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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appeal From Richland County

The Honorable Daniel M. Coble, Circuit Court Judge

Case No.: 2026-CP-40-05213

Appellant Case No.: 2026-001729

**South Carolina Republican
Party and South Carolina
Election Commission a/k/a
State Election Commission,**

Appellants,

v.

Danny Ford, II,

Respondent,

**RESPONDENT'S RETURN IN OPPOSITION TO THE MOTIONS
TO STAY THE INJUNCTION PENDING APPEAL, THE PETITION
FOR WRIT OF SUPERSEDEAS, AND THE MOTION FOR AN
IMMEDIATE ADMINISTRATIVE STAY**

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INTRODUCTION

Respondent Danny Ford, II submits this Return in opposition to the separate motions of Appellant South Carolina Republican Party (the “SCGOP”) and Appellant South Carolina Election Commission (the “Commission”) to stay the Circuit Court’s August 4, 2026 order granting a preliminary injunction, and to the Commission’s alternative petition for a writ of supersedeas and its request for an immediate administrative stay.

The Circuit Court, after a hearing at which both Appellants appeared and were heard, found that Ford — a candidate who meets every constitutional qualification for the office and timely filed for the ballot — was likely to prevail on the merits, would suffer irreparable harm, and had no adequate remedy at law. The Court then entered relief narrowly-tailored to impose “minimal impact on the election”: it ordered Ford’s name added prospectively, for early voting and election day only, and expressly declined to disturb any ballot already issued or cast.

Appellants now ask this Court to undo that relief on an emergency basis. They cannot meet the demanding standard for the extraordinary remedy they seek. A stay pending appeal is not granted for the asking; the movant must **clearly show** that leaving the injunction in place will work “an irreparable injury or the miscarriage of justice,” and that power is “exercised with great caution.” *Andrews v. Sumter Com. & Real Est. Co.*, 87 S.C. 301, 69 S.E. 604 (1910); *Kuhn v. Elec. Mfg. & Power Co.*, 92 S.C. 488, 75 S.E. 791 (1912). Appellants show neither. The central irreparable injury on this record is the one a stay would inflict: the permanent exclusion of a qualified candidate from a one-time special election that cannot be re-run for him. At the hearing on this matter, the Commission stated that the State and Counties were effectively on standby to

comply with the Circuit Court's Order whatever it should be. Furthermore, they have complied as shown in Exhibit A.¹ This Court should deny the motions.

STANDARD

An Order granting an injunction is not automatically stayed by the filing of a notice of appeal. To obtain a supersedeas suspending an injunction during the appeal, the moving party must "clearly show" that allowing the injunction to remain in effect "will result in irreparable injury or the miscarriage of justice." See *Kuhn* and *Andrews*. The burden is on the party seeking to disturb the order below.

The preliminary injunction that Appellants ask this Court to suspend rests on settled elements: the movant must establish "(1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law." *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 709 S.E.2d 639 (2011). A separate balancing of the equities "is no longer a requirement for a preliminary injunction." *Id.* The circuit court applied precisely this framework. Its exercise of discretion is entitled to deference and should not be disturbed absent a clear showing of error — a showing Appellants have not made.

¹ Attached is a sample ballot that Ford's counsel will represent was obtained from a County Board of Voter Registration that contains Ford's name and is in use for early voting.

ARGUMENT

I. Appellants cannot make the clear showing that the extraordinary remedy of a stay requires.

A stay pending appeal reverses the ordinary rule that a valid injunction must be respected and obeyed during an appeal. It is reserved for the case in which the movant demonstrates, clearly, that compliance will cause irreparable injury or a miscarriage of justice. *See Kuhn*. Neither Appellant carries that burden.

The Commission expressly disclaims any position on the merits of the dispute — whether Party Rule 11(a)(6)(a) is valid, whether the certification decision was state action, or whether Ford received due process. Its motion is “wholly administrative.” An agency that takes no position on whether the order below is correct cannot show that obeying it works a “miscarriage of justice.”

