

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

SOUTH CAROLINA REPUBLICAN
PARTY, *et al.*,

CA No. 6:10-1407-JMC

Plaintiffs,

vs.

STATE OF SOUTH CAROLINA, *et al.*,

Defendants.

**MOTION FOR INTERVENTION AS DEFENDANTS-INTERVENORS
PURSUANT TO F.R.C.P. RULE 24**

The following respectfully move this Court for an order, pursuant to F.R.C.P. Rule 24 granting them intervention as of right, or alternatively, by permission as defendants in this action:

(A) Wayne Griffin and Reginald Griffin of Greer, SC, Brett Bursey of Lexington, SC, and Alan Olson, Columbia, SC. These voters consider themselves to be independents and do not wish to enroll in a major party as a condition of voting in a primary election for nomination for public office.

(B) The South Carolina Independence Party, the South Carolina Constitution Party, the Progressive Network Education Fund, Inc., the Columbia Tea party, Inc., and the Committee for a Unified Independent Party, Inc. (d/b/a IndependentVoting.org).

(C) The following members of the Black Legislative Caucus of the South Carolina House of Representatives: Terry Alexander (District 59), Karl B.Allen (District 25), Jerry N.Govan, Jr. (District 95), Chris Hart (District 73), Leon Howard (District 76), Joseph Jefferson, Jr. (District 102), John Richard C. King (District 49), David J.Mack, III (District 109), Harold Mitchell, Jr. (District 31), Joseph Neal (District 44), Anne Parks (District 12), Ronnie Sabb (District 101), and Robert Williams (District 62).

In the event that intervention is granted, proposed defendants-intervenors also respectfully move for an extension of the time to make dispositive motions from February 10, 2011 to a date at least thirty days after intervention is granted.

1. As is set forth more fully in the declaration of Wayne Griffin, submitted herewith, the individual proposed defendants-intervenors who are not aligned with a major political party identify themselves as independents, do not wish to enroll in a major party, and have a sufficient interest in this litigation to be granted intervenor status.

2. As is set forth more fully in the declaration of Wayne Griffin and the exhibits thereto, the other individual proposed defendants-intervenors have a sufficient interest in this litigation to be granted intervenor status.

3. As is set forth more fully in the declaration of Wayne Griffin and the exhibits thereto, submitted herewith, the organizational proposed defendants-intervenors have a sufficient interest in this litigation to be granted intervenor status.

4. As is set forth more fully in the declaration of Jacqueline Salit, submitted herewith, IndependentVoting.org is a national organization representing the interests of independent voters.

5. Submitted with this motion is an application to admit attorney Harry Kresky of New York to the U.S. District Court for the District of South Carolina *pro hac vice*.

6. Also submitted is a proposed answer for defendants-intervenors.

7. This motion is timely as there has been no discovery and dispositive motions are scheduled to be filed on February 10, 2011.

WHEREFORE, it is requested that the instant motion be granted.

DATED this 7th day of February, 2011.

Harry Kresky
Law Office of Harry Kresky
250 W. 57th Street, Ste. 2017
New York, NY 10107
Telephone: 212-581-1516
Facsimile: 212-581-1352
Email: hkresky@harrykreskylaw.com

/s/ Fletcher N. Smith
Fletcher N. Smith & Assoc.
112 Wakefield Street
Greenville, SC 29601
Telephone: (864) 232-6541
Facsimile: 864-232-6756
Email: Fletcher@piedmontlegal.com

Attorneys for Proposed Defendants-Intervenors.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

SOUTH CAROLINA REPUBLICAN
PARTY, *et al.*,

Plaintiffs,

vs.

STATE OF SOUTH CAROLINA, *et al.*,

Defendants.

CA No. 6:10-1407-JMC

DECLARATION OF JACQUELINE SALIT

I, JACQUELINE SALIT, declare as follows:

1. I reside in New York, NY and am the President of the Committee for a Unified Independent Party, Inc. (“CUIP”, d/b/a IndependentVoting.org), a proposed defendant-intervenor herein.

2. CUIP is a not for profit corporation organized and chartered in New York and exempt from income taxes under Section 501(c)(4) of the Internal Revenue Code.

3. CUIP’s mission is to seek political recognition for independent voters and to respond to any efforts to marginalize their participation in the political process.

4. CUIP is in regular contact by telephone, e-mail and through its website with tens of thousands of independents across the country. Its website, *IndependentVoting.org*, is a recognized clearinghouse and nerve center for ideas and information about independent politics.

5. On February 12, 2011, I will host CUIP’s biannual national conference which over 500 independent activists from more than 40 states are expected to attend.

6. The issue of open primaries and the effort to prevent partisan interests from closing them down will be a major focus of our discussion.

7. Through our California affiliate, IndependentVoice.org, CUIP played an important role in the coalition, led by Lieutenant Governor Abel Maldonado, that brought open primaries to that State by achieving majority in a June 8, 2010 referendum.

