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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**

Hon. Daniel M. Coble, Circuit Court Judge

**Appellate Case No. 2026-001729
Case No. 2026-CP-40-05213**

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
S.C. STATE ELECTION COMMISSION**

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September 24, 2026
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STATEMENT OF ISSUES ON APPEAL

- I. Whether the circuit court erred in granting mandatory relief that commanded a state agency to alter the ballot of a special primary already in progress, where the relief reversed rather than preserved the status quo ante and where the circumstances the court called extraordinary were themselves reasons for judicial restraint.
- II. Whether the circuit court erred in entering an *ex parte* temporary restraining order against the Commission without notice, without defining the injury, and without stating why the order issued without notice, and whether a later hearing on notice cures those defects.
- III. Whether the circuit court erred in ordering affirmative relief against the Commission, where the complaint pleads no cause of action against it, where Title 7 assigns verification and certification of primary candidates to the political party, and where paragraph 2 of the order was not specific in terms as Rule 65(d), SCRCF, requires, because it commanded the Commission to place a candidate on a party primary ballot on an impractical timeline and without conditioning that command on the Party's certification.
- IV. Whether the circuit court erred in altering the ballot of an election already in progress under the circumstances.
- V. Whether this Court should adopt, as a matter of equity, a *Purcell* framework governing eleventh-hour election-related litigation.

INTRODUCTION

The South Carolina State Election Commission (“Commission”) takes no position on the validity of South Carolina Republican Party Rule 11(a)(6)(a), on whether the Party’s refusal to certify Danny Ford, II amounts to state action, on whether the Party owed Ford any process, or on the sufficiency of the process he received. Those questions remain between Ford and the Party, and the Commission has declined to take a side at every stage. The Commission prepares ballots and administers elections. It maintains this appeal of the circuit court’s orders because of what the court commanded of the Commission, the manner in which it compelled the Commission to act, and the timing of its directives to the Commission.

Ford filed his pleading at 12:40 p.m. on Thursday, July 30, 2026. The circuit court signed a temporary restraining order at 2:31 p.m. that same afternoon, and the clerk entered it at 2:33 p.m.—1 hour and 53 minutes later—without notice to either defendant. The order defined no injury, gave no reason for dispensing with notice, fixed no expiration, and restrained an unspecified “Defendant” in the singular. Eleven months earlier, this Court reversed an *ex parte* restraining order entered against this same agency for these same defects. *Crook v. S.C. Election Comm’n*, Op. No. 2025-MO-041, 2025 WL 2630725 (S.C. Sept. 11, 2025) (unpublished memorandum opinion).

Five days later, following a modified TRO, the circuit court entered a mandatory preliminary injunction. Paragraph 1 commanded the Party to certify Ford within 24 hours. Paragraph 2 commanded the Commission to place Ford’s name “on all ballots feasible for early voting and for election day.” Early voting started in less than 24 hours. By that point, county boards had distributed 333 UOCAVA ballots and 1,538 general absentee ballots, and voters had returned dozens of them. The order left those ballots undisturbed, and the special primary proceeded on two different ballots, with one listing nine candidates and the other listing ten.

The Commission does not ask this Court to decide whether Ford should have been certified. It asks this Court to decide what a circuit court may command of a state election agency, and how, once an election is in progress. On that question the August 4 order is the only written authority in South Carolina, and it is wrong in several respects: the relief it granted was mandatory and reversed the status quo rather than preserve it; the restraining order that preceded it issued *ex parte* against the State; the relief ran against an agency the complaint never sued and on terms contrary to Title 7; and it came after voting had begun, when no order could reach every voter alike.

Both defendants appealed within hours and moved to stay. This Court denied the stays on August 5, 2026, without reaching the merits, and concluded that “[t]he regrettable actions of the Commission have increased the risks of administrative error and possible voter confusion,” the Commission having “unilaterally direct[ed] that Ford’s name be added to the ballot.” The Commission addresses that concern here. In short, paragraph 2 of the circuit court’s order was unconditional: it did not direct the Commission to act upon the Party’s certification, and the 24 hours paragraph 1 gave the Party expired 1 hour and 35 minutes after early voting opened. The Party never certified Ford. The Commission could obey paragraph 2 without the certification Title 7 makes the predicate for placing a name on a primary ballot, or it could wait for a certification that never came and defy an unstayed order directed to it by name. It obeyed, and it asked this Court twice to say what paragraph 2 required. The Commission shares the Court’s concern about the risk of administrative error and voter confusion. That risk and related “regret[],” however, was the result of the circuit court’s *ex parte* actions and the timing and terms of its order.

The special primary took place on August 11, 2026. Ford was not nominated. The Commission does intend to address the dispute between Ford and the Party; it asks instead for a rule. A state election agency on a compressed election calendar needs to know that it is entitled to notice before a court enjoins its ballot preparation or other eleventh-hour election-related operations. This record provides the occasion for the Court to say so.

STATEMENT OF THE CASE

I. Background

A. The Party certifies candidates, and the Commission prepares ballots.

Title 7 divides responsibility for a party primary between the political parties and the election authorities, and it places candidate qualification squarely with the party. A political party “must verify the qualifications of those candidates prior to certification to the appropriate election commission of the names of candidates to be placed on primary ballots,” and a party “must not certify” an unqualified candidate, in which event “such candidate’s name shall not be placed on a primary ballot.” S.C. Code Ann. § 7-13-40. A candidate’s name “may not appear on a primary election ballot” absent certification “by the appropriate political party as required by Sections 7-13-40 and 7-13-350.” *Id.* § 7-11-15(B); *see also id.* § 7-13-350 (nominees “must be placed upon the appropriate ballot . . . by the authority charged by law with preparing the ballot if the names of the nominees are certified, in writing, by the political party”).

The Commission’s role runs downstream of that certification. The Commission coordinates the printing and distribution of ballots for statewide and federal offices, *id.* § 7-13-340, and it must “support all aspects of creating the ballots and the database” used by the State’s voting system, *id.* § 7-13-1655(B)(3). This Court has described those functions and duties as what they are: “ministerial in nature.” *W.J. Douan v. Charleston Cnty. Council*, 357 S.C. 601, 615 n.9, 594 S.E.2d 261, 268 n.9 (2003). The Commission does not have “any unilateral

authority” over the substance of what appears on a ballot; it “control[s] the form of the ballot only as it pertains to physical characteristics of the ballot such as space limitations and the arrangement of names and issues.” *Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm’n*, 336 S.C. 174, 184, 519 S.E.2d 567, 572 (1999). The Commission has no independent, inherent authority to add a name to, or remove a name from, a party primary ballot.

B. The unexpected vacancy, special primary, and compressed calendar.

United States Senator Lindsey O. Graham died in office on July 11, 2026, creating a vacancy in the Republican nomination for the general election of November 3, 2026. (Compl. ¶ 6). A special primary followed under S.C. Code Ann. § 7-11-55. The filing period opened at noon on July 21, 2026, and closed at noon on July 28, 2026. (McKissick Decl. ¶ 9). Twelve candidates filed. Ford did so in the final hour of the period. (McKissick Decl. ¶¶ 9–11).

The compressed calendar governed everything that followed, and it did so before this dispute began. UOCAVA requires a State to transmit validly requested absentee ballots to military and overseas voters not later than 45 days before an election for federal office. 52 U.S.C. § 20302(a)(8)(A); *see* S.C. Code Ann. § 7-15-680. Full compliance for an August 11 special primary would have required transmission no later than June 27, 2026, “which was before Sen. Graham passed away and more than a month before the resulting candidate filing period would end under South Carolina law.” (Ex. A, SEC Mem. in Opp’n ¶ 11 (Recitals)). No waiver was available, because none of the hardship criteria of 52 U.S.C. § 20302(g)(2) applied to a special primary and runoff on this calendar. *Id.* ¶ 8 (Recitals). Neither the Executive Director nor the Commission could move the election, because under S.C. Const. art. II, § 10, only the General Assembly may regulate the time, place, and manner of an election. *See Bailey v. S.C. State Election Comm’n*, 430 S.C. 268, 275–76 844 S.E.2d 390, 394 (2020).

