THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

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

Respondents.

INITIAL BRIEF OF APPELLANT (AMENDED)

Johnnie Cordero
4204 Mandel Drive
Columbia, SC 29210
(803) 753-8091
Appellant, *pro se*

January 18, 2021
Columbia, South Carolina

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STATEMENT OF ISSUES ON APPEAL

I. Whether the Circuit Court erred in finding that Appellant was not entitled to Default Judgment pursuant to South Carolina Rules of Civil Procedure Rule 55(b)(2) based on Defendants failure to file a timely response?

II. Whether the Circuit Court's grant of Defendants' Motion to Dismiss should be reversed as an abuse of discretion or as otherwise improperly granted?

III. Whether the Circuit Court erred in holding that the Plaintiff did not have standing to sue as a taxpayer, citizen, resident and registered voter and as a matter of public importance?

STATEMENT OF THE CASE

This action was initially filed via Summons and Complaint in the Court of Common Pleas for Richland County on April 16, 2020. The initial Complaint requested declaratory and injunctive relief pursuant to South Carolina Code of Laws §§15-53-10 and 15-53-90 and Rule 65 of the South Carolina Rules of Civil Procedure to enjoin the Defendants from holding virtual conventions and mail - in ballots in violation of South Carolina State Elections Law S.C. Code Ann. §§ 7-9-70 and 7-9-100.

On April 22, 2020, the South Carolina Supreme Court issued an amended Emergency Order extending filing/statutory due dates by 30 days.

On May 14, 2020,Defendants by their attorneys acknowledged service of process and requested an extension of time to respond to the complaint until June 17, 2020.

On May 15, 2020, a stipulation was signed and filed which granted Defendants, by agreement until June 17, 2020, to respond to the complaint.

On May 29, 2020, Plaintiff filed his First Amended Complaint.

On June 11, 2020, Defendants removed the action to Federal District Court.

On September 25, 2020, the District Court dismissed the Federal Claims and remanded the State Law claims to the Court of Common Pleas.

On October 26, 2020, Defendants filed a Motion to Dismiss pursuant to South Carolina Rules of Civil Procedure ("SCRCP") Rule 12(b)(6) in response to the complaint.

On November 16, 2020 Plaintiff filed a Motion for Default Judgment pursuant to South Carolina Rules of Civil Procedure Rule 55(b)(2).

On June 9, 2021, a virtual hearing was held before Honorable Alison Renee Lee on the Motion for Default Judgment and the Motion to Dismiss at which all parties were represented. The Court did not address or otherwise entertain the request for Declaratory and Injunctive relief.

On June 29, 2021, the Honorable Alison Renee Lee issued the Order that is the subject of this appeal. The Order denied Plaintiff's Motion for Default Judgment and Granted Defendants' Motion to Dismiss.

On July 26,2021, Appellant filed Notice of Appeal of the said Order and each and every part thereof.

On August 2, 2021 Appellant submitted a Transcript Request Form and thereafter paid for the requested transcript.

On or about August 20, 2021, Appellant received a deficiency letter from the Clerk of this Court dated August 18, 2021, Indicating that he failed to provide proof of service of the Transcript Request Form and that ". . . this deficiency must be corrected within ten (10) days of the date of this letter or the appeal will be dismissed."

On August 21, 2021, Appellant served the Proof of Service of the Transcript Request Form on Respondents and the Office of Court Administration as directed.

On August 21, 2021, Appellant received the requested transcript.

On September 16, 2021, this appeal was dismissed by the Clerk of Court.

On September 20, 2021, Appellant filed a Motion for Reinstatement of Appeal.

On September 28, 2021, Appellant received Respondents' Joint Return to Appellant's Motion for Reinstatement of Appeal.

On October 1, 2021, Appellant filed his Reply to Respondent's Joint Return.

On October 1, 2021, Respondents filed a Joint Supplemental Return to Appellant's Motion for Reinstatement of Appeal indicating that they received the Proof Service of Transcript Request Form on September 27, 2021, postmarked August 21, 2021.

On November 5, 2021 the Appeal was reinstated by Order of Hon. H. Brian Williams FOR THE COURT.

On November 30,2021, Appellant was granted 30 days to file the Initial Brief in this matter.

Appellant filed his Initial Brief in compliance with the Order of this Court on December 30, 2021.

