

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

KEVIN ALEXANDER GRAY, GLEN
DAVIS, CASSANDRA FRALIX, GERALD
RUDOLPH, MARJORIE BRITTAIN
HAMMOCK, and EFIA NWANGAZA; and
UNITED CITIZENS PARTY OF SOUTH
CAROLINA,

Plaintiffs,

vs.

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

Defendants.

Case No. 3:09-cv-02126-JFA

COMPLAINT

1. This is an action to enforce rights guaranteed to Plaintiffs by Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, and the First and Fourteenth Amendments to the United States Constitution. At issue is the South Carolina State Election Commission's recent reinterpretation of the State's filing-deadline statute, S.C. Code Ann. § 7-11-15. The Defendants have failed to obtain preclearance for their new interpretation as required by Section 5, and as applied to the Plaintiffs the new interpretation violates the First and Fourteenth Amendments. The Plaintiffs seek declaratory and injunctive relief prohibiting the Defendants from enforcing the reinterpreted filing-deadline against them.

JURISDICTION AND VENUE

2. This civil action is authorized by 42 U.S.C. § 1983 to redress the deprivation under color of state statute, ordinance, regulation, custom, or usage of rights, privileges, or immunities secured to plaintiffs by the Constitution and laws of the United States. This action is also authorized by 42 U.S.C. § 1973j to secure equitable and other relief under an act of Congress providing for the protection of civil rights. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 42 U.S.C. § 1973j(f). This Court has jurisdiction to grant both declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

3. Pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 2284(a), a district court of three-judges is required to hear Plaintiffs' claim that Defendants have failed to comply with Section 5 of the Voting Rights Act.

4. Venue is proper in the District of South Carolina pursuant to 28 U.S.C. § 1391(b) in that one or more Defendants resides in the state.

PARTIES

5. Plaintiffs Kevin Alexander Gray, Glen Davis, Marjorie Brittain Hammock, and Efia Nwangaza are African Americans, and residents and registered voters of South Carolina. Plaintiffs Cassandra Fralix and Gerald Rudolph are residents and registered voters of South Carolina. All Plaintiffs desire to participate in the political process on a basis of equality with other voters and for South Carolina to comply with Section 5 of the Voting Rights Act.

6. Plaintiff United Citizens Party is a political party in South Carolina first organized under the laws of the State in 1970 in response to the South Carolina Democratic Party's opposition to nominating African-American candidates for public office. The Party's mission

includes empowering ethnic minorities, the poor, the working class, women, and other marginalized citizens to actively and effectively participate in the political system. The United Citizens Party nominates its candidates by convention, and has regularly cross-nominated the winners of other parties' primary elections in the past and wants to continue doing so in future elections.

7. Defendant South Carolina State Election Commission is a state agency 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. Defendant South Carolina State Election Commission is responsible for enforcing S.C. Code Ann. § 7-11-15, the state's filing-deadline statute.

8. Defendant John H. Hudgens is the Chair of the South Carolina State Election Commission. He is sued in his official capacity only.

9. Defendants Cynthia M. Bensch, Tracey C. Green, Pamella B. Pinson, and Thomas Waring are members of the South Carolina State Election Commission. They are sued in their official capacities only.

10. Defendant Henry McMaster is the Attorney General of South Carolina. He is the chief legal officer of the state and is responsible for submitting state laws for preclearance in accordance with Section 5 of the Voting Rights Act. He is sued in his official capacity only.

FACTUAL ALLEGATIONS

11. South Carolina's filing-deadline statute, S.C. Code § 7-11-15, provides in relevant part: "In order to qualify as a candidate to run in the general election, all candidates seeking nomination by political party primary or political party convention must file a statement of

intention of candidacy between noon on March sixteenth and noon on March thirtieth as provided in this section.”

12. South Carolina permits a practice known as “electoral fusion,” or “fusion candidacies,” which allows one political party to cross-nominate the candidate of another political party for election to public office. 1969-70 Ops. Atty. Gen. No. 2996 p. 275.

13. Prior to April 2008, the State Election Commission interpreted the state’s filing-deadline statute to allow candidates to run as the candidate for one or more political parties in the general election so long as they filed a Statement of Intention of Candidacy for one political party before the statutory deadline of March 30 in an election year.

14. The Election Commission permitted candidates to file subsequent Statements of Intention of Candidacy for other political parties after the March 30 deadline.

15. The Election Commission’s interpretation of the state’s filing-deadline statute prior to April 2008 allowed political parties that nominate candidates by convention to cross-nominate the winning candidate in one of the other parties’ primary election.

16. The Election Commission’s pre-April 2008 interpretation of the state’s filing-deadline statute was “in force or effect” within the meaning of Section 5.

17. In April of 2008, the Election Commission reinterpreted the filing-deadline statute to prohibit a candidate from appearing on the general election ballot as the candidate from more than one political party unless she or he had filed a Statement of Intention of Candidacy for each political party for which the candidate planned to run in the general election before the statutory deadline in March 30 in an election year.

18. This reinterpretation has the practical effect of making it impossible for political parties that nominate by convention to cross-nominate the winner of another political party's primary election.

