

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
 COUNTY OF RICHLAND)

ROBERT DURDEN INGLIS; FRANK) Civil Action No. 2019-CP-40-_____
 HEINDEL,)

Plaintiffs,)

v.)

THE SOUTH CAROLINA)
 REPUBLICAN PARTY & DREW)
 MCKISSICK, State Chairman of the)
 South Carolina Republican Party, in his)
 official capacity.)

SUMMONS

Defendants.)

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint in the above-captioned action, a copy of which is herewith served upon you, and to serve a copy of your answer on the subscribers located at 1325 Park Street, Suite 100, Columbia, South Carolina 29201, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

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October 1, 2019

* *Pro hac vice* applications forthcoming.

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Defendants.)	

COMPLAINT

1. This case is about the failure of the State Executive Committee of the Republican Party of South Carolina to follow South Carolina law, the Republican Party’s own rules, and the South Carolina Constitution when it unilaterally and unlawfully canceled the 2020 South Carolina Republican presidential preference primary.¹ The result of that failure will be that plaintiffs Bob Inglis and Frank Heindel—South Carolina Republicans who intended to vote in the 2020 South Carolina Republican presidential preference primary—will be deprived of the ability to vote for the candidate of their choice in South Carolina’s famous (and

¹ Presidential primaries are sometimes referred to as “presidential preference primaries” because voters do not directly choose the party’s candidate for the general election. Instead, voters bind delegates who go on to vote for the party’s candidate at the national convention. This complaint uses the phrases “presidential primary” and “presidential preference primary” interchangeably.

particularly influential) “First in the South” primary. Plaintiffs accordingly bring this lawsuit to enforce their rights under South Carolina law; the rules of the South Carolina Republican Party, which are judicially enforceable under South Carolina law; and the South Carolina Constitution.

2. It didn’t have to be this way. South Carolina law, the rules of the South Carolina Republican Party, and the South Carolina Constitution require that a political party use a fair process to determine which candidate the state party supports in the general election. They don’t necessarily require a political party to hold a presidential preference primary election in all presidential election years. Rather, they merely require that *if* a party wishes to cancel its primary, it must observe certain democratic safeguards that ensure that a party’s supporters—and not just a small junta of party bosses—support canceling the primary, and the party must instead choose which candidate it will support at its state convention. But the State Executive Committee has not complied with *any* of the democratic safeguards required by both South Carolina law and Republican Party rules. Instead, the State Executive Committee has chosen which candidate to support by fiat, and in doing so, excluded Republican voters from the process entirely—in violation of the law and its own rules.

3. Under South Carolina law, a political party must select which candidates it will support by either a primary election or a party convention. S.C. Code Ann. § 7–11–10. South Carolina requires a political party to follow its own party rules, to the extent that those rules don’t conflict with state or federal law.

S.C. Code Ann. § 7–11–20. The South Carolina Constitution’s Due Process Clause likewise compels political parties to follow their own rules before depriving members of the right to vote in a primary election. *See* S.C. Const. art. I, § 3; *Rice v. Elmore*, 165 F.2d 387, 391 (4th Cir. 1947) (“When [party] officials participate in what is a part of the state’s election machinery, they are election officers of the state de facto if not de jure, and as such must observe the limitations of the Constitution.”).

4. The rules of the South Carolina Republican Party specify a process for canceling a presidential preference primary election: “the South Carolina Republican Party shall conduct a statewide presidential preference primary,” unless “decided otherwise by the state party convention within two (2) years prior to each presidential election year.” S.C. GOP Rule 11(b)(1). So if the State Executive Committee wanted to cancel the primary election, it needed to have the party convention vote to do so beforehand.