On January 7, 2021, Appellant received a deficiency letter directing him to file an Amended Initial Brief for the reasons set forth in the letter.

Appellant now files this Amended Initial Brief as directed.

ARGUMENT

I. THE CIRCUIT COURT ERRED IN HOLDING THAT APPELLANT WAS NOT ENTITLED TO DEFAULT JUDGMENT PURSUANT TO RULE 55(b)(2) SCRCP.

Standard of Review

Default Judgment Pursuant to Rule 55(b)(2) SCRCP

Rule 55 SCRCP is drawn from Rule 55 of the Federal Rules of Civil procedure. Federal Rule of Civil Procedure 55(b) permits the Court to enter default judgment, in actions for declaratory relief, among others. *CitiMortgage, Inc. v. Holmes,* Case No. DKC-13-1641, 2015 WL 224944, at *2 (D. Md. Jan. 14. 2015); Fed. R. Civ. P. 55(b)(2).

The entry of a default judgment rests with the sound discretion of the court. *SEC v. Lawbaugh, 359 F.Supp.2d 418, 421 (D. Md. 2005) (citing Dow v. Jones, 232 F.Supp.2d 491, 494 (D. Md. 2002)).* Although "the Fourth Circuit has a `strong policy that cases be decided on the merits,'" *Disney Enters, v. Delane,* 446 F.Supp.2d 402, 405 (D. Md. 2006) (quoting *United States v. Shaffer Equip. Co., 11 F.3d 450, 453 (4th Cir. 1993)*). "`default judgment is available when the 'adversary process has been halted because of an essentially unresponsive party.'" *Id.* (quoting *Lawbaugh,* 359 F. Supp. at 421): *see also Park Corp. v. Lexington Ins. Co., 812 F.2d 894, 896 (4th Cir. 1987)* (upholding a default judgment awarded where the defendant lost its summons and did not respond within the proper period).

To determine whether a default judgment is appropriate, the Court engages in a two-step inquiry. First, the Court must decide "whether the unchallenged facts in plaintiff's complaint constitute a legitimate cause of action." *Agora Fin., LLC v. Sander, 725 F.Supp.2d 491, 494 (D. Md. 2010).*

Second, if the Court finds that the complaint states a legitimate cause of action, it must then "make an independent determination" as to appropriate relief. *Id.* Declaratory relief is appropriate "if the well-pleaded allegations of the complaint establish the plaintiff's right to such relief." *CitiMortgage, Inc.,* 2015 WL 224944, at *2.

The Court takes as true all well-pleaded factual allegations in the complaint. Fed. R. Civ. P. 8(b)(6); *see also Ryan v. Homecomings Fin. Network, 253 F.3d 778,* 780 (4th Cir. 2001) ("The defendant, by his default, admits the plaintiff's well-pleaded allegations of fact, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established.").

In the case at bar Appellant's cause of action was for declaratory judgment and injunctive relief. The relief sought was to declare that Defendant's violated specific, mandatory provisions of the SC Code §§ 7-9-70 and 7-9-100 and to enjoin them from holding conventions in violation of the said statutes.

The unchallenged facts in this case indicate that Defendants did, in fact, violate the said elections laws on two separate occasions both while the lawsuit was pending. Defendant's argued and the Circuit Court held not that Defendants did not violate the law but that the existence of the pandemic and the South Carolina Supreme Court's Emergency Order necessitated and somehow excused the violation of the statute.

Appellant contends that the holding is erroneous in that, *inter alia,* even the recent and ongoing pandemic does not create the power to overrule the South Carolina

Elections Law or the South Carolina Constitution. Perhaps the United States Supreme Court said it best in 1934:

> "Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 425-426 (1934).

It is now settled law that the separation of powers doctrine prohibits one branch of government from usurping the powers of another branch. *(""[A] usurpation of powers exists, for purposes of [the] constitutional separation of powers doctrine, when there is a significant interference by one branch of government with the operations of another branch." 16A Am.Jur.2d *Constitutional Law* § 246. " *State v. Langford*, 400 S.C. 421, 434 (S.C. 2012)

In short, the Governor 's Emergency Order could not apply to the Judicial Branch. Upon information and belief none of the more than 30 Emergency Orders issued by the Governor even mention the courts.

