

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

MARY T. THOMAS, NEA RICHARD,)
JEREMY RUTLEDGE, TRENA WALKER,))
DR. BRENDA WILLIAMS, and)
THE FAMILY UNIT, INC.,)

Plaintiff(s),)

v.)

Case No.: 3:20-cv-01552-JMC

MARCI ANDINO as Executive Director of)
the State Election Commission,)
JOHN WELLS in his official capacity as)
Chair of SC State Election Commission,)
CLIFFORD J. EDLER and)
SCOTT MOSELEY in their official)
capacities as Members of the South Carolina)
State Election Commission, and)
HENRY D. MCMASTER in his official)
capacity as Governor of South Carolina)

Defendant(s).)

ANSWER

The intervenor–defendant, the South Carolina Republican Party (Republican Party), denies each and every allegation in the Plaintiffs’ Complaint not hereinafter specifically admitted, qualified, or explained, and further alleges in response thereto as follows:

FOR A FIRST DEFENSE

1. Responding to the allegations of Paragraph 1, the allegations consists of legal conclusions and generalizations rather than allegations of fact. To the extent Paragraph 1 contains factual allegations to which a response is required, the Republican Party craves reference to the publications referenced in Paragraph 1.

2. The Republican Party denies the allegations contained in Paragraph 2.

3. Responding to the allegations of Paragraph 3, the allegations consists of legal conclusions and generalizations rather than allegations of fact. The Republican Party craves reference to the statute referenced in Paragraph 3. To the extent Paragraph 3 contains factual allegations to which a response is required, the allegations are denied.

4. Responding to the allegations of Paragraph 4, the allegations consists of legal conclusions and generalizations rather than allegations of fact. The Republican Party craves reference to the statute referenced in Paragraph 4. To the extent Paragraph 3 contains factual allegations to which a response is required, the allegations are denied.

5. The Republican Party denies the allegations contained in Paragraph 5. The Republican Party craves reference to the publication referenced in Paragraph 5. To the extent the allegations are inconsistent with the publication, the allegations are denied.

6. Responding to the allegations of Paragraph 6, the allegations consists of legal conclusions and generalizations rather than allegations of fact. The Republican Party craves reference to section 2 of the Voting Rights Act. To the extent the allegations are inconsistent with section 2 of the Voting Rights Act, the allegations are denied.

7. Responding to the allegations of Paragraph 7, the allegations of Paragraph 7 consists of legal conclusions and generalizations rather than allegations of fact. To the extent Paragraph 7 contains factual allegations to which a response is required, the allegations are denied.

8. Responding to the allegations of Paragraph 8, the allegations of Paragraph 8 consists of legal conclusions and generalizations. To the extent Paragraph 8 contains factual allegations to which a response is required, the allegations are denied. The Republican Party craves reference to the statute referenced in Paragraph 8. To the extent the allegations are inconsistent with the statute, the allegations are denied.

9. Responding to the allegations of Paragraph 9, the allegations of Paragraph 9 consists of legal conclusions and generalizations. The Republican Party admits the clause “election integrity is a critical interest.” To the extent the remainder of Paragraph 9 contains factual allegations to which a response is required, the allegations are denied.

10. Responding to the allegations of Paragraph 10, allegations consist of conclusions and generalizations to which no response is required. The Republican Party asserts the request for relief should be denied.

11. The Republican Party lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the factual allegations contained in Paragraph 11.

12. The Republican Party lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the factual allegations contained in Paragraph 12.

13. The Republican Party lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the factual allegations contained in Paragraph 13.

14. The Republican Party lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the factual allegations contained in Paragraph 14.

15. The Republican Party lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the factual allegations contained in Paragraph 15.

16. The Republican Party, upon information and belief admits the Plaintiff Family Unit, Inc. is an entity incorporated in South Carolina, but lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 16 and 17 and therefore denies the factual allegations.

17. The Republican Party admits the allegations contained in Paragraphs 18, 19, and 20.

18. The allegations contained in Paragraphs 21, 22, 23, and 24 consist of legal conclusions and generalizations and do not require a response from the Republican Party. To the extent a response is required, the Republican Party denies the allegations.

