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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.

**INITIAL BRIEF OF APPELLANT
SOUTH CAROLINA REPUBLICAN PARTY**

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STATEMENT OF ISSUES ON APPEAL

- I. Did the circuit court err in finding the Party engaged in state action and violated Respondent's substantive due process rights—when he did not plead or brief that claim—by declining to certify him as a Republican candidate based on the Party's internal rule?
- II. Did the circuit court contravene the *Purcell* principle by granting mandatory injunctive relief in the middle of an ongoing election?

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)).

Of course, the South Carolina Republican Party (the Party or the SCGOP) may not add to constitutional qualifications to serve in Congress. *See U.S. Term Limits v. Thornton*, 514 U.S. 779, 798–99 (1995) (“qualifications for service in Congress set forth in the text of the Constitution are ‘fixed,’ at least in the sense that they may not be supplemented by Congress”). But that’s not what the Party did here. *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 primaries in recent years and the June 2026 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), by requiring some Republican voting history for nominees to run under the Party’s banner. That “is protected by the Constitution.” *Id.*

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, courts have “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); accord *Democratic Party of U.S. v. Wisc. ex rel. LaFollette*, 450 U.S. 107, 121–22 (1981); *O’Brien v. Brown*, 409 U.S. 1, 4–5 (1972) (per curiam).

Despite these bedrock principles, Respondent Danny Ford, II sought mandatory injunctive relief, not “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)), but *during* the ongoing Republican special primary election for U.S. Senate. Such extraordinary relief is already rare and disfavored, and of all the cases, it was certainly unwarranted here.

Start with the request for an *ex parte* TRO and failure to alert the circuit court to relevant adverse authority. (App. p. 20); see also *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); accord *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). Consider next Respondent’s proposed TRO, which still failed to comply with Rule 65(d), SCRCP, and did not actually order any relief. See (App. p. 18) (enjoining the Party “from removing” him “from the ballot,” even though he was never on the ballot). Turn last to his shifting arguments. Compare (Pl.’s Compl.) (free-and-open-elections clause) and (App. pp. 70–71), with (App. 16–17) (Equal Protection Clause and constitutional qualifications to serve) and (App. pp. 94–95). None of his short briefs included a substantive due process claim. See *id.*

In the face of these problems, the circuit court still issued a mandatory preliminary injunction (1) requiring the Party to certify Respondent as a candidate despite his failure to satisfy the Party’s rule and (2) ordering the State Election Commission to change the ballot in the middle of an ongoing election to include his name.

It did so on a constitutional claim Respondent did not plead in the complaint or any motion. *That was error.* It did so by substituting its judgment for the Party's because it did not see the point of Rule 11(a)(6)(a). *That was error.* It did so by putting the Party's voter history rule on par with racial discrimination to find state action. *That was error.* It did so by finding the Party's decision arbitrary, even though the rule was applied consistently, 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.* It did so by finding the rule violated Respondent's substantive due process rights without defining what rights Respondent possesses, considering whether the rule passed rational basis review, or explaining how the rule was "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.* And it did all this while the election was underway. *That was error.*

Because the order was not stayed, the Republican special primary election for U.S. Senate continued with two different ballots. Respondent did not even receive 1% of the vote.

The Court should vacate the injunction. Further, because the errors below will continue to plague this lawsuit and future ones, the Court should consider the circuit court's denial of the Party's motion to dismiss concerning the same issues, reverse, and remand with instructions to dismiss Respondent's complaint. *See Morris v. Anderson Cnty.*, 349 S.C. 607, 610, 564 S.E.2d 649, 651 (2002) ("this Court may, as a matter of discretion, consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation").

STATEMENT OF THE CASE

This appeal arises out of Respondent's request for the circuit court to order the Party to certify him as a candidate for U.S. Senate during the Republican special primary election.