In fact the Supreme Court makes only one reference to the Governor's Emergency Order to say extended scheduling order deadlines will end 45 days after the Governor lifts or rescinds his emergency order. It is axiomatic that the Governor cannot close down the courts.

The Court's Emergency Order does, however, mention its limitation and suggests that the legislature should consider taking action where appropriate. In Section (12) thereof, the Supreme Court states that it ". . . would be inappropriate for this Court to consider at this time what relief, if any, may be afforded to a litigant who is unable to file a civil action or take other actions under these statutory provisions due to this

emergency." Here the Court recognizes or at least strongly implies that it is the legislature that should make such changes.

A. The South Carolina Supreme Court Emergency Order is not dispositive of the issues in this Appeal.

The Circuit Court correctly concluded that the Emergency Order applies to statutory filing deadlines. The order reads, in pertinent part, ". . .the due dates for all trial court filings due on or after the effective date of this order are hereby extended for thirty (30) days." (Emer Ord, Sec. (c)(9)(A)).

The same order provides at (c)(9)(c) thereof that: "The provision in Rule 6(b), SCRCP, which permits the granting of only one extension of time by agreement of counsel, is suspended. *Counsel may agree to further extensions of time without seeking permission from the court,* and parties are strongly encouraged to do so upon request."(italics added).

Although this provision refers to further extensions of time it does permit parties to extend time by agreement during the pandemic and pursuant to the Order.

The point here is that reliance on the existence of the pandemic or the Governor's Emergency Order is not and cannot be dispositive of the issues in this case. Appellant contends and urges this Court to find that the Circuit Court finding that the Emergency Order of the South Carolina Supreme Court is dispositive of the issue in the case at bar is in error and must be reversed.

B. Notwithstanding the Emergency Order an agreement between the parties entered while the Order was in effect is valid and enforceable.

The Stipulation of the Parties

The Circuit Court noted that: "[t]he parties consented to a deadline to file a responsive pleading by June 17, 2020." (Ord., 6/29/21, page 3, para 3).

It is now settled law that "[w]hen an agreement entered by the parties is clear the function of the courts is solely to determine the intent of the parties. (See, *Bogan v. Bogan, 298 S.C. 139, 142, 378 S.E.2d 606, 608 (Ct.App. 1989).* In this case the agreement was clear: the Defendants would have until June 17, 2020, to respond to the complaint. No other interpretation is possible. The agreement was in writing and filed with the court.

Rule 43(k) SCRCP

Rule 43(k) SCRCP provides that: "No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record. " The rule is intended to prevent disputes as to the existence and terms of agreements pending litigation. *Ashford Corp. v. Palmetto Constr. Group, Inc., 318 S.C. 492, 493-94, 458 S.E.2d 533, 534 (1995).*

In the instant case Nekki Shutt, counsel for Defendants contacted Appellant and requested an extension of time to respond to the complaint. Appellant agreed. Counsel indicated that she would prepare and forward a document to memorialize the agreement for Appellants signature. Appellant received the document the following day and signed it. The document was filed by counsel for defendants on the same day.

In short, the agreement was (1) requested by counsel for defendants; (2) the agreement was drafted by counsel for defendants; (3) the agreement was filed by counsel for defendants; (4) the agreement provided defendants would have until June 17, 2020, to file their response to the complaint; and (5) *the agreement was filed and entered while the Emergency Order was in effect.*

Appellant is unable to find any rule that prohibits parties from voluntarily agreeing to a deadline that is *shorter* than a statutory deadline. Further, Defendants knew or should have known of the existence of the Emergency Order and must be held to their agreement. Further, the agreement was in writing and filed with the court; it complies with Rule 43(k) SCRCP and is therefore enforceable.

Respondents cannot now be heard to argue that they entered an unnecessary agreement for an extension of time when by their own argument no extension was required. In any event Appellant contends that the agreement is binding and enforceable.

C. The Circuit erred in its calculation of the amount of time Defendants had to file their responsive pleading or to otherwise move for an extension of time to do so.

