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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
South Carolina Election Commission
a/k/a State Election Commission,

.....Appellants.

**SOUTH CAROLINA STATE ELECTION COMMISSION’S MOTION TO STAY
INJUNCTION PENDING APPEAL, PETITION FOR WRIT OF SUPERSEDEAS,
MOTION FOR IMMEDIATE ADMINISTRATIVE STAY, AND MOTION FOR
EXPEDITED CONSIDERATION**

Pursuant to Rules 240 and 241, SCACR, as well as Rules 62(c) and (g), SCRCRCP, the South Carolina State Election Commission (“Commission”) hereby moves the Court to stay the circuit court’s August 4, 2026 order granting a preliminary injunction pending appeal or to issue a writ of supersedeas. The Commission further requests that the Court enter an immediate administrative stay of that order pending the Court’s ruling on this motion and consider this motion on an expedited basis. Early voting in the August 11, 2026 special Republican primary election for United States Senator begins tomorrow morning, Wednesday, August 5, 2026. The Commission therefore respectfully requests a ruling today to avoid voter confusion.

The Commission does not join the South Carolina Republican Party’s motion in its entirety, and it takes no position on the questions that divide Respondent and the Party: whether Party Rule 11(a)(6)(a) is valid, whether the Party’s certification decision constituted state action, whether

Respondent received the process he was due, or whether Respondent ought to be a candidate in this primary. Those are contested questions between a candidate and the Party.

For present purposes, the Commission's interests are narrower and wholly administrative. The Commission is the State agency responsible for the orderly, uniform, and lawful conduct of the August 11 special primary, and it is the party directed to act by paragraph 2 of the circuit court's order. *See* S.C. Code Ann. §§ 7-3-20, 7-11-55, 7-13-40. It appears here solely to explain why the relief the circuit court directed cannot be implemented uniformly at this stage of an election already underway, and why a stay is necessary to preserve the status quo and this Court's ability to grant meaningful relief to whichever party ultimately prevails. The Commission is focused on resolving the ballot-related questions as soon as practicable and avoiding voter confusion in the process.

STANDARD OF REVIEW

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 Rule 62 provides that parties should typically file a motion for injunction pending appeal with the circuit court in the first instance, "when such an application is not practicable it may first be made to an appellate court or a judge or justice thereof." *Id.*

An order granting an injunction is not automatically stayed by noticing an appeal. Rule 241(b)(8), SCACR; *see also* Rule 62(a), SCRCF. Nevertheless, a “party may move for an order imposing a supersedeas” to stay an injunction pending an appeal. Rule 241(c), SCACR. Unless “extraordinary circumstances make it impracticable,” this relief should be sought first from the court that entered the injunction. Rule 241(d)(1), SCACR. After that, a party may seek a writ of supersedeas from the appellate court. Rule 241(d)(2), SCACR.

To supersede an injunction pending an appeal, the party seeking to stay the injunction must clearly show that allowing the injunction to remain in effect would cause “an irreparable injury *or* the miscarriage of justice.” *Kuhn v. Elec. Mfg. & Power Co.*, 92 S.C. 488, 75 S.E. 791, 791 (1912) (emphasis added); *cf. Long v. Robinson*, 432 F.2d 977, 979 (4th Cir. 1970) (a party seeking a stay pending appeal must show “(1) that he will likely prevail on the merits of the appeal, (2) that he will suffer irreparable injury if the stay is denied, (3) that other parties will not be substantially harmed by the stay, and (4) that the public interest will be served by granting the stay”).

ARGUMENT

I. This Motion Is Properly Made First to This Court.

Rule 62(c), SCRCF, provides that on 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.” Rule 62(g) preserves the “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,” as well as the power to make “any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.” Although such an application is ordinarily made first to 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.” Rule 62(g), SCRCPP; *see also* Rule 241(d), SCACR (application may be made first to the appellate court where “extraordinary circumstances make it impracticable” to proceed first in the lower court).