After several years of discussion, the Party adopted a rule on June 27, 2026, 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.” SCGOP R. 11(a)(6)(a) (2026); *see also* (App. p. 91). When adopted, the Party did not know it would have to apply the rule so soon. The late Honorable Lindsey O. Graham won the Republican primary outright in June and was well on his way to being elected to a fifth term representing the people of South Carolina in the U.S. Senate. Tragically, he passed away suddenly on the evening of July 11, 2026. As a result, the Party had to hold a special primary election to nominate a new Republican candidate to run in the November general election.

Filing for the special election opened at noon on July 21, 2026 and lasted until noon on July 28, 2026. (App. p. 91). Respondent did not tell anyone at the Party he planned to file and submitted his paperwork in the last hour of filing. (App. p. 91). After reviewing Respondent’s voting history, the Party determined he did not vote in two of the last three statewide Republican primaries and declined to certify him to run as a candidate in the special election. (App. p. 92).

Respondent filed this lawsuit three days later on July 30, 2026. (App. p. 24). In his complaint, Respondent sought an *ex parte* TRO against the Party and the State Election Commission. (App. p. 28). That same day, he went to the courthouse without notice to the defendants and obtained an *ex parte* TRO. (App. pp. 20–22).

Upon receiving notice, the Party’s counsel immediately objected to the *ex parte* TRO, and the circuit court gave the Party and the State Election Commission three hours to file a brief at 9:00 P.M. that evening. (App. p. 33). It also sought proposed orders by noon the next day. (App. p. 96). The Party met these deadlines. (App. pp. 33–50 & 96–98). After the circuit court issued

a new TRO on Friday, July 31, 2026, (App. pp. 13–19), the Party filed another brief and a declaration on behalf of Chairman Drew McKissick on Sunday, August 2, 2026, in advance of the hearing, (App. pp. 72–93). That brief included a motion to dissolve the TRO, a response further opposing injunctive relief, and a motion to dismiss the complaint. (*Id.*).

The circuit court held a hearing the morning of August 3, 2026 at the Richland County Courthouse. *See generally* (Hr’g Tr.). At the conclusion of the hearing, the circuit court requested competing proposed orders by 5:00 P.M., (Hr’g Tr. at 73:12–18), and the parties submitted proposed orders later that day, (App. pp. 99–113).

At 10:05 A.M. on August 4, 2026, the circuit court issued its order granting Respondent’s motion for mandatory injunctive relief and denying the Party’s motion to dismiss. (App. p. 1). The Party appealed to this Court and moved to stay the injunction pending appeal before 3:00 P.M. that same day. (Notice of Appeal); (Mot. to Stay). The State Election Commission followed suit shortly thereafter. (SEC’s Notice of Appeal); (SEC’s Mot. to Stay). In response to the Court’s request, Respondent filed a return opposing the motion shortly before the 5:00 P.M. deadline on August 5. (Return). The Party filed a reply in less than an hour. (Reply). Moments later, the Court issued an order denying the motion to stay. (Order Den. Mot. to Stay). This brief follows.

STATEMENT OF THE FACTS

Following the untimely death of Senator Graham, the Party held a special primary election to replace him. (App. p. 91). The candidate filing period opened at noon on July 21, 2026, and lasted until noon on July 28, 2026. (*Id.*).

After the filing period closed, the Party’s Executive Committee met to review the specific candidate filing materials and certify the candidates. (*Id.* at 92). While Respondent filed the necessary documents to run in the special primary, the Party determined he could not run under

the SCGOP banner because he had not voted in at least two of the last three statewide Republican primaries under Rule 11(a)(6)(a). (*Id.*). Respondent voted in the June 2026 Republican primary election, including its runoff, but he did not vote in the other two most recent statewide Republican primaries. (*Id.* at 93). Because the Party found the June 2026 Republican primary election and its runoff did “not qualify as two separate ‘statewide Republican party primaries,’” it did not certify Respondent. (*Id.*). It did not certify another candidate for the same reason. (*Id.* at 92).

Meanwhile, the snap special primary began. As required by an agreement with the U.S. Department of Justice (DOJ), (App. pp. 56–67), 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) by August 1, 2026, (*id.* at 69). All UOCAVA ballots were sent, and voters had begun returning ballots. (*Id.*). Even so, Respondent demanded to get his name on the ballot. (App. p. 24).

