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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Daniel M. Coble, Circuit Court Judge

Case No. 2026-CP-40-05213

Danny Ford, II, Respondent,

v.

South Carolina Republican Party and
South Carolina Election Commission
a/k/a State Election Commission Appellants.

**APPELLANT SOUTH CAROLINA REPUBLICAN PARTY'S
MOTION TO STAY INJUNCTION PENDING APPEAL**

Pursuant to Rules 240 & 241, SCACR, as well as Rules 62(C) & (G), SCRCP, Appellant South Carolina Republican Party (the Party) respectfully submits this emergency motion to stay the circuit court's August 4, 2026 mandatory injunction pending appeal to preserve the status quo in this matter. The Party further moves that the Court enter an immediate administrative stay and order expedited briefing on the motion to stay in light of the issues of public importance raised in this appeal that will affect the August 11, 2026 Republican special primary election for U.S. Senate that is already underway.

INTRODUCTION

"This is a matter of great public importance. Integrity in elections is foundational." *Bailey v. S.C. State Election Comm'n*, 430 S.C. 268, 272, 844 S.E.2d 390, 392 (2020) (quoting *Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 556, 725 S.E.2d 704, 706 (2012)). Here, the circuit court issued a mandatory preliminary injunction that (1) required the Party to certify Respondent Danny

Ford, II as a Republican candidate for U.S. Senate and (2) ordered the State Election Commission to place his name on the ballot in the middle of an ongoing election. The undersigned have great respect and admiration for the able circuit court judge. Respectfully, however, the circuit court erred in granting relief that was both extraordinary and unwarranted. The Court should stay that ruling because “extraordinary circumstances make it impracticable” to file this motion “first” with “the lower court,” Rule 241(d), SCACR, given that absentee voting is underway, early voting begins tomorrow, voter confusion over having different ballots in the same special primary will ensue, and there is no way to undo the relief ordered. A stay is especially appropriate where, as here, the circuit court granted an injunction based on a constitutional claim that was never pleaded. For these reasons, as well as those below, the Court should stay the injunction pending appeal.

BACKGROUND

On June 27, 2026, the Party adopted a rule providing that “[n]o candidate shall be certified by the Republican Party who is not, at the time of filing, (a) A registered Republican elector for at least 90 days, and who has voted in at least two of the last three statewide Republican primaries, in this or any previous state of residence, excepting those who were not old enough to have done so, or who were unable due to active-duty military service.” SCGOP R. 11(a)(6)(a) (2026).

Almost a month later, following the tragic and untimely death of the late U.S. Senator Lindsey O. Graham, the candidate filing period opened for the special Republican primary election to replace him. Filing lasted from noon on July 21, 2026 to noon on July 28, 2026. Respondent, for his part, chose to wait until shortly before the noon filing deadline on July 28 to submit his paperwork. While he filed the necessary documents to run in the special primary, the Party made a timely determination that he could not run under the SCGOP banner because he had not voted in at least two of the last three statewide Republican primaries pursuant to Rule 11(a)(6)(a).

Meanwhile, the election began for this snap primary. The State Election Commission finalized the ballot and coordinated with the various county Boards of Voter Registration and Elections to send absentee ballots to voters covered by the Uniform and Overseas Citizens Absentee Voting Act (UOCAVA). Under an agreement with the U.S. Department of Justice (DOJ), that had to occur by Saturday, August 1, 2026. According to Executive Director Conway Belangia, all UOCAVA ballots have been sent, and voters have already returned ballots. Even so, Respondent demands to get his name on the ballot. But he hasn't gone about it the right way.

Start with his attempt to seek an *ex parte* TRO while failing to alert the circuit court to relevant adverse authority of which his counsel was aware.¹ See *Crook v. S.C. Election Comm'n*, Op. No. 2025-MO-041, 2025 S.C. Unpub. LEXIS 88 (S.C. Sept. 11, 2025) (reversing *ex parte* TRO against the State Election Commission obtained by the same counsel here); *State v. Hill*, 266 S.C. 49, 52, 221 S.E.2d 398, 399 (1976) (holding “an *ex parte* restraining order is improper when it involves the State”); *State v. Best*, 257 S.C. 361, 373, 186 S.E.2d 272, 278 (1972) (holding orders granted without notice to the State were improper and may be set aside on that ground alone). On top of that, Respondent's proposed order did not comply with the rule. See Rule 65(d), SCRPC. Unfortunately, this is déjà vu.

