

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Alan Ali

Plaintiff,

vs.

South Carolina Democratic Party and South  
Carolina Election Commission,

Defendants.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO: 2024-CP-10-1918

**ORDER**

Hearing Date: April 19, 2024 – 10:00 am  
Judge: Hon. George M. McFaddin, Jr.  
Plaintiff’s Attorneys: Mark A. Peper and Brenna Wiles  
Defendant SCDP Attorneys: Richard A. Hricik and Colleen Condon  
Defendant SCEC Attorneys: Michael Burchstead

Plaintiff filed a Verified Summons and Complaint on April 12, 2024 under the Uniform Declaratory Judgment Act on April 12, 2024 and served Defendant South Carolina Democratic Party (“SCDP”) through its Chair Christale Spain that same day. Plaintiff did not file a Motion seeking any temporary relief, but instead asked the Court to make time on its motion docket.

On Tuesday April 16, 2024, Plaintiff filed an Amended Verified Summons and Complaint adding the South Carolina Election Commission (“SCEC”) as a party and properly served both Defendants the following day.

In his request for relief, Plaintiff asked this Court to order the SCDP to certify Plaintiff as a candidate for the Democratic primary alleging:

SCDP Rule 11 relied upon by Defendant SCDP in refusing to certify Plaintiff is in conflict with state law and the State of South Carolina Constitution as unconstitutionally vague and ambiguous in violation of Plaintiff’s substantive due process rights granted him by S.C. Const. Art. I § 3; and that Defendant SCDP’s Rule 11 is unevenly applied by Defendant SCDP to similarly situated candidates, thus violating Plaintiff’s constitutional right to equal protection guaranteed him by S.C. Const. Art. I § 3.

Plaintiff appeared with his counsel, and Defendants were represented by their counsel. Defendant SCDP filed a brief entitled Motion to Dismiss and/or Summary Judgment on April 19, before the case was called for hearing, along with two sworn affidavits with exhibits.

In the interests of expediency, Counsel for Plaintiff and Defendant SCDP agreed that Plaintiff's Verified Complaint would be deemed to be the record of Plaintiff, and given the mix of factual and legal matters asserted therein, would be treated as both a Brief and Affidavit of Plaintiff but not as a stipulation nor would it be given any legal and/or factual presumptive effect on SCDP.

Defendant SCEC reiterated its position that time was of the essence as to any ruling and established April 25 as a cut-off date given the need for primary ballot preparation, in order to comply with 52 U.S.C.A. § 20302, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

### **FINDINGS OF FACT:**

1. Plaintiff Alan Ali timely applied to be certified by the Democratic Party to appear on the Democratic primary ballot for Sheriff of Charleston County and he attested, and SCDP did not dispute or challenge, that Ali meets, or will meet by the time of the general election, or as otherwise required by law, the constitutional and statutory qualifications to run for Charleston County Sheriff, to include SC Code Ann. Sec. 23-11-110.
2. A Democratic Party member challenged his certification in accord with the SCDP Rule 11 adopted by the SCDP in 2022.
3. The challenge hearing was held on April 4, 2024 before the SCDP Executive Council in accord with its Party Rules.
4. Mr. Ali appeared and testified before the Executive Council and stated he had considered running as Republican for Sheriff in Dorchester this election cycle and had met with Republicans in Dorchester County about running for Sheriff there.
5. The SCDP Council thereafter voted to recommend that the Chair not certify Mr. Ali for participation in their Democratic Primary for Sheriff.
6. The Affidavits of Christale Spain, SCDP Chair, and Sam Skardon, CCDP Chair, show they consulted the voting record of Mr. Ali, and The SCDP Chair again confirmed the testimony Mr. Ali offered with Mr. Skardon.

7. Per SCDP Party Rule 11, SCDP Chair Christale Spain, did not certify Mr. Ali for inclusion in the Democratic primary for Sheriff of Charleston County on April 5, 2024, citing SCDP Rule 11 that gives her the authority and discretion to enforce Party Rules and limit primary candidates to those who are aligned and loyal to the Democratic Party.