Respondent’s complaint contained only one claim for an alleged violation of the free-and-open-elections clause. (*Id.* at 29–30). His arguments were two-fold. First, he argued Rule 11(a)(6)(a) violated the free-and-open-elections clause because he was constitutionally qualified to run for U.S. Senate. (*Id.*). Second, he argued alternatively that he met the Party’s voting history requirement because he voted in the June 9, 2026 Republican primary election and its runoff on June 23, 2026. (*Id.* at 27). The complaint also pleaded a motion for *ex parte* temporary restraining order, motion for preliminary injunction, and request for permanent injunctive relief. (*Id.* at 28).

This matter comes before the Court on the circuit court’s order issuing a mandatory preliminary injunction requiring the Party to certify Respondent as a Republican candidate for U.S. Senate, ordering the State Election Commission to place his name on the ballot in the middle of an ongoing election, and denying the Party’s motion to dismiss the complaint. (App. pp. 1–12).

STANDARD OF REVIEW

“Whether to grant a preliminary injunction is left to the sound discretion of the trial court and will not be overturned unless it is clearly erroneous.” *Compton v. S.C. Dep’t of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011) (citing *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007)). “An abuse of discretion occurs when the trial court’s decision is unsupported by the evidence or controlled by an error of law.” *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). Further, the “Court reviews all questions of law de novo.” *Thompson v. Swicegood*, 430 S.C. 648, 658, 845 S.E.2d 920, 925 (Ct. App. 2020) (quoting *Fesmire v. Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009)).

“The remedy of an injunction is a drastic one and ought to be applied with caution.” *Strategic Res. Co.*, 367 S.C. at 544, 627 S.E.2d at 689. A plaintiff must show “(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*, 392 S.C. at 366, 709 S.E.2d at 642 (quoting *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004)). It “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).

“Mandatory preliminary injunctions do not preserve the status quo and normally should be granted only in those circumstances where the exigencies of the situation demand such relief.” *Wetzel v. Edwards*, 635 F.2d 283, 286 (4th Cir. 1980). “A mandatory injunction is an extraordinary remedy that orders some positive act to be performed.” 43A C.J.S. *Injunctions* § 19 (2019). “[E]specially at the preliminary stage of proceedings, [one] should not be granted except in rare instances in which the facts and law are clearly in favor of the moving party.” *Gantt v. Clemson Agr. Coll. of S.C.*, 208 F. Supp. 416, 418 (W.D.S.C. 1962). “Mandatory preliminary injunctive

relief in any circumstance is disfavored[] and warranted only in the most extraordinary circumstances.” *De La Fuente v. S.C. Democratic Party*, 164 F. Supp. 3d 794, 798 (D.S.C. 2016).

Where, as here, a plaintiff asks a court to require a political party to perform a positive act, he seeks a mandatory preliminary injunction. *See id.* (holding the plaintiff sought “mandatory injunctive relief” by “asking that the court require the Democratic Party to notify the Secretary of State to include him on the primary ballot”); 43A C.J.S. *Injunctions* § 19 (“A mandatory injunction is an extraordinary remedy that orders some positive act to be performed.”).

Although Respondent sought to frame his requests as seeking prohibitory relief, the only way he could get true relief was for the circuit court to require the Party to certify him and mandate the State Election Commission to place him on the ballot. And that is what the circuit court did. Its order said the Party “SHALL certify Plaintiff to the Commission as a qualified candidate within twenty-four (24) hours of entry of this Order” and ordered the State Election Commission “to include Plaintiff Danny Ford, II, by name as a candidate in the August 11, 2026, special Republican primary election for United States Senator on all ballots feasible for early voting and for election day.” (App. p. 11). Those are both positive, mandatory acts that upended the status quo predating the lawsuit.¹ Respondent thus sought and obtained a mandatory preliminary injunction.

ARGUMENT

I. The circuit court committed errors of law in finding Respondent was likely to succeed on the merits of an unpled substantive due process claim.