Consider next the failure to seek the correct relief in the TRO the circuit court issued after giving the Party and the State Election Commission roughly three hours to file responses. Respondent sought and the Court granted his request to merely restrain and enjoin the Party and the State Election Commission “from removing Plaintiff Danny Ford, II, from the ballot for the special Republican primary election for the office of U.S. Senator from South Carolina, and from

¹ To this day, opposing counsel have not explained their failure to follow this Court's precedent or furnish it to the circuit court.

refusing to certify his candidacy on the basis of his primary-voting history or Rule 11(a)(6).” Order Gr. TRO at 6, *Ford v. S.C. Republican Party*, Case No. 2026-40-05213 (S.C. Ct. Comm. Pl. July 31, 2026). Respectfully, it is impossible to remove someone’s name from a ballot when he was never on the ballot in the first place. The TRO indicated “ballots will be printed and the election conducted without Plaintiff’s name, and the opportunity for relief will be lost.” *Id.* at 3. But that already happened: UOCAVA ballots are out the door. Noticeably absent was any mention of the county boards of voter registration and elections or the agreement with DOJ.

Of course, every TRO “shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained.” Rule 65(d), SCRCP. The TRO, in essence, did nothing because ballots are out and voters have voted. Critical and irreversible events have already happened, and nothing in the order said how the Party and the State Election Commission were supposed to unring the bell. In reality, they can’t.² So the SCGOP asked the circuit court to dissolve the TRO and deny Respondent’s motion because he is not entitled to any relief.

Instead of proceeding with caution, the circuit court (1) ignored the *Purcell* principle favoring judicial restraint, (2) overlooked Respondent’s consistent failure to follow the rules, and (3) entered a mandatory injunction ruling on a claim never pleaded in the complaint.

A review of the claims Respondent did plead reveals he fares no better on the merits. To be sure, “the qualifications for service in Congress set forth in the text of the Constitution are

² Cf. *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (“A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.”); *Ry. Labor Execs. Ass’n v. Chesapeake W. Ry.*, 915 F.2d 116, 118 (4th Cir. 1990) (“Generally, a request for “an injunction to prohibit an act is rendered moot by the happening of the act.”).

‘fixed,’ at least in the sense that they may not be supplemented by Congress,” and “[c]ourts have struck down state-imposed qualifications” too. *U.S. Term Limits v. Thornton*, 514 U.S. 779, 798–99 (1995). But neither Congress nor the State has sought to add to constitutional qualifications to serve in Congress. Nor has the Party. *Cf. Anderson*, 397 S.C. at 558, 725 S.E.2d at 707 (per curiam) (distinguishing “filing requirements to appear on a ballot” from “qualifications for service”). Rather, based on its experience in the June primary, the Party made a “determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals,” *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 224 (1986), in certifying nominees to run under the Republic name. And that “is protected by the Constitution.” *Id.* Respondent’s reliance on *U.S. Term Limits* is therefore misplaced.

Indeed, “political belief and association constitute the core of those activities protected by the First Amendment.” *Elrod v. Burns*, 427 U.S. 347, 356 (1976). “[T]his freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States.” *Cousins v. Wigoda*, 419 U.S. 477, 487 (1975). “Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.” *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). For this reason, the Court has “always treated government assertion of control over the internal affairs of political parties—which, after all, are simply groups of like-minded individual voters—as a matter of the utmost constitutional consequence.” *Morse v. Republican Party of Va.*, 517 U.S. 186, 241 (Scalia, J., dissenting); *see also Democratic Party of U.S. v. Wisc. ex rel. LaFollette*, 450 U.S. 107, 121–22 (1981); *Cousins*, 419 U.S. at 487–88; *O’Brien v. Brown*, 409 U.S. 1, 4–5 (1972) (per curiam).

Yet Respondent asked the circuit court to issue an injunction “barring [the Party] from implementing its attempt to bar Plaintiff from having his name placed on the Republican Special

Primary ballot” and “requir[ing] the [State Election Commission] to include Plaintiff’s name on the Republican Special Primary ballot.” Compl. at ¶¶ 21 & 36. The circuit court should have declined the invitation, dissolved the TRO, and dismissed the complaint. Because it erroneously ruled with Respondent, the Party is constrained to seek extraordinary relief from this Court now to prevent irreparable harm by way of voter confusion and unruly election administration because it has no other remedy.

STANDARD

Under Rule 62(c), SCRCP, in an appeal “from an interlocutory . . . judgment granting . . . an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.” The provisions of Rule 62, however, “do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal,” nor do they prevent the Court from making any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.” Rule 62(g), SCRCP. Although parties should typically file a motion for injunction pending appeal with the circuit court, “when such an application is not practicable it may first be made to an appellate court or a judge or justice thereof.” *Id.*

ARGUMENT

The Court should stay the circuit court’s injunction because it is necessary to preserve the status quo. In the absence of a stay, the Party will suffer irreparable harm for which there is no adequate remedy at law. Further, because the Party’s right to determine who is and isn’t qualified under its own party rules is clear, the Party is likely to succeed on the merits of this appeal.

