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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 RESPONDENT DANNY FORD, II IN RESPONSE TO THE INITIAL BRIEF OF APPELLANT S.C. STATE ELECTION COMMISSION

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STATEMENT OF ISSUES ON APPEAL

I. Whether the Commission's appeal is moot, the special primary having been held on August 11, 2026 and Respondent not having been nominated, such that no exception warrants deciding the institutional questions the Commission poses.

II. Whether the circuit court acted within its equitable discretion in granting preliminary injunctive relief to prevent the irreparable loss of Respondent's opportunity to appear on the ballot.

III. Whether the full adversarial hearing held on notice on August 3, 2026, and the order entered thereafter, cured any defect in the initial *ex parte* restraining order.

IV. Whether the Commission, joined under Rule 19 as a party necessary to complete relief, was properly directed to perform the ministerial act of placing on the ballot a candidate the court ordered certified, and whether paragraph 2 was specific in terms.

V. Whether this Court should decline to adopt the rigid Purcell framework the Commission proposes.

INTRODUCTION

This is the second appeal arising from a single order. On August 4, 2026, the circuit court granted Respondent Danny Ford, II a preliminary injunction after a full hearing on notice. Both the South Carolina Republican Party (the "Party") and Appellant South Carolina State Election Commission (the "Commission") appealed, and both served initial briefs on September 24, 2026. Respondent answers the Party's brief, which contests the merits, in a separate brief; this brief responds to the Commission's.

The Commission's brief is notable for what it does not say. The Commission "takes no position" on the validity of the Party's Rule 11(a)(6)(a), on whether the Party's refusal to certify Respondent amounts to state action, on the process the Party owed him, or on the sufficiency of the process he received. It does not defend the Party's decision, and it does not ask this Court to hold that Respondent should have been kept off the ballot. It asks instead that this Court reach out, in a controversy everyone agrees is over, to vacate a reasoned order and to announce a new, prophylactic rule of election law. The Court should decline both invitations.

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 change the result of an election already held. The Commission concedes as much. What the Commission seeks is not relief in this case but doctrine for future ones — a holding that it is entitled to notice before any court touches its ballot preparation, and a four-part Purcell framework to govern "eleventh-hour" election litigation. Those are weighty questions. They should be decided, if at all, in a live case with an adverse party to brief the other side — not in a spent controversy in which the only appellant professing a stake disclaims the merits.

STATEMENT OF THE CASE

United States Senator Lindsey O. Graham died in office on July 11, 2026, leaving a vacancy in the Republican nomination for the November 3, 2026 general election. A special primary followed under S.C. Code Ann. § 7-11-55 on the compressed schedule that statute prescribes: the filing period opened at noon on July 21, 2026 and closed at noon on July 28, 2026. Twelve candidates filed, Respondent among them.

On June 27, 2026 — weeks before the Senator's death — the Party adopted Rule 11(a)(6)(a), providing that no candidate would be certified who had not, at the time of filing, been "a registered Republican elector for at least 90 days" and "voted in at least two of the last three statewide Republican primaries." After the filing period closed, the Party's State Executive Committee declined to certify Respondent and two other candidates and certified the remaining nine. Respondent had voted in the June 9, 2026 Republican primary and its June 23, 2026 runoff, but the Party treated that primary and runoff as a single election and concluded that he had not voted in two separate statewide primaries. Respondent learned on July 28, 2026 that he had not been certified.

The special-primary calendar was already in motion. Under a memorandum of agreement the Commission executed with the United States Department of Justice on July 20, 2026, county boards were to transmit ballots to military and overseas voters no later than August 1, 2026, and the county boards began distributing absentee ballots on July 29, 2026.