8. CUIP has also intervened, along with eleven independent voters in litigation, similar to this, brought by the Republican Party of Idaho, *The Idaho Republican Party, Et Al. V. Ben Ysursa, in his Official Capacity as Secretary of State of the State of Idaho*, Case No. 1:08-cv-00165-BLW. The case has gone to trial and is awaiting decision by U.S.D.J. B. Lynn Winmill.

9. By open primaries we mean primary elections in which all voters can participate regardless of party affiliation.

10. In South Carolina and Idaho (and some 18 other states) this has been accomplished by a system of nonpartisan registration which allows voters to choose which primary election they wish to vote in.

11. In California, voters adopted a “top two” open primary system, where there is a first round of voting in which all candidates appear on one ballot and all voters participate on an equal footing, with the top two vote getters going on to the general election.

12. CUIP supports other reforms designed to make our electoral process and government fairer and more democratic, such as initiative and referendum, non-partisan administration of elections, non-partisan redistricting, and the lowering of barriers to ballot access.

13. Independents, now more than 38 percent of the electorate, are playing an increasingly important role in the political process.

14. Observers and analysts generally agree that independents were key to turnover of control in the last two midterm Congressional elections.

15. In 2008 the support of independents in open primary/caucus states made it possible for Barack Obama to defeat the establishment candidate in the Democratic primary and win the presidency.

16. A coalition of Black and independent voters contributed to his success in the historic South Carolina primary.

17. Our South Carolina affiliate, Wayne Griffin, Chairperson of the South Carolina Independence Party played an active role in the that effort.

18. The lawsuit seeking to close South Carolina's primary elections and institute partisan registration may be a response to the increasing influence of independent voters.

19. Along with the other proposed defendants-intervenors, CUIP seeks to join in this litigation so that the state and national interests of independents can be represented.

20. Independents have a direct and immediate interest in the outcome of this litigation.

21. If the plaintiffs are successful, independents in South Carolina will be denied participation in primary elections unless they enroll in a major political party.

22. As independents we value our right to non-association with a political party.

23. CUIP has worked hard to bring together the diverse coalition of organizations and individuals seeking intervenor status here.

24. While the Columbia Tea Party and the Progressive Network do not agree on all issues, they do agree on maintaining South Carolina's open primary system.

25. I am confident that defendant Secretary of State will effectively articulate the interests of the State of South Carolina in the current system of non-partisan registration and open primaries, but he cannot reasonably be expected to articulate the particular interest that independents have in the litigation.

26. CUIP believes that this litigation is of national significance and if plaintiffs prevail it will encourage partisans in other states with some form of open primary to seek to close them.

27. For all of the above reasons and those set forth in the other moving papers, CUIP's application to intervene as a defendants-intervenors should be granted, as should that of the other proposed defendants-intervenors.

Pursuant to 28 U.S.C. Sec. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 1, 2011

JACQUELINE SALIT

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

SOUTH CAROLINA REPUBLICAN
PARTY, *et al.*,

CA No. 6:10-1407-JMC

Plaintiffs,

vs.

STATE OF SOUTH CAROLINA, *et al.*,

Defendants.

DECLARATION OF WAYNE GRIFFIN

I, WAYNE GRIFFIN, declare

1. I reside in Greer, South Carolina.
2. I make my living as a principal of Griffin Brothers Insurance in Greenville, South Carolina.
3. I am a Member of the Greer City Council and serve as Chairperson of the South Carolina Independence Party which has been accorded ballot status under the laws of South Carolina.
4. This declaration is submitted in support of the motion for intervention as defendants-intervenors by myself and several other voters, the South Carolina Independence Party and a number of other organizations that represent independent voters in South Carolina or have allied with them in this lawsuit.
5. The other organizations include the South Carolina Constitution Party, the South Carolina Progressive Network Education Fund, and the Columbia Tea Party.
6. The South Carolina Independence Party seeks to represent the interests of South Carolina voters who do not identify with one of the major parties. It believes, as do I, that an

open primary, non-partisan registration system such as that in South Carolina provides the best opportunity for such voters to influence the choice of candidates who run for public office.

7. I believe that the introduction of partisan registration and closed primaries would increase the control of the major parties over the political process and our government by preventing independents from voting for the candidate of their choice unless they join that candidate's political party.

8. Annexed hereto as Exhibit A are statements by the other South Carolina organizations and some of the individuals seeking to intervene in this litigation.

9. The proposed defendants-intervenors seek to join in this litigation so that the voice of South Carolina's independents can be heard.¹

10. While, as can be seen above, our points of view are diverse, independents and their allies have a direct and immediate interest in the outcome of this litigation.

11. If the plaintiffs are successful, independents will be denied participation in primary elections unless we enroll in a political party.

12. As independents we value our right to non-association with a major political party.

13. Under the current system, we are on an equal footing with all the citizens of South Carolina.

14. If the plaintiffs have their way and the court directs that South Carolina implement a system of partisan registration, we will become second class citizens, denied the right to participate in primary elections.

¹ In November 2010, 37 percent of America's voters self identified as independent.
<http://www.politicsdaily.com/2010/11/01/independent-swing-voters-fed-up-with-entire-political-system/>

15. In most elections in South Carolina, moreover, the winner of the Republican Party primary is the likely winner of the general election.