A stay is appropriate because the Republican special primary for U.S. Senate is already underway, early voting starts tomorrow (August 5), and without a stay of the injunction, the Party's right to determine who is qualified to run under its own rules will be eviscerated and voter confusion will ensue. The circuit court erred in finding the Party's decision not to certify Respondent was state action and finding Respondent is likely to succeed on the merits of a due process claim he never pleaded in the complaint or argued in a motion or brief filed with the court.

"The purpose of an injunction is to preserve the status quo and prevent irreparable harm to the party requesting it." *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011); *see also Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010) (asserting that "[a] preliminary injunction should issue only if necessary to preserve the status quo ante"). "The party seeking an injunction has the burden of demonstrating, the facts and circumstances warranting an injunction." *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). For an injunction to issue, the moving party "must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

I. The stay motion is properly before this Court.

At the outset, filing an application for a stay with the circuit court was "not practicable" here because (1) time is of the essence as the special primary is already underway, early voting begins tomorrow, August 5, and election day voting starts a week from today, and (2) the likelihood of changing the circuit court's mind is slim to none. *See* Rule 62(g), SCRCP (noting that when filing an application for an injunction pending appeal with the circuit court "is not practicable it may first be made to an appellate court"). Given the importance of the issues and

the need for expedited disposition, it would not be practicable to wait for the circuit court to issue an order on the stay while this Court considered the merits.

II. Appellants will suffer irreparable harm for which there is no adequate legal remedy.

Of course, “[e]xtreme diligence and promptness are required in election-related matters.” 29 C.J.S. *Elections* § 459. Because Respondent sought extraordinary mandatory injunctive relief “in the period close to an election,” *Andino v. Middleton*, 141 S. Ct. 9, 10 (2020) (Kavanaugh, J., concurring) (citing *Purcell v. Gonzalez*, 549 U.S. 1, 4–6 (2006) (per curiam))—actually during an election—the circuit court should have denied his request. The U.S. Supreme Court “has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election,” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020). Known as the “*Purcell* principle,” its “wisdom” is “to avoid . . . judicially created confusion” in elections. *Id.* That’s because “[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.” *Purcell*, 549 U.S. at 4–5. Here, because the election has already begun, the risk is a certainty.

While the *Purcell* doctrine generally applies when a federal court is asked to intervene in a state election, the considerations remain in full force in state-law cases like this one. Indeed, the circuit court agreed in another election matter less than two years ago. *See* Order Den. Mot. for TRO, *ACLU v. State Election Comm’n*, No. 2024-CP-40-06286, at 8 (Nov. 7, 2024) (Coble, J.) (“Voting was already underway when Plaintiff filed this lawsuit. So Plaintiff is instead asking the Court to upend an ongoing election. The State Election Commission and county boards have spent significant time, expense, and effort to ensure a smooth and orderly election. Any court-ordered change at this late date could cause major disruption in the political process, risk considerable voter confusion and delays at the polls, and impose additional taxpayer expense.”).

“When an election is close at hand, the rules of the road should be clear and settled. That is because running a statewide election is a complicated endeavor.” *Democratic Nat’l Comm. v. Wisc. State Legis.*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring).

Even seemingly innocuous late-in-the-day judicial alterations to state election laws can interfere with administration of an election and cause unanticipated consequences. If a court alters election laws near an election, election administrators must first understand the court’s injunction, then devise plans to implement that late-breaking injunction, and then determine as necessary how best to inform voters, as well as state and local election officials and volunteers, about those last-minute changes. It is one thing for state legislatures to alter their own election rules in the late innings and to bear the responsibility for any unintended consequences. It is quite another thing for a . . . court to swoop in and alter carefully considered and democratically enacted state election rules when an election is imminent.

Id.

The *Purcell* doctrine—which is really is just a species of laches specific to elections—should bar Respondent’s claims. That is especially so where, as here, *Respondent* created this timing problem by filing at the last second without providing any notice of his intent to do so. Had he filed earlier in the one-week window, the parties could have dealt with this issue in due course. As the State Election Commission confirmed, however, the various county Boards of Voter Registration and Elections have already sent out all UOCAVA ballots. And South Carolina citizens have already placed their vote for the Republican candidate for the United States Senate. The election is underway, and the prejudice is palpable.