At most the Commission asserts administrative inconvenience — the burden of updating a database and testing equipment before early voting. That is the ordinary cost of complying with a lawful order, not the rare, irreparable injury that justifies a stay. Indeed, the Commission’s own motion confirms that “diligent efforts by the [county boards] to comply with that order are in progress.” Compliance has occurred as evidenced by a sample ballot – see Exhibit A. A stay would disrupt this compliance and exacerbate these issues.

The SCGOP’s asserted injury — “voter confusion” and burdens on election administration — is likewise speculative and, in any event, is not the SCGOP’s injury to assert. The administration of the ballot is the Commission’s responsibility, and the Commission seeks only clarity, not vindication of any right of its own. The SCGOP’s true grievance is that it must certify a candidate

it would prefer to exclude. But the Circuit Court held that the SCGOP's exclusion of Ford was likely unlawful, and being required to comply with law is not irreparable harm.

II. Appellants are not likely to succeed on the merits.

Although a stay under *Kuhn* turns on irreparable injury and miscarriage of justice, Appellants premise their motions on a likelihood of success on appeal. They are unlikely to prevail, because the Circuit Court's Order rests on findings reviewed only for abuse of discretion and amply supported by the record.

State action

The Circuit Court did not hold that the SCGOP is a state actor in its internal affairs. It held the narrower proposition that when the SCGOP "certifies to the Commission who is and who is not on the ballot," it "wade[s] into the gray area of state action," because South Carolina channels that certification decision directly onto the State-printed primary ballot. That holding follows a long line of authority treating participation in the machinery of a state election as state action. The SCGOP's reliance on its First Amendment associational rights does not answer the point: the Court expressly recognized those rights and held only that, having undertaken the state function of ballot certification, the SCGOP "must meet due process requirements". The SCGOP's authorities concern a political party's protected internal decisions; they do not license arbitrary conduct once a political party assumes a role in the State's election machinery.

Due process and arbitrariness

The court found a likelihood that Party Rule 11(a)(6), as applied to Ford, was administered arbitrarily and capriciously. The record supports that finding. The rule's key term — "statewide

primary” — was undefined and subject to multiple credible interpretations, so much so that the Commission had to issue a public statement to explain voter eligibility. Ford was certified to run as a Republican in the June 9, 2026 and June 23, 2026 primaries, yet the SCGOP applied a rule adopted June 27, 2026 to decertify him mid-stream. The Court reasonably concluded that this asymmetry, and the absence of safeguards around the process, presented a likelihood that Ford’s State Constitutional Rights were violated. Nothing in Appellants’ motions shows that finding to be clearly erroneous.

The “unpleaded claim” argument

The SCGOP contends the injunction rests on a due process theory never pleaded. That argument fails on this record. The matter was heard on the merits, on notice, with both Appellants “fully heard,” and the Circuit Court expressly resolved any objection to the procedural posture. The Complaint pleaded a constitutional challenge to the SCGOP’s refusal to place Ford on the ballot and sought exactly the relief the Court granted. Furthermore, the Complaint itself references the confusing terminology and double-standards that were applied by the SCGOP and led the Circuit Court to this due process analysis. The Court’s analysis of whether Ford was arbitrarily deprived of ballot access fell squarely within the controversy the parties litigated. At a minimum, this is not the sort of clear legal error that justifies the extraordinary step of staying an injunction and excluding a qualified candidate from the ballot.

III. A stay — not the injunction — would cause irreparable harm for which there is no remedy.

The irreparable-harm inquiry cuts decisively against a stay. The Circuit Court found, correctly, that “[t]he loss of an imminent election is irreparable,” and that “[n]o award of damages

could restore the opportunity to appear on the August 11 ballot.” If this Court stays the injunction, the August 11 special primary will proceed in part without Ford’s name (as ballots already contain his name), the election will be held, and no later appellate victory can put him on a ballot that no longer exists. His injury would be complete and irreparable.