Those circumstances are present. The order was filed at 10:05 a.m. today. It directs the Party to certify Respondent within twenty-four hours and directs the Commission to include Respondent’s name “on all ballots feasible for early voting and for election day.” Order Granting Prelim. Inj. at 11, *Ford v. S.C. Republican Party*, No. 2026-CP-40-05213 (S.C. Ct. Comm. Pl. Aug. 4, 2026) (“Order”). Early voting centers open at 8:30 a.m. tomorrow. *See* S.C. Code Ann. § 7-13-25(F). There is no practical opportunity to obtain a ruling from the circuit court and then, if necessary, from this Court before the county boards of voter registration and elections must open those centers and begin issuing ballots.

II. The Order Cannot Be Implemented Uniformly, and Compliance Will Produce Irreversible Consequences Before the Merits Can Be Reviewed.

A. Ballots have been issued, and votes have already been cast.

The record establishes that 333 UOCAVA ballots and 1,538 general absentee ballots were distributed to voters on July 29, 2026, and that, as of the morning of the August 3 hearing, 28 UOCAVA ballots and 31 general absentee ballots had been returned. Order at 3 & n.1. The Commission transmitted the UOCAVA ballots on that schedule in order to comply with federal law and with an agreement with the United States Department of Justice. None of those ballots bears Respondent’s name, and the order does not disturb them. *See* Order at 11 (“Plaintiff made no request as to rescission of existing ballots.”).

B. The order therefore yields two different ballots in a single primary election.

Paragraph 2 directs the Commission to include Respondent “on all ballots feasible” for early voting and election day. Order at 11. The necessary consequence is that voters who have

already returned ballots, and those UOCAVA and absentee voters now holding ballots in hand, will have voted a ballot that does not list Respondent, while voters who appear during early voting or on election day will vote a ballot that does. Some qualified electors in this single primary will thus have been presented a field of candidates that others were not. The Commission takes no position on whether that disparity is constitutionally significant. It observes only that the disparity is one the Commission cannot cure by tomorrow morning, and one that predictably invites protest of the results and further litigation.

C. Ballot redefinition, reprogramming, retesting, and reprinting cannot responsibly be accomplished overnight.

Adding a candidate to a ballot in an election already in progress is not a matter of editing a single document. The Election Commission must first prepare a new database to disperse to the 46 county Boards of Voter Registration and Elections (BVREs) who then must prepare and test the voting equipment for logic and accuracy before using it. That work ordinarily precedes an election by weeks. Here, under an already condensed special election schedule, compressing this process into the hours between the circuit court's order and the opening of early voting has introduced a real risk of administrative error affecting every voter in the primary.

D. A stay preserves the status quo; the order below does not.

“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). A preliminary injunction “should issue only if necessary to preserve the status quo ante.” *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010). The order below does the opposite: it changes the ballot of an election that is already underway. Absent an administrative stay, because ballots cannot be recalled once they have been cast, compliance will, as a practical matter, place the order beyond effective appellate review.

Courts have long recognized the particular hazard of altering the rules of an election once voting has begun. “Court 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 v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam); see also *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020) (per curiam) (“[L]ower federal courts should ordinarily not alter the election rules on the eve of an election.”). This Court has recognized the same interest in different words: “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)).

III. No Bond Is Required

The Commission is an agency of the State. Therefore, no bond is required. See Rule 62(e), SCRPC (“When an appeal is taken by the State or an officer or agency thereof . . . and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.”).

CONCLUSION

The Commission was required to give direction to the BVREs today with regards to the circuit court’s order, and diligent efforts by the BVREs to comply with that order are in progress. It therefore respectfully asks the Court to rule as promptly as the Court’s consideration of the matter permits.

For the foregoing reasons, the Commission respectfully requests that the Court: (1) consider this matter on an expedited basis and require any return to this motion to be filed by a time certain today and dispense with further briefing; (2) enter an immediate administrative stay

of the circuit court's August 4, 2026 order, and in particular paragraph 2 of that order, before early voting centers open at 8:30 a.m. on Wednesday, August 5, 2026; and (3) stay the order and preliminary injunction pending resolution of this appeal. In the alternative, should the Court decline to stay the order, the Commission respectfully requests that the Court provide clarity as to what paragraph 2 of the circuit court's order requires, including whether early voting shall proceed on schedule while ballots are redefined and equipment retested, how ballots already cast are to be treated, and whether any replacement ballots must be issued to absentee and UOCAVA voters.

Respectfully submitted,

s/ Thomas W. Nicholson

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August 4, 2026
Columbia, South Carolina