On that note, Respondent’s balance-of-the-equities argument below missed the mark. For one, it is blackletter law in South Carolina that “the ‘balancing the equities’ requirement is neither necessary nor appropriate in a preliminary injunction case, where the three requirements (irreparable harm, success on merits, and inadequate remedy at law) are well established and

clearly delineate the burden of proof and of persuasion.” *Poynter Invs.*, 387 S.C. at 587, 694 S.E.2d at 17.

For another, Respondent would fail that balancing test in any event. By waiting until the very end of the period to file for U.S. Senate after losing his prior race for Agriculture Commissioner, Respondent “unreasonably delayed in filing and pursuing this action,” and “the only relief available at this late date would prejudice Defendants” given all that has happened. *De La Fuente*, 164 F. Supp. 3d at 806. The State Election Commission, together with the county boards, has finalized and distributed ballots. And the Party has scheduled debates and worked to educate voters about the special primary and the nine candidates (out of twelve) who were certified. Time and money has been spent.³ Early voting begins tomorrow. And election day is one week away. “Based on the time frame of the primary election process, it is simply too late to grant the relief requested: the primary would be thrown into confusion.” *Id.* So even if it were appropriate to consider, the balance of the equities does not tip in Respondent’s favor.

Pursuant to S.C. Code Ann. § 7-11-55, the special primary will take place August 11, 2026. The State Election Commission is responsible for preparing ballots to be used during statewide primary elections in South Carolina. *See* S.C. Code Ann. § 7-13-1655. When the Election Commission received the Party’s certification on July 28, 2026, it immediately began preparing

³ To that end, the conclusory finding in the TRO that a \$100 bond was sufficient because neither the Party nor the State Election Commission would experience harm is unsupported by any evidence in the record and fails as a matter of law. Unfortunately, that finding did not carry to the preliminary injunction, which supersedes the TRO. So the preliminary injunction did not require a bond. Our appellate courts have held for centuries that the failure to require a bond constitutes reversible error. *See, e.g., Headdon v. State Hwy. Dep’t*, 197 S.C. 118, 123, 14 S.E.2d 586, 588 (1941) (holding the failure to require a bond prior to issuing an order that effectively continued a temporary restraining order constituted error); *Hunt v. Smith*, 18 S.C. Eq. 277, 280 (1 Rich. Eq.) (1845) (reversing and holding the lower court should have refused to issue an injunction because the applicant failed to comply with the law by not giving bond with sufficient security).

ballots to be used to conduct the election by the 46 county boards of voter registration and elections, including UOCAVA ballots and regular absentee ballots. The county boards sent eligible voters their absentee ballots as early as July 29, 2026. As of the time of the hearing, 333 UOCAVA absentee ballots had been sent to eligible voters, and 28 of these ballots had been voted and returned. Further, as of that date, 1538 regular absentee ballots had been sent to eligible voters, and 31 ballots had been returned. Consistent with the Party's certification, Respondent's name did not appear on any of these ballots.

Early voting under S.C. Code Ann. § 7-13-25 is set to begin Wednesday, August 5, 2026. At least 10 boards will be conducting early voting in multiple locations. The State Election Commission prepares election databases that are dispersed to the county boards, who then prepare voting equipment based on this database. And the machines for both early voting and voting on election day must be prepared and tested by staff before being used during an election. To change the ballots used during early voting (or on election day), the State Election Commission must first prepare a new database to disperse to the county boards, who then must prepare and test the voting equipment before using it. Yet the State Election Commission already sent a database to the county boards that does not include Respondent's name. Any change to the ballot to be used for early voting will require the State Election Commission to prepare and send a new database, which would then require preparation and testing, all before early voting tomorrow. Regrettably, the able circuit court judge did not account for any of this in granting extraordinary relief to Respondent.

Adding Respondent's name to the primary ballots will seriously disrupt the orderly, efficient, and accurate conduct of the special primary. Respondent indicated he would be satisfied if his name is not on absentee ballots, so long as it appears on the ballots used in early voting and on August 11, 2026. The circuit court took him up on this new offer. But this solution would

certainly confuse the public and cast doubt on the integrity of the election process when different voters face different ballots for the same race. Implementing Respondent’s suggested two-ballot solution will not just increase voter confusion, but on the current election schedule, it will risk error on the part of the county boards who would be required to implement the court’s less-than-specific order into the ground rules for the election.