Appellant argued below that after the case was remanded by the Federal District Court on September 25, 2020, the Respondents did not respond or otherwise move for an extension of time to do so. That they did not do so is not in dispute. The Circuit Court's conclusion that the Respondents' responsive pleading was timely filed is erroneous based on the following facts:

First, the date of remand was September 25, 2020 not September 30, 2020, as held by the Circuit Court. In *Limehouse v. Hulsey*, 404 S.C, 93, 96 (S.C. 2013) (a case

cited favorably by the circuit court) the South Carolina Supreme Court opined that in the case of remand the state cases " . . . recommence from the procedural point at which the state court received a certified remand order from the federal court." The remand order was entered on September 25, 2020, and a certified copy of the remand order was received by the state court on the same day.

Second, the Circuit Court concluded that defendants were entitled to sixty (60) days from May 14, 2020, the date of their acknowledgement of service of process (also the date of the stipulation between the parties to a date of June 17, 2020 for Defendants to file responsive pleadings) or until July 14, 2020. The error in this calculation is palpable. Without arguing the Emergency Order issue which is addressed at length above, the agreement of the parties, set a date of June 17. The court cannot summarily disregard an agreement of the parties that is otherwise enforceable.

The question of course is whether an agreement to lessen a statutory deadline is enforceable? Appellant has been unable to find a single case that holds that a stipulation that is otherwise valid becomes unenforceable because it *lessens* a statutory filing deadline.

D. When Rule 15(a) SCRCP is applied to the Amended Complaint Defendants' response is still untimely.

In its order the Circuit Court relied partially on Rule 15(a) SCRCP which rule provides in pertinent part that: "A party shall plead in response 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, unless the court otherwise orders."

Specifically, the Court held that:

> "Under SCRCP Rule 15, Defendants had 30 days 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.at the time of remand " (Ord. pg. 4. para 3).

In the instant case Appellant filed an Amended Complaint on May 29, 2020. As noted above the parties agreed to an extension of Defendants time to respond until June 17, 2020. When Rule 15 (a) is applied to the date of Amended Complaint it does not extend the time to file a responsive pleading beyond the stipulated extension. In this case the additional fifteen days would expire on June 13, 2020 (May 29 + 15 days = June 13, 2020) or 4 days before the stipulated date. So that even under this reckoning the Motion to Dismiss was untimely filed.

E. Defendants' had constructive notice of the Summons and Complaint on April 20, 2020

Appellant contends that even if this Court holds that the Stipulation is unenforceable, Defendants response is still untimely for the following reasons:

On or about April 17, 2020, a copy of the Summons and Complaint was served on RCDP Chair and Defendant Matthew Kisner by a deputy of the Richland County Sheriff's Department. Defendant Kisner was at the time also a member of the Executive Committee of Defendant SCDP.

On April 20, 2020, an Emergency Meeting of the SCDP Executive Committee was called by Defendant Trav Robertson, Jr., for the singular purpose of addressing this lawsuit. Appellant was intentionally excluded from the meeting. Upon information and at the meeting this lawsuit was discussed at length. Appellant contends that service on Defendant Matt Kisner and the calling of a meeting by Defendant Trav Robertson represents constructive service upon both Defendants as of the date of the Executive Committee Meeting on April 20, 2020. And as such the true date upon which Appellant was served contends that holding a meeting to determine how to respond to the lawsuit is proof of constructive notice of the lawsuit.

In this scenario the defendant had 30 days to respond which would have expired on May 20, 2020, and if the Emergency order is controlling June 20, 2020. This matter was removed by the defendant on June 9, 2020. Which would have left eleven days unexpired at the time of the remand. By this reckoning Defendants had until October 6, 2020, to respond. Defendants response by way of Motion to Dismiss was filed on October 26, 2020. If follows that by any scenario and any reckoning Defendants' response was untimely and Appellant was and remains entitled to default judgment.

II. THE CIRCUIT COURT ERRED IN GRANTING RESPONDENTS' MOTION TO DISMISS BECAUSE APPELLANT STATED A VALID CAUSE OF ACTION UNDER THE UNIFORM DECLARATORY JUDGMENT ACT.

Standard of Review
Motion to Dismiss Rule 12(b)(6) SCRCP

"Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. In considering such a motion, 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). "On

appeal from the dismissal of a case pursuant to Rule 12(b)(6), [SCRCP,] an appellate court applies the same standard of review as the trial court." *Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431*, 433 (2009). "That standard requires the [c]ourt to construe the complaint in a light most favorable to the nonmovant and determine if the `facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." Id. (quoting *Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001)*).