19. The allegations contained in Paragraphs 25, 26, 27, 28, 29, 30, 31, 32 and 33 are generalizations and do not warrant a response. The Republican Party craves reference to the publications referenced in Paragraphs 25, 26, 27, 28, 29, 30, 31, 32, and 33. To the extent the allegations are inconsistent with the publications, the allegations are denied.

20. The allegations contained in Paragraphs 34 and 35 are conclusions and generalizations and do not require a response from the Republican Party. To the extent a response is required, the allegations are denied.

21. The allegations contained in Paragraphs 36, 37, 38 and 39 are generalizations and do not warrant a response. The Republican Party craves reference to the publications referenced in Paragraphs 36, 37, 38, and 39. To the extent the allegations are inconsistent with the publications, the allegations are denied.

22. The Republican Party craves reference to Governor McMaster's Executive Orders referenced in Paragraphs 40. To the extent the allegations are inconsistent with Governor McMaster's Executive Orders, the allegations are denied.

23. The Republican Party craves reference to Governor McMaster's Executive Order No. 2020-08 referenced in Paragraph 41. The Republican Party also admits and craves reference to President Trump's National Emergency proclamation. To the extent the allegations are inconsistent with President Trump's proclamation or Governor McMaster's Executive Orders, the allegations are denied.

24. The Republican Party craves reference to Governor McMaster's Executive Orders No. 2020-08 referenced in Paragraphs 42 and 43. To the extent the allegations are inconsistent with Governor McMaster's Executive Orders, the allegations are denied.

25. The Republican Party craves reference to President Trump's Major Disaster Declaration for South Carolina referenced in Paragraph 44. To the extent the allegations are inconsistent with President Trump's declaration, the allegations are denied.

26. The Republican Party craves reference to Governor McMaster's Executive Order Nos. 2020-15, 2020-17, 2020-21 referenced in Paragraphs 45, 46, 47, 48, and 49. To the extent the allegations are inconsistent with Governor McMaster's Executive Order, the allegations are denied.

27. The Republican Party craves reference to the order of this Court referenced in Paragraph 50. To the extent the allegations are inconsistent with the orders, the allegations are denied.

28. The Republican Party craves reference to Governor McMaster's April 16, 2020 letter to the South Carolina General Assembly referenced in Paragraph 51. To the extent the allegations are inconsistent with the letter, the allegations are denied.

29. The Republican Party craves reference to Governor McMaster's Executive Order No. 2020-28 referenced in Paragraph 52. To the extent the allegations are inconsistent with Governor McMaster's Executive Order, the allegations are denied.

30. The Republican Party craves reference to the publications referenced in Paragraphs 53, 54, 55, and 56. To the extent the allegations are inconsistent with the publications, the allegations are denied.

31. The Republican Party admits the allegations contained in Paragraph 57.

32. The Republican Party craves reference to Executive Director Marci Andino's March 30, 2020 letter referenced in Paragraphs 58, 59, 60 and 61. To the extent the allegations are inconsistent with the Executive Director Andino's letter, the allegations are denied.

33. The Republican Party craves reference to the specific statutes referenced in Paragraphs 62, 63, 64, and 65. To the extent the allegations are inconsistent with the statutes, the allegations are denied.

34. The Republican Party admits the allegations contained in Paragraph 66.

35. The Republican Party craves reference to the specific statutes referenced in Paragraph 67, 68, 69, and 70. To the extent the allegations are inconsistent with the statutes, the allegations are denied.

36. The Republican Party denies the allegations contained in Paragraph 71.

37. The Republican Party craves reference to the publication referenced in Paragraph 72. To the extent the allegations are inconsistent with the publication, the allegations are denied.

38. The Republican Party craves reference to the Center of Disease Control and Prevention publication referenced in Paragraph 73. To the extent the allegations are inconsistent with the publication, the allegations are denied.

39. Responding to the allegations contained in Paragraph 74, the allegations are generalizations to which no response is required. To the extent a response is required, the allegations are denied.