This poses an unacceptable risk to public confidence in integrity of the election process. Further, conducting the election on two different sets of official ballots will amplify (if not guarantee) the probability of an election protest. *See* S.C. Code Ann. §§ 7-17-560 & -570.⁴ Practically speaking, it would be as if voters were participating in two different elections. The circuit court’s order would almost certainly lead to the necessity for a new election, causing further damage to public confidence in elections. *Cf. Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 78 (2026) (“The counting of unlawful votes—or discarding of lawful ones—erodes public confidence that the election results reflect the people’s will. And when public confidence in the election results falters, public confidence in the elected representative follows.”).

Consistent with the principles set forth in *Purcell*, given the increased risk of error in conducting the special primary election under new rules imposed by the circuit court, coupled with the risk of resulting damage to public confidence in the electoral process this would likely cause, the Party will be irreparably harmed absent a stay of the circuit court’s injunction.

In short, changing the ballot when an election is already underway only invites chaos. Voter confusion and burdens on election administration are not theoretical. They are profound. Yet the “important principle of judicial restraint” under *Purcell* prevents all that and “protects the

⁴ For just one example, any candidate listed on the absentee ballots might protest any result arrived at in a multi-candidate primary election where Respondent’s name appeared on early voting and election day ballots but did not appear on absentee ballots.

State's interest in running an orderly, efficient election" to give the public "confidence in the fairness of the election." *Democratic Nat'l Comm.*, 141 S. Ct. at 31 (Kavanaugh, J., concurring). For that reason alone, whether under laches or *Purcell*, the Court should stay the order granting Respondent's request for mandatory injunctive relief because Defendants will suffer irreparable harm. There is no adequate remedy at law because once the election occurs, including the potential errors, you can't put the toothpaste back in the tube. Voters of South Carolina deserve better.

III. The Party is likely to succeed on the merits because the circuit court's order interferes with the Party's decision finding Respondent unqualified to run as a Republican.

The U.S. Supreme Court has long held that "a [s]tate, or a court, may not constitutionally substitute its own judgment for that of the Party." *Tashjian*, 479 U.S. 208, 224 (1986) (quoting *LaFollette*, 450 U.S. at 123–24). A political party's "determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution." *Id.* at 224. "And as is true of all expressions of First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational." *LaFollette*, 450 U.S. at 124.

What is important . . . is that a party's choice, as among various ways of governing itself, of the one which seems best calculated to strengthen the party and advance its interests, deserves the protection of the Constitution as much if not more than its condemnation. The express constitutional rights of speech and assembly are of slight value indeed if they do not carry with them a concomitant right of political association. Speeches and assemblies are after all not ends in themselves but means to effect change through the political process. If that is so, there must be a right not only to form political associations but to organize and direct them in the way that will make them the most effective.

Ripon Soc'y, Inc. v. Nat'l Republican Party, 525 F.2d 567, 585 (D.C. Cir. 1975).

Given the First Amendment protections afforded to political parties, the circuit court had no occasion to "substitute" *Tashjian*, 479 U.S. at 224 (quoting *LaFollette*, 450 U.S. at 123–24), its

judgment for that of the Party's executive committee. *See Determination of Controversies Within Political Party*, 169 A.L.R. 1281 § III (1947) (“[I]t is generally held that where questions [related to party policies or organization] have been submitted to and determined by the proper party tribunal, according to the rules and customs of the party, the courts will give effect to, and will not attempt to review such decision, but, in the absence of fraud, will regard it as conclusive.”); *Bruce v. S.C. High Sch. League*, 258 S.C. 546, 551, 189 S.E.2d 817, 819 (1972) (“It is well established that courts will not interfere with the internal affairs of voluntary associations, except in such cases as fraud, lack of jurisdiction, or the invasion of property or pecuniary rights or interests. The decisions of the tribunal of an association with respect to its internal affairs will, in the absence of mistake, fraud, illegality, collusion, or arbitrariness, be accepted by the courts as conclusive.”).

Indeed, other South Carolina courts have agreed. *See* Order Den. Pl.’s Pet. for Dec. Relief, *Ali v. S.C. Democrat Party*, No. 2024-CP-10-1918, at 4 (Apr. 23, 2024) (“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.”); *see also id.* (“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.’” (quoting *Follette*, 450 U.S. at 122)). But the circuit court improperly did.

In all events, the Party got it right. The applicable rule, which was passed in the ordinary course, provides that “[n]o candidate shall be certified by the Republican Party who is not, at the time of filing, (a) A registered Republican elector for at least 90 days, and *who has voted in at least*

two of the last three statewide Republican primaries.” SCGOP R. 11(a)(6)(a) (2026) (emphasis added). Respondent’s voting records, which the Party received from the Election Commission, reveal he voted in the June 2026 Republican primary election, including its runoff, but not in the other two most recent statewide Republican primaries.