5. The South Carolina Republican Party Rules are in line with the democratic safeguards that South Carolina law itself imposes. South Carolina specifies that a party may only select nominees through a primary or through a party convention. S.C. Code Ann. § 7–11–10. And if a party that held a primary in the prior election wishes to switch from a primary to a party convention, South Carolina law also imposes additional procedural safeguards:

- First, there must be “a three-fourths vote of the total membership of the convention to use the convention nomination process.” S.C. Code Ann. § 7–11–30(A)(1).
- Second, “a majority of voters in that party’s next primary election approve the use of the convention nomination process.” *Id.* § 7–11–30(A)(2).

See generally id. § 7–11–30; *see also* Mem. from Assist. Att’y Gen. Brendan McDonald to Exec. Dir. of S.C. Election Comm’n Marci Andino re: Equal Access to the Ballot Act at 2–3 (Nov. 12, 2013) (describing how § 7–11–30 “change[d] the procedure political parties utilize when they wish to change *from* the primary nomination process, *to* a convention nomination process”).²

6. These procedural safeguards make sense: a switch from a primary to a party convention is potentially worrying because it does not provide the same opportunity to the voters to have as significant an input into the political process. Party conventions carry with them a far higher risk that the views of few party bosses could override the will of the party’s general members. Thus, both the party rules and section 7–11–30 require the party bosses to ensure that the membership is in favor of a move away from a primary. In fact, a 2014 resolution adopted unanimously by the South Carolina Republican Party’s State Executive Committee explained the value of its presidential preference primary:

² Available at <http://www.scag.gov/wp-content/uploads/2013/11/andino-m-os-9690-11-12-13-S.2-impact-on-political-parties-nominate-candidates-convention-process.pdf>.

WHEREAS, spirited and competitive primaries are a healthy way to grow the Republican Party through increased primary participation, and

WHEREAS, Republicans do not wish to be perceived as a party that simply selects its nominees in a backroom or underhanded fashion, and . . .

WHEREAS, anything other than a fair and legitimate primary where state party staff and officers avoid even the appearance of intervention could irrevocably damage the integrity of our primary process and inadvertently affect our “First in the South” presidential preference status . . .

THEREFORE BE IT RESOLVED, that all state Republican Party staff shall treat all campaigns equally, maintaining public neutrality in the primary process[.]”

S.C. Republican Party State Exec. Comm. Res., *Support of Integrity, Openness, and Fairness in the Primary Process* (May 3, 2014).³ Indeed, the Republican Party has gone so far as to argue to a court that canceling a presidential primary would cause “irreparable harm to the public interest” because “the citizens of South Carolina deserve an opportunity to vote on the Republican nominee for President of the United States.” Def. S.C. Republican Party’s Mem. in Opp’n to Pl.’s Mot. for Prelim. Inj./Rule 12(b)(6) Mot. to Dismiss at 6, *Coyne v. S.C. Sec’y of State*, No. 3:15-cv-03669 (D.S.C. Nov. 16, 2015), ECF No. 18.

7. But here—for whatever reason—the State Executive Committee of the South Carolina Republican Party has not heeded its own wise counsel from 2014

³ Available at <https://www.sc.gop/wp-content/uploads/2014/05/SCGOP-Res-PrimaryNeutrality.pdf>.

and 2015. And its failure to do so violated its *own* rules, the South Carolina Election Law, and the South Carolina Constitution.

8. Accordingly, left effectively disenfranchised by their own political party and with no other remedy to protect their right to vote, plaintiffs now turn to this Court to enforce the democratic safeguards guaranteed by party rules, state law, and the South Carolina Constitution.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this case pursuant to Article V, Section 11 of the South Carolina Constitution, which gives the Circuit Courts general jurisdiction over civil cases.

10. This Court also has “jurisdiction to hear and determine all questions, actions and controversies, other than those involving rates of public service companies for which specific procedures for review are provided in Title 58, affecting boards, commissions and agencies of this State, and officials of the State in their official capacities in the circuit where such question, action or controversy shall arise.” S.C. Code Ann. § 15–77–50.

