

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case # 2024-CP-40-_____
	)	
South Carolina Democratic Party,	)	
	)	
Plaintiff,	)	<b>SUMMONS</b>
	)	
v.	)	
	)	
Howard Knapp, in his official capacity as	)	
Executive Director of the South Carolina	)	
State Election Commission,	)	
	)	
Defendant	)	
	)	

**TO THE DEFENDANT NAMED ABOVE:**

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

Attorney for Plaintiff

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October 3, 2024  
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case # 2024-CP-40-_____
	)	
South Carolina Democratic Party,	)	
	)	
Plaintiff,	)	<b>COMPLAINT</b>
v.	)	
	)	
Howard Knapp, in his official capacity as	)	
Executive Director of the South Carolina	)	
State Election Commission,	)	
	)	
Defendant	)	
_____	)	

**INTRODUCTION & BACKGROUND**

On October 2, 2018, in response to Hurricane Florence, this Court issued an Order pursuant to a nearly identical Complaint & Motion for Temporary Injunction, extending the then Voter Registration deadline for 10 days due to the effects of Hurricane Florence. *Exhibit A – Order State of South Carolina v. Andino, Richland County, Case #2018-CP-40-05088 (October 2, 2018)*

This Complaint and Motion For Temporary Injunction asks for the identical relief under nearly identical circumstances – due to the flooding and destruction caused by Hurricane Helene across numerous South Carolina counties, that has resulted in loss of electricity, internet access, cell service and the closure of County Offices in numerous counties, as well as an extension of all deadlines for all court filings for seven (7) days by the Supreme Court of South Carolina. *Exhibit B & C – 9/28/24 and 10/1/24 Orders of the South Carolina Supreme Court.*

This Complaint and Motion For Temporary Injunction asks this Court to extend all the voter registration deadlines for the general election to October 14, 2024 (inclusive of

that date), for all forms of voter registration and to take all such measures are needed to ensure that the deadline is properly implemented.

NOW COMES Plaintiff, the South Carolina Democratic Party, on behalf of its candidates, members, and all voters, alleges and states:

### **PARTIES**

1. Plaintiff The South Carolina Democratic Party ("SCDP") is a political party recognized by the State of South Carolina in accordance with S.C. Code Ann. §7-9-10 et seq., and has nominated and certified numerous candidates for public office through its primary election process who are to appear on the general election ballot for the general election taking place on November 5, 2024, and its membership and prospective members includes registered voters and prospective voters legally qualified to vote as set forth in S.C. Code Ann. §7-9-20.

2. Howard Knapp is the Executive Director of the South Carolina State Election Commission, ("SCSEC") with all the authority provided to him pursuant to State law including, but not limited to, S.C. Code Ann. §7-3-20.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the parties and the causes of action asserted by Plaintiff pursuant to S.C. Const., Art. V, §11 and S.C. Code Ann, §15-53-10, et seq.

4. Venue is appropriate in Richland County because the Defendant's Office is in Richland County where he exercises those duties given to him by State law, including those matters that are the subject of this proceeding.

5. The 2024 General Election is scheduled for November 5, 2024. See S.C. Code § 7-13-10 ("General elections for Federal, State and county officers in this State shall be

held on the first Tuesday following the first Monday in November in each even-numbered year").

6. State law mandates that an individual be registered at least thirty days prior to the date of an election in order to vote. See S.C. Code §§ 7-5-110 ("No person shall be allowed to vote at any election unless he shall be registered as herein required."); 7-5-150 ("The registration books shall be closed thirty days before each election"); 7-5-155(a)(1) ("any qualified citizen may register to vote by mailing or having delivered a completed state registration by mail application form or a completed national registration by mail application form prescribed by the Federal Election Commission not later than thirty days before any election to his county board of voter registration and elections"); 7-5-185 (an electronic voter registration application "is effective upon receipt of the application by the State Election Commission if the application is received thirty days before an election"); 7-5-220 ("registration made thirty days or less before any election is not valid for that election"); 7-5-330(A)-(D) (for registration with motor vehicle application, by mail, at a voter registration agency, or in any other case, valid registration form must be completed at DMV, postmarked, completed at voter registration agency, or received by county board of voter registration and elections no later 30 days before date of election, respectively).