The complaint upon which this action rests sought declaratory judgment pursuant to the Uniform Declaratory Judgment Act SC Code 15-53-10 and 15-53-90 and sought to have the court declare that the actions of the Defendants' alleged in the complaint violated the South Carolina State Elections Law(s).

Appellant further requested the Court enjoin the holding of conventions in violation of the said election law. The Circuit Court did not address the issue of declaratory judgment other than to say "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, National party Convention." (Ord. 6/29/21, pg 1, para. 2).

The Court then proceeded to address other issues and never returned to the request for declaratory judgment. Appellant contends that once the issue of default judgment was decided the Court was required to address the declaratory judgment issue. Instead the Court moved directly to the Motion to Dismiss.

It is now settled law that in deciding a Motion to Dismiss under Rule 12(b)(6) SCRCP the Court must rely solely on the allegations of the complaint. Again, in this

case the complaint is for declaratory judgment. It follows that if declaratory judgment is available the complaint has stated a cause of action *under any theory of the case* and the motion to dismiss should have been denied.

The complaint calls for declaratory and injunctive relief only. It is axiomatic that the Court can grant declaratory relief and still deny injunctive relief. In either case a complaint filed pursuant to the Uniform Declaratory Judgment Act is a valid cause of action upon which relief can be granted. Appellant contends that by failing to address whether a cause of action was stated in the complaint as required by law, the grant of Respondent's Motion to Dismiss was reversible error.

III. APPELLANT HAS STANDING TO SUE UNDER THE PUBLIC IMPORTANCE EXCEPTION.

It is now settled law that standing to sue is a fundamental requirement to institute an action. *Joytime Distribs. & Amusement Co. v. State* , 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). However, standing may exist via the public importance exception. *Youngblood v. S.C. Dep't of Soc. Servs.* , 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013). Standing may be achieved by statute, constitutional standing, or the public importance exception. *Id.*

In the case at bar defendants argued and the Circuit Court held that appellant had no private right of action to pursue the statutory violations alleged in the complaint. Specifically, the court held that: "... upon reviewing the statutes at issue, this Court finds neither the statutes nor the legislative intent create a private right of action." (See Ord. p. para). Appellant contends that the Court's analysis and its conclusion are inaccurate because fundamentally flawed.

A. Appellant is a Citizen, Resident, Taxpayer and Registered Elector of the State of South Carolina

The Circuit Court held that Appellant had no standing to sue because the cited Elections Laws did not provide a private right of action. First, this action was not brought pursuant to the election laws; second, no relief was requested under the election laws; and third, any reliance on them to deny the requested declaratory relief is misplaced.

The main case relied upon by the Circuit Court is *Georgetown Cty. League of Women Voters v. Smith Land Co., 393 S.C. 350, 353, 713 S.E.2d 287, 289 (2011).* Apparently the court failed to consider that the Supreme *reversed* the lower court and held that the statute did provide a private cause of action. It follows that the passage cited is not the holding the case and cannot therefore be dispositive and is, at best, *obiter dictum.*

The second case cited by the court is *Doe v. Marion, 373 S.C. 390 397, 645 S.E.2d 245, 248 (2007).* In *Doe* the number one issue before the court was "I. Did the Court of Appeals err in finding S.C. Code Ann. § 20-7-510 (Supp. 2002) does not give rise to a private cause of action for negligence *per se?*"

The Court held that the statute in question did not give rise to a private cause of action and affirmed the lower court decision. Again, this case is not dispositive of the issue now before this Court. The cited portions relied upon by the court are at best *obiter dictum.*

The cases cited by the Circuit Court are further distinguishable for the following reasons: (1) Appellant does not challenge any statute; (2) his lawsuit is for a declaration

that defendants have not complied with *mandatory* provisions of the statute; and (3) Appellant has not and does not request enforcement of any statute.

B. Appellant Has Public Interest StandingTo Bring This Lawsuit.

Alternatively and notwithstanding Defendants' private right of action argument Appellant contends and urges this Court to find that he has public interest standing to bring this lawsuit.