The Commission therefore negotiated a memorandum of agreement with the United States Department of Justice, executed July 20, 2026, covering both the August 11 primary and any August 25 runoff. (Ex. A to SEC Mem. in Opp’n). It required the Commission to ensure that county boards transmit ballots to all validly requesting UOCAVA voters no later than August 1, 2026, and it provided that “[t]he ballots will include Instant Runoff Voting for a potential runoff election on August 25, 2026.” *Id.* ¶ 2 (Terms); *see* S.C. Code Ann. § 7-15-650; 52 U.S.C. § 20302(a)(9). A UOCAVA voter accordingly ranks the primary candidates, and that ranking “serve[s] as the[ir] ballot[s] in the event of a runoff.” *Id.* ¶ 15(c) (Recitals). The agreement required a report to the Department by August 4, 2026, on the transmittal of those ballots, *id.* ¶ 8 (Terms), and made a material failure to comply “enforceable immediately in the United States District Court for the District of South Carolina,” *id.* § V.

County boards began distributing UOCAVA and general absentee ballots on July 29, 2026, the day after the filing period closed. As of the morning of July 31, the Executive Director swore that approximately 280 UOCAVA ballots had been sent, “well over half of the UOCAVA voters eligible to vote in the Special Republican Primary,” that approximately 29 had been returned, and that approximately 1,111 general absentee ballots had been sent. (Belangia Aff. ¶¶ 6–8).

C. The Party declines to certify Ford as a candidate.

The Party’s State Executive Committee met on July 28, 2026, and no member moved for a waiver under Rule 11. The Party’s State Executive Committee declined to certify Ford and two other candidates, but the Committee certified the names of the remaining nine candidates to the Commission. Ford learned that day that he had not been certified as a candidate. (McKissick Decl. ¶¶ 13–19).

II. Procedural History

A. The initiation of *ex parte* litigation.

Ford filed suit at 12:40 p.m. on Thursday, July 30, 2026, in a single pleading captioned as a motion for an *ex parte* temporary restraining order, a motion for a preliminary injunction, and a complaint for declaratory and injunctive relief. (Summons & Compl.). The pleading names the Commission in a single paragraph, which alleges that the Commission “has the responsibility for administering elections and preparing special primary and general election ballots according to law” and that, “[a]s such, the SCEC is joined under Rule 19, SCRCF as a party necessary to grant complete relief.” (Compl. ¶ 3). Every substantive allegation runs against the Party. The prayer seeks a declaration that the “actions of Defendant Republican Party” violate the state and federal constitutions and Title 7. (Compl. ¶ 31).

B. The July 30 *ex parte* order and the July 31 order.

The circuit court signed a temporary restraining order at 2:31 p.m. on July 30, 2026, and the clerk entered it at 2:33 p.m., 1 hour and 53 minutes after Ford filed and without notice to either defendant. (July 30 TRO). The order states that the court “GRANTS Plaintiff’s Motion for *Ex parte* Temporary Restraining Order, Motion for Preliminary Injunction, and Complaint for Declaratory and Injunctive Relief,” and recites “Plaintiff’s verified Motion.” (July 30 TRO 2). It states no reason for dispensing with notice, identifies no injury beyond the assertion that irreparable harm will follow if Ford’s name is omitted, fixes no expiration, running instead “until a hearing can be held . . . or pending further Order of the Court,” and restrains “Defendant,” in the singular. (July 30 TRO 2–3). It set security at \$100 on the stated ground that “there is minimal risk of financial harm to the Defendants.” *Id.*

The Party filed a response in opposition at 9:57 p.m. that evening, on roughly three hours' notice, objecting under *Crook*, *Hill*, and *Best*. (SCGOP Resp. in Opp'n). The circuit court also asked the Commission for its opposition. The Commission's Memorandum in Opposition states on its face that the Commission submits it "at the Court's request," and its certificate of service recites service on "July 30, 2026"—the same day the *ex parte* order issued. (SEC Mem. in Opp'n 1, 5). The Commission objected there that Rule 65(a) forbids injunctive relief without notice, that an *ex parte* order involving the State is improper under *Hill*, *Best*, and *Crook*, that the July 30 order satisfied none of the requirements of Rule 65(b) and (d), and that the relief Ford sought would require the Commission to redefine the ballot, rebuild and redistribute the database to 46 county boards, and retest voting equipment on a calendar that allowed none of it. *Id.*

Ford filed a reply at 11:59 a.m. on July 31. (Ford Reply to Mem.). The circuit court signed a second restraining order at 1:10:58 p.m. that day, and the clerk entered it at 1:15 p.m. (July 31 TRO). That order recites that the court reviewed "the verified Complaint, the Motion and supporting Memorandum of Law, and the applicable law," and sets out its findings under the heading "ALLEGATIONS WITHIN THE VERIFIED COMPLAINT." (July 31 TRO 1). It does not recite consideration of either defendant's opposition, including the opposition the court had asked the Commission to furnish. It provides that it "shall remain in effect until further order of this Court or until the hearing on Plaintiff's Motion for a Preliminary Injunction, whichever occurs first," rather than fixing a term not to exceed ten days, repeats the \$100 figure, and requires the security within five days. (July 31 TRO 6). Its caption reads "County of Orangeburg" in a Richland County case. (July 31 TRO 1). The clerk's file stamp on the Commission's memorandum reads 1:36 p.m. that afternoon, 21 minutes after entry of the second

order. (SEC Mem. in Opp’n 1). The Commission filed the Affidavit of Conway Belangia at 2:09 p.m. (Belangia Aff.).

C. The August 3 hearing and the August 4 mandatory injunction.

The circuit court heard all parties on August 3, 2026, and admitted four exhibits offered by Ford without objection. (Order Granting Prelim. Inj. 1). The Party filed the Declaration of its Chairman, Drew McKissick, that morning. (McKissick Decl.). At 8:10 a.m., Ford filed his Reply to Motion, stating that he “does not, on this motion, expand those theories beyond what the Complaint states; he asks only that they be preserved as pleaded.” (Ford Reply to Mot. 2). At the outset of the hearing Ford’s counsel proposed to rely on the pleading to establish six facts about Ford himself, and counsel for the Party and for the Commission had no objection. (Tr. 5:5–17, 6:1–4).

Counsel for the Commission opened by stating its position: “we are not taking a position in the merits We are here to advise the Court of the status of the election and the things that the Commission has to deal with in conducting it as it exists now, or if anything should change.” (Tr. 29:14–20). He then described the administration. The Party certified its candidates on the afternoon of July 28, the Commission built the ballots and delivered them to the counties, and absentee ballots went out beginning July 29, so that “they were already going out then, and the election is a live event.” (Tr. 30:6–13). As of that morning county boards had distributed 333 UOCAVA ballots, of which 28 had been returned, and 1,538 general absentee ballots, of which 31 had been returned. (Tr. 31:18–21). Any change would require a new database and a new set of ballots, sent to the counties, and the counties to “prep the machines, test the machines” before early voting opened, and compressing that work raises the risk of error. (Tr. 33:19–34:15). The

45-day UOCAVA requirement could not be met on this calendar, which is why the Commission had negotiated the memorandum of agreement. (Tr. 35:5–20).

The circuit court asked counsel for the Commission what the agency would do if a candidate's name had been left off a ballot by accident on this same timeline. Counsel answered, "This would be a big problem," distinguished a contained local error from a live statewide election, and said of the ballots already cast: "how do you un-ring that bell? I'm not sure that you . . . can do it without ordering a new election." (Tr. 38:20–40:1, 41:1–7). Counsel for the Party objected that the relief sought was mandatory and that Ford had not pleaded the constitutional claims being argued. (Tr. 45:18–19, 60:9–15). Ford closed by asking that his name "be included on all ballots practical between now and the date of the election," and the court took the matter under advisement, directing proposed orders by 5:00 p.m. that day. (Tr. 72:6–11, 73:8–18).