11. Venue is proper in this Court because the causes of action arose in Richland County and the South Carolina Republican Party’s headquarters are in the County. *See id.* § 15–7–30; *see also id.* § 15–7–20(2).

PARTIES

A. Plaintiffs

12. Plaintiff **Robert Durden Inglis** is a registered voter in Greenville County, South Carolina. He goes by Bob. His polling location is the Cleveland First Baptist Church.

13. Mr. Inglis previously represented South Carolina as a Republican in the United States Congress from 1993–1999 and 2005–2011. He has also served on the executive committee of the Greenville County Republican Party.

14. Mr. Inglis has voted regularly in South Carolina, including in numerous Republican primaries, for over three decades.

15. Before the South Carolina Republican Party announced that it had canceled the 2020 Republican presidential primary, Mr. Inglis intended to vote in that primary. He still desires to do so. Mr. Inglis views primary elections as the place where he, as a member of the Republican Party, can shape how the party looks and feels.

16. Mr. Inglis is harmed by the South Carolina Republican Party's decision to cancel the 2020 Republican presidential preference primary because it denies him the ability to vote in the Republican primary and thus the ability to steer his party in the direction he wants.

17. Plaintiff **Frank Heindel** is a registered voter in Charleston County, South Carolina. His polling location is the Mt. Pleasant National Guard Armory.

18. Mr. Heindel regularly votes, including in the South Carolina Republican primaries in 2000, 2002, 2004, 2008, and 2012. He also has voted in numerous general elections in South Carolina, including in 2000, 2002, 2004, 2008, 2010, 2012, 2016, and 2018.

19. Mr. Heindel has donated to the South Carolina Republican Party.

20. Before the South Carolina Republican Party announced that it had canceled the 2020 Republican presidential primary, Mr. Heindel intended to vote in that primary. He still desires to do so. He believes that voting in a primary is part of having a healthy debate, a healthy party, and a healthy democracy. He believes that as a voter, he deserves to have a choice and to make his voice heard in the primary.

21. Mr. Heindel is harmed by the South Carolina Republican Party's decision to cancel the 2020 Republican presidential preference primary because that prevents him from being able to vote in the Republican primary. It thwarts his opportunity to express his political views and participate in the democratic process.

B. Defendants

22. Defendant the **South Carolina Republican Party** (S.C. GOP) is an unincorporated political organization, certified by the South Carolina State Election Commission as a political party pursuant to S.C. Code Ann. § 7–9–10. *See* Aff. of Karen Floyd ¶ 2, *Greenville Cty. Republican Party Exec. Comm. v. South Carolina*, No. 6:10-cv-1407 (D.S.C. Feb. 10, 2011), ECF No. 28-4.

23. The S.C. GOP has its headquarters in Richland County, South Carolina.

24. Defendant **Drew McKissick** is the State Chairman of the S.C. GOP. Upon information and belief, he was elected to that position on May 13, 2017. He is sued in his official capacity.

LEGAL AND FACTUAL BACKGROUND

A. The organization of political parties in South Carolina

25. In South Carolina, political parties are organized under and regulated by the South Carolina Election Law, codified at Title 7 of the South Carolina Code. *See* S.C. Code Ann. §§ 7–1–10 *et seq.*

26. Chapter 9 of Title 7 governs the organization of political parties.

27. Section 7–9–10 provides that political parties must be certified by the South Carolina State Election Commission.

28. Section 7–9–90 requires that each certified political party have a state committee and delineates the composition of the state committee. The state committee may appoint officers, and it is responsible for nominating presidential electors and filling vacancies in the state ticket of electors and the national committee of a party. *Id.*

29. Section 7–9–100 requires that each certified political party convene a state convention “during a thirteen-month period ending May fifteenth of every general election year.” The state convention is composed of delegates elected by county conventions. *Id.* Parties may adopt or amend party rules at the state convention, as well as nominate candidates.