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. at 224 (quoting *LaFollette*,

¹ The Fourth Circuit “has defined the status quo as the ‘last uncontested status between the parties which preceded the controversy.’” *Pashby v. Delia*, 709 F.3d 307, 320 (4th Cir. 2013) (quoting *Aggarao v. MOL Ship Mgmt. Co., Ltd.*, 675 F.3d 355, 378 (4th Cir. 2012)).

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).

Against this backdrop, a court’s review of the SCGOP executive committee’s decision is thus limited. *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.”).

Rather than heed these “well established,” *id.*, principles of judicial restraint and proceed with caution, the circuit court entered a mandatory injunction based on a claim Respondent never pleaded in the complaint or argued in a brief, finding the Party’s decision not to certify him was state action and arbitrary. The circuit court erred as a matter of law.

A. Respondent never pleaded nor briefed a substantive due process claim.

To begin, 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). In briefing, proposed orders, and oral argument, he bounced from one purported constitutional violation to another. But the only constitutional claim alleged in his complaint arose under the free-and-open-elections clause. (Pl.’s Compl. at ¶¶ 26–32) (“FOR A FIRST CAUSE OF ACTION Declaratory Relief: Free and Open Elections Clause Violation”).

The law does not countenance this slapdash approach. *See Watts v. Metro Sec. Agency*, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001) (“The purpose of a pleading is fair notice to the opponent and the court.”); Rule 7(b)(1), SCRCP (requiring that motions “state with particularity the grounds therefor”). Nor does it allow the circuit court, “under the guise of liberal construction of the pleadings, [to] write into the complaint allegations that are not presented.” *Davis v. Monteith*, 289 S.C. 176, 182, 345 S.E.2d 724, 727 (1986); *see also Blackburn & Co. v. Dudley*, 289 S.C. 415, 418, 338 S.E.2d 151, 153 (1985) (“This is a rule of pleading based upon the principle that a plaintiff who has pled one theory should not be allowed to recover upon another.”); *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) (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”).

Respondent never pled or briefed a due process claim. By granting injunctive relief on a claim never pleaded or briefed, the circuit court committed the very constitutional violation of

which Respondent belatedly accused the Party. After all, the Party had no notice of or an opportunity to be meaningfully heard on a substantive due process claim. *See* S.C. CONST. art. I, § 3 (“nor shall any person be deprived of life, liberty, or property without due process of law”); *Robert K. v. City of Camden Plan. Comm’n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (“The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.” (citation omitted)). Substantive due process triggers its own distinct analysis. And pleading the U.S. Constitution and South Carolina Constitution preserves nothing. *Cf. State v. Colf*, 332 S.C. 313, 322, 504 S.E.2d 360, 364 (Ct. App. 1998) (“An issue is [] deemed abandoned if the argument in the brief is merely conclusory.”).

Neither the Party nor the State Election Commission were on notice of a substantive due process claim. The circuit court thus erred by accepting 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 unpreserved constitutional claims. *See* (App. pp. 33–43, 72–93, 96–113). That alone warrants reversal.

B. The Party’s interpretation of its own internal rule does not constitute state action.

Underpinning the circuit court’s ruling on the belated due process claim is its erroneous finding that the Party “waded into the gray area of state action when it certifies to the Commission who is and who is no on the ballot” and thus “moved from merely private association comprised of like-minded individuals to state actor.” (App. p. 8). But that conflates the analysis.

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. “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 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). Indeed, the circuit court here correctly noted “[t]he government cannot force political parties to open its door to anyone that it does not desire, nor can the government force political parties to abolish rules that limit those that may join.” (App. p. 6). Setting a 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” that courts cannot resolve with “judicially discoverable and manageable standards.” *Baker v. Carr*, 369 U.S. 186, 217 (1962).

And that is why the U.S. Supreme Court 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).

From the outset, Respondent’s gripe was with the Party, not the State Election Commission or any other arm of the State. Indeed, he named the State Election Commission only to carry out a remedy. (App. p. 24). But he never alleged or showed the Party’s “conduct, as alleged, has amounted to, or would constitute, state action.” *Wymbs*, 719 F.2d at 1077. Nor could he.

