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

Roque "Rocky" De La Fuente, Plaintiff, v. South Carolina Democratic Party, Defendants	CA No. 3:16-cv-00322-CMC Opinion and Order Granting Defendant's Motion for Summary Judgment

On February 2, 2016, Plaintiff Roque "Rocky" De La Fuente ("Plaintiff") filed a Complaint seeking declaratory and injunctive relief determining the decision of the South Carolina Democratic Party not to include him on the list of approved candidates to appear on the Presidential Primary Ballot was "unconstitutional and violative of the 14th Amendment to the United States Constitution and violates 42 U.S.C. § 2000d et seq." Entry No. 1, Compl. ¶ 34. On February 22, 2016, Plaintiff filed a motion for preliminary injunction, seeking a delay of the primary scheduled for February 27, or, alternatively, that his name be added to the primary ballot. Preliminary injunctive relief was denied on February 25, 2016. ECF No. 35. All Defendants other than South Carolina Democratic Party ("SCDP") were dismissed from the case at that time.

Plaintiff filed a second amended complaint against SCDP on April 20, 2016, seeking nominal and compensatory damages for alleged violation of due process and discrimination. ECF No. 58. SCDP filed a motion for summary judgment (ECF No. 112), Plaintiff filed a response in opposition (ECF No. 123), and SCDP filed a reply on July 7, 2017 (ECF No. 125). This matter is now ripe for resolution.

FACTUAL BACKGROUND

On November 16, 2015, Plaintiff, a Hispanic-American male, filed his Notice of Candidacy and formal written request with SCDP to be included on the ballot for the Party Presidential Primary, to be held on February 27, 2016. ECF No. 58 at ¶ 7. With his notice, Plaintiff filed his pledge, campaign plan, certification of authorized representatives, and submitted a cashier's check for the $2,500 filing fee. *Id.*

In order to be granted access to the presidential preference primary ballot, SCDP must certify candidates as meeting "the qualifications in the United States Constitution, statutory law and party rules." S.C. Code § 7-11-20(B)(2). In addition, SCDP's Delegate Selection Plan requires candidates be "generally acknowledged or recognized in the news media throughout the United States as viable candidates for that office, and who are actively campaigning for the South Carolina Democratic presidential primary." ECF No. 112-1 at 14.

Plaintiff gained a level of recognition in the media prior to submitting his name to appear on the South Carolina primary ballot, and was certified by four states for inclusion on their ballots. ECF No. 123-6-12; ECF No. 123-13, 14.

Pursuant to SCDP's Delegate Selection Plan, the Executive Council met on December 7, 2015, to consider all Democratic presidential campaign filings. ECF No. 112-3 at ¶ 6. The Council decided Plaintiff did not have nationwide recognition as a viable presidential candidate, and had not campaigned in South Carolina. *Id*. at. ¶ 9. Therefore, it did not approve Plaintiff's filing, and notified him by letter Plaintiff received December 29, 2015. ECF No. 58 at ¶ 8.

At least one other candidate was not certified for appearance on the ballot: Lloyd Kelso, a Caucasian from North Carolina who SCDP notes indicate "was not active in his state politics and officials there are unaware of him. He has no staff in SC, no [sic] aware of any campaign visits, no planned engagements and has only reached out to Dorchester County." ECF No. 112-3 at 5. In contrast, Willie Wilson, an African American, had "hired staff in SC, visited the state twice, reached out to clergy and elected officials for endorsements, sponsored both the presidential forum and debate, and paid $20,000 to help with the filing fee." *Id.* The Executive Council approved Mr. Wilson's inclusion on the ballot. *Id.*

STANDARD

Summary judgment should be granted if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). It is well established that summary judgment should be granted "only when it is clear that there is no dispute concerning either the facts of the controversy or the inferences to be drawn from those facts." *Pulliam Inv. Co. v. Cameo Properties*, 810 F.2d 1282, 1286 (4th Cir. 1987). The party moving for summary judgment has the burden of showing the absence of a genuine issue of material fact, and the court must view the evidence before it and the inferences to be drawn therefrom in the light most favorable to the nonmoving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

Rule 56(c)(1) provides as follows:

> (1) A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers or other materials; or
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> (b) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1).

DISCUSSION

Plaintiff brings due process and equal protection claims against SCDP. First, Plaintiff alleges the decision of the Executive Council to exclude him from the primary ballot was "arbitrary and capricious" and SCDP policy is unconstitutionally vague, in violation of Plaintiff's due process rights. ECF No. 58 at ¶ 19. Second, Plaintiff alleges SCDP discriminated against him on the basis of national origin, in violation of the Civil Rights Act, 42 U.S.C. § 2000d *et seq*., and the Fourteenth Amendment. *Id.* at ¶ 26-27.