The circuit court signed the Order Granting Preliminary Injunction at 9:53 a.m. on August 4, 2026, and the clerk entered it at 10:05 a.m. (Order Granting Prelim. Inj.). The order held the action not moot; held that a mandatory injunction was warranted by "extraordinary" circumstances; held that the Party's certification decision constitutes state action; and found a likelihood of success on substantive due process under article I, section 3 of the South Carolina Constitution, while rejecting in footnote 3 the theory Ford pleaded. (*id.* at 5, 6–8, 8–10, 9 n.3). Paragraph 1 enjoined the Party from declining to certify Ford and directed it to "certify Plaintiff to the Commission as a qualified candidate within twenty-four (24) hours of entry of this Order." Paragraph 2 directed the Commission to "include Plaintiff Danny Ford, II, by name as a candidate . . . on all ballots feasible for early voting and for election day." (Order Granting Prelim. Inj. 11). Paragraph 2 states no condition and no sequence. It does not direct the

Commission to act upon the Party’s certification, or after it, or in the event of it. The order required no security. *Id.*

D. The appeal, this Court’s August 5 Order, and the Commission’s compliance.

The Party filed its notice of appeal at 3:02 p.m. on August 4, and the Commission filed its notice of appeal at 6:11 p.m. the same day. (Notices of Appeal). Both appellants moved in this Court to stay the injunction pending appeal. The Commission also petitioned for a writ of supersedeas and moved for an immediate administrative stay and for expedited consideration. In the alternative, and expressly in the event this Court denied a stay, the Commission asked this Court to specify what paragraph 2 required of it, how the ballots already issued were to be treated, and whether replacement ballots had to issue. (SEC Mot. to Stay 6–7). It received no stay and no instructions. Early voting opened at 8:30 a.m. on August 5, 2026, and voters cast 8,481 ballots by 11:30 a.m. that morning. S.C. Code Ann. § 7-13-25(F); (SEC Mot. to Stay 4). This Court denied all stay relief that day, expressly declining to reach the merits and applying *Purcell*-type considerations as an exercise of its own equitable judgment. (S. Ct. Order of Aug. 5, 2026, at 2–3).

The same order stated that the Commission, “despite filing a motion to stay the lower court’s order with this Court and with full knowledge of the Party’s appeal and motion to stay the injunction, added further confusion to the legal dispute by unilaterally directing that Ford’s name be added to the ballot,” and concluded that “[t]he regrettable actions of the Commission have increased the risks of administrative error and possible voter confusion.” (S. Ct. Order of Aug. 5, 2026, at 2). The Court drew that conclusion from three of the Commission’s statements: a press release of August 4 reporting that Ford’s name had been added; the August 4 motion, which reported that the Commission “was required to give direction to the BVREs today” and

that “diligent efforts by the BVREs to comply with that order are in progress”; and the August 5 return, which reported that the name “has been added.” *Id.* at 2 n.1. The Commission takes that criticism seriously and answers it below at Part III(D). The facts of record are these.

Rule 241(b)(8), SCACR, provides that service of a notice of appeal does not automatically stay an order granting an injunction, and no court stayed the August 4 order at any time. The Commission stood under an unstayed mandatory injunction from 10:05 a.m. on August 4 forward, and early voting opened less than 24 hours later. Paragraph 2 stated no condition and no sequence: it did not direct the Commission to act upon the Party’s certification, after it, or in the event of it. (Order Granting Prelim. Inj. 11). Paragraph 1 gave the Party 24 hours, which ran to 10:05 a.m. on August 5—1 hour and 35 minutes after early voting opened. The Party did not certify Ford. It appealed, and on August 5 it asked this Court to “allow the State Election Commission to restore the ballot lawfully certified by the Party without Respondent’s name on it.” (SCGOP Reply ISO Mot. to Stay 3).

What the Commission did was comply. Its August 4 motion described the compliance as in progress because, at the hour it was filed, it was. Its August 5 return described the work as finished because, overnight, the county boards had finished it: “In conformity with the order of the circuit court . . . the Election Commission prepared election databases that included Respondent’s name and provided those to the 46 county Boards of Voter Registration and Elections. The BVREs have prepared voting equipment using this database so that ballots used during early voting would include Respondent’s name going forward.” (SEC Return 2). In the same return the Commission renewed its request for instructions and told the Court that, stay or no stay, “there will be two sets of ballots to be counted after election day.” (SEC Return 2–3).

E. The special primary, and the subsequent proceedings.

The Commission and the county boards conducted the special Republican primary on August 11, 2026, with Ford’s name on the early voting and election day ballots. Ford was not nominated. (Order Granting Prelim. Inj. 3); (SEC Mot. to Dismiss ¶ 2). Voters who had cast or received UOCAVA and general absentee ballots before August 5 voted a field of nine candidates. Voters who voted early or on election day voted a field of ten. The August 4 order left the earlier ballots in place because Ford “made no request as to rescission of existing ballots.” (Order Granting Prelim. Inj. 11).

The Commission filed a motion to dismiss under Rules 12(b)(1) and 12(b)(6), SCRCP, on August 31, 2026, expressly reserving this appeal, and answered the same day. The Party answered on September 1, 2026, asserting as its Eighth Defense that unpleaded constitutional claims fail under Rule 8, SCRCP. (SEC Mot. to Dismiss; SEC Answer; SCGOP Answer ¶ 35). The Commission’s August 31 motion to dismiss and answer, and the Party’s September 1 answer, do not affect this Court’s jurisdiction. *See* Rule 205, SCACR; *Tillman v. Oakes*, 398 S.C. 245, 728 S.E.2d 45 (Ct. App. 2012); *Maybank 2754, LLC v. Zurlo*, 444 S.C. 47, 906 S.E.2d 94 (Ct. App. 2024). This Court has jurisdiction under S.C. Code Ann. § 14-3-330(4), which authorizes review of “[a]n interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction.” The August 4 order granted an injunction, and the Commission served its notice of appeal the same day.

STANDARD OF REVIEW

“Declaratory judgments are neither legal nor equitable,” so the standard of review is “determined by the nature of the underlying issue.” *Bundy v. Shirley*, 412 S.C. 292, 301, 772 S.E.2d 163, 168 (2015). Respondent sought injunctive relief with a declaratory judgment, and “[a]ctions for injunctive relief are equitable in nature.” *Lambries v. Saluda Cnty. Council*, 409

S.C. 1, 7, 760 S.E.2d 785, 788 (2014). When the Court reviews “an action in equity, this Court may make factual findings based on its own view of the preponderance of the evidence.” *Id.* And it reviews questions of law *de novo*. *Id.*

“The remedy of an injunction is a drastic one and ought to be applied with caution.” *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). A party seeking preliminary injunctive relief “must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation.” *Allegro, Inc. v. Scully*, 400 S.C. 33, 45, 733 S.E.2d 114, 121 (Ct. App. 2012). The applicant must also establish that (1) they “would suffer irreparable harm if the injunction is not granted,” (2) they “will likely succeed on the merits of the litigation,” and (3) no adequate remedy at law exists. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). The party seeking an injunction bears the burden of demonstrating facts and circumstances warranting an injunction. *Strategic Res.*, 367 S.C. at 544, 627 S.E.2d at 689. “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 grant or denial of injunctive relief is reviewed for abuse of discretion, *Strategic Res.*, 367 S.C. at 544, but that deference has limits. “An abuse of discretion occurs when the trial court's decision is unsupported by the evidence or controlled by an error of law.” *Id.* The questions presented here are principally questions of law. Whether Rule 65, SCRPC, permitted an *ex parte* order on this pleading; whether the relief granted was mandatory; what Title 7 permits a court to order of the Commission; and whether paragraph 2 was specific in its terms

are all legal questions, and this Court owes the circuit court no deference in answering them. *See Lambries*, 409 S.C. at 7–8, 760 S.E.2d at 788.

ARGUMENT

The Commission’s position in this appeal is narrow and institutional. It does not defend the Party’s Rule 11(a)(6)(a), and it does not attack it. It takes no position on state action, on the process the Party owed Ford, or on the sufficiency of the process he received. It argues that the circuit court commanded of the Commission something Title 7 does not permit, in terms too indefinite to follow, by a procedure Rule 65 forecloses, and at a point when compliance significantly complicated election-administration activities. Those are the Commission’s concerns, and this Court should reach and resolve them.

I. The August 11 primary does not bar review of the questions the Commission raises.

The Commission acknowledges the obvious. The special primary took place on August 11, 2026. Ford was not nominated. No ballot remains on which his name could appear, and no order of this Court can alter an election already held. A case becomes moot “when judgment, if rendered, will have no practical legal effect upon [an] existing controversy.” *Byrd v. Irmo High Sch.*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). The Commission preserves that objection as to the merits of the dispute between Ford and the Party, on which it takes no position, but the questions the Commission raises are different, and they fall within the exception for matters capable of repetition yet evading review.