Appellants invert this analysis. They argue that compliance is irreparable because “you can’t put the toothpaste back in the tube.” But the Circuit Court’s Order was designed to avoid exactly that problem: it does not rescind or recount a single ballot already cast, and it operates only prospectively, on ballots “feasible for early voting and for election day.” Adding a qualified candidate going forward is reversible in the way that matters — if Appellants prevail on appeal, Ford’s candidacy can be addressed in any ensuing proceeding — whereas excluding him from a special election that will never be held again is not. As between a reversible administrative update and the permanent disenfranchisement of a candidate and the voters who would choose him, the irreparable harm lies with a stay.

IV. The equities and the public interest favor denying a stay.

Even accounting for the interests Appellants invoke, a stay is not warranted.

The order preserves the status quo; a stay would disrupt it

Appellants argue the injunction upset the status quo by changing the ballot mid-election. The Circuit Court correctly saw the matter differently. The controversy has been live since before any ballot was tabulated: the mailing of absentee ballots is “but one step in the election process” and “is not in and of itself the ‘happening’ of the election,” and tabulation does not begin until 7:00 a.m. on election day. This framework has been cited in other election cases such as *Libertarian*

Party of Virginia v. Virginia State Bd. of Elections, No. 1:10-CV-615 LMB/TCB, 2010 WL 3732012, at *4 (E.D. Va. Sept. 16, 2010). The status quo the injunction preserves is a lawful ballot — one that includes a qualified, timely-filed candidate whom the SCGOP likely had no lawful basis to exclude. A preliminary injunction exists “to preserve the status quo,” *Compton*, and that is what this order does.

The two-ballot concern is speculative and of Appellants’ own making

The Commission warns that some voters will have received ballots without Ford’s name while others will vote a ballot with it. The Circuit Court considered and rejected the premise that this disparity forecloses relief, relying on authority approving supplemental ballots accompanied by clear instructions in precisely this situation, and finding Appellants’ confusion-and-delay concerns “speculative.” To the extent any disparity exists, it flows from the SCGOP’s decision to exclude a qualified candidate and from the compressed timeline of a special election — not from the Court’s narrowly-tailored remedy. The Commission itself asks, in the alternative, only for clarification of how to implement the order — confirming that implementation is feasible, not impossible. In fact, implementation has occurred. See Exhibit A.

Purcell and laches do not support a stay

The SCGOP invokes the *Purcell* principle and laches, arguing that courts should not alter election rules once voting is underway. Those principles counsel judicial caution against last-minute *changes* to settled election rules; they do not require a court to ratify a party’s unlawful exclusion of a qualified candidate. Ford did not sit on his rights. He filed timely for the ballot, and the truncated timeline is a product of a special election necessitated by Senator Graham’s death and of the SCGOP’s decision to adopt and enforce Rule 11(a)(6)(a) only weeks before filing

opened. The Circuit Court weighed these extraordinary circumstances and found relief warranted. Denying a stay vindicates, rather than undermines, the public interest in an election in which every qualified candidate appears on the ballot.

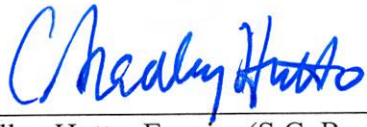
V. No separate showing cures the deficiency, and the Commission's status does not change the analysis.

The Commission notes that, as a state agency, it need not post bond. That is a rule about security, not a substitute for the required showing of irreparable injury or miscarriage of justice. The absence of a bond requirement does not lower Appellants' burden under *Kuhn* and *Andrews*, which they have not met.

CONCLUSION

The Circuit Court entered a narrowly tailored injunction, after a hearing, to keep a qualified candidate on the ballot for a special election that can never be repeated. Appellants have not clearly shown that compliance will cause irreparable injury or a miscarriage of justice — the showing the law requires before an injunction is suspended pending appeal. The only irreparable harm on this record is the harm a stay would cause. Respondent Danny Ford, II respectfully requests that the Court deny the SCGOP's motion to stay, deny the Commission's motion to stay, petition for a writ of supersedeas, and request for an immediate administrative stay, and leave the preliminary injunction in effect pending appeal.

Respectfully submitted,



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