7. Federal law also mandates that states ensure any eligible applicant be registered to vote if a valid registration form is submitted or postmarked, if by mail, "not later than the lesser of 30 days, or the period provided by State law, before the date of an election." 52 U.S.C.A. § 20507(a)(1).

8. For the 2024 General Election, the deadlines to register to vote are as follows:

- a. in person: Friday, October 4;
  - b. online or by fax or email: Sunday, October 6; and
  - c. by mail: Monday, October 7 (must be postmarked by this date). Per S.C. Code Ann. § 7-5-150 (“The registration books shall be closed thirty days before each election.”)
9. Hurricane Helene has had a profound impact on this state that has continuing effects today. As a result of this natural disaster, lives have been lost, families displaced and massive amounts of property destroyed. On September 25, 2024, the Governor of South Carolina issued Executive Order 2024-24 declaring a State of Emergency in preparation for the potential effects of Hurricane Helene. *Exhibit D - Executive Order*
10. On September 26 and 27, Hurricane Helene caused extensive flooding and wind damage across much of South Carolina. Numerous county courthouses and other state and local offices were closed on Friday, September 27, 2024, and it is expected that many South Carolina counties may remain closed for several more days. Many thousands of South Carolinians remain without power. See <https://www.wyff4.com/article/south-carolina-power-outage-updates-duke/62445192>
11. Schools and County Offices were and are closed in some counties and as of this writing in Spartanburg, Laurens, and Edgefield, state offices remain closed through this Friday, October 5, 2024. <https://www.scemd.org/closings/>
12. On September 28, 2024, Governor Henry McMaster sent a detailed expedited request for the federal government to declare portions of South Carolina disaster

areas giving great detail as to the extensive damage caused by Hurricane Helene:

Residents and local governments in half of the State are experiencing severe conditions including power and communications outages, impeded transportation access because of downed trees and power lines, and damage to structures and infrastructure. Power outage numbers are a record high for the State, and power restoration is expected to last into next week. One of the State's main river systems is expected to crest at a record high in Greenville County.

*See Exhibit E – 9/28/24 Letter to President Biden Requesting Expedited Disaster Aid*

13. On September 30, 2024, the South Carolina Supreme Court issued an Order pursuant to Rule 611 of the South Carolina Appellate Court Rules, (SCACR) declaring filing "holidays" for Friday September 27; Monday September 30; and Tuesday, October 1, 2024 because of issues caused by Hurricane Helene. *Exhibit B – 9/20/24 Order*. <https://www.sccourts.org/media/courtOrders/PDFs/2024-09-30-01.pdf>
14. On October 1, 2024, based on the continued difficulties in restoring power and other services to large portions of the population in South Carolina, the South Carolina Supreme Court issued an order finding “we find these problems continue to adversely affect the ability of many lawyers and litigants to comply with filing and service deadlines in various courts. Accordingly, we declare Wednesday October 2 through Friday October 4, 2024 to be statewide filing "holidays" for the purpose of computing time under Rule 263 of the South Carolina Appellate Court Rules; Rule 6 of the South Carolina Rules of Civil Procedure; Rule 35 of the South Carolina Rules of Criminal Procedure; and Rule 3 of the South Carolina Rules of Magistrates Court. *Exhibit C 10/1/24 Order*. <https://www.sccourts.org/media/courtOrders/PDFs/2024-10-01-01.pdf>

15. Due to the catastrophic impact of Hurricane Helene on this state which is continuing, and in order to protect, to the extent possible, the constitutional right to vote, Plaintiff believes that the Court must direct the Executive Director to extend the voter registration deadline until October 14, 2024, consistent with his general authority to ensure that voter registration complies with “applicable state or federal law.” §7-3-20. That date would allow citizens whose lives have been disrupted due to the profound impact of Hurricane Helene time to register to vote in order to exercise this fundamental right while recovery efforts proceed.
16. Although not every county in the State has been affected in the same way, all counties have been impacted, as recognized by the above orders and declarations that affect all or significant parts of the State. The Constitution recognizes that standards for voting must be uniform statewide. Ops. Atty. Gen. (March 12, 2014 – 2014 WL 1398593). Therefore, the new deadline must apply statewide.