8. Plaintiff offered evidence of two other Democratic candidates that had been certified by the SCDP to participate in their primary, one in 2018 and another during this same election filing period as Plaintiff in an attempt to demonstrate unequal application of SCDP Rule 11. However, Plaintiff offered no evidence that (1) either of those candidates were ever formally challenged by a party member (as was Plaintiff) in accordance with the SCDP Rule 11 process; and (2) that either of those two candidates were the subject of a decision made pursuant to the SCDP Rule 11 challenge process. One candidate was certified in 2018 before the SCDP Rule 11 was adopted in 2022.

9. No actions of the SCDP deny Plaintiff the right to appear on the general election ballot for Sheriff of Charleston County. The SCDP's decision only denies him the ability to participate in the Democratic Party primary.

### **CONCLUSIONS OF LAW**

1. SCDP has submitted a detailed lengthy brief citing to numerous U.S. Supreme Court decisions and decisions from many states recognizing that political parties have a long established First Amendment right of association and have great leeway in governing their own affairs. See generally *Cousins v. Wigoda*, 419 U.S. 477 (1972); *Cal. Democratic Party v. Jones*, 530 U.S. 567 (2000).

2. Implicit in the freedom of association is a political party's substantial interest in ensuring that party members have an effective role in determining who will appear on a general election ballot as that party's candidate. See, *Democratic Party of U.S. v. Wisconsin*, 450 U.S. 107 (1981). A political party has a First Amendment right to limit its membership as it wishes, and to choose a candidate-selection process that will in its view produce the nominee who best represents its political platform. *Democratic Party of United States v. Wisconsin ex rel. La Follette*, 450 U. S.

107, 122 (1981); *California Democratic Party v. Jones*, 530 U. S. 567, 574–575 (2000). (emphasis added).

3. S.C. Code Section Ann. §7-9-20 allows political parties to add rules to the qualifications for membership in the party by its state convention, as was done by the SCDP in 2022 with Rule 11, as long as the Party Rules do not violate the South Carolina and United States Constitutions and statutory law.

4. Political parties have the right to decide whether or not to certify a candidate for their primary pursuant to their Party Rules under SC Code of Laws §7-13-40. The statute recognizes SCDP's right (and every other political party's First Amendment association right) to make its own rules and determine who will appear as a candidate on its primary ballot as allowed by law. The statute is purposefully silent on how Party certification is to occur – that is exclusively and rightfully the province of the respective Party. (emphasis added).

The statute gives discretion, subject to statutory law and the Constitution, to the Party to determine how its primary candidates may be certified, in recognition of the Party's rights to make their own rules. The statute requires that the Party must then also verify any candidate the Party chose to certify, that the candidate is legally qualified to hold that office.

Plaintiff's interpretation of §7-13-40 fails to recognize this distinction drawn in the statute between VERIFICATION and subsequent CERTIFICATION of those candidates who have been CERTIFIED. The statute does not compel political parties and require that political parties must certify every candidate who wants to appear on their primary ballot – for good reason – that would, in effect, undermine the very nature of the existence of political parties who have constitutionally protected First Amendment Association rights. "Including people unaffiliated with the party—or those with whom the party does not wish to affiliate—"may seriously distort [the party's] collective decisions—thus impairing the party's essential functions." *Democratic Party of U.S. v. Wisc. ex rel. La Follette*, 450 U.S. 107, 122, 101 S.Ct. 1010, 67 L.Ed.2d 82 (1981). "[P]olitical parties may accordingly protect themselves from intrusion by those with adverse political principles," *Id.* (quoting *Ray*, 343 U.S. at 221-22, 72 S.Ct. 654).

5. Plaintiff did not cite to any legal authority that holds a candidate in South Carolina has a constitutionally recognized right to appear on a party primary ballot. There is likewise no recognized “right” to force the South Carolina Democratic Party to associate with a candidate and allow participation in their Democratic primary against their own vote and their own party rules. Federal courts have held that such alleged primary candidate rights are “considerably attenuated and possibly nonexistent.” *Duke v. Massey*, 87 F.3d 1226, 1233 (11th Cir. 1996) (“Duke III”); see also *Id.* at 1232-33 (holding that candidate “does not have a First Amendment right to express his beliefs as a presidential candidate for the Republican Party”); *Duke v. Cleland*, 954 F.2d 1526, 1530-31 & n. 6 (11th Cir. 1992) (“Duke I”) (rejecting candidate’s allegation that “he has a right to associate with an ‘unwilling partner,’ the Republican Party,” and holding that “[i]ndeed a strong argument could be made that there is no right to vote for any particular candidate in a party primary, because the party has the right to select its candidates”). See also, *Hero v. Lake County Election Board* 42 F.4<sup>th</sup> 768 (2022) expressly stating that a candidate does not have a right to participate on a primary ballot.