While courts have found political parties were state actors in the context of “increasingly subtle tactics employed to exclude blacks from participating” in the primary process, *Republican*

Party of Conn. v. Tashjian, 599 F. Supp. 1228, 1232 (D. Conn. 1984), those cases “do not stand for the proposition that party affairs are public affairs, free of First Amendment protections.” *Cal. Democratic Party*, 530 U.S. at 573. Rather, “courts have hesitated to find state action when . . . racial discrimination is not involved.” *Wymbs*, 719 F.2d at 1076.

The Party is a voluntary political association, not an arm of the State. Yet the circuit court found—for the first time outside the context of racial discrimination—the Party engaged in state action, citing *Bruce v. South Carolina High School League*, 258 S.C. 546, 189 S.E.2d 817 (1972) and *Rice v. Elmore*, 165 F.2d 387 (4th Cir. 1947). Neither can bear the weight placed on it.

Rice involved the Democratic Party excluding black voters from its primary. 165 F.2d at 388. But as the circuit court recognized, “race is not at issue here,” (App. p. 6), so *Rice* is inapposite.² And *Bruce* simply says what the Party has argued all along: decisions “with respect to its internal affairs will, in the absence of mistake, fraud, illegality, collusion, or arbitrariness, be accepted by the courts as conclusive.” 258 S.C. at 551, 189 S.E.2d at 819.

Bruce did not overturn the well-settled principle that “rights secured by the Constitution are protected *only* against infringement by governments.” *Flagg Bros., Inc.*, 436 U.S. at 156 (emphasis added); *see also Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 349 (1974) (“private action is immune from the restrictions of the Fourteenth Amendment”). Nor did it contemplate how a private political association’s decision may cross the line into state action. In fact, the Court reaffirmed “[i]t 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

² What is more, primaries today bear no resemblance to the election context of *Rice*. 165 F. 2d at 388 (noting one party “absolutely controlled the choice of elective officers in the State,” and “[i]n the election of 1946, for instance, 290,223 votes were cast for Governor in the Democratic primary” and “only 26,326 in the general election”). So exclusion from one party’s primary is not tantamount to exclusion from the political process. The Court should not blind itself to that reality.

of property or pecuniary rights or interests.” *Bruce*, 258 S.C. at 551, 189 S.E.2d at 819. And the Court there found students could not “force their participation in interscholastic athletics . . . upon the basis that they have a constitutionally protected right to do so.” *Id.* at 552, 189 S.E.2d at 819.

So too here. The Party’s decision not to certify Respondent as a Republican candidate because he failed to satisfy the Party’s rules does not constitute state action under any standard. In making *that* decision, the Party did not “undertake[] the duty to assist in the administration of the election,” Order Den. Inj. & Dismissing Compl. at 16, *Inglis v. S.C. Republican Party*, Case No. 2019-CP-40-05486 (S.C. Ct. Comm. Pl. Dec. 10, 2019), as the circuit court found, (App. p. 8). It simply applied its own rule, adopted in the ordinary course, about who can run under its banner. If that is state action, then it is tough to see what wouldn’t be. That cannot be the law.

The Party is a private, voluntary association of like-minded individuals afforded “freedom to identify the people who constitute the association, and to limit the association to those people only.” *Cal. Democratic Party*, 530 U.S. at 574. To be sure, “the qualifications for service in Congress set forth in the text of the Constitution are ‘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*, 514 U.S. at 798–99. 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”). The Party simply made a “determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals,” *Tashjian*, 479 U.S. at 224, in certifying nominees to run under the Republican name. The Party is more than a mere record-keeper performing the ministerial task of confirming a candidate’s constitutional qualifications concerning age and residence.

Whether a candidate is constitutionally qualified to hold the office he seeks is a fundamentally different inquiry from whether he meets the Party’s association rules. Though the former determination may, in some instances, constitute state action, the latter does not. Other circuit courts have agreed. *E.g.*, 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 . . . 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.”).

