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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 RESPONDENT DANNY FORD, II IN RESPONSE TO THE INITIAL BRIEF OF APPELLANT SCGOP

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STATEMENT OF THE ISSUES ON APPEAL

I. Whether the circuit court acted within its discretion by granting preliminary relief after finding that the Party performed state action when it certified candidates for placement on the official primary ballot and arbitrarily excluded Respondent under a newly adopted rule that left the operative term "statewide primary" undefined.

II. Whether SCGOP status quo and mandatory injunction arguments establish reversible error.

III. Whether the Purcell principle, a doctrine of equitable restraint developed for federal-court intervention in state elections, required a South Carolina circuit court to withhold narrowly tailored relief correcting Respondent's exclusion from the ballot.

IV. Whether the SCGOP'S Appeal is moot.

INTRODUCTION

South Carolina law has long recognized that political parties, though private associations, do not act wholly beyond the reach of judicial review. The decisions of a party concerning its internal affairs are accepted as conclusive only "in the absence of mistake, fraud, illegality, collusion, or arbitrariness." *Bruce v. S.C. High Sch. League, 258 S.C. 546, 551, 189 S.E.2d 817, 819 (1972).* This appeal concerns what happens when a party crosses that line, and whether a circuit court abuses its discretion by correcting it.

The South Carolina Republican Party adopted Rule 11(a)(6)(a) on June 27, 2026, providing that no candidate would be certified who had not "voted in at least two of the last three statewide Republican primaries. The Party never defined the operative term—"statewide primary." When Respondent Danny Ford, II filed to run in the special Republican primary for United States Senate, the Party reviewed his voting history, confirmed that he had voted in the June 9, 2026, Republican primary and its runoff on June 23, 2026, and then—treating that primary and its runoff as a single election rather than two—declined to certify him. Ford's name appeared on both of those ballots as a certified Republican candidate for Commissioner of Agriculture.

Respondent is correct that his participation in a statewide primary and in its separately conducted statewide runoff is most naturally read as participation in two statewide Republican primaries. At a minimum, the Party's contrary reading of a term it never defined, applied to exclude a duly-filed candidate, was not so clearly compelled as to place the decision beyond review. The circuit court so found. It determined that the Party—by certifying to the Commission who may and may not appear on the official ballot—had engaged in state action, and that its

application of an undefined rule was arbitrary. On that basis the court granted a preliminary injunction and denied the Party's motion to dismiss.

Those findings are reviewed deferentially, and they are supported by the record. A party that serves as the gatekeeper to a State-administered ballot does not escape all constitutional constraint by invoking its associational freedom; and a rule that turns on an undefined term, applied to one candidate one way and described by the court itself as "floundering in arbitrariness," is the paradigm of the arbitrariness that *Bruce* leaves open to review. The *Purcell* principle—a prudential doctrine of restraint developed to guide federal courts—did not require the circuit court to leave that error uncorrected, particularly where the relief it granted was prospective and narrow.

The Court should affirm.

STATEMENT OF THE CASE

This appeal arises from an order of the Richland County Court of Common Pleas, the Honorable Daniel M. Coble presiding (Appellate Case No. 2026-001729). Respondent Danny Ford, II commenced this action on July 30, 2026, by a complaint for declaratory and injunctive relief, pleading that Rule 11(a)(6)(a) and the Party's refusal to certify him violated the free and open elections clause of the South Carolina Constitution Respondent sought to compel his certification as a candidate in the special Republican primary for United States Senate.

That same day, Respondent obtained an ex parte temporary restraining order. A further temporary restraining order issued on July 31, 2026. The circuit court held a hearing on the morning of August 3, 2026, at the Richland County Courthouse at which the Party and the State Election Commission appeared, opposed injunctive relief, and—in the Party's case—moved to dismiss the complaint. The state-action question and the validity of Rule 11(a)(6)(a) were briefed and argued by the parties.

At 10:05 A.M. on August 4, 2026, the circuit court issued its order granting Respondent's motion for a preliminary injunction and denying the Party's motion to dismiss. The order directed that 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."