This Court will decide an otherwise moot question where the issue is “capable of repetition, but which will evade review.” *Byrd*, 321 S.C. at 432, 468 S.E.2d at 864; *see also Charleston Cnty. Sch. Dist.*, 336 S.C. at 180, 519 S.E.2d at 571 (reaching a moot pre-election dispute because “the same situation could arise again and it is unlikely an appellate court would

resolve such a case before an election was held”). Both halves are satisfied here, and the second is satisfied by the structure of the statute.

The likelihood of evading review is often a product of election calendars generally, but in this specific context, it is a product of S.C. Code Ann. § 7-11-55. A special primary follows a vacancy on a fixed and compressed schedule: filing opens on the second Tuesday after the death, remains open one week, and the primary follows on the second Tuesday after filing closes, with any runoff two weeks later. The entire cycle runs about 30 days. Ballots must be transmitted to military and overseas voters before it, under a federal deadline the calendar cannot accommodate. Litigation that begins inside that window is resolved in hours. This case proves the point: the circuit court entered an *ex parte* order less than two hours after the complaint was filed, entered a mandatory injunction five days later, and this Court ruled on the stay motions the next day. No order entered in such a case can be reviewed on the merits before the election it concerns is over, and a rule that withheld review in these circumstances would place the conduct of special primaries permanently beyond this Court’s supervision.

The repetition is equally structural. Vacancies in federal and state office recur, and the processes for filling such vacancies are prescribed by law (and often accompanied by condensed election calendars). Moreover, the Commission is frequently named as a defendant in election-related litigation. As the Court will recall, within the last year, the Court reversed an *ex parte* restraining order entered against this same agency without notice, and the circuit court here read that decision to hold the opposite of what it says. *Crook*, 2025 WL 2630725. The same questions will return, on the same calendar, against the same party.

In simple terms, there are four basic questions, and each recurs whenever a court is asked to intervene in an election in progress. What notice is a state election agency entitled to before a

court enjoins its ballot preparation? What must an injunction directed to an election agency say in order to be specific in terms? What must such an order do when a statute makes a third party's act the predicate for the agency's? And what should a South Carolina court consider before altering the conduct of an election that has already begun? This Court may also reach them as questions "of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest," *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001), but it need not rest on that ground. Declining review would leave the August 4 order standing as the only written authority in South Carolina on what a circuit court may command of a state election agency in the middle of an election. In the event the Court finds the appeal moot, the Commission asks the Court to vacate the August 4 order to ensure that it carries no precedential or preclusive weight. *Cf. United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950).

II. The Court should vacate the circuit court's order granting mandatory relief that reversed rather than preserved the status quo ante.

A. Paragraphs 1 and 2 command affirmative acts.

Paragraph 1 directs the Party to "certify Plaintiff to the Commission as a qualified candidate within twenty-four (24) hours of entry of this Order." Paragraph 2 directs the Commission to "include Plaintiff Danny Ford, II, by name as a candidate . . . on all ballots feasible for early voting and for election day." (Order Granting Prelim. Inj. 11). Neither paragraph restrains anything. Both compel action, on a deadline, by parties who had already completed the acts the order undid. Whatever its label, it is a mandatory injunction.

B. Preliminary injunctive relief in South Carolina preserves the status quo ante; it does not reverse it.

"A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable

harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law.” *Poynter Invs., Inc.*, 387 S.C. at 586, 694 S.E.2d at 17. “[T]he sole object of a temporary injunction is to preserve the subject of controversy in the condition which it is at the time of the Order.” *Cnty. Council of Charleston v. Felkel*, 244 S.C. 480, 137 S.E.2d 577 (1964). Where a plaintiff seeks affirmative relief, a mandatory injunction is the remedy available “[i]f plaintiff prevails on the merits.” *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 199 S.E.2d 60 (1973). The status quo ante on July 30, 2026, was a certified field of nine candidates, a ballot built and proofed, UOCAVA ballots in transit under a federal deadline, and votes already cast. The August 4 order changed each of them.

C. A mandatory injunction is a drastic remedy, not a routine or reflexive recourse.

“Preliminary injunctions may be categorized as either prohibitory or mandatory.” *Billups v. City of Charleston*, 194 F. Supp. 2d 452, 460 (D.S.C. 2016). “Prohibitory preliminary injunctions aim to maintain the status quo and prevent irreparable harm while a lawsuit remains pending.” *Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013). “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, especially at the preliminary stage of proceedings, 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). The U.S. Court of Appeals for the Fourth Circuit “has defined the status quo as the ‘last uncontested status between the parties which preceded the

controversy.” *Pashby*, 709 F.3d at 320 (quoting *Aggarao v. MOL Ship Mgmt. Co., Ltd.*, 675 F.3d 355, 378 (4th Cir. 2012)). *Poynter* may have folded the balance of equities into the irreparable-harm and adequate-remedy elements for ordinary preliminary relief, *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 587, 694 S.E.2d 15, 17 (2010), but it did not relax the caution this Court has required before a court commands affirmative action, and the status-quo requirement independently forecloses the relief granted here.

D. The circuit court recited the standard and then inverted it.

The August 4 order states the mandatory-injunction standard accurately and then applies it backwards. As the “extraordinary” circumstances justifying extraordinary relief, the order lists the Senator’s death, the Party’s new rule, the compressed election calendar, the Commission’s agreement with the Department of Justice, the absence of clarity about what counts as a statewide primary, and “the short time frame for a court to hear and schedule arguments to rule on the multitude of issues.” (Order Granting Prelim. Inj. 5). Every one of those is a reason for a court to stay its hand. The doctrine limiting mandatory preliminary relief exists precisely because compressed timelines produce unreliable adjudication. The order converts the reason for restraint into an open invitation for judicial intervention.

Nor does the record support the court’s treatment of the Commission’s evidence as “speculative.” (Order Granting Prelim. Inj. 3). Counsel explained at the hearing that any change would require a new database sent to the counties and the counties to “prep the machines, test the machines” before early voting opened the next morning, and that “if they’re having to do it under the pressure of time, then the likelihood of errors does increase.” (Tr. 33:19–34:15). The Commission said the same to this Court the next day, describing work that “ordinarily precedes an election by weeks.” (SEC Mot. to Stay 5). Nothing in the record contradicts it.

The hypothetical the order relies on was put to the Commission at the hearing, and the answer it received was the opposite of the answer the order assumes. The order posits a candidate “by complete accident left off” the ballot and states that “[t]he Commission would undoubtedly remedy that situation.” (Order Granting Prelim. Inj. 5). The Commission’s counsel answered, “This would be a big problem,” distinguished a contained local error from a live statewide election, and said of the ballots already cast: “how do you un-ring that bell? I’m not sure that you . . . can do it without ordering a new election. Because there’s no way to divide -- okay, you guys get to vote -- you guys are gonna get to vote with Mr. Ford on the ballot. But you guys have already got a ballot and that was your choices and you were limited to that.” (Tr. 38:20–40:1, 41:1–7). The order recites the hypothetical but not the answer. The distinction also runs deeper than the order allows: restoring a candidate a party certified corrects a clerical error and requires the Commission to do only what the certification already directed, while adding a candidate a party declined to certify substitutes a court’s judgment for the party’s on a question Title 7 commits to the party.

The order answers the point with *Erlandson v. Kiffmeyer*, 659 N.W.2d 724 (Minn. 2003), and with the statement that “Defendants failed to proffer any rational justification against distributing supplemental ballots to absentee voters.” (Order Granting Prelim. Inj. 3). Two things are wrong with that statement. Ford never asked for supplemental ballots; the order says so, recording that he “made no request as to rescission of existing ballots,” (*id.* at 11), and a party need not justify opposition to relief no one has sought. And the Commission explained why replacement ballots would not work: there is “no way to divide” the electorate between those who may vote a corrected ballot and those limited to the ballot they received. (Tr. 41:1–7).