Although the circuit court began its analysis by acknowledging these bedrock principles, it finished by contravening them. Labeling the Party’s judgments as “state action,” the circuit court erroneously “substitute[d] its own judgment for that of the Party.” *Tashjian*, 479 U.S. at 224. Doing so was an error of law that infringed upon the Party’s constitutional rights.

C. The Party’s voting history rule and its decision not to certify Respondent pass constitutional muster in any event.

After finding state action, the circuit court concluded the Party violated Respondent’s due process rights without defining the liberty or property interest at stake, announcing the applicable level of scrutiny, or holding Respondent to his burden.

The circuit court agreed “a person wanting to run as the *Republican* nominee for U.S. Senate . . . is by no means a guaranteed right rooted in state law.” (App. p. 9). Respondent has no constitutional right to run for office at all, much less as a Republican. *See Biener v. Calio*, 361 F.3d 206, 215 (3d Cir. 2004) (“The right to run for office has not been deemed a fundamental right.” (citing *Bullock*, 405 U.S. at 142–43)). So he could not force the Party to place him on the

ballot based on some purported “constitutionally protected right to” so appear. *Bruce*, 258 S.C. at 552, 189 S.E.2d at 819. Running under the Republican name, or that of any party, is a privilege that “may be claimed by [candidates] only in accordance with the eligibility standards prescribed” by the Party. *Id.* at 551–52, 189 S.E.2d at 819. It is thus unclear how the circuit court found the Party deprived Respondent of this unknown right. *See Seabrook*, 369 S.C. at 198, 631 S.E.2d at 911 (a due process claim requires a “constitutionally protected property interest”).

Even so, “only suspect classes and fundamental rights receive intermediate or strict scrutiny.” *Biener*, 361 F.3d at 215 (citing *Bullock*, 405 U.S. at 142–43). Because there is no fundamental right to be a candidate, “[t]he standard for reviewing [this] substantive due process” claim “is whether the [rule] 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). 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.

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 statewide primaries. And the rule was adopted in the ordinary course. (App. p. 91). 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. (App. p. 93). 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.” *Biener*, 361 F.3d at 215.

While the circuit court claimed it wasn't wading into the wisdom of the Party's rule, the order paints a different picture. The circuit court acknowledged it could not "subject[] its views and judgments onto a private party" by finding "previous voting criteria" unconstitutional. (App. p. 9 n.3). Yet it stated that "the Party Rule is floundering in arbitrariness." (*Id.* at 9 n.2). To the extent this affected the circuit court's ruling, it was an error of law too.

For decades, the U.S. Supreme Court has 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 *Bullock*, 405 U.S. at 144–45). It 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. "The merits of such a rule or the wisdom of its adoption are not for the courts to determine." *Bruce*, 258 S.C. at 553, 189 S.E.2d at 819. To the extent the Court can even scrutinize those objectives, the Party's rule more than survives rational basis review. *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").

What is more, the Party faithfully and consistently applied the rule. Rule 11(a)(6)(a) 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 reveal he voted in the June 2026 Republican primary election, including its runoff, but not in the other two most recent statewide Republican primaries. (App. pp. 48–50, 92–93). Neither Respondent nor the circuit court disagreed with this.

Rather, the circuit court found the rule “confusing” because “the term ‘statewide primary’ was not defined and subject to multiple, credible interpretations.” (App. pp. 9–10). But that is the wrong question. Both the Party and the State Election Commission understood the term “statewide primary” and concluded the June 2026 Republican primary election and its runoff were the same election. *See 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). And the Attorney General considers them the same too. *See 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”).

There is no “lack of consistency” here. (App. p. 9). Even if there were, this is *the Party’s* rule. So long as the Party didn’t apply the rule arbitrarily, it had the authority to determine on its own what constituted a “statewide primary.” And it didn’t. Consider a few examples. Clark Nielsen, for his part, was not certified because he does not live in South Carolina. (App. p. 92). Senator Darline Graham voted in a Republican primary runoff in 2024 and the 2026 Republican primary. (Pl.’s Ex. 4). 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. (*Id.*). Respondent, on the other hand, voted in the 2026 Republican primary and runoff *for the same election*. The Party found he “clearly” fell short of the Rule’s requirements, making him “ineligible” to run in the special primary. *Bruce*, 258 S.C. at 553, 189 S.E.2d at 819.

