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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

Appellate Case No. 2026-001729

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
REPLY IN SUPPORT OF ITS MOTION TO STAY**

Pursuant to Rule 240(f), SCACR, Appellant South Carolina Republican Party submits this brief reply in support of its motion to stay the circuit court's August 4, 2026 order pending appeal.

At the outset, the Party acknowledges the timeline here. Early voting ends Friday, and UOCAVA and absentee voting are underway. Even if the Court were to rule tonight, it would be difficult for the State Election Commission to implement the original (correct) ballot before tomorrow. But timing is no bar to relief. Voting was already underway before the circuit court intervened in this election. And the Court can still correct course for Election Day. And contrary to Respondent's assertion, the State Election Commission sought a stay and has made its *Purcell* arguments clear from the outset. It only took no position on the merits of constitutional arguments.

The Court should not allow procedural gamesmanship to win the day. In this case, the Party had no idea Respondent intended to run for U.S. Senate, and he filed at the last second. Even

so, the Party’s executive committee met shortly after the noon filing deadline on July 28, 2026 and timely certified nine of the twelve candidates who sought to run in the Republican special primary. Respondent, however, waited three days to file this lawsuit. Despite his tarrying, he sought an *ex parte* TRO that was legally improper.¹ When Respondent notified the Party, the undersigned immediately objected to the *ex parte* TRO, and the circuit court gave them three hours to file a brief at 9:00 P.M. that evening. The circuit court sought proposed orders by noon the next day.

Recognizing the urgency of the situation, the Party dutifully met these deadlines. After the circuit court issued a new TRO on Friday, July 31, 2026, the Party filed another brief and a declaration on behalf of Chairman Drew McKissick on Sunday, August 2, 2026, in advance of the hearing on Monday, August 3, 2026. And the Party met the circuit court’s deadline for proposed orders, submitting a comprehensive one some five hours after the hearing.

When the circuit court issued its order after 10:00 A.M. on August 4, 2026, the Party again moved with dispatch, submitting all its appellate filings—including the instant motion to stay—to this Court before 3:00 P.M. that same day. The State Election Commission’s filing followed shortly thereafter. Respondent just filed his brief shortly before today’s deadline. And the Party is filing this reply a mere hour later to ensure the Court has it ready as soon as it reopens in the morning. In sum, Appellants have done everything possible to protect their rights, get this matter heard in an expedited fashion, follow the law, and prevent voter confusion.

Although this situation is not ideal, it is not without precedent. *E.g., Andino v. Middleton*, 592 U.S. 906, 906 (2020) (granting State Election Commission, SCGOP, and legislative leaders’ stay application “in part,” “except to the extent that any ballots cast before this stay issues and

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); *State v. Hill*, 266 S.C. 49, 52, 221 S.E.2d 398, 399 (1976); *State v. Best*, 257 S.C. 361, 373, 186 S.E.2d 272, 278 (1972).

received within two days of this order may not be rejected for failing to comply with the witness requirement”). To the extent there is any “judicially created confusion,” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 425 (2020), that is precisely why the U.S. Supreme Court has cautioned judges not to interfere in elections in the first instance. The Party is simply trying to return to the status quo.

The Court should not leave a mandatory injunction in place just because of a timing problem Respondent created, particularly when the order “represents a stark interference with South Carolina’s electoral process right in the middle of the election season.” *Middleton v. Andino*, 990 F.3d 768, 771 (4th Cir. 2020) (Wilkinson & Agee, JJ., dissenting). Instead, the Court can and should stay the injunction pending appeal and allow the State Election Commission to restore the ballot lawfully certified by the Party without Respondent’s name on it for Election Day on Tuesday, August 11, 2026.

Nor would that be a pyrrhic victory. In the 2024 state primaries only 27% of voters availed themselves of early voting or voting via absentee ballot. Voter Participation Summary, STATE ELECTION COMM’N (last visited Aug. 5, 2026) <https://scvotes.gov/wp-content/uploads/2025/05/Absentee-Voting-History-1998-2024.pdf>. So the overwhelming preference of voters in South Carolina is to cast a ballot in person on Election Day. Restoring the proper ballot is therefore feasible, necessary, and would provide meaningful relief from this judicial intrusion into the Party’s political objectives and the General Assembly’s carefully crafted election process.

