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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Daniel M. Coble, Circuit Court Judge

Case No. 2026-CP-40-05213

DANNY FORD II,Respondent,

v.

SOUTH CAROLINA REPUBLICAN PARTY,
SOUTH CAROLINA¹ ELECTION COMMISSION
A/K/A STATE ELECTION COMMISSIONAppellant,

RETURN TO MOTION TO STAY AND MOTION TO CERTIFY

Pursuant to the Court's letter dated August 4, 2026, the State Election Commission (Election Commission or Appellant) submits this Return to the South Carolina Republican Party's (the Party) Motion to Stay and Motion to Certify. About the time the Court delivered this letter, the Election Commission filed with this Court its own Motion to Stay Injunction Pending Appeal, Petition for Writ of Supersedeas, Motion for Immediate Administrative Stay, and Motion for Expedited Consideration (the Commission Motion). There, the Election Commission noted that it 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,

¹ Note that there is no entity known as the South Carolina Election Commission. The agency is the State Election Commission.

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. This will remain true for this Return. Further, for the substance of this Return the Election Commission will rely on the matters presented in its motions of August 4, 2026, and present the following for the Court's further consideration:

Current Status of the Special Primary Election.

In conformity with the order of the circuit court (Exhibit A), the Election Commission prepared election databases that included Respondent's name and provided those to the 46 county Boards of Voter Registration and Elections (BVREs). The BVREs have prepared voting equipment using this database so that ballots used during early voting would include Respondent's name going forward. Early voting for the Special Primary Election began this morning at 8:30 A.M. in all 46 Counties. As of the date of this filing, voting has been brisk. As of 11:30 A.M., 8,481 ballots have been cast. All these ballots include Respondent's name. Early voting is currently set to continue on Thursday and Friday of this week, and then on election day, August 11, 2026.

As noted in the circuit court's order, by the time of the hearing before that court on the August 3, 2026, 333 UOCAVA ballots and 1,538 general absentee ballots had been distributed to voters 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. None of those ballots included Respondent's name. As of the time of this Return, at least 58 voted UOCAVA ballots have been returned, and 87 voted regular absentee ballots have been returned that did not include Respondent's name.²

² These numbers reported from the Voter Registration and Election Management System maintained by the Election Commission. Note that these numbers must be manually updated by BVRE staff, so the total number of returned absentee ballots is likely higher than currently indicated in the system.

Whether this Court grants a stay or not, there will be two sets of ballots to be counted after election day, one set including Respondent's name, and one set that does not include it. The Election Commission is concerned that the existence of two sets of ballots will confuse the public as to the legitimacy of the Special Primary Election. Further, the Election Commission is concerned that the two sets of ballots will amplify the possibility of an election protest being filed that may further delay the selection of a Republican nominee before the November 2026 General Election or cause a new election to be ordered.³

As part of the conclusion in the Commission Motion, the Election Commission wrote "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." Given that currently the election equipment being used by the BVREs has been updated with a new database and early voting is underway using ballots including Respondent's name, the Election Commission respectfully restates its request that, if the Court declines to stay the order, it clarify what paragraph 2 of the circuit court's order requires, including whether early voting shall proceed on Thursday and Friday of this week using the ballots including Respondent's name, how ballots already cast that did not include his name will be treated, and whether any replacement ballots must be issued to absentee and UOCAVA voters.

Respectfully Submitted,

³ For instance, any election result on August 11, 2026 where the number of ballots without Respondent's name could have been determinative in arriving at a clear winner or lead to a runoff could be grounds for a protest.

s/ Thomas W. Nicholson

Thomas W. Nicholson (S.C. Bar No. 101505)

STATE ELECTION COMMISSION

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August 5, 2026

Columbia, South Carolina