The circuit court’s ranging hypotheticals were thus inapt, especially on an (unpled) as-applied due process claim. Had the State Election Commission interpreted “statewide primary” differently, (App. p. 10), the Party’s interpretation of its own rule would control.³ And “whether the June 9, 2026, primary is considered the same primary as the current special election [] held August 11, 2026,” (*id.*), for future elections and applications of the rule has no bearing on the facts here: the Party consistently interpreted the June 9, 2026, primary and its runoff as one election.

Indeed, the only question the circuit court could consider is whether the Party’s decision to exclude Respondent from the ballot was arbitrary. *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.”).

But the Party followed its own rules and determined—based on the evidence before it—Respondent could not run *as a Republican* for U.S. Senate. Reviewing voting records of individual candidates was part of the Party’s due diligence for certification. Based on that review, the Party found Respondent had voted twice in the same “primary,” while other candidates satisfied the requirement in different ways. (App. pp. 92–93). “Under these circumstances, the SCGOP’s

³ For this reason, the fact the State Election Commission issued a press release “address[ing] voter eligibility question” is of no moment. (App. 9–10).

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 abused its discretion in finding the Party “tend[ed] to present its decisions on candidate certification as capricious and arbitrary.” (App. p. 9). On top of the undisputed facts failing to bear that out, Respondent failed at any rate to show how the rule was “so far beyond the limits of legitimate governmental action, no process could cure the deficiency.” *Seabrook*, 369 S.C. at 198, 631 S.E.2d at 911. Indeed, had he bothered telling anyone of his intent to run for U.S. Senate after losing the race for Agriculture Commissioner, perhaps the executive committee members would have sought a waiver of the rule. But he didn’t, and they didn’t. That is nobody’s fault but his own. It is not a substantive due process violation.

II. The circuit court committed these errors in the middle of an election.

Compounding these errors was the circuit court’s decision to issue a mandatory injunction to change the ballot, “represent[ing] 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).

The U.S. Supreme Court has “repeatedly emphasized that federal courts ordinarily should not alter state election rules in the period close to an election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (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. Such “interventions by the courts . . . undermine [their]

most valued asset, the public’s trust and confidence in the judiciary.” *Middleton*, 990 F.3d at 774. “And when public confidence in the election results falters, public confidence in the elected representative follows.” *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 78 (2026).

While it is most often applied in federal courts, the *Purcell* principle is no stranger to South Carolina courts. This Court, for its part, saw “no reason why these considerations do not apply with equal force to the unique circumstances presented here.” Order Den. Mot. to Stay Inj. Pending Appeal, App. Case No. 2026-001729, at 3 (Aug. 8, 2026). In 2024, the same circuit court judge applied the doctrine in another election matter too. *See* Order Den. Mot. for TRO, *ACLU v. State Election Comm’n*, No. 2024-CP-40-06286, at 8 (Nov. 7, 2024) (Coble, J.) (“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.”).

For good reason. This “important principle of judicial restraint” “protects the State’s interest in running an orderly, efficient election” and gives the public “confidence in the fairness of the election.” *Democratic Nat’l Comm. v. Wisc. State Legis.*, 592 U.S. 1039, 1044 (2020) (Kavanaugh, J., concurring). It “reflects a bedrock tenet of election law: When an election is close at hand, the rules of the road must be clear and settled.” *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (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.

Democratic Nat'l Comm., 592 U.S. at 1043–44 (Kavanaugh, J., concurring). In other words, “practical considerations,” like already-cast ballots, “sometimes require” allowing elections to proceed despite pending legal challenges.” *Riley v. Kennedy*, 553 U.S. 406, 426 (2008).