B. The Election Law’s democratic safeguards on parties’ selection of candidates

30. “It is too plain for argument” that the United States Constitution allows South Carolina to “insist that intraparty competition be settled before the general election by primary election or by party convention.” *Am. Party of Tex. v. White*, 415 U.S. 767, 781 (1974).

31. To that end, the South Carolina Legislature has placed democratic safeguards around the party primary process to ensure that party insiders cannot subvert the will of party members. This case centers on three of those democratic safeguards: Sections 7–11–10, 7–11–20, and 7–11–30 of the South Carolina Election Law.

32. Section 7–11–10 imposes a basic requirement on certified political parties in South Carolina: they must select their general election candidates by either primary election or party convention. *See* S.C. Code Ann. § 7–11–10.⁴ Thus, under South Carolina law, a political party cannot simply convene the party’s state executive committee and pick its preferred candidate for a general election. A party’s general election candidate must, instead, have some democratic imprimatur—namely, that they be chosen by primary or convention.

⁴ For the sake of completeness, it’s worth noting that, for candidates who do not intend to be nominated by any political party, section 7–11–10 also allows a candidate to obtain a place on the general election ballot via petition, provided that they have not been “defeated as a candidate for nomination to an office in a party primary or party convention.” That portion of section 7–11–10 is not relevant to this litigation.

33. Section 7–11–20 then adds an additional safeguard: “party conventions or party primary elections . . . must be conducted in accordance with . . . party rules[.]” Stated otherwise, a party’s state executive committee cannot break the party rules that a party adopts at its convention when determining who the party’s nominee will be.

34. Section 7–11–20(B) further explains that there is no exception to that rule for presidential preference primaries held by a major political party (defined as a party having won more than five percent of the vote in a previous presidential election). Whenever such a party decides to hold a presidential preference primary election, “the State Election Commission must conduct the presidential preference primary in accordance with the provisions of this title *and party rules*.” *Id.* § 7–11–20(B)(2) (emphasis added); *see also Beaufort Cty. v. S.C. State Election Comm’n*, 395 S.C. 369, 369–78, 718 S.E.2d 432, 433–39 (2011); *cf.* S.C. Code Ann. § 7–11–20(B)(1) (“[A] certified political party wishing to hold a presidential preference primary election may do so in accordance with the provisions of this title and party rules.”).

35. Finally, section 7–11–30 layers on yet another democratic safeguard, imposing procedural requirements on a party that seeks to switch from a primary election to a convention nomination process. *See* Mem. from Assist. Att’y Gen. Brendan McDonald to Exec. Dir. of S.C. Election Comm’n Marci Andino re: Equal Access to the Ballot Act at 2–3 (Nov. 12, 2013). First, there must be “a three-fourths vote of the total membership of the convention to use the convention nomination process.” S.C. Code Ann. § 7–11–30(A)(1). And second, “a majority of voters in that

party's next primary election approve the use of the convention nomination process." *Id.* § 7–11–30(A)(2).

36. As a result, a major South Carolina political party cannot simply cancel a primary election whenever the party's state executive committee wants to; under state law, the decision must instead receive the support of both a supermajority of the party's convention and a majority of the party's primary voters.

37. That is important. As the State Executive Committee explained in its 2014 resolution, primaries guard against the perception that the "party . . . simply selects its nominees in a backroom or underhanded fashion." S.C. GOP State Exec. Comm. Res., *Support of Integrity, Openness, and Fairness in the Primary Process* (May 3, 2014). "[A]nything other than a fair and legitimate primary . . . could irrevocably damage the integrity of [the S.C. GOP's] primary process" and injure "Republicans across South Carolina [who] deserve the primary election integrity" that comes from a Republican Party primary. *Id.*

38. Taken together, sections 7–11–10, 7–11–20, and 7–11–30 impose three limitations on a South Carolina political party's state executive committee when the party is picking general election candidates. A political party must (1) pick its candidates by either primary or party convention, (2) must always follow its own rules, and (3) if a party wishes to switch from a primary to a party convention, the party members must chose to do so in both a convention vote and a primary vote.