19. The Election Commission has placed its recent reinterpretation of South Carolina's filing-deadline statute on its website and stated its intention to enforce it in all future elections.

20. The filing-deadline voting change implemented by the Election Commission has a retrogressive effect and makes it more difficult for Plaintiffs to actively and effectively participate in the political process.

THE NEED FOR INJUNCTIVE RELIEF

21. The Plaintiffs have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein, and this suit for declaratory and injunctive relief is their only means of securing adequate redress from the unlawful practices of the Defendants.

22. The Plaintiffs will continue to suffer irreparable injury from the acts, policies, and practices of the Defendants set forth herein unless enjoined by this Court.

CLAIMS FOR RELIEF

Count One: Violation of Section 5 of the Voting Rights Act of 1965

23. South Carolina is covered by Section 5 of the Voting Rights Act and must obtain preapproval or preclearance before seeking to administer or implementing any voting qualifications or prerequisites to voting, or standards, practices, or procedures with respect to voting that are different from those that were in force or effect on November 1, 1964.

24. The South Carolina State Election Commission's recent reinterpretation of the state's filing-deadline statute, S.C. Code Ann. § 7-11-15, is a "standard, practice, or procedure with

respect to voting different from that in force or effect on November 1, 1964” within the meaning of Section 5 of the Voting Rights Act.

25. The Election Commission has “enact[ed]”, has “administer[ed],” and “seeks to administer” its recent reinterpretation of the State’s filing-deadline statute, S.C. Code Ann. § 7-11-15, within the meaning of Section 5.

26. The Defendants did not seek or obtain preclearance under Section 5 before enacting or administering the Election Commission’s recent reinterpretation of the state’s filing-deadline statute, S.C. Code Ann. § 7-11-15.

27. The Defendants’ failure to obtain preclearance prior to enforcing the Election Commission’s recent reinterpretation of the state’s filing-deadline statute, violates Section 5 of the Voting Rights Act.

**Count Two: Violation of the First and Fourteenth Amendments
to the United States Constitution**

28. The Election Commission’s policy and practice of requiring candidates seeking nomination by political party convention to file a Statement of Intention of Candidacy by March 30 of an election year imposes severe burdens on the Plaintiffs’ associational and voting rights which are not justified or made necessary by any sufficiently weighty governmental interest.

29. The Election Commission’s policy and practice of requiring candidates seeking nomination by political party convention to file a Statement of Intention of Candidacy by March 30 of an election year deprives Plaintiffs of rights, privileges or immunities secured by the First and Fourteenth Amendments to the United States Constitution.

30. The Election Commission’s policy and practice of requiring “fusion candidates” to file separate Statements of Intention of Candidacy for all political parties for which they intend

to run as candidates in the general election by March 30 of an election year imposes severe burdens on Plaintiffs' voting and associational rights which are not justified or made necessary by any sufficiently weighty governmental interest.

31. The Election Commission's policy and practice of requiring "fusion candidates" to file separate Statements of Intention of Candidacy for all political parties for which they intend to run as candidates in the general election by March 30 of an election year deprives Plaintiffs of rights, privileges or immunities secured by the First and Fourteenth Amendments to the United States Constitution.

REQUEST TO CONVENE A THREE-JUDGE COURT

32. Pursuant to 42 U.S.C. §§ 1973c and 28 U.S.C. § 2284(a), the convening of a district court of three-judges is requested to hear Plaintiffs' claim under Section 5 of the Voting Rights Act.

PRAYER FOR RELIEF

33. Wherefore, Plaintiffs respectfully request that this Court enter a judgment granting them:

- a. a declaration that Defendants' failure to obtain preclearance prior to enforcing the Election Commission's recent reinterpretation of S.C. Code § 7-11-15 violates Section 5 of the Voting Rights Act;
- b. an injunction prohibiting Defendants and their officers, agents, employees, attorneys, and successors in office, and all other persons in concert or participation with them, from enforcing the Election Commission's recent reinterpretation of S.C. Code § 7-11-15 unless and until they obtain preclearance under Section 5 of the Voting Rights Act;

c. a declaration that the policy and practice of requiring candidates seeking nomination by political party convention to file a Statement of Intention of Candidacy by March 30 of an election year violates the First and Fourteenth Amendments to the United States Constitution;

d. an injunction prohibiting South Carolina from requiring candidates seeking nomination by political party convention to file a Statement of Intention of Candidacy by March 30 of an election year;

e. a declaration that the policy and practice of requiring “fusion candidates” to file separate Statements of Intention of Candidacy for all political parties for which they intend to run as candidates in the general election by March 30 of an election year violates the First and Fourteenth Amendments to the United States Constitution;

f. an injunction prohibiting South Carolina from requiring “fusion candidates” to file separate Statements of Intention of Candidacy for all political parties for which they intend to run as candidates in the general election by March 30 of an election year;

g. an award of expenses, costs, fees, and other disbursements associated with the filing and maintenance of this action, including reasonable attorneys’ fees, pursuant to 42 U.S.C. §§ 1973l(e) and 1988; and

h. such other relief at law or in equity as this Court may deem appropriate.

Respectfully submitted,

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