Respondent does not dispute this. He simply claims the June 9, 2026 primary election and the June 23, 2026 primary election runoff should be considered two different elections. Compl. at ¶ 17. They aren’t. *Cf.* S.C. Att’y Gen. Op. at 2 (Aug. 23, 2024) (stating “nothing in the law requires that a qualified elector must vote in an election or primary election in order to secure their right to vote in a corresponding runoff,” and “[t]his makes sense if an election and a subsequent runoff are indeed considered one electoral event with one frozen set of qualified electors”); *SEC Addresses Voter Eligibility Question*, STATE ELECTION COMM’N (July 15, 2026), <https://scvotes.gov/statement-from-the-south-carolina-state-election-commission/> (finding “voters who participated in the June Democratic Primary are not eligible to vote in the August 11 Special Republican Primary” because it is the same election).

Put simply, the SCGOP followed its own rules and determined—based on the evidence before it—that Respondent could not run *as a Republican* for the United States Senate. And its determination was consistent with how the Attorney General and State Election Commission view what constitutes the same election. *See id.*

“Under these circumstances, the SCGOP’s decision cannot be deemed illegal or arbitrary, and the Court has no role over this dispute other than to accept the decision of the executive committee as conclusive.” Order Den. Inj, at 13–17, *Inglis v. S.C. Republican Party*, No. 2019-CP-40-05486 (S.C. Ct. Comm. Pl. Dec. 11, 2019). The circuit court erred in finding otherwise.

IV. The circuit court erred as a matter of law by granting an injunction on a due process claim that was neither pled nor briefed.

Respondent’s “arguments have shifted at every step of this litigation.” *Hood v. United Servs. Auto Ass’n*, 445 S.C. 1, 7 n.2, 910 S.E.2d 767, 770 n.2 (2025). The Party already objected to other claims Respondent raised in reply briefs and slipped into proposed orders. Yet the circuit court’s entire merits analysis hinged on a due process claim that was not raised in the complaint.

To be clear, the only constitutional claim raised in the complaint arose under the free-and-open-elections clause. Because this new due process claim was not pled or part of any motion, the circuit court erred as a matter of law in deciding the case on that ground, and the Court should stay its ruling immediately for that reason alone. *But see* Rule 7(b)(1), SCRCP (motions “shall state with particularity the grounds therefor”); *Kelagher, Connell & Conner, P.C. v. S.C. Workers’ Comp. Comm’n*, 435 S.C. 55, 62, 863 S.E.2d 842, 845 (Ct. App. 2021) (stating plaintiff “did not allege a constitutional violation of due process in its complaint and the circuit court was limited to allegations as contained in the complaint”).

In all events, the Party did not violate any constitutional provision. Some fifty years ago, the U.S. Supreme Court predicted the challenging constitutional questions that would accompany judicial intervention in political intraparty disputes, including justiciability, whether party action amounted to state action, the reach of the Due Process Clause, and the vital rights of freedom of association guaranteed by the First Amendment. *See O’Brien*, 409 U.S. at 4 (per curiam). “Political squabbles are not as easily resolved in . . . courts as are some other disputes.” *Wymbs v. Republican State Exec. Comm. of Fla.*, 719 F.2d 1072, 1076 (11th Cir. 1983).

“[T]he process of selecting its nominee . . . often determines the party’s positions on the most significant public policy issues of the day” and anoints the nominee as “the party’s ambassador to the general electorate in winning it over to the party’s views.” *Cal. Democratic Party v. Jones*, 530 U.S. 567, 575 (2000). And setting a Republican voting history requirement as

part of that nominee selection process is “an initial policy determination” by a political party “of a kind clearly for nonjudicial discretion” the Court cannot resolve with “judicially discoverable and manageable standards.” *Baker v. Carr*, 369 U.S. 186, 217 (1962). The Supreme Court, for its part, has recognized a difference between action by “state law rather than action by a political party.” *Bullock v. Carter*, 405 U.S. 134, 140 n.16 (1972).

After all, “most rights secured by the Constitution are protected only against infringement by governments.” *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 156 (1978). The “Fourteenth Amendment to the Constitution of the United States protects citizens against *state action*.” *Keeler v. Mauney*, 330 S.C. 568, 572, 500 S.E.2d 123, 125 (Ct. App. 1998) (emphasis added). Respondent’s beef is with the SCGOP’s decision, not the State Election Commission. Indeed, his complaint clarifies the State Election Commission is named as a necessary party only to carry out a remedy. But he has not shown the Party’s “conduct, as alleged, has amounted to, or would constitute, state action.” *Wymbs*, 719 F.2d at 1077.