C. The South Carolina Republican Party's organization and own democratic safeguards

39. As noted above, the S.C. GOP is an unincorporated political organization, certified by the South Carolina State Election Commission as a political party pursuant to section 7–9–10 of the South Carolina Code. *Aff. of Karen Floyd ¶ 2, Greenville Cty. Republican Party Exec. Comm. v. South Carolina*, No. 6:10-cv-1407 (D.S.C. Feb. 10, 2011), ECF No. 28-4.

40. On top of the democratic safeguards required by South Carolina's Election Law, the S.C. GOP's own rules impose their own democratic safeguards on the party's selection of presidential candidates. *See* S.C. GOP, *The Rules of the South Carolina Republican Party* (May 13, 2017) ("S.C. GOP Rules").⁵ And South Carolina law requires that the party follow its own rules. *See* S.C. Code Ann. § 7–11–20.

41. The S.C. GOP's current party rules were adopted at the party's 1962 state convention and have been amended twenty-two times since, including, most recently, at the 2017 state convention. *See* S.C. GOP Rules at 1.

42. Rule 11(b)(1) provides that, "[u]nless decided otherwise by the state party convention within two (2) years prior to each presidential election year, the South Carolina Republican Party shall conduct a statewide presidential preference primary on a date selected by the chairman of the party."

43. No other provision of the S.C. GOP Rules permits the State Executive Committee to unilaterally decide not to conduct a primary.

⁵ Available at <https://www.sc.gop/resources/rules/> (last visited Sept. 19, 2019).

44. In contrast, Rule 11(b)(2) of the S.C. GOP Rules explicitly provides that, in the event the state party convention decides *not* to conduct a primary, the State Executive Committee may “override the decision of the convention and reinstate the primary.”

45. Together, Rule 11(b)(1) and Rule 11(b)(2) require the S.C. GOP to hold a statewide presidential preference primary and preclude its State Executive Committee from unilaterally deciding not to conduct a primary. Those rules are legally binding on the party by operation of S.C. Code Ann. § 7–11–20.

46. The S.C. GOP’s commitment to holding primaries is to its own benefit. As the S.C. GOP explained in a court filing in a different case, the party’s “status as the ‘First in the South’ Republican presidential primary is critically important to the continued status and vitality of the SCGOP as a leader in presidential politics in our country.” Def. S.C. Republican Party’s Mem. in Opp’n to Pl.’s Mot. for Prelim. Inj./Rule 12(b)(6) Mot. to Dismiss at 6, *Coyne v. S.C. Sec’y of State*, No. 3:15-cv-03669 (D.S.C. Nov. 16, 2015), ECF No. 18. A failure to hold a presidential primary “would cause irreparable harm to the SCGOP from which it would likely never recover.” *Id.* at 6.

D. Overriding democratic safeguards, the State Executive Committee unilaterally cancels its 2020 primary

47. Notwithstanding South Carolina’s Election Code and the S.C. GOP’s own rules, on September 7, 2019, the State Executive Committee voted to cancel the S.C. GOP’s 2020 presidential primary. *See* Jamie Lovegrove, *SC Republicans Vote*

to Forgo 2020 GOP Presidential Primary, Setting Up Trump Renomination, The Post and Courier (Sept. 7, 2019).⁶

48. The S.C. GOP did not follow its own rules in doing so, as required by S.C. Code Ann. § 7–11–20. And to the extent that the S.C. GOP characterizes its decision as one to choose which presidential candidate it supports by party convention rather than primary, the S.C. GOP failed to follow the required procedure to switch from a party primary to a party convention, as mandated by S.C. Code Ann. § 7–11–30.