Here, the circuit court disregarded *Purcell*’s counseled restraint and issued a mandatory injunction that disrupted an ongoing election. In doing so, the circuit court likened the Party’s voter history rule—designed to accomplish political objectives protected by the First Amendment—to racial discrimination to find state action and decide a major constitutional question. It then found a likelihood of success on an unpled substantive due process claim. These consequential errors only underscore the fraught task trial judges face when asked to weigh in on complex political issues on a compressed timeline so close to an election. Or here during one.

Characterizing this argument as one of mootness,⁴ the circuit court accepted Respondent’s argument that the “concerns and potential harm” the Party raised were “speculative.” (App. p. 3). Not so. By the time the injunction issued, hundreds of ballots without Respondent’s name had been sent to voters, including 333 UOCAVA ballots and over 1,500 general absentee ballots. (App. p. 69). And 59 South Carolina citizens had already cast their vote. *Id.*; *see also* (App. p. 3). The Republican special primary election was underway, and the prejudice was real.

South Carolina voters felt the consequences. Adding Respondent’s name to the primary ballots disrupted the orderly, efficient, and accurate conduct of the special primary. At the hearing, Respondent pivoted and said he was not concerned about voters who already cast their ballots without his name appearing on them. *See* (App. p. 11). Noting Respondent’s concession, the circuit court did not address the outstanding ballots or the already cast ballots or require the State Election Commission to notify those voters who had received them. (*Id.*) (“While Defendants

⁴ The *Purcell* doctrine is really a species of laches, not mootness, specific to elections.

brought the Court’s attention to the existing military and absentee ballots and the impact a Court’s ruling would have on them, Plaintiff requested a prospective option at the August 3, 2026, hearing, requesting to be restored to ballot for early voting and election day, August 11. Plaintiff made no request as to rescission of existing ballots.”). But Respondent doesn’t get to decide that. Because of his demanded intrusion, the outstanding ballots—along with those already returned and cast—did not contain all possible candidates. It is tough to imagine what could be more confusing than an election with two sets of ballots for the same party and the same office. What if Respondent had been a legitimate candidate and garnered real support? The fact he was irrelevant to the election does not eliminate the confusion caused by having two ballots for the same election. This was not a “minimal impact on the election.” (App. p. 11).

“A smoothly run election . . . does not just happen,” *Middleton*, 990 F.3d at 774 (Wilkinson & Agee, JJ., dissenting), for “running a statewide election is a complicated endeavor,” *Democratic Nat’l Comm.*, 592 U.S. at 1043 (Kavanaugh, J., concurring). When the rules change and candidates are added after voting has already begun and less than 24 hours before in-person voting begins, the complication multiplies. It shatters public confidence in integrity of the election process. *Cf. Bost*, 607 U.S. at 78 (“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.”). It amplifies the probability of an election protest. *See* S.C. Code Ann. §§ 7-17-560 & -570. And practically speaking, it is as if voters participated in two different elections.

The “important principle of judicial restraint” under *Purcell* prevents that and “protects the State’s interest in running an orderly, efficient election” to give the public “confidence in the fairness of the election.” *Democratic Nat’l Comm.*, 592 U.S. at 1044 (Kavanaugh, J., concurring).

Consistent with *Purcell*, given the increased risk of error in conducting the special primary election under new rules, coupled with the risk of resulting damage to public confidence in the electoral process, the circuit court should have denied the request for a mandatory injunction.

Both federal and state courts have done so for decades. And this case demonstrates the resulting peril when due consideration is not given to the *Purcell* doctrine. “[W]hen a lower court intervenes and alters the election rules so close to the election date, [the Supreme Court’s] precedents indicate that this Court, as appropriate, should correct that error.” *Republican Nat’l Comm.*, 589 U.S. at 425. Otherwise, *Purcell* is toothless and circuit courts become “a roving commission to rewrite state election codes,” *Tex. Democratic Party v. Abbott*, 961 F.3d 389, 394 (5th Cir. 2020), or party rules. Accordingly, the Court should reverse and provide much-needed guidance for circuit courts who are frequently asked to intervene in elections at the eleventh hour.

CONCLUSION

For these reasons, the Court should reverse the circuit court’s order, vacate the mandatory injunction, and remand with instructions to dismiss the complaint.

Respectfully submitted,

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