Respondent filed suit at 12:40 p.m. on July 30, 2026, in a single pleading styled as a motion for a temporary restraining order, a motion for a preliminary injunction, and a complaint for declaratory and injunctive relief. He named the Commission under Rule 19, SCRCP, as a party necessary to afford complete relief. The circuit court signed a temporary restraining order that

afternoon; it then invited the Party and the Commission to submit opposition, and the Commission did so. Respondent replied, and the court entered a second restraining order on July 31, 2026. The record on appeal includes the July 30 and July 31 restraining orders, the August 4 Order Granting Preliminary Injunction, and the transcript of the August 3 hearing.

The circuit court heard all parties on August 3, 2026, and admitted four exhibits offered by Respondent without objection. Counsel for the Commission told the court that the Commission took no position on the merits of the dispute between Respondent and the Party and appeared only to advise the court on election administration. As of that morning, county boards had distributed 333 UOCAVA ballots and 1,538 general absentee ballots.

The circuit court entered its Order Granting Preliminary Injunction on August 4, 2026. The court held the matter was not moot, found that extraordinary circumstances warranted a mandatory injunction, held that the Party's certification decision constituted state action, and found a likelihood of success on the merits under article I, section 3 of the South Carolina Constitution. Paragraph 1 directed the Party to certify Respondent within twenty-four hours; paragraph 2 directed the Commission to include Respondent "on all ballots feasible for early voting and for election day." Respondent had asked only that his name "be included on all ballots practical between now and the date of the election," and made no request to rescind ballots already issued.

Both appellants appealed on August 4, 2026 and moved to stay the injunction. This Court denied all stay relief on August 5, 2026, expressly declining to reach the merits and applying Purcell-type equitable considerations. The Court also stated that the Commission had "added further confusion" by directing that Respondent's name be added, and that its "regrettable actions" had "increased the risks of administrative error and possible voter confusion." Early voting opened at 8:30 a.m. on August 5, 2026, and the Party never certified Respondent.

The special primary was conducted on August 11, 2026, and Respondent was not nominated. The Commission filed a motion to dismiss on August 31, 2026, and the Party answered on September 1, 2026; the underlying proceedings continue in the circuit court. This appeal is taken from the August 4 order under S.C. Code Ann. § 14-3-330(4).

STANDARD OF REVIEW

Actions for injunctive relief are equitable in nature, and the standard of review follows the nature of the underlying issue. See *Lambries v. Saluda Cnty. Council, 409 S.C. 1, 7, 760 S.E.2d 785, 788 (2014).* 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).* An abuse of discretion occurs only 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. *Lambries, 409 S.C. at 7–8, 760 S.E.2d at 788.*

ARGUMENT

The Commission's appeal should be dismissed as moot. If the Court reaches the Commission's arguments, each fails: the circuit court acted within its equitable discretion; the full hearing on August 3 cured any defect in the initial *ex parte* order; the Commission was properly joined and directed to perform a ministerial act; and Purcell supplies no ground to disturb a South Carolina court's exercise of its own equity jurisdiction.

I. The Commission's appeal is moot.

A case is moot when a judgment would have no practical legal effect on an existing controversy. *Byrd v. Irmo High School, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996).* The Commission's appeal challenges an order governing ballots for an election that has concluded. No ballot remains on which Respondent's name could be placed, and no appellate order can alter the completed August 11 primary. The Commission's institutional questions concerning notice, injunction language, and Purcell would not change the election's result or provide effective ballot relief. Those questions therefore do not present a live controversy in this interlocutory appeal.

The capable-of-repetition exception does not justify an advisory ruling. The Commission does not establish that it is likely to face the same order involving the same circumstances; it relies instead on the general proposition that election controversies often proceed on compressed schedules. That general possibility is insufficient to preserve this specific dispute. If this Court finds the appeal moot, it should dismiss the appeal and leave the circuit court's interlocutory order and continuing proceedings undisturbed.

II. The circuit court acted within its equitable discretion; the relief it granted protected Respondent against an imminent and irreparable loss.