The Party and the State Election Commission appealed and moved to stay the injunction pending appeal; the motion to stay was denied.

STATEMENT OF THE FACTS

Following the death of United States Senator Lindsey O. Graham, the Party held a special primary election to nominate a candidate to replace him. The candidate filing period opened at noon on July 21, 2026, and closed at noon on July 28, 2026. Respondent filed the documents necessary to run in the special primary.

Weeks earlier, on June 27, 2026, the Party had adopted Rule 11(a)(6)(a) which 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, in this or any previous state of residence." The Rule did not define the term "statewide primary."

Respondent voted in the June 9, 2026 Republican primary election and in its runoff on June 23, 2026. The Party nonetheless concluded that the June 2026 primary and its runoff did not qualify as two separate statewide Republican primaries, treated them as a single election, and declined to certify Respondent on that ground.

The Party certified other candidates whose records it read to satisfy the Rule—for example, a candidate who had voted in a 2024 Republican multicounty primary runoff and in the 2026 Republican state wide primary, and a candidate who had voted in a 2024 Virginia Republican primary and the 2026 South Carolina Republican state wide primary—while declining to certify a separate candidate who did not reside in South Carolina.

In granting relief, the circuit court found 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 thereby "moved from merely private association comprised of like-minded individuals to state actor." The court further found that the Rule's operative term, "statewide primary," was "not defined and subject to multiple, credible interpretations" and observed that "the Party Rule is floundering

in arbitrariness." The court's order required the Party to certify Respondent within twenty-four hours and directed the State Election Commission to add his name for early voting and election day in the August 11, 2026 special primary.

STANDARD OF REVIEW

A preliminary injection requires immediate and irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. "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). Questions of law are reviewed 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)).*

This standard is deferential, and it frames the whole appeal. The Party does not come to this Court asking it to decide the certification question in the first instance; it asks the Court to hold that the circuit court's findings—that the Party engaged in state action and applied an undefined rule arbitrarily—are so unsupported by the evidence, or so controlled by legal error, that the grant of a preliminary injunction was clearly erroneous. As shown below, the Party cannot meet that burden.

ARGUMENT

I. The circuit court acted within its discretion in finding Respondent likely to succeed on the merits.

The circuit court found that Respondent had shown a likelihood of success because the Party, acting as the gatekeeper to the State's official primary ballot, excluded him through the arbitrary application of an undefined rule. Each premise of that conclusion is supported by the record and consistent with controlling law. Because the Party identifies neither an absence of evidentiary support nor a controlling error of law, the court did not abuse its discretion.

A. The validity of the Party's rule and its application were squarely before the circuit court.

The Party's lead contention—that the circuit court decided an "unpled" claim—mistakes the label for the claim. Respondent's complaint challenged Rule 11(a)(6)(a) and the Party's refusal to certify him as a violation of the free and open elections clause, and sought declaratory and injunctive relief compelling his certification. The lawfulness and arbitrariness of the Party's decision not to certify Respondent—including whether that decision was arbitrary—was the central question the complaint presented and the question the parties litigated.

A court is not confined to the particular constitutional label a party attaches to its theory; it applies the governing law to the facts alleged and tried. Whether the Party's exclusion of Respondent was arbitrary is, moreover, the very inquiry that *Bruce* makes available whenever a court is asked to review a voluntary association's decision: such decisions are conclusive only "in the absence of mistake, fraud, illegality, collusion, or arbitrariness." *Bruce, 258 S.C. at 551, 189 S.E.2d at 819.* The Party itself placed state action and the validity of the Rule before the court by moving to dismiss on those grounds and briefing them. Having litigated those issues, the Party cannot now complain that the court resolved them.