40. The Republican Party craves reference to the statute referenced in Paragraph 75. To the extent the allegations are inconsistent with the statute, the allegations are denied.

41. The Republican Party craves reference to Executive Director Andino's Letter referenced in Paragraph 76. To the extent the allegations are inconsistent with the statute, the allegations are denied.

42. The Republican Party denies the allegations contained in Paragraphs 77, 78, 79, 80 and 81.

43. Responding to the allegations of Paragraphs 82, 83, 84, and 85, the allegations are conclusions of law that have no relevance to the legal issues regarding South Carolina laws. As such the Republican Party neither admits or denies. To the extent these allegations are deemed to be allegations of fact, the allegations are denied.

44. The Republican Party craves reference to the statute referenced in Paragraph 86. To the extent the allegations are inconsistent with the statute, the allegations are denied.

45. Responding to the allegations of Paragraph 87, the allegations are conclusions and generalizations, to which no response is required. To the extent a response is required, the allegations are denied.

46. Responding to the allegations of Paragraph 87, the allegations are conclusions and generalizations, to which no response is required. To the extent a response is required, the allegations are denied.

47. The Republican Party denies the allegations contained in Paragraph 89.

48. The Republican Party craves reference to the publication referenced in Paragraph 90. To the extent the allegations are inconsistent with the publication, the allegations are denied.

49. The Republican Party craves reference to the Census Bureau publication referenced in Paragraphs 91 and 92. To the extent the allegations are inconsistent with the publication, the allegations are denied.

50. The Republican Party craves reference to the Center of Disease Control and Prevention publication referenced in Paragraph 93. To the extent the allegations are inconsistent with the publication, the allegations are denied.

51. The Republican Party craves reference to the publication referenced in Paragraph 94. To the extent the allegations are inconsistent with the publication, the allegations are denied.

52. The Republican Party denies the allegations in Paragraph 95.

53. The Republican Party denies the allegations contained in Paragraph 96.

54. The Republican Party craves reference to the letter referenced in Paragraph 97. To the extent the allegations are inconsistent with the letter, the allegations are denied.

55. The Republican Party denies the allegations contained in Paragraph 98.

56. Responding to the allegations contained in Paragraph 99, the allegations are conclusion and generalization to which no response is required. To the extent a response is required, the allegations are denied.

57. Responding to the allegations contained in Paragraph 100, the allegations are legal conclusions to which no response is required.

58. The Republican Party craves references to the statutes referenced in Paragraph 101, 102, 103, 104, 105 and 106. To the extent the allegations are inconsistent with the statutes, the allegations are denied.

59. The Republican Party denies the allegations in Paragraph 107.

60. The Republican Party craves reference to Executive Director Andino's letter referenced in Paragraph 108. To the extent the allegations are inconsistent with the publication, the allegations are denied.

61. The Republican Party realleges and reincorporates by reference all prior responses to the Paragraphs of this Complaint.

62. The Republican Party admits duly qualified South Carolina electors have a fundamental right to vote under the First and Fourteenth Amendments of the U.S. Constitution. The remaining allegations in Paragraph 110 consist of legal conclusions to which no response is required.

63. The Republican Party denies the allegations contained in Paragraphs 111 and 112.

64. The Republican Party realleges and reincorporates by reference all previous responses to the Paragraphs of this Complaint.

65. The Republican Party craves reference to section 2 of Voting Rights Act as referenced in Paragraph 114. To the extent the allegations are inconsistent, the allegations are denied.

66. Responding to the allegations contained in Paragraph 115, the allegations are conclusions of law to which no response is required. The Republican Party craves reference to the *League of Women Voters of North Carolina v. North Carolina*, 769 F.3d 224, 238–39 (4th Cir. 2014). To the extent the allegations are inconsistent, the allegations are denied.

67. The Republican Party denies the allegations contained in Paragraphs 116 and 117.

68. Responding to the allegations contained in Paragraphs 118 and 119, the allegations are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

69. The Republican Party denies the allegations contained in Paragraph 120.

70. The Republican Party realleges and reincorporates by reference all previous responses to the Paragraphs of this Complaint.