If the Court reaches the propriety of the relief, the August 4 order should be affirmed. A preliminary injunction is reviewed deferentially, *Compton, 392 S.C. at 366, 709 S.E.2d at 642*, and the circuit court made the findings our law requires: irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. See *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004); Allegro, Inc. v. Scully, 400 S.C. 33, 45, 733 S.E.2d 114, 121 (Ct. App. 2012).* The harm was concrete and fixed by the election calendar: unless Respondent's name was placed on the ballot before voting closed, his asserted right to stand as a candidate would be lost beyond recall. The Party disputes the merits of the likelihood-of-success determination; Respondent answers the Party separately and does not relitigate those merits here, where the Commission raises only the form and timing of the relief.

The Commission's contrary argument — that the relief was "mandatory" and reversed rather than preserved the status quo — misidentifies the status quo. The relevant baseline is "the last uncontested status between the parties which preceded the controversy." *Pashby v. Delia, 709 F.3d 307, 320 (4th Cir. 2013) (quoting Aggarao v. MOL Ship Mgmt. Co., 675 F.3d 355, 378 (4th Cir. 2012)).* Here the controversy was the Party's refusal to certify Respondent; the last uncontested status preceding it was Respondent's position as a candidate who had filed within the period and awaited certification. Relief restoring him to the ballot preserved that status rather than upending it.

In any event, our law permits a mandatory preliminary injunction where the moving party is entitled to affirmative relief. See *Powell v. Immanuel Baptist Church, 261 S.C. 219, 199 S.E.2d 60 (1973).* Such relief is reserved for circumstances whose exigencies demand it, and the circuit

court expressly found those circumstances extraordinary. The court was entitled to weigh the equities and to rely on persuasive authority addressing the correction of an improper ballot omission. See *Erlandson v. Kiffmeyer, 659 N.W.2d 724 (Minn. 2003).* On a deferential standard, that exercise of discretion should not be disturbed. Restoring Respondent prospectively preserved the opportunity that the lawsuit sought to protect. The order did not recall, invalidate, or recount existing ballots. It applied only to ballots for which implementation remained feasible.

III. The August 3 hearing on notice, and the order entered after it, cured any defect in the initial *ex parte* order.

The Commission devotes much of its brief to the initial *ex parte* restraining order of July 30. Whatever its defects, that order is not the order on appeal. The operative order — the August 4 preliminary injunction — issued only after every party appeared and was fully heard, on notice, at the August 3 hearing, where the court admitted four exhibits and heard argument from the Party and the Commission alike. A party that has been fully heard on the merits of the application cannot be heard to complain that it lacked notice of an earlier, superseded order. *See Meinhard v. Youngblood, 37 S.C. 223, 15 S.E. 947 (1892); Jordan v. Wilson, 69 S.C. 52, 48 S.E. 37 (1904).* The Commission not only received notice; it accepted the court's invitation to submit a memorandum, appeared at the hearing, and argued its position. The purpose of notice — an opportunity to be heard before the court acts with finality — was fully served before the August 4 order issued.

The Commission's reliance on *Crook v. S.C. Election Comm'n, Op. No. 2025-MO-041 (S.C. Sept. 11, 2025)*, is misplaced. Crook is an unpublished memorandum opinion whose citation is limited by Rule 268(d)(2), SCACR, and it reversed an *ex parte* order in a posture where no

hearing on the merits had cured the want of notice. Here, a hearing on notice was held, and the injunction rests on that hearing — not on the *ex parte* order that preceded it. The circuit court therefore correctly treated the earlier notice objection as resolved.

IV. The Commission was properly joined under Rule 19 and directed to perform a ministerial act, and paragraph 2 was specific in terms.

The Commission argues that the complaint stated no claim against it and that Title 7 gave it no authority to add Respondent's name. But Respondent did not sue the Commission for damages or a declaration of its wrongdoing; he joined it under Rule 19, SCRCP, as the agency that prepares the ballots and whose participation was necessary to afford complete relief. A declaratory action requires that "all persons shall be made parties who have or claim any interest which would be affected by the declaration," S.C. Code Ann. § 15-53-80, and a court of equity may direct a party so joined to perform the acts necessary to carry its decree into effect. The Commission itself acknowledges that, upon a party's certification, its duty to place the certified candidate on the ballot is "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)*; see S.C. Code Ann. § 7-13-350. Having ordered the Party to certify Respondent, the circuit court could direct the Commission to perform the ministerial step that certification sets in motion.

