

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

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SC Court of Appeals

27 July, '21

**VIA U.S. MAIL AND EMAIL**

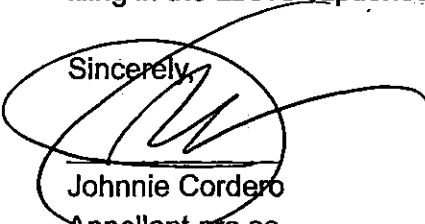
**Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201.**

**Re: Cordero v Kisner, et al,  
Richland County Court of Common Pleas  
Case No. 2020-CP-40-01980**

Dear Clerk of Court:

Enclosed please find Proof of Service and a copy of the lower court Order appealed from for filing in the above captioned matter.

Sincerely,



Johnnie Cordero  
Appellant pro se

ENC:Proof of Service (2 pages)  
Order of Hon. Alison Renee Lee (8 pages)

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

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Docket No.: 2020-CP-40-01980

**ORDER**

**RECEIVED**  
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 SC Court of Appeals

This matter came before the Court upon Plaintiff's, Johnnie Cordero ("Plaintiff"), Motion for Default Judgment, and Defendants', Matthew Kisner ("Kisner"), The Richland County Democratic Party ("RCDP"), Trav Robertson, Jr. ("Robertson"), and The South Carolina Democratic Party ("SCDP") (collectively "Defendants") Motion to Dismiss. A hearing on these matters was held on February 9, 2021. Present at the hearing was Plaintiff, representing himself *pro se*, and Grant Burnette LeFever, Esq. and Nekki Shutt, Esq. representing Defendants.

**BACKGROUND**

Plaintiff filed a Summons and Complaint on April 16, 2020, seeking a permanent injunction to prohibit Defendants from holding county or statewide virtual conventions and mail-in ballot voting for delegates to the County, State, and National Party Convention. On March 21, 2020, SCDP directed the thirty-three county Democratic Party committees to hold their conventions remotely by telephone town hall or mail-in ballot by April 25, 2020, despite state law setting March 31 as the deadline to hold county conventions. These committees usually held conventions in late March, in compliance with state statute, and are typically in-person; however, Defendants chose to change to a virtual convention platform because of the global COVID-19 pandemic. RCDP sent mail-in ballots to the county party convention delegates and held a virtual convention on April 18, 2020. On May 19, 2020, the SCDP announced its decision to move the

State Convention, originally scheduled for May 30, to a remote platform, with a virtual convention on June 6, 2020.

On May 14, 2020, after Defendants' were served with the Summons and Complaint, all parties consented to an extension of time for Defendants to respond to the Complaint by June 17, 2020. On May 29, 2020, Plaintiff filed a First Amended Complaint, which he served on Defendants by U.S. Mail. On June 9, 2020, SCDP and Robertson, with the consent of RCDP and Kisner, removed the action to Federal Court. Subsequently, on September 25, 2020, the Federal District Court granted Defendants' Motion to Dismiss Plaintiff's federal law claims and remanded the state law claim to this Court. The Richland County Clerk of Court filed the certified copy of the remand order on September 30, 2020. The only remaining cause of action alleges violations of S.C. Code Ann. §§ 7-9-70 and 7-9-100 for failing to hold the RCDP Convention by the March 31 statutory deadline established by statute and the SCDP convention timely and in person. "A county convention must be held during a twelve-month period ending March thirty-first of each general election year during a month determined by the state committee as provided in Section 7-9-100." S.C. Code Ann. § 7-9-70. "The state convention shall meet at a location in this state determined by the state committee to have adequate facilities during a thirteen-month period ending May fifteenth of every general election year on a day and at a time fixed by the state committee and announced publicly at least ten days before the meeting." S.C. Code Ann. § 7-9-100. Plaintiff alleges Defendants violated the statute by failing to conduct county and state party conventions by the designated dates.