B. The Party's certification of candidates to the State Election Commission constitutes state action.

The circuit court found 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 thereby "moved from merely private association comprised of like-minded individuals to state actor." That finding is sound. A political party is free to govern its genuinely internal affairs—its platform, its organization, the selection of its nominee. But when a party controls access to a State-administered primary ballot by certifying to a state agency who may and may not appear on it, the party performs a function integral to the State's electoral machinery, and its exclusionary decisions are subject to constitutional constraint. See *Rice v. Elmore, 165 F.2d 387 (4th Cir. 1947)*. The Circuit Court recognized that a party's conduct of an election controlling ballot access can constitute action under color of law.

A prior-primary-voting requirement is not among the constitutional qualifications for the office of United States Senator. The circuit court therefore had ample grounds to find a likelihood that the Party could not use an undefined, discretionary voting-history rule to exclude a constitutionally qualified and timely filed candidate.

The Party does not merely keep its own records. By its own account, it certifies candidates to the State Election Commission, which then prepares the official ballots and conducts the election. That certification is the gateway to the State's ballot: a candidate the Party refuses to certify does not appear, and a voter cannot vote for him. Where a party occupies that gatekeeping role in the State's election, its decision to admit or exclude a candidate is not a purely private act. The circuit court did not err in so concluding, and certainly did not commit the kind of clear legal error required to disturb its exercise of discretion.

The Party's reliance on the private-association cases does not answer this point. Those authorities protect a party's truly internal choices; they do not hold that a party's administration of access to the State's official ballot is immune from review. *Rice* itself confirms that a party's conduct of an election that controls access to the ballot can constitute action under color of law. The circuit court's finding of state action was within its discretion.

C. The circuit court did not abuse its discretion in finding the Party's application of its undefined rule arbitrary.

Even on the deferential standard the Party invokes, a party's decision about its internal affairs is reviewable for arbitrariness. *Bruce* holds 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," and that such decisions are conclusive only "in the absence of mistake, fraud, illegality, collusion, or arbitrariness." *Bruce, 258 S.C. at 551, 189 S.E.2d at 819.* A decision is arbitrary when 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." *Deese v. S.C. State Bd. of Dentistry, 286 S.C. 182, 184–85, 332 S.E.2d 539, 541 (Ct. App. 1985).*

The record supports the circuit court's finding that the Party's application of Rule 11(a)(6)(a) met that standard. The Party adopted the Rule on June 27, 2026—weeks before the filing period and left its operative term, "statewide primary," undefined. The circuit court found that term "not defined and subject to multiple, credible interpretations." Respondent voted in the June 9, 2026 statewide Republican primary and again in its statewide runoff on June 23, 2026. A runoff is itself conducted as a statewide balloting; on a natural reading, Respondent thus voted in two statewide Republican primaries. The Party reached the opposite result only by treating the primary and its runoff as a single election an interpretation its undefined Rule neither compelled

nor explained. Having adopted a rule it never defined and then applied it to exclude a qualified, duly-filed candidate on a contestable reading, the Party supplied no "adequate determining principles." *Deese, 286 S.C. at 184–85, 332 S.E.2d at 541.* The circuit court's own characterization—that "the Party Rule is floundering in arbitrariness" was a finding the evidence supports.

Nor do the external authorities the Party invokes compel reversal. The views of other officials concerning voter eligibility—whether a voter who participated in one June primary may vote in the August special primary—address a different question from the one here: whether a candidate who voted in a statewide primary and in its statewide runoff has "voted in at least two of the last three statewide Republican primaries" within the meaning of the Party's own undefined Rule. That the Party could point to officials who, for other purposes, treat a primary and its runoff as one event does not establish that the Party's exclusion of Respondent rested on fixed, determinate standards rather than on an interpretation adopted to reach a result.

Furthermore, it appears that The Party allowed a vote by a candidate, later certified, who has voted in a multicounty primary to count as a statewide primary for the purpose of interpreting its rule. Additionally, The Party's Rule 11 requires candidates to be "A registered Republican Elector for at least 90 days." This is impossible since South Carolina does not authorize registration by party.

Because the circuit court's finding of arbitrariness is supported by the evidence and is not controlled by any error of law, it is not clearly erroneous, and the grant of preliminary relief should be affirmed.