I. Due Process

A unanimous Supreme Court has held a state has "a legitimate interest in regulating the number of candidates on the ballot." *Bullock v. Carter*, 405 U.S. 134, 145, (1972). In doing so, the state "understandably and properly seeks to prevent the clogging of its election machinery, avoid voter confusion, and assure that the winner is the choice of a majority, or at least a strong plurality, of those voting, without the expense and burden of runoff elections." *Id.* The state's right

> to restrict access to primary ballots is accepted as a legitimate means of preventing candidates who have not even a minimal degree of voter support from appearing

> on the ballot. Requiring a showing of substantial support reduces waste and confusion by excluding from the ballot frivolous candidates by requiring a showing of substantial support.

Anderson v. Celebrezze, 460 U.S. 780, 788–89, n. 9 (1983); *see also Lubin v. Panish*, 415 U.S. 709 (1974) ("That 'laundry list' ballots discourage voter participation and confuse and frustrate those who do participate is too obvious to call for extended discussion.").

SCDP argues its qualification requirements provide a sufficiently clear and objective standard for determining which candidates will be certified for placement on the primary ballot, and it followed that plan in selecting candidates for the 2016 Democratic primary ballot. ECF No. 112 at 6. Plaintiff asserts SCDP "failed to constrain its certification decision as to plaintiff's presidential candidacy to the requirements of Section 7-11-20(8)(2)[1] of the Code of Laws of South Carolina," thereby rendering SCDP's decision arbitrary and capricious. ECF No. 123 at 7. Therefore, Plaintiff does not argue SCDP's standard is vague as written, but that it was applied incorrectly to Plaintiff's request, thereby violating due process.[2]

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[1] The correct citation is § 7-11-20(B)(2), as cited above.

[2] Although Plaintiff does not appear to allege in his second amended complaint SCDP's standard is vague on its face, a review of pertinent case law reveals that standards such as the one at issue here have consistently survived vagueness challenges. The Democratic Party's requirements that candidates be "generally acknowledged or recognized in news media throughout the United States as viable candidates for that office, and . . . actively campaigning for the South Carolina Democratic presidential primary" are consistent with statutes containing a news media recognition standard that have been upheld. Such requirements provide a sufficiently clear standard that is not arbitrary, but instead serves to assist in evaluating a candidate's seriousness in running for election. *See, e.g., Kay v. Austin*, 621 F.2d 809, 810 (6th Cir. 1980) (state statute considering "individuals generally advocated by national news media to be potential presidential candidates" not void for

Plaintiff argues SCDP failed to follow "an exclusive two prong test" provided by "Section 7-11-20(8)(2)," (sic) requiring candidates to be 1) generally acknowledged or recognized in news media throughout the United States as viable candidates for that office, and 2) actively campaigning for the South Carolina Democratic Primary. *Id.* at 8. Specifically, Plaintiff argues there is no evidence regarding SCDP's investigation into the first prong and Plaintiff was nationally recognized as evidenced by a Google search; SCDP "improperly constrained its analysis to whether or not plaintiff . . .was physically campaigning in South Carolina as of December 7, 2015;" and SCDP improperly considered financial considerations in limiting access to the primary ballot. *Id.* at 8-10.

The Affidavit of Jason Perkey and minutes of the SCDP Executive Council Teleconference reflect the Executive Council did not exercise its discretion arbitrarily in this case. In his affidavit, Mr. Perkey details his investigation into Plaintiff's candidacy, noting he contacted SCDP county chairs, executive committee members, and the Executive Director of the California Democratic

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vagueness); *De La Fuente v. Democratic Party of Tenn.*, No. 3:16-0189, 2016 WL 7395797 (M.D. TN. Oct 24, 2016) ("Tennessee statute requiring candidates be "generally advocated or recognized as candidates in the national news media throughout the United States" not void for vagueness); *LaRouche v. Sheehan*, 591 F. Supp. 917, 928 (D. Md. 1984) (media recognition provisions "serve[] the legitimate – and important – state interests of providing a basis for reasonable assessment of the seriousness of an individual's candidacy and for exclusion of frivolous candidates from the ballot."); *Belluso v. Poythress*, 485 F. Supp. 904, 907 (N.D. Ga. 1980) (upholding a statute that required candidates to be "generally advocated or recognized in news media throughout the United States" as facially reasonable).

Party, none of whom had knowledge of or had been contacted by Plaintiff or his campaign.[3] ECF No. 112-3 at ¶¶ 10-11. Mr. Perkey advised the Executive Council Plaintiff had no campaign in South Carolina: no staff, office, community support, clergy or elected official endorsements, no participation in party presidential forums or debates, and no campaign material. The meeting minutes show the members of the Executive Council discussed Plaintiff's candidacy, but no motion was made he be certified and it was recommended he not be.[4] *Id.* at 5.