16. Therefore, to be barred from the primary is to be barred from meaningful participation in the electoral process.

17. In addition, as an African American elected official, I share the concerns voiced by Rep. Joseph Neal of the Black Legislative Caucus that, if this lawsuit succeeds, it will further racial polarization in South Carolina as whites will increasingly gravitate to the Republican Party while the Democratic Party will become predominantly African American.

18. Given the dominance of the Republican Party in South Carolina, this will marginalize the African-American community.

19. While we are sure that defendant Secretary of State will effectively articulate the interests of the State of South Carolina in the current system of non-partisan registration and open primaries, he cannot reasonably be expected to articulate the particular interest that independents have in the litigation.

20. The claims and defenses of proposed intervenors are based on facts and legal issues that are, in part, common with the main action.

21. For all of the above reasons and those set forth in the other moving papers, this motion to intervene as defendants-intervenors should be granted.

Pursuant to 28 U.S.C. Sec. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 1, 2011

WAYNE GRIFFIN

I am Rep Joe Neal, representing District 70, covering Richland and Sumter counties. I think it's important to intervene in this case because of what it represents to the political process, its impact on African American voters and the openness of the political process itself. Forcing registration by party in an environment such as we find in South Carolina literally translates, in my view, into the segregation of the political parties. To close those primaries to anyone but registered party members will have the effect of bringing a cultural imperative to the political process which is racial in nature. The simple act of requiring party registration in order to vote in the primaries will place incredible pressures on black and white members of the public to register as either Democrats or Republicans by race, thus limiting political choices and limiting the ability to influence political parties and their positioning on issues. The net effect of all this, I believe, will be a dramatic lessening of the public's ability to influence the political sector in a way that matters.

My name is Allen Olson, Chairman of Columbia TEA Party. We are a 501C4 organization whos' core values are 1) Fiscal responsibility, 2) Limited government and 3) Adherence to the constitution.

Although this lawsuit does not fall under the umbrella of our core values, we feel the need to become interveners as to protect the choice of many of our members who chose to vote in the republican primaries, including myself. The TEA Party was born out of frustration of both parties, and to further alienate frustrated voters would in my opinion cause further dissension. I understand the purpose of this lawsuit, but let's put blame where blame belongs. It is not the primaries itself that is the problem, it is the run off that is the problem. Why should someone be able to vote in the run off if they didn't vote in the primary in the first place?

Allen Olson
Chairman
Columbia TEA Party
803-466-7217

AFFIDAVIT OF BRETT BURSEY

I am Brett Allen Bursey, a 62 year-old resident of Lexington County South Carolina and a registered voter. I am the Executive Director of the South Carolina Progressive Network Education Fund, a federally tax-exempt, nonpartisan, organization that promotes civic engagement.

During the 2009 session of the South Carolina State Legislature, I testified on behalf of approximately 60,000 registered voters who belong to organizations that are part of our Network, before a House Judiciary Subcommittee hearing in opposition to H-3140. This bill called for South Carolinians to register to vote by party and would prohibit citizens from voting in a party primary unless they were registered as a member of that party. The bill to close the primaries never got out of committee.

South Carolina has the least competitive general elections in the nation, with an average of 70% of the 170 legislative seats (124 House seats, 46 Senate seats) uncontested.

I live in House District 69, in Lexington County. At the time of my testimony, it had been 24 years since a Democrat, or third party candidate, appeared on the general election ballot as a House candidate.

If the primaries in my district are closed, voters, like myself, who do not identify themselves as Republicans, would have no voice in choosing their legislative representatives. Republican voters who live in districts that have been made "safe" for Democrats, face the same problem.

In 2010, I was a candidate for House District 69 for the Labor Party. I was the Labor Party's only candidate in the entire state. Should I be required to register by (Labor) party, and prevented from voting in another party's primary, I would effectively lose my right to vote for representatives for federal and offices not contested by the Labor Party.

I swear to the truth of this affidavit.

Brett Allen Bursey, January 23, 2011

To: Ms. Nancy Ross
Independent Voters
N.Y., New York

From: Ted Adams
Chairman, SC Constitution Party

Subject: Statement concerning proposed Closed Republican Party Primaries in South Carolina

The current two party monopoly in South Carolina has not served our state well. The Republicans and Democrats have built a system that is very effective in excluding our state citizens from control of their government. Only twenty percent of the votes in either legislative body are recorded. There is no provision for recall of wayward politicians or for petition initiative that is workable for the citizens. The two parties have it just like they want it.

Now, the Republicans seek to further entrench their party power by implementing a closed primary election procedure. Most people don't want to give up their right to vote in the primary of their choice, nor do they want more red tape in the election process.

The two party system has produced economic disaster, educational failure, judicial injustice, rampant corruption and a lowered quality of life. We oppose any change in the electoral process that helps to assure continued destructive policies in South Carolina.

Ted Adams
Chairman
South Carolina Constitution Party.

January 6, 2011