E. Paragraph 3 extended the injunction to any runoff, which the ballots already transmitted could not accommodate.

One consequence of ordering relief after transmission had begun shows that the order could not be implemented on its own terms. Paragraph 3 limits the injunction to Ford and to the August 11 primary “(and any ensuing runoff for that office).” (Order Granting Prelim. Inj. 11). But the UOCAVA ballots transmitted by August 1 were not confined to August 11. Under the memorandum of agreement they “include Instant Runoff Voting for a potential runoff election on August 25, 2026,” so that a UOCAVA voter ranks the primary candidates and that ranking “serve[s] as the[ir] ballot[s] in the event of a runoff.” (Ex. A to SEC Mem. in Opp’n ¶ 2 (Terms), ¶ 15(c) (Recitals)); *see* S.C. Code Ann. § 7-15-650; 52 U.S.C. § 20302(a)(9).

Military and overseas voters had therefore already ranked a field of nine candidates, for the primary and for any runoff, before the August 4 order added a tenth. The Commission takes no position on whether that disparity is constitutionally significant. It observes that paragraph 3 commanded relief for a runoff the ballots in voters’ hands could not deliver, and that the order does not address the point, although the agreement the Commission filed on July 31 describes the instant runoff ballots.

One further consequence went unweighed. The ballots the order reached were transmitted by August 1 to satisfy Term 2 of the agreement with the United States, which makes a material failure to comply “enforceable immediately in the United States District Court for the District of South Carolina.” (Ex. A to SEC Mem. in Opp’n ¶ 2 (Terms), § V). The Commission filed that agreement below on July 31 and explained it at the hearing. (Tr. 35:5–20). The order does not mention it. The Commission does not suggest that a federal agreement immunizes it from state judicial process. It says only that a court weighing competing considerations before

enjoining an agency's ballot preparation must account for the obligations the agency already owes, and that it can do so only if it hears from the agency first.

III. The *ex parte* temporary restraining order violated Rule 65 and this Court's prohibition of *ex parte* relief involving the State, and the later hearing did not cure the defects.

A. Rule 65(a), SCRCP, is categorical.

"No temporary injunction shall be issued without notice to the adverse party." Rule 65(a), SCRCP. The July 30 order did not merely restrain. It states that the circuit court "GRANTS Plaintiff's Motion for *Ex parte* Temporary Restraining Order, Motion for Preliminary Injunction, and Complaint for Declaratory and Injunctive Relief." (July 30 TRO 2). A court cannot grant a complaint, and Rule 65(a) forbids granting a preliminary injunction without notice. That the decretal paragraph ran narrower does not repair the defect: on its face the order awarded every form of relief Ford requested, *ex parte*, before either defendant knew the action existed. *Cf. Crook*, 2025 WL 2630725, at *2.

B. An *ex parte* order involving the State is improper.

This Court has said so plainly, and more than once. "[W]hen an order involves the State an *ex parte* order is improper." *State v. Hill*, 266 S.C. 49, 52, 221 S.E.2d 398, 399 (1976); accord *Ishmell v. S.C. Highway Dep't*, 264 S.C. 340, 343, 215 S.E.2d 201, 202 (1975). Orders granted "without notice to the State . . . might have been set aside on that ground alone." *State v. Best*, 257 S.C. 361, 373, 186 S.E.2d 272, 278 (1972). The reason *Best* gives applies with force here: had the State "been given the opportunity to call the attention of the judge to the law of the cases herein cited, the result in the court below might have been different and this appeal unnecessary." *Id.*

Eleven months before this case, this Court applied that rule to this agency. In *Crook*, the Court reversed an *ex parte* restraining order and preliminary injunction entered against the Commission without notice: “Because the order does not comply with Rule 65, SCRCF; was issued without notice to the State; and fails to establish Respondent is entitled to injunctive relief, it is clearly erroneous.” *Crook*, 2025 WL 2630725, at *3.¹ The sequence here shows why the rule matters and why nothing that followed repaired the breach. The circuit court entered the July 30 order without notice and then asked the Commission for its opposition. The Commission furnished it “at the Court’s request” and served it that same day, using the occasion for precisely the purpose *Best* describes: it called the court’s attention to Rule 65(a), to *Hill* and *Best* themselves, and to *Crook*. (SEC Mem. in Opp’n 1, 5). The court entered a second restraining order the following afternoon on the same terms, reciting “the verified Complaint, the Motion and supporting Memorandum of Law, and the applicable law,” and saying nothing of the opposition it had requested. (July 31 TRO 1).

The Commission does not suggest that the circuit court acted in bad faith in soliciting its views. The point is one of procedure. An invitation to submit a memorandum after an order has issued is not the notice Rule 65(a) requires, because the notice that rule requires precedes issuance: “No temporary injunction shall be issued without notice to the adverse party.” Rule 65(a), SCRCF (emphasis added). A court that recognizes within hours that it should hear from a state agency has identified the defect; it has not cured it. The cure is to give notice to the agency before the order issues, which here would have cost no more than the few hours it took to collect the Commission’s memorandum.

1. Although *Crook* is an unpublished memorandum opinion, and Rule 268(d)(2), SCACR, limits its citation, the Commission cites it as persuasive authority given that it involved the same counsel seeking (and securing) *ex parte* relief against the Commission.

C. The July 30 order did not satisfy the requirements of Rule 65(b) and (d).

Rule 65(b) permits a restraining order without notice only on “specific facts shown by affidavit or by a verified complaint” clearly showing “that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon,” and it requires that every such order “be endorsed with the date and hour of issuance”; “define the injury and state why it is irreparable and why the order was granted without notice”; and “expire by its terms within such time after entry, not to exceed 10 days, as the court fixes.” Rule 65(b), SCRPC. Rule 65(d) requires that the order “set forth the reasons for its issuance,” be “specific in terms,” and “describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained.” Those requirements are mandatory, and an order that violates them is erroneous “regardless of whether it is considered a temporary injunction or a TRO.” *Spartanburg Buddhist Ctr. of S.C. v. Ork*, 417 S.C. 601, 609–10, 790 S.E.2d 430, 434–35 (Ct. App. 2016).

The July 30 order states no reason for dispensing with notice, defines no injury beyond the conclusory assertion that irreparable harm will follow if Ford’s name is omitted, fixes no expiration, and restrains “Defendant,” in the singular, without identifying which defendant it binds or describing in reasonable detail what that defendant must do. (July 30 TRO 2–3). The Commission raised each defect below. (SEC Mem. in Opp’n). Omissions like these are why Rule 65 requires specificity. Without forcing a circuit court to articulate—even if briefly—what precisely justifies this “drastic remedy,” *Greenville Bistro, LLC v. Greenville Cnty.*, 435 S.C. 146, 160, 866 S.E.2d 562, 569 (2021), that court can avoid rigorous analysis and burden this Court’s appellate review. The July 31 order repaired some of them but not the duration defect: it remained in effect “until further order of this Court or until the hearing on Plaintiff’s Motion for

a Preliminary Injunction, whichever occurs first,” (July 31 TRO 6), which is *not* a term “not to exceed 10 days,” Rule 65(b), SCRCP.

D. A later hearing does not cure an order that should never have issued.

The August 4 order disposes of the *ex parte* objection in two sentences: “Because the matter has now been heard on notice and on the merits of the request, any objection that relief was first granted without notice to the State is resolved. *See Crook v. S.C. Election Comm’n.*” (Order Granting Prelim. Inj. 1). *Crook* holds nothing of the kind. *Crook* reversed the order and remitted the plaintiff to a fresh application, “without prejudice to Respondent’s right to request a hearing before the circuit court, after notice to the State, on her claim for a preliminary injunction.” *Crook*, 2025 WL 2630725, at *3. A decision that reverses an *ex parte* order and requires the plaintiff to start over on notice cannot stand for the proposition that a later hearing validates the order it reversed or obviates the original error.

Other recent authorities reflect a similar understanding. Where an *ex parte* order entered without notice or an opportunity to be heard is “a nullity,” a later hearing directed at a different question does not validate it. *Cuttino v. Lenoir*, 271 S.C. 447, 448–49, 247 S.E.2d 815, 816 (1978). In *Spartanburg Buddhist Center*, the Court of Appeals held that the first injunction violated Rule 65(a) because it issued without notice and Rule 65(c) because it required no security, and that the superseding injunction entered after the hearing on the motion to dissolve was independently deficient because it too dispensed with security. 417 S.C. at 609–10, 790 S.E.2d at 434–35. The hearing did not rehabilitate the first order; the second had to satisfy Rule 65 on its own terms. The older cases Ford may invoke, *see, e.g., Meinhard v. Youngblood*, 37 S.C. 223, 15 S.E. 947 (1892); *Jordan v. Wilson*, 69 S.C. 52, 48 S.E. 37 (1904), establish only that a defendant who is fully heard on his own motion to dissolve cannot complain that he received

no hearing at all. They do not hold that a hearing cures an order that violated the mandatory terms of the rule.