On October 26, 2020, Defendants filed and served a Motion to Dismiss the state claim pursuant to South Carolina Rules of Civil Procedure ("SCRCP") Rule 12(b)(6). Plaintiff filed a Motion for Default Judgment on November 16, 2020, asserting that Defendants' Motion to Dismiss filed on October 26, 2020, is untimely pursuant to SCRCP Rule 55(b)(2).

#### **LEGAL STANDARD**

In cases not involving monetary damages or a sum certain, the party seeking a judgment by default must apply to the court for such, in accordance with SCRCP Rule 55(b)(2). SCRCP Rule 12(a), requires a defendant to serve an answer or Rule 12 motion within thirty days after service of the complaint. SCRCP Rule 15(a), requires a party to respond to an amended pleading "within the time remaining for response to the original pleading or within fifteen days after service of the named amended pleading, whichever period may be the longer."

In considering a motion to dismiss, the trial court must base its ruling solely on allegations set forth in the complaint. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). SCRCP Rule 12(b)(6) permits a trial judge to dismiss a claim when the defendant demonstrates the plaintiff's "failure to state facts sufficient to constitute a cause of action" in the pleadings filed with the Court. *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct. App. 2002). The court "must base its ruling solely on allegations set forth in the complaint." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). When reviewing a Rule 12(b)(6) motion, a court must view the complaint in the light most favorable to the plaintiff and every doubt must be resolved in the plaintiff's favor. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). If the "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case," then the court may not grant a Rule 12(b)(6) motion. *Sloan Constr. Co. v. Southco Grassing Co.*, 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008).

## ANALYSIS

### **I. Default Judgment**

Plaintiff seeks default judgment asserting Defendants failed to file a responsive pleading within 30 days of service of the complaint. The parties consented to a deadline to file a responsive pleading by June 17, 2020. In response to the global pandemic, on April 22, 2020, the South Carolina Supreme Court issued an amended order automatically extending the due dates for all trial court filings by thirty days. The extension was in effect from April 3, 2020, until January 15, 2021. See Supreme Court of South Carolina's Order RE: Operation of the Trial Courts During the Coronavirus Emergency, as amended April 22, 2020, ("Coronavirus Emergency Order") section (c)(9)(A). Plaintiff filed this action on April 16, 2020, and a First Amended Complaint on May 29, 2020, prior to Defendants filing a response to the initial complaint. On June 9, 2020, Defendants removed the case to Federal Court prior to the deadline for filing a response. This matter was officially remanded to state court on September 30, 2020. Defendants filed their Motion to Dismiss on October 26, 2020.

Plaintiff argues the deadline to file a response was eight days after the remand. Plaintiff asserts the Supreme Court Order allows the parties to agree to filing dates earlier than the 30 day extension without approval of the Court. Plaintiff argues that because the parties agreed to the June 17, 2020 deadline, that date determines the remaining time to respond after remand.

Defendants argue they had 38 days to file a response to the Summons and Complaint once the case was remanded. Defendants assert that the Supreme Courts extension applies to the agreed upon date of June 17, 2020. Thus, Defendants argue had they not removed the matter to federal court the deadline to file a response was July 17, 2020 pursuant to the Coronavirus Emergency Order. Defendants assert the 38 days between June 9, 2020, and July 17, 2020 should be applied to their time to respond after September 30, 2020.

When a case is removed to federal court, the state court's jurisdiction is suspended or held in abeyance until the case is properly remanded. *See Limehouse v. Hulsey*, 404 S.C. 93, 112, 744 S.E.2d 566, 577 (2013). “Removal of a state court case to federal court tolls the time period for filing responsive pleadings.” *Id.* Defendants timely removed the case to federal court; therefore the time to file a response pleading was tolled until the case was remanded to State court. *Id.*

