

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

SOUTH CAROLINA GREEN PARTY,)
EUGENE PLATT, and ROBERT)
DUNHAM,)

Plaintiffs,)

v.)

SOUTH CAROLINA STATE)
ELECTION COMMISSION, JOHN H.)
HUDGENS, CYNTHIA M. BENSCH,)
TRACEY C. GREEN, PAMELLA B.)
PINSON, and THOMAS WARING, in)
their official capacities only as)
Chairman and members respectively)
of the South Carolina State Election)
Commission)

Defendants.)

Civil Action No. _____

COMPLAINT

Nature of the Case

1. This is an action under 42 U.S.C. §1983 to enforce rights guaranteed to the plaintiffs by the First and Fourteenth Amendments to the United States Constitution. At issue is South Carolina's sore-loser statute, S.C. Code Ann. § 7-11-10, as applied in the context of an electoral scheme which permits fusion, an electoral practice which allows more than one party to nominate the same candidate. The plaintiffs seek declaratory and injunctive relief prohibiting the defendants from applying the sore-loser statute to the extent that it disqualifies candidates from appearing

on the general election ballot as a candidate for a certified political party because of a loss in another party's primary or convention, given that South Carolina permits fusion. The plaintiffs also seek an injunction requiring the defendants to place the nominee of the Green Party for State House Seat 115 on the ballot for the November 2008 General Election.

Jurisdiction and Venue

2. This Court has original jurisdiction over this case pursuant to Article III of the United States Constitution and 28 U.S.C. §§ 1331 and 1343(a)(3).
3. This suit is authorized by 42 U.S.C. § 1983.
4. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.
5. Venue is proper in the District of South Carolina pursuant to 28 U.S.C. § 1391(b).

Parties

6. Plaintiff South Carolina Green Party is a certified political party in accordance with § 7-9-10 of the South Carolina Code.
7. Plaintiff Eugene Platt is a United States citizen and a resident of the State of South Carolina.
8. Platt is a resident and registered voter in Charleston County, South Carolina.
9. Platt is the South Carolina Green Party's nominee for South Carolina State House Seat 115 in the November 2008 General Election.

10. Plaintiff Robert Dunham is a United States citizen and a resident of the state of South Carolina.
11. Dunham is a resident and registered voter in Charleston County, South Carolina.
12. Dunham would like to have the opportunity to vote for Eugene Platt in the November General Election.
13. Defendant South Carolina State Election Commission is charged with ensuring that every eligible citizen has the opportunity to register to vote, participate in fair and impartial elections, and have the assurances that their votes will count.
14. Defendant is responsible for disqualifying candidates from the general election ballot under S.C. Code Ann. § 7-11-10.
15. Defendant John H. Hudgens is the Chairman of the South Carolina State Election Commission. He is sued in his official capacity only.
16. Defendant Cynthia M. Bensch is a member of the South Carolina State Election Commission. She is sued in her official capacity only.
17. Defendant Tracey C. Green is a member of the South Carolina State Election Commission. He is sued in his official capacity only.
18. Defendant Pamella B. Pinson is a member of the South Carolina State Election Commission. She is sued in her official capacity only.
19. Defendant Thomas Waring is a member of the South Carolina State Election Commission. He is sued in his official capacity only.

Factual Background

20. South Carolina is one of only four states that have an electoral scheme which permits fusion and includes a sore-loser statute.
21. There are no provisions expressly dealing with fusion in South Carolina, and the Attorney General has interpreted this as indicating that there may be multiple nominations of one name by several parties. 1969-70 Ops. Atty. Gen. No. 2996 p. 275.
22. The sore-loser statute provides that “no person who was defeated as a candidate for nomination to an office in a party primary or party convention shall have his name placed on the ballot for the ensuing general or special election.” S.C. Code Ann. § 7-11-10 (1976).
23. All statements of candidacy must be filed with the county executive committee of a party, which must report all filings to the state committees no later than 5:00 p.m. on March 30. S.C. Code Ann. § 7-11-15(2).
24. South Carolina election law does not provide for a candidate to withdraw from a primary or convention once a statement of candidacy has been filed.
25. In accordance with South Carolina fusion laws, Eugene Platt filed statements of candidacy with the Green Party and the Democratic Party for South Carolina State Seat House 115.
26. Eugene Platt was selected as the nominee at the Green Party convention on May 3, 2008.

27. On June 10, 2008, over one month later, Eugene Platt failed to win the endorsement of the Democratic Party at the party's primary.
28. South Carolina's sore-loser statute impermissibly allows one political party to disqualify the duly chosen nominee of another political party.
29. The South Carolina Election Commission, at the urging of the Democratic Party, decided that Eugene Platt was not eligible to be on the ballot as the Green Party's candidate, citing S.C. Code Ann. § 7-11-10.
30. South Carolina's sore-loser statute imposes a severe and unjustified burden on the Green Party's associational right to select a particular individual as the party's standard bearer, and on the associational rights of the candidate and voters supporting him.
31. The state's recognition of fusion, and the simultaneous filing deadline for all party primaries and conventions, negates any narrowly tailored compelling interest which may be asserted by the state as justification for the severe burden imposed on the associational rights of the Green Party voters who may wish to vote for the Green Party's candidate, and candidates for the Green Party's nomination.

Claim One

32. South Carolina's sore-loser statute, as applied in an electoral scheme which permits fusion, violates rights guaranteed to the plaintiffs by the First and Fourteenth Amendments to the United States Constitution, as enforced by 42 U.S.C. § 1983.

Relief

33. A real and actual controversy exists between the parties.
34. The plaintiffs have no adequate remedy at law other than this action for declaratory and injunctive relief.
35. The plaintiffs are suffering irreparable harm as a result of the violations complained of herein, and that harm will continue unless declared unlawful and enjoined by this court.

WHEREFORE, the plaintiffs respectfully pray that this Court:

- (1) take original jurisdiction over this case;
- (2) enter a declaratory judgment that South Carolina's sore-loser statute, S.C. Code Ann. § 7-11-10, violates rights guaranteed to the plaintiffs by the First and Fourteenth Amendments to the United States Constitution, as enforced by 42 U.S.C. § 1983;
- (3) enjoin the defendants from enforcing South Carolina's sore-loser statute to the extent that it disqualifies a candidate from appearing on the general election ballot as a candidate for a certified political party because of a loss in another party's primary or convention, given that fusion is permitted;
- (4) enjoin the defendants from failing to place the nominee of the South Carolina Green Party for State House Seat 115 on the ballot for the November 2008 General Election;
- (5) award the plaintiffs nominal damages;

(6) award the plaintiffs the cost of this action together with their reasonable attorneys' fees pursuant to 42 U.S.C.

§ 1988; and,

(7) retain jurisdiction of this action and grant the plaintiffs any further relief which may in the discretion of this Court be necessary and proper.

Respectfully Submitted,

/s/Laughlin McDonald
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