The defect was not academic. The *ex parte* order operated from 2:33 p.m. on July 30 until the August 4 order superseded it, and the July 31 order the circuit court treated as its considered replacement recites no consideration of either defendant's opposition. (July 31 TRO; SEC Mem. in Opp'n).

IV. Ford pleaded no claim against the Commission, Title 7 gave the Commission no authority to do what the order commanded, and paragraph 2 was not specific in terms.

A. The complaint pleads no cause of action against the Commission.

Ford's pleading mentions the Commission once, to allege that it "has the responsibility for administering elections and preparing special primary and general election ballots according to law" and that, "[a]s such, the SCEC is joined under Rule 19, SCRCP as a party necessary to grant complete relief." (Compl. ¶ 3). That is a joinder allegation, not a claim. Rule 19 identifies who must be before the court; it does not create a cause of action against the party joined. Every substantive allegation concerns the Party's conduct, and the prayer asks for a declaration about the "actions of Defendant Republican Party." (Compl. ¶ 31). Section 15-53-80 confirms the point: in a declaratory action "all persons shall be made parties who have or claim any interest which would be affected by the declaration," and the interest at stake was the Party's. That the Commission could be bound to carry out a valid decree against the Party does not supply a claim against the Commission, and it does not authorize a command that runs to the Commission independent of the Party's certification. A defendant joined as a stakeholder necessary to implement relief against another party is a nominal defendant, and no affirmative decree should have run against it.

B. The Commission's duties are ministerial, and it has no authority to add an uncertified name to a primary ballot.

Title 7 assigns the verification and certification of primary candidates to the party. S.C. Code Ann. §§ 7-13-40, 7-13-350; *see id.* § 7-11-15(B). This Court has said that “[t]he voters in this State rely on the political parties to ensure that only those individuals who are qualified candidates appear on the party primary ballots.” *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 727 S.E.2d 418 (2012). The Commission’s duties are “ministerial in nature,” *W.J. Douan*, 357 S.C. at 615 n.9, 594 S.E.2d at 268 n.9, and it exercises no “unilateral authority” over what a ballot says, *Charleston Cnty. Sch. Dist.*, 336 S.C. at 184, 519 S.E.2d at 572. The limits run deeper than the ballot. Under article II, section 10 of the South Carolina Constitution, only the General Assembly may regulate the time, place, and manner of an election; neither the Executive Director nor the Commission may alter them. *Bailey*, 430 S.C. at 275–76, 844 S.E.2d at 394. That is why the memorandum of agreement with the Department of Justice adjusts the mechanics of transmission rather than the date of the election. (Ex. A, SEC Mem. in Opp’n).

That allocation matters to what a court may compel. An applicant for mandamus must establish a duty to perform the act, the ministerial nature of the act, a specific legal right for which discharge of the duty is necessary, and the absence of any other legal remedy, and the duty must be “indisputable and plainly defined.” *Charleston Cnty. Sch. Dist.*, 336 S.C. at 183, 519 S.E.2d at 572. The same line marks the outer limit of what a mandatory injunction may command of a ministerial officer. The Commission’s duty on receipt of a party’s certification is plainly defined, and it performed that duty: it placed the nine certified candidates on the ballot. It had no duty, and no authority, to add a tenth name the Party had not certified.

C. Paragraph 2 was not specific in terms, and the Commission asked for the specificity the order lacked.

Rule 65(d), SCRCP, requires that an injunction be “specific in terms” and “describe in reasonable detail, and not by reference to the complaint or other document, the act or acts” it commands. Paragraph 2 ordered the Commission to include Ford “on all ballots feasible for early voting and for election day.” (Order Granting Prelim. Inj. 11). The formulation came from Ford, who closed his argument by asking that his name “be included on all ballots practical between now and the date of the election.” (Tr. 72:6–11). Neither word answers the question the Commission had to answer within 22 hours. The order did not say which ballots were feasible; what to do with the 333 UOCAVA and 1,538 general absentee ballots already distributed, or with those voters had returned; whether early voting was to open on schedule at 8:30 a.m. the next morning while the Commission redefined the ballot, rebuilt and redistributed databases to 46 counties, and retested equipment; or whether replacement ballots were to issue. The order delegated to the Commission every judgment the circuit court declined to make.

The Commission asked this Court for exactly that missing specificity on August 4, in the alternative to a stay. (SEC Mot. to Stay 6–7). It received a denial of the stay but no answer to the alternative request. It then complied with the unstayed order as best the calendar allowed, and this Court’s order of August 5 described that compliance as unilateral and regrettable. The Commission understands (and shares) the Court’s frustration but respectfully submits that it was misdirected.

The Commission nevertheless asks the Court to help avoid similar instances in the future. It asks this Court to hold what this record demonstrates: an injunction commanding a state election agency to alter a ballot must state, in reasonable detail, what the agency is to do, on what schedule, and with what effect on ballots already issued. An agency that must guess at the

meaning of a mandatory order, on penalty of contempt if it guesses wrong, has not been told, with specificity, what the law requires of it.

D. The order did not sequence the two commands, and the omission left the Commission no course that complied with everything.

The specificity Rule 65(d) requires is not merely descriptive. Where an order commands two defendants to perform related acts, and a statute makes one defendant's act the predicate for the other's, the order must say how the two relate. This one did not, and the omission is the source of the conduct this Court called regrettable. Paragraph 1 enjoined the Party from declining to certify Ford and directed it to certify him "within twenty-four (24) hours of entry of this Order." Paragraph 2 directed the Commission to include Ford "on all ballots feasible for early voting and for election day." (Order Granting Prelim. Inj. 11). Paragraph 2 is unconditional. It does not say "upon certification by the Party," or "following the Party's compliance with paragraph 1," or "in the event the Party certifies." It states no sequence at all. Title 7 supplies the sequence the order omitted: a party "must verify the qualifications of those candidates prior to certification," S.C. Code Ann. § 7-13-40, and "[a] candidate's name may not appear on a primary election ballot absent certification by the appropriate political party," *id.* § 7-11-15(B). Certification is the Commission's authority to print a name. Without it, the Commission has none.

The two commands also ran on different clocks, and the Commission's expired first. The clerk entered the order at 10:05 a.m. on August 4. The Party's 24 hours ran to 10:05 a.m. on August 5. Early voting opened at 8:30 a.m. on August 5. *Id.* § 7-13-25(F). The Commission's performance came due 1 hour and 35 minutes before the Party's. A court that wished the Commission to act upon the Party's certification would have had to give the Commission time the order did not grant.

That left two courses and no third. The Commission could wait for the certification Title 7 makes the predicate for placing a name on a primary ballot, in which case early voting would open without Ford's name and the Commission would stand in violation of an unconditional order directed to it by name and enforceable by contempt. Or it could place the name on the ballot without the certification, in which case it would do the one thing Title 7 says it may not do and would be open to the charge that it had acted on its own. It took the second course, because paragraph 2 commanded it and Rule 241(b)(8), SCACR, left the command in force. It was then described as having acted unilaterally. The Party never certified Ford; it appealed, and on August 5 asked this Court to "allow the State Election Commission to restore the ballot lawfully certified by the Party without Respondent's name on it." (SCGOP Reply ISO Mot. to Stay 3). The condition that would have made the Commission's act lawful under Title 7 never occurred, and on the order's own timetable it could not have.

The Commission raises this for two reasons, and not to relitigate the stay. *First*, an order that commands an agency to do what a statute forbids it to do unaided—without saying how the agency is to reconcile the two—is not "specific in terms" as required by Rule 65(d). And the defect is not cured by the agency's having guessed correctly which command to obey. *Second*, the consequence this Court identified, an increased risk of administrative error and voter confusion, followed from the order's silence (or lack of specifics) rather than from the Commission's conduct. The Commission told the circuit court on August 3 that a change on this calendar would raise the risk of error; it told this Court on August 4 that it could not answer what paragraph 2 required and asked to be told; and it told this Court again on August 5, in the same return the Court read as inconsistent, that "[w]hether this Court grants a stay or not, there will be two sets of ballots to be counted after election day." (Tr. 33:19–34:15; SEC Mot. to Stay 6–7;

SEC Return 2–3). At every stage the Commission identified the risk in advance and sought direction. At no stage did it receive any.