Despite parties agreeing to a date of June 17, 2020, the Supreme Court Order applied to all statutory filing deadlines. This Court calculates the time to file a response pleading pursuant to SCRCP and the Supreme Court Order. Under SCRCP Rule 15, Defendants had 30 days to from May 14, 2020, to file a response plus an additional 30 days pursuant to the Supreme Court Order. Therefore, prior to Defendants removing the case to federal court they had at least until July 14, 2020, to file a response. When Defendants removed to Federal Court only 26 days expired between May 14, 2020, and June 9, 2020. Pursuant to Supreme Court Order, once the case was remanded back to State Court on September 30, Defendants had 34 days remaining to file a response pleading. The Motion to Dismiss was filed within the allotted to time granted by the Supreme Court. Defendants timely filed a responsive pleading and are not in default.

## **II. Motion to Dismiss**

### **A. Plaintiff's Private Right of Action**

Defendants claim their motion to dismiss should be granted because Plaintiff has no private right of action to pursue the statutory violations alleged in the complaint. Defendants assert there is neither a private right of action created by the plain language of the statutes nor was the legislation enacted for the special benefit of a private party. Defendants also argue the sole enforcement mechanism relating to the party organization statutes is the State Election Commission's authority to decertify a political party pursuant to S.C. Code Ann. § 7-9-10. *See*

*Dema v. Tenet Physician Hilton Head, Inc.*, 383 S.C. 115, 121, 678 S.E.2d 430, 434 (2009). Thus, Defendants claim Plaintiff is barred from bringing this action.<sup>1</sup>

Plaintiff argues that he has taxpayer standing to bring this action. Plaintiff asserts that as a taxpayer, citizen, resident and registered voter he is entitled to standing in this matter as it is an issue of public concern. Plaintiff further asserts that he has taxpayer standing because this matter is one that needs future guidance by the Court.

“Legislative intent to grant or withhold a private right of action for a violation of the statute is determined primarily from the language of the statute.” *Georgetown Cty. League of Women Voters v. Smith Land Co.*, 393 S.C. 350, 353, 713 S.E.2d 287, 289 (2011). “When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party.” *Doe v. Marion*, 373 S.C. 390, 397, 645 S.E.2d 245, 248 (2007). Upon reviewing the statutes at issue, this Court finds neither the statutes nor the legislative intent create a private right of action. The statutes do not affirmatively state or imply that a private individual may bring an action to enforce a political party to comply with the statute. The statutes do not create a benefit or special duty to voters or members of a given political party. The State Ethics Commission has the authority to enforce the statute against a political party for any violation. See S.C. Code Ann. § 7-9-10.

Further, this Court finds there is no need for future guidance on this issue. “Public importance” standing allows citizens in some limited instances to seek judicial resolution of an issue “of such public importance as to require its resolution for future guidance.” *Davis v. Richland County Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007). However, the Supreme Court has recognized that courts “must be cautious with this exception, lest it swallow the rule.” *Jowers v. S.C. Dep’t Health & Envtl. Control*, 423 S.C. 343, 360, 815 S.E.2d 446, 455 (2018) (quoting *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 646, 744 S.E.2d 521, 524 (2013)). Indeed, “standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits.” *Sloan v. Sanford*, 357 S.C.

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<sup>1</sup> Defendants also rely on an order from the Thirteen Judicial Circuit, which ordered that the Plaintiffs failed to make a prima facie showing of irreparable harm and likelihood of success on the merits for the Court to order a preliminary injunction. See *Stutts v. S.C. Republican Party*, No. 2021-CP-23-02173 (Greenville Cty. C.P. May 6, 2021). While, the facts of this case are similar in nature, this Court finds the issues addressed in *Stutts* are different from those raised in this matter.

431, 434, 593 S.E.2d 470, 472 (2004). The key for finding that public importance standing is warranted is a need for future guidance. As the Supreme Court has stated:

For a court to relax general standing rules, the matter of importance must, *in the context of the case*, be inextricably connected to the public need for court resolution for future guidance.

*ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008) (emphasis added).