“A smoothly run election is a beautiful thing. But it does not just happen.” *Middleton*, 990 F.3d at 774 (Wilkinson & Agee, JJ., dissenting). The State Election Commission, together with the county boards of voter registration and elections, “have to design and print ballots, instruct voters on correct procedures, train workers who staff the precincts and tabulate results, and make

sure that mail-in balloting and early and election-day voting are all running with scrupulous impartiality and unimpeachable competence.” *Id.* When the judiciary becomes involved, “making a hard task even harder,” that creates practical election administration problems. *Id.* Yet “neutral rules neutrally applied in the interest of honest elections” cannot “just be tossed aside every time an election-eve plaintiff alleges an adverse effect.” *Id.* The circuit court ignored these principles.

Here, the circuit court substituted its judgment for that of the Party because it did not agree with or see the point of Rule 11(a)(6)(a). That was error. See *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 224 (1986) (“a [s]tate, or a court, may not constitutionally substitute its own judgment for that of the Party” (quoting *Democratic Party of U.S. v. Wisc. ex rel. LaFollette*, 450 U.S. 107, 123–24 (1981))); *LaFollette*, 450 U.S. at 123–24 (stating the Court “may not interfere on the ground that [it] view[s] a particular expression as unwise or irrational”); *Wymbs v. Republican State Exec. Comm. of Fla.*, 719 F.2d 1072, 1077 (11th Cir. 1983) (courts should not lightly disturb political parties’ decisions of strategy”)

It put the Party’s voter history rule—designed to accomplish political objectives protected by the First Amendment—on par with racial discrimination to find state action. That was error. *LaFollette*, 450 U.S. at 123–24) (“courts have hesitated to find state action” where “racial discrimination is not involved”); *Republican Party of Conn. v. Tashjian*, 599 F. Supp. 1228, 1232 (D. Conn. 1984) (stating 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”).

It found the Party’s decision arbitrary, even though the executive committee’s decisions were tailored to the unique facts of each candidate and aligned with both the Attorney General and

State Election Commission’s view of what constitutes a single election. That was error. *Cf. Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184–85, 332 S.E.2d 539, 541 (Ct. App. 1985) (“A decision is arbitrary if it is without a rational basis, is based alone on one’s will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.”).

It decided Respondent’s likelihood of success on the merits based on a substantive due process claim that appears nowhere in the complaint or any motion.² That was error. *See* Rule 7(b)(1), SCRCP (motions “shall state with particularity the grounds therefor”); *Kelaheer, 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”).

Ignoring that “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), the circuit court found the voting history requirement violated Respondent’s substantive due process rights without considering whether it passed rational basis review. That was error. *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”). And in finding a violation, the circuit court failed to explain how Plaintiff met his heavy burden of showing “he possessed a constitutionally protected property interest that

² Pleading the U.S. Constitution and South Carolina Constitution preserves nothing. Respondent briefed several constitutional claims but never mentioned substantive due process, which triggers its own analysis. Appellants were not on notice of the issue. The Court should not have accepted Respondent’s invitation to decide the case on a new ground just because his argument shifted again when he had no response to the Party’s arguments that doomed his other claims.

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) (emphasis added). That was error.

Respectfully, the circuit court’s order cannot stand. Because there is still time to correct course, the Court should grant this motion to stay the injunction pending appeal to prevent “irreparable injury” and “a miscarriage of justice.” *Kuhn v. Elec. Mfg. & Power Co.*, 92 S.C. 488, 489, 75 S.E. 791, 791 (1912). If that is not possible by the time early voting concludes, the Court should apply its order to the ballot Republican voters will use to cast their vote in the special primary for U.S. Senate in person on Election Day. Doing so would restore the status quo just as the U.S. Supreme Court did in *Middleton*, 592 U.S. at 906.

Respectfully submitted,

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