In *Sloan v.. Sanford, 357 S.C. 431 (2004) 593 S.E.2d 470,* the South Carolina Supreme Court citing *Baird v. Charleston County,* 333 S.C. 519, 511 S.E.2d 69 1999) (citing *Thompson v. South Carolina Comm'n on Alcohol & Drug Abuse,* 267 S.C. 463, 229 S.E.2d 718 (1976) noted: "Petitioner contends he has standing to bring this action as citizen, resident, taxpayer, and registered elector of the State of South Carolina. We agree." The Court further held that: "We conclude Petitioner has public interest standing because of the importance of the issue he raises. Our conclusion is consistent with prior case law." *Sloan v. Sanford*, supra, at 434.

In this case the Circuit Court concluded that: (1) "Upon reviewing the statutes at issue, this Court finds neither the statutes nor the legislative intent create a private right of action."; (2) ". . . this Court finds there is no need for future guidance on this issue." ; and (3) "The key for finding that public importance standing is warranted is a need for future guidance." (Ord. 6/29/21, pg. 5, para.3).

1.The Circuit Court's Review of The Statutes is Not Dispositive Because The Underlying Lawsuit is Not Brought Pursuant to the Statutes Reviewed.

It is now settled law that in a Motion pursuant to Rule 12(b)(6) SCRCP as well as Declaratory Judgment actions pursuant to §§ 15-53-10 and 15-53-90 the Court looks to

the underlying complaint. In short, 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). When bringing an action under the Declaratory Judgment Act, "[a]ll that is required is that the [plaintiff] demonstrate a justiciable controversy." *Brown v. Wingard, 285 S.C. 478, 479, 330 S.E.2d 301, 302 (1985). Sloan v. School District of Greenville County*, 342 S.C. 515, 525 (S.C. Ct. App. 2000). Whether the plaintiff demonstrates a justiciable controversy is also determined by the complaint. (see *Power v. McNair*, 255 S.C. 150, 153-54 (S.C. 1970), ""Where a concrete issue is present, and there is a definite assertion of legal rights and a positive legal duty with respect thereto, which are denied by the adverse party, there is a justiciable controversy calling for the invocation of declaratory judgment action.""

2. The Issues raised by this action are of public importance and warrant public importance standing.

The South Carolina Democratic Party controls primaries and ballots for the election of public offices from President of the United States to state senators and Representatives. Approximately 45% of South Carolina registered voters are Democrats. Of that number approximately 67% are African American. In the last presidential election 2,476,644 votes were cast. Approximately 55% were cast for the Republican candidate and 43% for the Democratic candidate. If the Democratic Party is violating the election laws this is a matter of public importance and the public must be made aware of it in order to take corrective action. If both parties are or have been violating the election laws the public importance of this issue is increased exponentially,

In *Stutts v. S.C. Republican Party. No.2021-CP-23-02173 (Greenville Cty. C.P. May 6, 2021)* a case cited by Respondents as persuasive authority in the Circuit Court the plaintiffs requested declaratory judgment and injunctive relief.

In *Stutts* members of the South Carolina Republican Party raised issues nearly identical to those raised by Appellant in this case. The lawsuit was brought *after* Appellant's lawsuit but was heard and decided in twenty (20) days. The significance of *Stutts* was not the speed with which it was heard but the fact that it demonstrates conclusively that the issue raised in this case is one of true public importance.

Members of South Carolina's two major certified political parties acting separately brought essentially the same lawsuit based on the same cause of action. This is more than coincidence. Together the two certified political parties represent approximately 98% of the electorate in South Carolina. By sheer numbers alone this matter is one of wide public importance.

Appellant filed this action in an attempt to prevent the violation complained before the Defendants had violated the law. Since the filing of this action Defendants have violated the said statutes not once but twice and will violate it again in 2022. The Court must not overlook the fact that this action for declaratory judgment and the motion for speedy hearing has been on the books since April 16, 2020. That is one year, two months to the decision including four months in federal district court.

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Members of South Carolina's two major certified political parties acting separately brought essentially the same lawsuit based on the same cause of action. This is more than coincidence. Together the two certified political parties represent approximately 98% of the electorate in South Carolina. By sheer numbers alone this matter is one of wide public importance.

In addition *Stutts* stands for the proposition that two Circuit Courts have reached different conclusions based on the same statutes. In *Stutts*, the court noted that it did not decide the matter on the merits while the Circuit Court in this case concluded that there was no reason to interpret the statute because it is unambiguous. Appellant contends that this seeming discrepancy makes this matter ripe for adjudication by this Court or the South Carolina Supreme Court,

3.The actions complained of are highly likely to be repeated and therefore public importance standing Is required to enable court resolution for future guidance.