49. The vote was not unanimous and faced immediate public rebuke from many within the S.C. GOP. Rob Godfrey, who served as a top advisor to former South Carolina Governor Nikki Haley, called the cancellation “a shady backroom deal where a small group of party insiders made a big decision that stops hundreds of thousands of voters from participating in the process.” *See* Steve Peoples *et al.*, *Still On: Iowa, New Hampshire, Won’t Nix 2020 GOP Contests*, Associated Press (Sept. 11, 2019).⁷ President Trump’s Republican challengers also spoke out against the decision, publishing an op-ed calling the cancellation “an effort to eliminate any threats to the president’s political power in 2020.” *See* Mark Sanford, Joe Walsh, &

⁶ Available at https://www.postandcourier.com/politics/sc-republicans-vote-to-forgo-gop-presidential-primary-setting-up/article_96d05722-d0d6-11e9-9771-6ba2d039a3e4.html.

⁷ Available at <https://www.apnews.com/3cf0a814468b4aa9bc1679aae61fe1ae>.

Bill Weld, Opinion, *We Are Trump's Republican Challengers. Canceling GOP Primaries Is a Critical Mistake*, Wash. Post (Sept. 13, 2019).⁸

FIRST CLAIM FOR RELIEF
Violation of S.C. Code Ann. § 7–11–20

50. Plaintiffs reallege and incorporate by reference all other paragraphs as if fully set forth herein.

51. Section 7–11–20(A) of the South Carolina Code requires that nominations by party conventions and party primaries be conducted “in accordance with . . . party rules not in conflict with the provisions of this title or of the Constitution and laws of this State or of the United States.”

52. Section 7–11–20(B)(2) likewise requires that when a major political party (*i.e.*, a party that received at least five percent of the popular vote in South Carolina for the party’s candidate for President of the United States) decides to hold a presidential preference primary election, it must do so “in accordance . . . with party rules[.]”

53. The S.C. GOP is a major political party, and its current rules provide that “[u]nless decided otherwise by the state party convention within two (2) years prior to each presidential election year, the South Carolina Republican Party *shall* conduct a statewide presidential preference primary on a date selected by the chairman of the party[.]” S.C. GOP Rule 11(b)(1) (emphasis added).

⁸ Available at https://www.washingtonpost.com/opinions/we-are-trumps-republican-challengers-canceling-gop-primaries-is-a-critical-mistake/2019/09/13/7a951c84-d665-11e9-86ac-0f250cc91758_story.html.

54. No other provision of the S.C. GOP Rules permits the State Executive Committee to unilaterally cancel the party's presidential preference primary.

55. Defendants therefore violated the S.C. GOP Rules and section 7–11–20 of the South Carolina Code in purporting to cancel South Carolina's 2020 Republican presidential preference primary election.

56. Plaintiffs are harmed by the defendants' unlawful act, as they are Republicans in South Carolina who intended to—and still hope to—vote in the S.C. GOP's 2020 presidential preference primary, but will be prevented from doing so without relief from this Court.

57. Unless enjoined by the Court, defendants, and those acting in concert with them, will continue to violate S.C. Code Ann. § 7–11–20 and inflict irreparable harm on plaintiffs by denying plaintiffs the ability to vote for the Republican candidate of their choice in a presidential primary.

SECOND CLAIM FOR RELIEF
Violation of S.C. Code Ann. §§ 7–11–10, 7–11–30

58. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

59. Chapter 11 of Title 7 of the South Carolina Code governs the “Designation and Nomination of Candidates.” Section 7–11–10 identifies the “[m]ethods of nominating candidates.” It states that “nominations for candidates for the offices to be voted on in a general or special election may be by political party

primary, by political party convention, or by petition.”⁹ *Id.* It does not permit any other method for nominating candidates for a general election.

60. Section 7–11–30 of the South Carolina Code describes the process that a political party must use if it has nominated candidates by primary in the past but wishes to nominate candidates by convention in the future. It states, in relevant part:

(A) A party may choose to change from nomination of candidates by primary to a method to nominate candidates by convention for all offices . . . if:

(1) there is a three-fourths vote of the total membership of the convention to use the convention nomination process; and

(2) a majority of voters in that party’s next primary election approve the use of the convention nomination process.