The language of S.C. Code Ann. §§ 7-9-70 and 7-9-100 is clear and unambiguous and there is no need for this Court to provide an interpretation of these statutes. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581(2000). Defendants conducted county and state conventions while also attempting to comply with Governor McMaster's executive orders and ensuring they would not endanger its members by placing them in environments that would increase their risk of contracting COVID-19. In March of 2020, Governor McMaster declared a state of emergency and issued more than a dozen executive orders implementing various safety measures, including prohibiting public gatherings and ordering law enforcement to disperse gatherings of three or more people due to the concerns of the COVID-19 pandemic. Pursuant to the Executive Orders issued by Governor McMaster, Defendants were prohibited from conducting a convention in person in the ordinary and traditional manner. Many State agencies and private organizations, including this Court, were forced to adjust the way it operates in response to COVID-19. Those adjustments included the use of virtual meetings and telecommunication as a means to fulfill tasks and duties. Further, the timing of these conventions was during the beginning stages of the pandemic when the entire world was still learning how to navigate through the pandemic. Many public venues and facilities were closed during this time. Public importance standing is inappropriate here because there is no ruling this Court might issue that would provide future guidance on these issues.

Moreover, the statutes do not restrict political parties from holding virtual conventions or elections. Plaintiff primarily challenges Defendants ability to verify the authenticity of the votes casts virtually or by mail-in. These issues are more appropriately addressed within the organization. Based on the pleadings, Defendants considered the impact of COVID-19, while balancing state statute and the Governor's executive orders in planning county and state conventions. Therefore, there is no need for future guidance on this issue.

**B. Cause of Action is Moot**

Defendants also claim Plaintiff's claims are moot. In the complaint, Plaintiff seeks a declaratory judgment to declare that Defendants violated state law, and he seeks an injunction barring Defendants from holding any more conventions virtually or using mail-in ballots. Defendants argue that the conventions have already occurred and there is no actual controversy.

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

The conventions and elections organized by Defendants which Plaintiff alleges violate the statutes have already occurred. Plaintiff alleges RCDP violated state statute by failing to hold an in-person county convention by March 31, 2020, and casting votes for executive positions within the county party after this date. Defendants argue these issues arose from extraordinary circumstances created by a global pandemic and are unlikely to occur again. This Court finds Defendants' actions to schedule conventions beyond the statutory date were due to the unprecedented global pandemic. It would be improper for this Court to prohibit Defendants from holding virtual conferences in the future because nothing in the statute prohibits Defendants from doing so.

**ORDER**

Based on the pleadings, Plaintiff has no private right of action and lacks standing to bring this action. Plaintiff's claims are moot. Therefore, **IT IS ORDERED** that Defendants' Motion to Dismiss is **GRANTED**. Plaintiff's Motion for Default Judgment is **DENIED**.

**AND IT IS SO ORDERED.**

[ELECTRONIC SIGNATURE TO FOLLOW]



Richland Common Pleas

**Case Caption:** Johnnie Cordero vs Matthew Kisner  
**Case Number:** 2020CP4001980  
**Type:** Order/Other

IT IS SO ORDERED!

s/ Alison Renee Lee

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Alison Renee Lee, Circuit Court Judge

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Case No. 2020-CP-40-01980

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SC Court of Appeals

Johnnie Cordero,

Appellant,

v.

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

The Richland County Democratic Party; and

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

The South Carolina Democratic Party,

Respondents.

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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, on July 27, 2021, addressed to their attorneys of record as follows:

Nekki Shutt, Esq  
Attorney for Defendants South Carolina Democratic Party  
and Trav Robertson, Jr.;

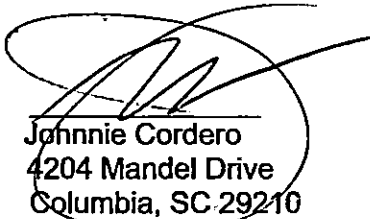
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Dated: July 27, 2021  
Columbia, SC

  
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1141 29 JUL 2021

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