When this matter was initiated the acts complained of had not occurred. Defendants argued that the acts were not likely to be repeated. Yet, they were repeated. Appellant notified the Circuit Court of an imminent second violation before it happened but the Court still did not act. Now, we are faced with the real possibility that the statute will be violated a third time. The next South Carolina Democratic Party convention is

scheduled for March 2022. If the convention is held virtually, which is likely given the increase in Delta and Omicron variant infections, the violation will be repeated. Respondents cannot be allowed to violate the mandatory requirements of the statute with impunity. There is no option to ignore the law. If the law must be changed to meet current conditions it is the legislature that must do it - not the political parties.

Appellant only requests a declaration that the statute has been violated based on the plain reading of it. The statute is not ambiguous and its requirements are *mandatory.* Each of the mandatory requirements have been violated repeatedly. SC Code §Section 7-9-70 states the political parties *must hold their conventions by March thirty-first each general election year. It is undisputed that the Defendants did not hold their convention by March thirty-first of the 2020 general election year.* Repeated violation requires the drastic remedy of decertification. However, the Appellant is not asking for enforcement of the statute. He requests merely a declaration that the statute has been violated. When circumstances clearly not contemplated by the statute arise the court must interpret the statute in light of those circumstances for future guidance and in the public interest. Since it is clear that the statute has been violated and it is equally clear that it will be violated again, court resolution is appropriate for future guidance.

The issues in this case are issues of such public importance as to require resolution for future guidance. Among the important issues raised in this lawsuit is the fact that a political party certified by the State Elections Commission and bound by its rules violated those mandatory rules by holding unlawful state and county conventions. The said unlawful conventions and attendant elections served to benefit only party

loyalists the effect of which was to exclude registered Democrats who for a host of reasons are not dyed in the wool party loyalists.

Plaintiff further contends that the persons excluded were those who Defendant SCDP's Affirmative Action Plan was implemented to reach, i.e., African American, woman, people 36 years old and younger, LGBTQ and Hispanic, Asican American and Pacific Islander, Native Americans and people with disabilities.

The Federal District Court has found that the issues raised in this lawsuit are complex and that there is no state precedent making the issues raised by Plaintiff novel and not suitable for dismissal of 12(b)(6).

This Court may take judicial notice of Defendants SCDP and RCDP have a long history of intentionally undermining the right to vote of African Americans and of utilizing questionable legal tactics to delay adjudication when lawsuits are brought to vindicate the rights of African Americans. *(See Elmore v. Rice, 72 F. Supp. 516 (E.D.S.C. 1947)* the landmark case which struck down the all White Primary in South Carolina and in which both SCDP and the RCDP were named Defendants. It is also relevant here that the in *Elmore* the Federal Court also held that

> "... the defendants *and their successors in office* will be enjoined from excluding qualified voters from enrollment and casting ballots by reason of their not being persons of the white race." Id, at 528.

Defendants in this case are *successors in office* of the Defendants in *Elmore v Rice*. It is high time that the Democratic Party was required to cease hiding behind rules that they can manipulate to control the leadership of the party because they believe they should be treated like a private club. *Ubi Jus Ibi Remedium.*

Conclusion

For the foregoing reasons Appellant prays this Honorable Court will reverse the decision of the Circuit Court and grant such other and further relief as to this Court may seem, just, equitable and proper.

Dated: January 18, 2022
Columbia, South Carolina

Respectfully submitted

Johnnie Cordero
4204 Mandel Drive
Columbia, SC 29210
Tel.: (803)753-8091
Appellant, pro se

CERTIFICATE OF SERVICE

I, Johnnie Cordero, Appellant pro se, hereby certify that I have served an exact copy of the INITIAL BRIEF OF APPELLANT (AMENDED) on the Nekki Shutt and Grant Burnette LeFever attorneys for the Respondents by hand delivery at the offices of BURNETTE, SHUTT & MCDANIEL, PA at 912 Lady Street, Columbia, SC 29201,

Dated: January 18, 2021
Columbia, South Carolina

Respectfully submitted,

Johnnie Cordero