71. The Republican Party craves reference to section 201 of the Voting Rights Act as referenced in Paragraph 122. To the extent the allegations are inconsistent, the allegations are denied.

72. The Republican Party craves reference to *United States v. Board of Commissioner of Sheffield*, 435 U.S. 110, 120-21 (1978), as referenced in Paragraph 123. To the extent the allegations are inconsistent, the allegations are denied.

73. The Republican Party craves reference to *Northwest Austin Municipal Utility District No. One v. Holder*, 557 U.S. 193, 198 (2009), and *Reno v. Bossier Parish School Board*, 528 U.S. 320, 338 n. 6 (2002), as referenced in Paragraph 124. To the extent the allegations are inconsistent, the allegations are denied.

74. The Republican Party denies the allegations contained in Paragraph 125.

75. The Republican Party admits the allegations contained in Paragraph 126 and craves reference to *Gregory v. S.C. Democratic Executive Committee*, 271 S.C. 364, 247 S.E.2d 439 (1978).

76. The Republican Party denies the allegations contained in Paragraphs 127 and 128.

77. The Republican Party denies the allegations contained in the Prayer for Relief.

FOR A SECOND DEFENSE

78. The Plaintiffs' Complaint fails to allege facts sufficient to state any claims upon which relief may be granted and, therefore, should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

79. The Plaintiffs are not entitled to an injunction of any kind because they are not likely to succeed on the merits, they cannot demonstrate irreparable harm, the balance of the equities does not tip in their favor, and an injunction would not be in the public interest.

FOR A FOURTH DEFENSE

80. The Plaintiffs' claim for injunctive relief fails because they seek relief that violates the separation of powers, federalism, and comity doctrines.

FOR A FIFTH DEFENSE

81. The Plaintiffs' claims are barred by the doctrines of waiver, laches, estoppel, and unclean hands.

FOR A SIXTH DEFENSE

82. On May 1, 2020, Governor McMaster announced, effective May 4, 2020, he was lifting the Home or Work Order. Executive Order No. 2020-31 was issued May 3, 2020. There is currently no mandatory Home or Work Order in effect in South Carolina. Executive Order No. 2020-31 "is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivision, or other entities, or any officers, employees or agents thereof, or any other person." S.C. Governor, Executive Order 2020-31, § 3(A) (May 3, 2020).

FOR A SEVENTH DEFENSE

83. The Plaintiffs' Complaint presents nonjusticiable, political questions. The reliefs sought by the Plaintiffs ask this Court only for relief "while the risk of COVID-10 transmission in South Carolina remains." Compl. Prayer for Relief ¶¶ A and B. It is not clear whether the Plaintiffs are requesting this Court to retain jurisdiction to determine when the risk of COVID-19 is sufficiently diminished to lift the injunction. The determination as to the length of COVID-19 and its effects of the public health is a non-justiciable, political question.

FOR AN EIGHTH DEENSE

84. The Plaintiffs' claim under Section 201 of the Voting Rights Act is not properly before the Court because raising such a claim requires a request and the subsequent convening of a three-judge court.

FOR A NINTH DEFENSE

85. The Republican Party expressly reserves the right to assert any and all additional affirmative defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

WHEREFORE, the intervenor–defendant, the Republican Party, prays that the Plaintiffs' Complaint be dismissed, with costs, and for such other and further relief as the Court may deem just and proper.

(Signature Page Follows)

Respectfully submitted,

ROBINSON GRAY STEPP & LAFFITTE, LLC

By: s/Robert E. Tyson, Jr.

Robert E. Stepp
Fed. ID No. 4302
Robert E. Tyson, Jr.
Fed. ID No. 7815
Vordman Carlisle Traywick, III
Fed. ID No. 12483
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29201
(803) 929-1400
rstepp@robinsongray.com
rtyson@robinsongray.com
ltraywick@robinsongray.com

*Counsel for Intervenor, South Carolina Republican
Party*

Columbia, South Carolina

May 11, 2020