D. Respondent established irreparable harm and the absence of an adequate legal remedy

The loss of the opportunity to participate in an imminent election is irreparable, and no damages award could restore Respondent's opportunity to appear on the August 11 ballot.

The Party's claimed administrative and associational harms did not outweigh that permanent injury. Respondent sought only prospective placement on feasible early-voting and election-day ballots and did not ask the court to rescind ballots already issued. The limited remedy directly addressed the irreparable injury without disturbing completed votes.

II. The Party's Status-Quo and Mandatory-Injunction Arguments Do Not Establish Reversible Error

The relevant status quo is the last uncontested status between the parties preceding the controversy. Before the Party's disputed refusal to certify him, Respondent had timely filed as a candidate and awaited certification.

Even if the injunction is characterized as mandatory, that characterization does not compel reversal. Mandatory preliminary relief may issue in extraordinary circumstances when the exigencies demand it and the facts and law clearly favor the movant. The circuit court expressly found this to be such an extraordinary circumstance.

The election calendar made prospective relief necessary. Denial would have conclusively destroyed Respondent's opportunity before the merits could be adjudicated.

III. The *Purcell* principle did not require the circuit court to deny relief.

The Party's remaining argument—that the timing of the election barred any relief—misconceives the *Purcell* principle. *Purcell* is a prudential doctrine of restraint developed to guide federal courts in deciding whether to alter state election rules in the period close to an

election. *See Purcell v. Gonzalez, 549 U.S. 1, 4–5 (2006); Republican Nat'l Comm. v. Democratic Nat'l Comm., 589 U.S. 423, 424 (2020); Democratic Nat'l Comm. v. Wisc. State Legis., 592 U.S. 1039 (2020).* The Party concedes that the principle is "most often applied in federal courts."

Even where it applies, *Purcell* is not jurisdictional and does not strip a court of power to remedy an unlawful ballot exclusion. Nor does it catatonically bar a South Carolina Court from applying South Carolina equitable principles to a South Carolina Election. The circuit court recognized as much, explaining that the doctrine "is really a species of laches, not mootness, specific to elections." As an equitable consideration, *Purcell* is weighed in the court's discretionary balancing of the harms; it does not command that a candidate wrongly excluded by an arbitrary rule be left without any remedy.

Respondent did not delay after learning of the refusal to certify him; the Party declined certification after the filing period closed on July 28, and Respondent filed suit on July 30. The compressed schedule resulted from the special election and the Party's recent adoption and enforcement of the Rule, not from inequitable delay by Respondent.

The circuit court struck that balance, and it did so within its discretion. It found the Party's asserted harm speculative. And the relief it granted was deliberately narrow: Respondent requested only a prospective remedy—restoration to the ballot for early voting and for election day—and "made no request as to rescission of existing ballots." The order tracked that request, directing the State Election Commission to add Respondent's name for early voting and election day in the August 11, 2026, special primary. A court that corrects an arbitrary exclusion through narrow, prospective relief does not offend the interest in orderly elections that *Purcell* protects; it vindicates it. Whatever confusion attended the special primary flowed in the first instance from

the Party's arbitrary refusal to certify a qualified candidate—the very conduct the circuit court's order addressed. The circuit court did not abuse its discretion in declining to treat the election's timing as a reason to deny all relief.

IV. The SCGOP's Appeal Is Moot.

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 special primary was held on August 11, 2026, and Respondent was not nominated. No ballot remains on which his name could appear and no order of this Court can alter an election already held.

CONCLUSION

For the foregoing reasons, Respondent Danny Ford, II respectfully requests that the Court affirm the circuit court's order granting the preliminary injunction and denying the Party's motion to dismiss.

Respectfully submitted,

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PROOF OF SERVICE

Pursuant to Rule 262(c)(3), SCACR, I certify that I have served the Initial Brief of Respondent Danny Ford, II on the following counsel of record by email on November 17, 2026:

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