The three statements this Court compared describe one process at three points in time, amidst ongoing, statewide efforts to comply with the circuit court’s order. *First*, the Commission had given the county boards direction and new databases, and it said so. *Second*, hours later, the boards were still working and the Commission could not represent that all 46 would be ready when the doors opened, so it wrote that efforts “are in progress.” *Third*, the next morning, the boards had finished and the Commission reported the result. (S. Ct. Order of Aug. 5, 2026, at 2 n.1). Each statement was accurate when made. The record shows an agency reporting the progress of complying with an unsolicited *ex parte* order altering the ballot of a special election already in progress.

V. The circuit court should not have altered the ballot of an election already in progress, and the Court should adopt equitable principles to govern in the future.

A. Ford’s delay was short in days but consequential in effect.

The filing period closed at noon on July 28, 2026, and Ford learned that day that the Party had not certified him. (McKissick Decl. ¶¶ 13–19). The Party adopted the rule he challenges on June 27, and counsel for the Party observed at the hearing that Ford “could have brought that on June 27th or 28th, rather than wait until the election had . . . started.” (Tr. 59:3–5). He filed suit at 12:40 p.m. on July 30. In the interval, on July 29, county boards began distributing UOCAVA and general absentee ballots under a federal transmission deadline of August 1, and by the morning of the hearing 333 UOCAVA and 1,538 general absentee ballots had gone out and 59 had come back. (Order Granting Prelim. Inj. 3 & n.1; Tr. 31:18–21). Two days is a short delay measured on a calendar. Measured against a special primary compressed

into three weeks, it was the difference between a ballot not yet issued and a ballot in the hands of voters overseas.

B. The Commission raised the *Purcell* principle below, and this Court endorsed it.

The Commission raised this point below, in its own voice and while taking no position on the merits. Asked at the hearing whether the Commission had a position, counsel answered that it took none on the dispute between Ford and the Party, and added: “We would take the position that on the schedule we’re on now, and also keeping in mind the general election and getting things done timely for that, that we think that we’ve gone past the point where you could reasonably order a new election or modify the terms currently. And here I would invoke the *Purcell* case.” (Tr. 42:10–19).

In denying the stays, this Court quoted *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam), and *Republican National Committee v. Democratic National Committee*, 589 U.S. 423, 424 (2020) (per curiam), and said: “Though this Court is not bound by these federalism principles, we see no reason why these considerations do not apply with equal force to the unique circumstances presented here.” (S. Ct. Order of Aug. 5, 2026, at 2–3). The Commission asks this Court to adopt that reasoning in a published opinion and to give it content.

C. The risks *Purcell* identifies are not abstractions on this record.

Purcell rests on a practical judgment about what judicial intervention does to an election in progress. “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*, 549 U.S. at 4–5. “Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.” *Id.* at 4. Every risk those sentences describe materialized here, and the record measures them.

Two ballots. A single special primary was conducted on two differently constituted ballots. Voters who received UOCAVA and general absentee ballots before August 5 chose among nine candidates. Voters who voted early or on election day chose among ten. (Order Granting Prelim. Inj. 3 & n.1); (SEC Return 2). The Commission told this Court on August 5 that, stay or no stay, “there will be two sets of ballots to be counted after election day,” and that it was “concerned that the existence of two sets of ballots will confuse the public as to the legitimacy of the Special Primary Election.” (SEC Return 2–3). A court asked to alter a ballot after voting has begun cannot give every voter the same ballot, and the order did not try: it left the earlier ballots undisturbed because Ford “made no request as to rescission of existing ballots.” (Order Granting Prelim. Inj. 11).

Disparity that no step could cure. The UOCAVA ballots transmitted by August 1 carried instant runoff instructions for the August 25 runoff, so military and overseas voters had already ranked a field of nine for the primary and for any runoff before the August 4 order added a tenth. (Ex. A, SEC Mem. in Opp’n ¶ 2 (Terms), ¶ 15(c) (Recitals)). Counsel put the problem to the circuit court in plain terms: “how do you un-ring that bell? I’m not sure that you . . . can do it without ordering a new election.” (Tr. 41:1–7). Ohio’s court has identified precisely this concern as the core of the principle: “Intrusions into elections that would lead to disparate enforcement of election procedures and confusion among voters should be avoided.” *State ex rel. Ohio Democratic Party v. LaRose*, 257 N.E.3d 130, 137 (Ohio 2024) (citing *State ex rel. Skaggs v. Brunner*, 900 N.E.2d 982 (Ohio 2008)).

Administrative risk, stated in advance. Counsel advised the circuit court on August 3 that any change would require a new database sent to 46 county boards and the counties to “prep the machines, test the machines” before early voting opened the next morning, and that “if they’re

having to do it under the pressure of time, then the likelihood of errors does increase.” (Tr. 33:19–34:15). That is the same judgment the United States Supreme Court has expressed: “Even seemingly innocuous late-in-the-day judicial alterations to state election laws can interfere with administration of an election and cause unanticipated consequences.” *Democratic Nat’l Comm. v. Wisconsin State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring). The circuit court called the Commission’s account “speculative.” (Order Granting Prelim. Inj. 3). Nothing in the record contradicted it, and the county boards in fact worked overnight to open on time.

A confidence cost the Commission has to bear. This Court described the Commission’s compliance as “regrettable” and as having “increased the risks of administrative error and possible voter confusion.” (S. Ct. Order of Aug. 5, 2026, at 2). The Commission accepts that the risks were real. It asks this Court to locate their source. They arose because relief issued after the election began, without notice to the agency that had to implement it, in terms that did not say what implementation required. A principle that addressed the timing would have prevented all of it.

D. Other state courts of last resort have adopted the principle as their own, and South Carolina should join them.

Ford argued below that *Purcell* concerns federal court intervention in state elections and has no application in a state court. The premise is historically accurate but legally beside the point. A growing number of state courts of last resort have adopted the reasoning as a matter of their own equitable judgment, on the ground that the concerns are not peculiarly federal. The principle is also older than *Purcell*, and its origin is equitable rather than distinctly federal: “where an impending election is imminent and a State’s election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief.” *Reynolds v. Sims*, 377 U.S. 533, 585 (1964).

In *LaRose*, the Supreme Court of Ohio held that “[a]s a general matter, courts should refrain from ordering changes to the rules governing elections during or close to the start of an election,” and, acknowledging that “*Purcell* is a federal case and therefore not binding on this court,” found “its logic persuasive.” 257 N.E.3d at 137. The court explained that “[w]hile built primarily on principles of federalism, *Purcell* also stands for the common-sense principle that judges—novices in election administration—should not meddle in elections at the last minute, . . . because when they do, they are likely to do more harm than good,” *id.* (quotation marks omitted), and quoted the Sixth Circuit: “Call it what you will—laches, the *Purcell* principle, or common sense—the idea is that courts will not disrupt imminent elections absent a powerful reason for doing so.” *Id.* (quoting *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016)).

Pennsylvania has adopted the same restraint in a single sentence. Denying extraordinary jurisdiction during an ongoing election, the Supreme Court of Pennsylvania held that it “will neither impose nor countenance substantial alterations to existing laws and procedures during the pendency of an ongoing election,” citing *Crookston* and *Purcell*. *New PA Project Educ. Fund v. Schmidt*, 327 A.3d 188, 189 (Pa. 2024).

Maryland and Iowa have integrated the reasoning into settled state doctrine. Maryland applied laches to bar an untimely ballot challenge, quoting *Purcell* for the propositions that confidence in electoral integrity “is essential to the functioning of our participatory democracy” and that court orders affecting elections “can themselves result in voter confusion and consequent incentive to remain away from the polls.” *Md. State Bd. of Elections v. Ambridge*, 330 A.3d 700, 726 (Md. 2025). Iowa vacated a district court order that altered absentee procedures weeks before a general election, warning of “judicially created confusion.”

