia v. Sanders, 231 S.C. 61, 68, 97 S.E.2d 210, 213 (1957). The

State Ethics Commission, on the other hand, is expressly given the authority to issue advisory opinions. See S.C. Code Ann. § 8-13-320(11)(a).

As noted above, the dispute over spending in this election is now moot. Appellants, however, wish to use this Court as a vehicle to curb the Party's spending moving forward with no plausible allegations as to how the Party intends to spend that money. The next primary will not take place for another two years, and trying to guess who may run for House District 8 at that time would amount to nothing more than pure speculation. If Appellants want an advisory opinion about the Party's spending practices, they can always present the matter to the State Ethics Commission. See S.C. Code Ann. § 8-13- Order, Harpoottlian v. S.C. Senate Republican Caucus, App. Case No. 2019-001404 (S.C. Sup. Ct. filed Dec. 12, 2019), reh'g denied (Mar. 12, 2020). After all, the Commission is given the statutory authority to issue advisory opinions. See S.C. Code Ann. § 8-13-320(11)(a). But this Court possesses no such authority.

In the alternative, dismissal is appropriate at this stage because Appellants have failed to exhaust their administrative remedies by seeking a determination in the State Ethics Commission. See id. (noting that “because the election at issue has taken place, the allegation Petitioner violated the Ethics Act may be resolved without the expediency required by” subsection 8-13-530(5)); see also Rainey, 404 S.C. at 327–28, 745 S.E.2d at 85 (Beatty, J., concurring) (arguing the matter was “not procedurally proper” because “declaratory judgment proceedings were inappropriate as it would deprive Respondent of her constitutional right to a jury trial,” and Appellant also “failed to exhaust the [State Ethics] Act’s administrative remedies”); 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).

Because Appellants' request relief hinges upon future events that may not occur as anticipated or may not occur at all, and they have failed to exhaust the administrative remedies available under the State Ethics Act, their claims regarding the Party's future spending are not ripe for judicial review. Therefore, dismissal is appropriate.

C. Remedy

Dismissal of the action, in full, is appropriate in this case because the courts no longer have jurisdiction over the subject matter of this dispute.

Indeed, dismissing the case would promote judicial economy and avoid the procedural mess that arose in the Harpoottlian matter when the circuit court continued to assume jurisdiction after the election. See generally Stone v. Thompson, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019) ("The provisions of section 14-3-330 are narrowly construed and serve the underlying policy favoring judicial economy by avoiding 'piecemeal appeals.'" (quoting Hagood v. Sommerville, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005))); Treece v. State, 365 S.C. 134, 136 n.1, 616 S.E.2d 424, 425 n.1 (2005) ("dispos[ing] of [an issue] for purposes of judicial economy" even though it should have been appealed through a lower court). And this result appears to be contemplated by the law governing subject matter jurisdiction anyway. See Rule 12(h)(3), SCRCP ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." (emphasis added)); In re Nov. 4, 2008 Bluffton Town Council Election, 385 S.C. at 637, 686 S.E.2d at 686 (holding "[i]ssues related to subject matter jurisdiction may be raised at any time").

Further, given that this motion presents a fundamental question on the power of the courts to pass upon this dispute, Respondents respectfully request that the Court stay the current briefing deadline pending resolution of the important jurisdictional questions raised. See Rule 240(b),

SCACR (“Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition. A motion to dismiss an appeal . . . shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided.”).

IV. CONCLUSION

In sum, the Court should dismiss this action for want of subject matter jurisdiction. This matter belongs in the State Election Commission. Further, the case is now moot. And to the extent he seeks to use the court system to curb any future unknown spending of the Party, his claims are not ripe for adjudication. If Hill truly wishes to change campaign finance law, he is in the unique position to do so as a member of the General Assembly given that he won the election in question. But the relief he seeks here is impermissible because he has a specific statutory remedy available to him in the State Ethics Commission. Pending resolution of this motion, the Court should stay the remaining briefing deadlines.

(Signature page to follow)

Respectfully submitted,

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