While Plaintiff argues he was campaigning in South Carolina via the internet, including social media cites such as Facebook, these materials were not directed at or specific to South Carolina. It is undisputed Plaintiff had no actual, non-electronic presence in South Carolina. Plaintiff testified at deposition he had only been to South Carolina four times in conjunction with his 2016 presidential campaign – two of which were his court and deposition appearances for this case, after SCDP made its decision. ECF No. 112-2, Plaintiff Dep. at 62:10-18. Plaintiff stated in his deposition he was planning to take up residence in South Carolina on Lake Wylie for the period just prior to the South Carolina primary, and he had rented a residence just across the border in North Carolina[5] for that purpose. *Id.* at 64:23-66:4. Plaintiff planned to focus "exclusively" on

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[3] Plaintiff is a resident of California.

[4] The other denied candidate was Lloyd Kelso. His certification was also denied for similar reasons as Plaintiff: he had no campaign presence in South Carolina other than one contact with Dorchester County.

[5] Plaintiff testified in deposition he rented a house on Lake Wylie in North Carolina because it was more convenient to the Charlotte airport, as the Columbia airport was less convenient to fly into

South Carolina between the New Hampshire primary on February 9, 2016, and February 27, 2016, the date of the South Carolina Democratic primary. *Id.* at 70:11-16. However, he conceded he had no endorsements by elected officials or clergy in South Carolina and did not distribute any printed campaign materials in South Carolina because he was "managing [his] resources," although he did so in other states and did participate in a debate in New Hampshire. *Id.* at 73:23-74:23.

Plaintiff is correct the SCDP certification process does not on its face require physical presence in South Carolina. However, it is difficult to imagine how a candidate could be "actively campaigning for the South Carolina Democratic presidential primary" without any contact with the state other than through a Facebook page – one not even directed specifically at South Carolina, but a general campaign page. If nothing more than a general Facebook page was sufficient to meet the standard set by SCDP, there would be no point in having a South Carolina specific standard. SCDP did not limit its investigation into Plaintiff's South Carolina contact merely to physical presence, as Plaintiff suggests, but instead also canvassed South Carolina clergy and elected officials, as well as Democratic Party contacts, to determine whether Plaintiff had made simple phone calls to their offices – which he had not. SCDP's decision on this prong was not arbitrary or capricious.

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and more expensive. Plaintiff decided he "would be able to service South Carolina from North Carolina." *Id.* at 38:5-21.

Further, SCDP exercised its discretion in determining Plaintiff was not a viable candidate for the position he sought based on news media throughout the United States. While Plaintiff points to approximately eighty internet articles about his candidacy in existence at the time of SCDP's decision, none appears to indicate Plaintiff was actually a viable candidate for President. It was within SCDP's discretion and was not arbitrary or capricious to determine the slim coverage regarding Plaintiff was insufficient to meet its standard.

Finally, Plaintiff argues SCDP added a third criteria, not in its delegate selection plan and thus uncommunicated to Plaintiff and other candidates – that it considered its financial burden when choosing how many and which candidates to certify. Specifically, Plaintiff contends SCDP noted Willie Wilson "had paid the $20,000 filing fee that the party would have to pay to the State of South Carolina upon the certification of his name for the 2016 primary ballot" before certifying him for inclusion. ECF No. 123 at 11. However, it is clear this was not the only reason for Mr. Wilson's certification. He was engaged in campaigning in South Carolina: he had hired staff in the state, visited personally, reached out to clergy and elected officials for endorsements, and sponsored both the presidential forum and debate as well as helping with the filing fee. ECF No. 112-3 at 5. As argued by SCDP, Mr. Wilson's participation in raising money for SCDP shows engagement in state politics in South Carolina. Payment of this additional fee was not a third criteria for certification, but merely information considered when determining whether candidates met the two requirements. Plaintiff and the other candidate not certified, Mr. Kelso, showed no such involvement in South Carolina politics, and no fundraising for SCDP.

Therefore, the court finds the decision of SCDP not to certify Plaintiff was not arbitrary or capricious, and did not violate Plaintiff's due process rights. SCDP is entitled to summary judgment on this claim.

II. Discrimination

In support of his equal protection claim, Plaintiff argues SCDP denied his request to be on the ballot because of the "political and electoral threat that plaintiff's Hispanic heritage posed to Hillary Clinton." ECF No. 123 at 12. However, Plaintiff offers no factual support for this claim other than an assertion in his deposition SCDP discriminated against him because he is Hispanic, and offers as evidence the prior outcomes of elections. ECF No. 112-3, Plaintiff Dep. at 118:24-119:18; 120:11-121:13. Although it is unknown to the court, it may be true SCDP has not certified a Hispanic-American candidate; however, Plaintiff provides no evidence in support of this argument. Further, it may simply be no Hispanic-American candidate has previously sought inclusion on the ballot. This does not show discrimination on the part of SCDP. *See Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265 (1977) ("Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.").

As Plaintiff has failed to introduce evidence of discrimination, SCDP is entitled to summary judgment on his equal protection claim.

CONCLUSION

For the reasons set forth above, SCDP's motion for summary judgment is granted. Plaintiff's claims are dismissed with prejudice.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
July 20, 2017