Paragraph 2 directed the Commission to place Respondent on "all ballots feasible for early voting and for election day." That command identified the person, election, ballots, and temporal scope of the required conduct.

Rule 65(d), SCRCP, requires reasonable detail, not advance resolution of every possible administrative contingency. The Commission implemented the directive, demonstrating that the order was sufficiently definite to be understood and obeyed.

The term "feasible" appropriately preserved the Commission's administrative judgment regarding what could practically be accomplished while requiring diligent compliance with the court's decree. An injunction does not become void merely because implementation requires professional judgment.

V. This Court should decline to adopt the rigid Purcell framework the Commission proposes.

Finally, the Commission asks this Court to adopt, as a matter of state equity, the federal Purcell principle and a four-part test to govern election litigation once ballots have issued. The Court should decline. The Commission raised the principle below as its own request for restraint, and now asks the Court to codify it; the request is as unnecessary as it is novel.

Purcell is a doctrine of federal-court restraint, rooted in principles of federalism that counsel federal courts against disturbing state election rules in the period close to an election. See *Purcell v. Gonzalez, 549 U.S. 1 (2006); Republican Nat'l Comm. v. Democratic Nat'l Comm., 589 U.S. 423 (2020)*. This Court recognized as much in denying the stay, observing that it is "not bound by these federalism principles." Those federalism concerns have no purchase when a South Carolina court applies South Carolina equity to a South Carolina election, and other state courts of last resort have declined to import *Purcell* into their own practice. See *Martin v. Simon, 6 N.W.3d 443 (Minn. 2024)*.

A rigid rule of the kind the Commission proposes would do real harm. South Carolina courts have long entertained pre-primary challenges to a party's certification decisions and have

corrected ballots before elections. *See Anderson v. S.C. Election Comm'n, 397 S.C. 551, 725 S.E.2d 704 (2012); Florence Cnty. Democratic Party v. Florence Cnty. Republican Party, 398 S.C. 124, 727 S.E.2d 418 (2012).* The Commission concedes that *Anderson* approved judicial intervention in ballot access before a primary. A framework barring relief once any ballot issued would place the conduct of compressed special primaries beyond meaningful judicial supervision and would reward a party that withholds certification until the calendar runs out. Even the equitable principle the Commission invokes is discretionary rather than categorical: it holds only that imminent-election circumstances "might justify a court in withholding" immediate relief. *Reynolds v. Sims, 377 U.S. 533, 585 (1964) (emphasis added).*

The Commission's laches theme fails on this record. Respondent did not sleep on his rights. The Party did not decline to certify him until after the filing period closed at noon on July 28, 2026, and he sued two days later, on July 30. He sought only prospective relief and expressly declined to disturb ballots already cast. Whatever the merits of a laches rule in a case of genuine delay, this is not that case. The circuit court considered timing, feasibility, voter confusion, and the scope of relief. Its narrow order reflected equitable caution rather than disregard of election administration. The judgment of the Circuit Court is entitled to deference.

CONCLUSION

For these reasons, Respondent respectfully requests that this Court dismiss the Commission's appeal as moot. In the alternative, the Court should affirm the circuit court's August 4, 2026 Order Granting Preliminary Injunction, decline to vacate that order, and decline to adopt the *Purcell* framework the Commission proposes.

Respectfully submitted,

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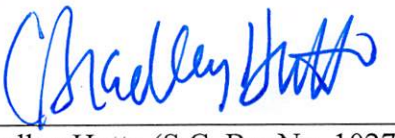
Pursuant to Rule 262(c)(3), SCACR, I certify that I have served the Initial Brief of Respondent Danny Ford, II on the following counsel of record by email on November 17, 2026:

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