6. Plaintiff has not been denied general election ballot access by the SCDP’s decision. Rather, Plaintiff has only been denied the ability to run in the Democratic party primary. Plaintiff retains all of his rights to run in the general election and to be elected as Sheriff in Charleston County. Plaintiff can seek and obtain another Party’s nomination (S.C. Code Sec. §7-13-50) be nominated by another party by their convention (S.C. Code Ann. §7-11-30); appear as a petition candidate (S.C. Code Ann. §§ 7-11-70 and 7-13-351); or mount a write-in candidacy. Plaintiff can still run for Sheriff and tout his ‘Democratic virtues,’ tell voters he supports Democrats, and run on an identical Democratic platform. *See also, N.Y. Board of Elections v. López Torres*, 552 U.S. 196 at 207-08, (recognizing that candidates' and voters' associational rights are "well enough protected" if there is "an adequate opportunity to appear on the general-election ballot"). I find this logic as to general election ballot access as curative of any “alleged harm” to the Plaintiff to be compelling and persuasive.

7. Recognition of access to the general election ballot as curative for of alleged “rights violations” for denial of participation in a Presidential Primary, was discussed in great detail with citation to numerous references in *De La Fuente v. Simon*, 940 N.W.2d 477 (Minn. 2020) *cert denied* 141 S.Ct. 1374 (2021). In that case, the statute of Minnesota, that is virtually identical to

SC Code of Laws §7-13-40, gave the MN Republican Party complete discretion as to the names the party chose to be placed on their primary ballot. *De La Fuente, supra*, MN 207A.13. The *De La Fuente* Court went on to hold that there was no “right” to appear on a primary ballot and stated: “In other words, different processes are needed for different avenues to the general-election ballot; but in the end, any presidential candidate who satisfies statutory requirements has access to the general-election ballot, regardless of the candidate’s access to the presidential nomination primary ballot.”

8. Given SCDP’s well-recognized First Amendment rights of association to determine its members and its candidates, and the State’s equally well-recognized interest in supporting same, SCDP’s Rule 11 was written by the Democratic Party members for the Democratic Party and was adopted by the Democratic Party as their Rules. Implicit in the freedom of association is a political party’s substantial interest in ensuring that party members have an effective role in determining who will appear on a general election ballot as that party’s candidate. *See, Democratic Party of U.S. v. Wisconsin*, 450 U.S. 107 (1981). (emphasis added).

9. Just as it is not the prerogative of this Court to assume the duties of the Legislature and write the laws of this State, it is not for this Court to counsel, rewrite, or interfere in the inner workings of the SCDP or any political party, and rewrite their Party Rules. This would force unwanted association and government intrusion in violation of their long-recognized and constitutionally protected First Amendment rights of association; undermining their very existence and reason for forming in the first place.

10. SCDP followed their own rules and procedures in declining to certify Plaintiff for participation in their primary – as was their constitutional right. Further, SCDP’s decision was not completely arbitrary as alleged by Plaintiff, especially given the Plaintiff’s own statements about running for Sheriff as a Republican in another County, Plaintiff’s past voting record, and absence of known or established Democratic allegiances. SCDP’s Rule 11, as written, and as applied to Plaintiff, does not implicate any alleged constitutional rights of Plaintiff nor give rise to any alleged constitutional violations.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:**

Plaintiff's Petition for Declaratory Relief is denied.

**AND IT IS SO ORDERED.**

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The Hon. George McFaddin  
Presiding Judge

Charleston, South Carolina

April \_\_\_\_\_, 2024



Charleston Common Pleas

**Case Caption:** Alan Ali VS Democratic Party South Carolina , defendant, et al

**Case Number:** 2024CP1001918

**Type:** Order/Other

So Ordered

S/George M. McFaddin, Jr., #2759