**FOR A FIRST CAUSE OF ACTION  
Setting Extended Deadline for Registration to  
October 14, 2024, to Protect The Right to Vote**

17. Each of the above allegations is incorporated by reference as if fully rewritten and set forth herein.
18. The right to vote is fundamental. To protect this right to the extent possible in the wake of a major hurricane and its effects, the Executive Director must be directed to set a voter registration of October 14, 2024 (inclusive of that date), for all voter registration, consistent with his general authority to ensure that voter registration complies with “applicable state or federal law.” §7-3-20. See Ops. Atty. Gen., March 8, 2016 - 2016 WL 963705, at \*3 (right to vote is a fundamental right and

interpretation by a court of the Voter ID Act will certainly be well cognizant of the fundamental nature of the right to vote); *South Carolina v. United States*, 898 F. Supp. 2d 30, 35–36 (D.D.C. 2012) (“The Attorney General of South Carolina and Ms. Andino have emphasized that a driving principle both at the polling place and in South Carolina state law more generally is erring in favor of the voter.”); see also, Ops. Atty. Gen. (October 3, 1989 -1989 WL 406196) (interpreting §41–35–110 of the Code and the authority of the Employment Security Commission to make a certain finding to the limited and exigent circumstances occasioned by the devastation of Hurricane Hugo).

**FOR A SECOND CAUSE OF ACTION**  
**Equitable Tolling of Deadline to Protect The Right to Vote**

19. Each of the above allegations is incorporated by reference as if fully rewritten and set forth herein.
20. To preserve the constitutionally protected right to vote in light of the natural catastrophe caused by Hurricane Helene, the court should suspend by equitable tolling the running of the current registration deadline to allow voter registration to proceed up to and including October 14, 2024, for all voter registration including electronic registration. A Court such as this Court, possesses the inherent powers to do justice in the wake of an act of God. See *Carlisle v. U.S.*, 517 U.S. 416, 436 (1996) The Legislature did not intend voters to be barred from exercising their constitutional right to vote because a natural disaster has struck the State.
21. As stated in *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009):

Equitable tolling is judicially created; it stems from the judiciary's



inherent power to formulate rules of procedure where justice demands it. *Rodriguez v. Superior Court*, 176 Cal.App.4th 1461, 98 Cal.Rptr.3d 728 (2009). “Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period ‘to ensure fundamental practicality and fairness.’” *Id.* at 736 (citation omitted).

See also, *Carlisle v. United States*, 517 U.S. 416, 436 (1996)( In the rare situations Justice STEVENS envisions—delay of a meritorious motion due to an Act of God, see post, at 1480, or cases comparable to those in which we would read and grant an out-of- time rehearing petition, see post, at 1478—these modes of relief should provide an adequate corrective.”); *Windland v. Dretke*, No. 3-05-CV-2438-K, 2006 WL 1391435, at\*2 (N.D. Tex. May 18, 2006), *rev'd sub nom.* *Windland v. Quarterman*, 578 F.3d 314 (5th Cir. 2009).<sup>1</sup>

22. “It has been observed that “[e]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control.” *Ocana*, 91 F.3d at 66.” *Id.*
23. This doctrine permits the Court exercise its inherent powers to toll the deadline to October 14, 2024 as was done in 2018 in *State of South Carolina v. Andino, Richland County, Case #2018-CP-40-05088 (October 2, 2018) – Exhibit A.*

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<sup>1</sup> As stated in *Windland*: Petitioner further argues that the AEDPA statute of limitations should be tolled from September 22, 2005 to October 3, 2005 due to a power outage at the prison caused by Hurricane Rita. The court agrees that equitable tolling may be warranted where a hurricane or other natural disaster prevents the timely filing of a federal habeas petition. See *Carlisle v. United States*, 517 U.S. 416, 436, 116 S.Ct. 1460, 1471, 134 L.Ed.2d 613 (1996) (suggesting that equitable tolling doctrine may apply to excuse untimely filing of meritorious motion due to an “Act of God”)

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court issue an Order granting the following relief:

- A. Direct the Defendant Executive Director to set a voter registration deadline of October 14, 2024 (inclusive of that date), for all voter registration deadlines consistent with the above causes of action.
- B. Direct the Executive Director to take all such measures are needed to ensure that the deadline is properly implemented and take reasonable efforts to notify the general public of the new deadline.
- C. For such other relief as may be deemed appropriate by this Court.

Respectfully Submitted,

Counsel For Plaintiff

**/s/ Richard A. Hricik**

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