Democratic Senatorial Campaign Comm. v. Pate, 950 N.W.2d 1, 8 (Iowa 2020) (quoting *Republican Nat’l Comm.*, 589 U.S. at 425). Even the Justice who questioned whether *Purcell* applies in state court recognized that “where ballots with candidates listed have already been printed and substantial numbers of votes cast, it may not be possible to backtrack and add to the ballot a candidate improperly omitted from the ballot.” *Democratic Senatorial Campaign Comm.*, 950 N.W.2d at 15 (Appel, J., concurring specially) (citing *Williams v. Rhodes*, 393 U.S. 23 (1968)).

Wisconsin and Michigan reached the same place through laches. The Supreme Court of Wisconsin held that “[p]arties bringing election-related claims have a special duty to bring their claims in a timely manner,” because “[u]nreasonable delay in the election context poses a particular danger—not just to municipalities, candidates, and voters, but to the entire administration of justice.” *Trump v. Biden*, 2020 WI 91, ¶ 30, 394 Wis. 2d 629, 951 N.W.2d 568. A justice of the Supreme Court of Michigan described the principle as “in essence, the equitable doctrine of laches applied in a unique way to election matters.” *DeVisser v. Sec’y of State*, 981 N.W.2d 30 (Mich. 2022) (Welch, J., concurring).²

Against this backdrop, and particularly in view of recent experience, the Commission encourages this Court to adopt the principle as a matter of equity. After all, “[a]n injunction is an equitable remedy, and such relief may be inequitable if it is issued shortly before an election,

2. The Commission notes that other States have declined to adopt a similar principle, but often for distinct reasons. For instance, the Supreme Court of Minnesota declined to apply the principle in its own courts, but on a ground that does not reach this case: Minnesota has a statute, Minn. Stat. § 204B.44, that “expressly permits a petition to be filed in state court to correct election-related errors that have occurred or are about to occur,” and the court held that a federal restraint on enjoining state election laws “is inapplicable in the context of a section 204B.44 petition.” *Martin v. Simon*, 6 N.W.3d 443, 452 (Minn. 2024). South Carolina has no comparable statute, and Ford invoked none.

when candidates, election officials, and voters have relied on the rules in place at that time.” *Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026) (Alito, J., concurring in grant of stay).

E. The principle the Commission asks this Court to adopt, and how it would work.

The Commission does not ask for a per se prohibition. A rule that no court may ever correct an election error once voting starts would put the conduct of elections beyond judicial supervision and would reward the party that delays. *Cf. LaRose*, 257 N.E.3d at 152 (Brunner, J., dissenting) (a per se rule would let those who write the rules “disenfranchise certain voters without consequence”). What the Commission asks for is a heightened and structured showing, of the kind Justice Kavanaugh described as “a sensible refinement of ordinary stay principles for the election context.” *See Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (mem.) (Kavanaugh, J., concurring in grant of applications for stays).

The Commission proposes that a South Carolina court asked to order a change in the conduct of an election should apply the ordinary preliminary injunction standard and then, once ballots have issued to any voter, answer four additional questions before relief issues.

First, could the claim have been brought before ballots issued? If it could, laches should ordinarily bar relief that would change the election now. Laches is a familiar equitable principle, and it addresses the right question in this context. *See, e.g., Hendon v. N.C. State Bd. of Elections*, 710 F.2d 177, 182 (4th Cir. 1983) (“Courts have imposed a duty on parties having grievances based on election laws to bring their complaints forward for pre-election adjudication when possible.”). It is also the route Ohio, Maryland, and Wisconsin have taken. Here the Party adopted the rule on June 27 and declined to certify Ford shortly after the noon filing deadline on July 28; Ford sued at 12:40 p.m. on July 30, after the distribution of ballots.

Second, can the relief be applied uniformly to every voter in the election? If it cannot, that is a powerful reason to withhold it, because relief that reaches some ballots and not others creates within a single election the disparity the principle exists to prevent. *See LaRose*, 257 N.E.3d at 137. Here the answer was no, and the order acknowledged as much on its face.

Third, has the agency that must implement the relief been heard on what implementation requires? Rule 65(a), SCRCF, already requires notice, and a court cannot weigh or address administrative risk in the context of an *ex parte* application. The court should make findings on feasibility, and those findings should rest on or incorporate the agency's account unless the record contradicts it.

Fourth, can the order be written with the specificity Rule 65(d), SCRCF, demands—stating what the agency must do, on what schedule, with what effect on ballots already cast, and how the command sequences with acts required of others? If the relief cannot be reduced to those terms, it should not issue, because an order the agency cannot follow produces the administrative error and voter confusion the inquiry is meant to avoid.

The Commission respectfully submits that a framework of this nature is both necessary and appropriate, as it relates both to this case (even without addressing anything between Ford and the Party) and to future elections. The claim could have been brought before ballots issued. The relief could not reach every voter. The agency was not heard before the first order and was not credited after the second. And paragraph 2 could not be written in terms the Commission could follow, which is why the Commission twice asked this Court what it required. Four questions, four answers, all pointing the same way.

F. An established route existed that would have resolved the question before ballots issued and for the whole State at once.

The Commission does not suggest that no court could hear Ford's claim. It observes a pattern in this Court's cases that bears on timing. This Court has repeatedly resolved, on *certiorari*, challenges to a party executive committee's decision about who may stand as its nominee. *Sasser v. S.C. Democratic Party*, 277 S.C. 67, 68–69, 282 S.E.2d 602, 603–04 (1981); *Gregory v. S.C. Democratic Exec. Comm.*, 271 S.C. 364, 247 S.E.2d 439 (1978); *Drawdy v. S.C. Democratic Exec. Comm.*, 271 S.C. 415, 247 S.E.2d 806 (1978); *Breeden v. S.C. Democratic Exec. Comm.*, 226 S.C. 204, 84 S.E.2d 723 (1954). *Breeden* explained the reason: to require a claimant to “institute an action in circuit court would unduly delay final determination” of a question of public interest that “should be promptly decided.” 226 S.C. at 208, 84 S.E.2d at 725. And this Court has twice exercised its original jurisdiction to decide, before a primary, which candidates a party had properly certified. *Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 725 S.E.2d 704 (2012); *Florence Cnty. Democratic Party*, 398 S.C. 124, 727 S.E.2d 418.

Anderson is instructive on the point the circuit court got backwards. This Court took the case before the primary, explaining that acting then was warranted to spare voters “a slate of candidates, of whom one or more may not be certified after the election.” 397 S.C. at 555–56, 725 S.E.2d at 706. *Florence County* then directed a corrected certification list on a deadline measured in hours and made the ruling binding on “political party primaries throughout the State.” 398 S.C. at 130, 727 S.E.2d at 421. Ford will read *Anderson* as approving judicial intervention in ballot access before a primary, and to that extent he is right; the Commission does not argue otherwise and takes no position on the merits of his claim. The distinction that matters is between what those cases did and what the circuit court did here (and when). They fixed the ballot before it issued, in a single proceeding binding every county board at once. The August 4

order changed the ballot after county boards had distributed 1,871 UOCAVA and general absentee ballots and voters had returned dozens of them, and it bound only the parties before it.

G. The order produced a single primary conducted on two ballots.

The practical consequence of the August 4 order was that one election proceeded on two different ballots. Voters who cast or received UOCAVA and general absentee ballots before August 5 voted a field of nine; voters who voted early or on election day voted a field of ten, and 8,481 such ballots were cast by 11:30 a.m. on the first morning of early voting. (SEC Mot. to Stay 4). The order left the earlier ballots in place because Ford “made no request as to rescission of existing ballots,” (Order Granting Prelim. Inj. 11), so the disparity was a known and accepted consequence of the relief requested (and granted) rather than an unforeseen one. The Commission presents this point as an administrative fact: a court asked to alter a ballot after voting has begun cannot restore the parties to their prior positions and cannot give every voter the same ballot. That is why the circuit court’s list of compressed-calendar “extraordinary circumstances” called for restraint rather than intervention, *ex parte* or otherwise.

CONCLUSION

The Commission asks this Court to vacate the circuit court’s orders. It further asks this Court—without regard to whether it reaches the merits of the dispute between Ford and the Party—to establish (or reaffirm) that the Commission, as the State’s election agency, is entitled to notice under Rule 65 before a court enjoins its election-related activities and operations. The Commission also respectfully encourages the Court to consider adopting the previously endorsed *Purcell* principle and to do so in a published opinion.

Respectfully submitted,

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