“[C]ourts have hesitated to find state action when . . . racial discrimination is not involved,” *id.*, and the Court “may not interfere on the ground that [it] view[s] a particular expression as unwise or irrational,” *LaFollette*, 450 U.S. at 123–24. The cases where “the Supreme Court overturned a series of increasingly subtle tactics employed to exclude blacks from participating in the Texas Democratic Party’s candidate selection process, do not stand for the proposition that all actions of political parties constitute state action without regard to the surrounding circumstances.” *Republican Party of Conn. v. Tashjian*, 599 F. Supp. 1228, 1232 (D. Conn. 1984).

Race isn’t at issue here. Because the Party is a voluntary association of like-minded individuals, not an arm of the State of South Carolina, no state action is at issue here either. As a result, Respondent’s constitutional claims fail as a matter of law. Yet the circuit court used this

case to find—for the first time outside the context of racial discrimination—that the Party engaged in state action. Respectfully, that is a bridge too far.

Even so, assuming without deciding state action, “only suspect classes and fundamental rights receive intermediate or strict scrutiny,” and “[t]he right to run for office has not been deemed a fundamental right.” *Biener v. Calio*, 361 F.3d 206, 215 (3d Cir. 2004) (citing *Bullock*, 405 U.S. at 142–43). And “*LaFollette* and cases like it stand for the proposition that courts should not lightly disturb political parties’ decisions of strategy.” *Wymbs*, 719 F.2d at 1077.

Here, to prevent Trojan horse candidacies, the Party adopted an eminently sensible rule requiring a candidate seeking to run as a Republican to have voted in at least two of the last three Republican primaries. This rule was adopted in the ordinary course. No one knew we were going to lose South Carolina’s Senior Senator, triggering a special primary to replace him as a candidate. When the time came for filing, though, the rule was in place. And Respondent did not comply with it. The Court can quickly find the voting-history requirement is rationally related to a host of legitimate interests, including “to protect the integrity of its political processes from frivolous or fraudulent candidacies.” *Bullock*, 405 U.S. at 145 (citing *Jenness v. Fortson*, 403 U.S. 431, 442 (1971)). “Keeping the ballot manageable is an interest sufficient to meet the low standard of review.”⁵ *Biener*, 361 F.3d at 215.

As the Supreme Court acknowledged, the “interest in keeping ballots within manageable, understandable limits is of the highest order.” *Lubin v. Panish*, 415 U.S. 709, 715 (1974) (citing

⁵ Respondent did not bring First and Fourteenth Amendment claims in his complaint. Nor does his complaint purport to raise claims on behalf of voters. Thus, the *Anderson–Burdick* framework has no purchase here. See *Tully v. Okeson*, 977 F.3d 608, 616 (7th Cir. 2020) (holding “all election laws affecting the right to vote are subject to the *Anderson/Burdick* test, but election laws that do not curtail the right to vote need only pass rational-basis scrutiny”). Even if those claims were at issue, precedent makes clear this ballot-access claim is subject only to rational basis review.

Bullock, 405 U.S. at 144–45). The Supreme Court even said “[t]hat ‘laundry list’ ballots discourage voter participation and confuse and frustrate those who do participate is too obvious to call for extended discussion.” *Id.* And “a State has an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies.” *Bullock*, 405 U.S. at 145 (citing *Jenness*, 403 U.S. at 442). The Party seeks to avoid people who aren’t true Republicans running under the SCGOP banner in *its* primaries. So it passed Rule 11(a)(6)(a) to accomplish its political strategic objectives and help ferret out those folks. To the extent the Court can even scrutinize those objectives, the Party’s decision more than survives rational basis review.

Next, Respondent’s free-and-open-elections clause claim fails out of the batter’s box. *See* S.C. CONST. art. I, § 5 (“All elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for in this Constitution shall have an equal right to elect officers and be elected to fill public office.”). “The South Carolina Free and Open Elections Clause protects an individual’s right to vote, but it does not create a right for political parties or their dedicated voters to have their chosen candidates win.” *League of Women Voters of S.C. v. Alexander*, 446 S.C. 591, 611, 921 S.E.2d 660, 671 (2025). In *Alexander*, our supreme court chronicled the three prior cases in which it analyzed the clause. *Id.* at 609, 921 S.E.2d at 670 (citing *Cothran v. W. Dunklin Pub. Sch. Dist. No. 1-C*, 189 S.C. 85, 200 S.E. 95 (1938), *State v. Huntley*, 167 S.C. 476, 166 S.E. 637 (1932); *Gardner v. Blackwell*, 167 S.C. 313, 166 S.E. 338 (1932)). None helps Respondent here because “an equal right to . . . be elected to fill public office,” S.C. CONST. art. I, § 5, is irrelevant to a political party’s decision on who to certify in a primary.

Nor is the case on which Respondent initially relied. It merely says “when a state Constitution names the qualifications for a constitutional office, the *legislature* has no authority to prescribe additional qualifications, or to remove any of the requirements provided for in the

Constitution, unless that instrument, expressly or by implication, gives the legislature such power.” *Joint Legis. Comm. for Judicial Screening ex rel. McConnell v. Huff*, 320 S.C. 241, 244, 464 S.E.2d 324, 326 (1995) (emphasis added) (quoting *McLure v. McElroy*, 211 S.C. 106, 118, 44 S.E.2d 101 (1947)). Again, we aren’t dealing with a statute here, and the Party did not add to the constitutional qualifications to *serve* in the U.S. Senate. *Cf. Anderson*, 397 S.C. at 558, 725 S.E.2d at 707 (distinguishing “filing requirements to appear on a ballot” from “qualifications for service”). Also, Respondent has other means for seeking this office. *E.g.*, S.C. Code Ann. § 7-11-70.

Respondent’s equal protection claim does not hold water either. Consider a few examples. Clark Nielsen, for his part, was not certified because he does not live in South Carolina. Senator Darline Graham voted in a Republican primary runoff in 2024 and the 2026 Republican primary. Because those are two separate elections, she was certified. Same with Glenda Gail Parker. After obtaining her voting record, the Party confirmed she voted in a Virginia Republican primary in 2024 and the South Carolina Republican primary in 2026. Respondent, on the other hand, voted in the 2026 Republican primary and runoff *for the same election*. The equal protection clause, of course, “does not prohibit different treatment of people in different circumstances under the law.” *Harbit v. City of Charleston*, 382 S.C. 383, 396, 675 S.E.2d 776, 782–83 (Ct. App. 2009).

Finally, though Respondent’s due process is not properly before this Court, Respondent fell far short of his burden. “To establish a substantive due process claim, a plaintiff must show he possessed a constitutionally protected property interest that was deprived by state action so far beyond the limits of legitimate governmental action, no process could cure the deficiency.” *Seabrook v. Knox*, 369 S.C. 191, 198, 631 S.E.2d 907, 911 (2006). Because Respondent has no fundamental right to be a candidate, “[t]he standard for reviewing [this] substantive due process” claim, as federal courts have noted in the case law outlined above, “is whether the ordinance bears

a reasonable relationship to any legitimate interest of government.” *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 96, 596 S.E.2d 917, 923 (2004). For all the reasons already explained, the Party’s decision comfortably survives rational basis review.

V. Staying the injunction pending appeal would restore the status quo ante.

“A preliminary injunction should issue only if necessary to preserve the status quo ante.” *Poynter Invs., Inc.*, 387 S.C. at 586, 694 S.E.2d at 17. Here, the circuit court’s order did not preserve the status quo ante. By issuing a preliminary injunction after the special primary is already underway, the circuit court ignored the ballots the State Election Commission has already sent to UOCAVA voters and rendered the ballots already cast by voters irrelevant.

VI. No bond is required.

Upon information and belief, the Election Commission is also appealing the circuit court’s order. Because the State Election Commission is a party on appeal, and (based on the undersigned’s understanding) will likewise seek a stay, no bond is required. *See* Rule 62(e), SCRCF (“When an appeal is taken by the State or an officer or agency thereof or by direction of any department of the Government of the State and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.”).

VII. The Court should decide this motion and appeal on an expedited basis.

Finally, the Court should enter an immediate administrative stay and require Respondent to file a return to this motion by no later than 5:00 P.M. today, issue a formal stay after briefing, dispense with further briefing, decide this case on the merits, and issue an expedited opinion as soon as possible. *Cf. McConnell v. Haley*, 393 S.C. 136, 137, 711 S.E.2d 886, 887 (2011) (granting the petition for original jurisdiction, dispensing with briefing, and staying and enjoining an executive order the same day it was filed with the Court).

CONCLUSION

For these reasons, the Court should enter an immediate administrative stay, and after briefing, issue an order staying the circuit court's August 4, 2026 injunction pending its resolution of this matter on appeal. This drastic remedy is necessary to preserve the status quo, prevent voter confusion, and avoid further burdening election administration. County boards are on standby right now, for absentee voting has begun and early voting begins tomorrow for the August 11, 2026 Republican special primary election for U.S. Senate.

Respectfully submitted,

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