S.C. Code Ann. § 7–11–30; *see also* Mem. from Assist. Att’y Gen. Brendan McDonald to Exec. Dir. of S.C. Election Comm’n Marci Andino re: Equal Access to the Ballot Act at 2–3 (Nov. 12, 2013).

61. Defendants have purported to decide by State Executive Committee vote to use neither a primary nor a state convention to select who the state party supports as a candidate for President. *See* Jamie Lovegrove, *SC Republicans Vote to Forgo 2020 GOP Presidential Primary, Setting Up Trump Renomination*, The Post and Courier (Sept. 7, 2019). Defendants are therefore in violation of section 7–

⁹ The third option, nomination by petition, is only relevant to candidates who are not nominated by a political party, and therefore is not relevant here. *See supra* note 4.

11–10, which requires certified political parties to use either a party primary or a state convention. S.C. Code Ann. § 7–11–10. The State Executive Committee of the S.C. GOP is not empowered to take away the party members’ choice of candidates. It must follow the law, which requires that the S.C. GOP decide which candidate it supports either by party primary or by party convention.

62. Upon information and belief, the S.C. GOP intends to hold a state party convention before May 15, 2020, as required by South Carolina law. *See* S.C. Code Ann. § 7–9–100 (requiring that each certified political party convene a state convention “during a thirteen-month period ending May fifteenth of every general election year”).

63. To the extent defendants characterize the State Executive Committee’s decision as one to use a party convention rather than a primary to determine who the state party supports for President, defendants violated section 7–11–30 by failing to follow the statutorily mandated process to switch from a primary to a convention nomination process. Namely, upon information and belief, there was not a three-fourths vote at the last state party convention to hold a convention to select a nominee for President, as required by section 7–11–30(A)(1). Nor, upon information and belief, did a majority of voters in the S.C. GOP’s most recent primary election approve the use of the convention nomination process, as required by section 7–11–30(A)(2).

64. Thus, defendants have violated section 7–11–10 by announcing their decision to use neither a primary nor a convention, and to the extent they claim

that they have decided to use a convention, they have violated section 7–11–30 by failing to comply with the democratic safeguards required for a political party to switch from using a primary to using a convention. *See* S.C. Code Ann. §§ 7–11–10, 7–11–30.

65. Plaintiffs are harmed by the defendants’ unlawful act, as they are Republican voters registered in South Carolina, who intended to, and still wish to, vote in the S.C. GOP’s 2020 presidential preference primary election and will now be prevented from doing so.

66. Unless enjoined by the Court, defendants, and those acting in concert with them, will continue to violate S.C. Code Ann. §§ 7–11–10 and 7–11–30 and inflict irreparable harm on plaintiffs by denying plaintiffs the ability to vote for the Republican candidate of their choice in a presidential primary.

THIRD CLAIM FOR RELIEF
Violation of the South Carolina Constitution Article I, § 3’s
Due Process Clause

67. Plaintiffs reallege and incorporate by reference all other paragraphs as if fully set forth herein.

68. When parties participate in the selection of candidates for a general election, they are subject to the same constitutional bounds as state actors. *See, e.g., Beaufort Cty*, 395 S.C. at 379 n.5, 718 S.E.2d 432 at 439 n.5 (Hearn, J., concurring in part and dissenting in part) (observing that parties’ presidential preference primaries “are elections and accordingly are subject to state and federal laws concerning the electoral process”); *see also N.Y. State Bd. of Elections v. Lopez*

Torres, 552 U.S. 196, 203 (2008) (parties must abide by the constitution when they play a role in the election process); *Rice*, 165 F.2d at 391 (“When [party] officials participate in what is a part of the state’s election machinery, they are election officers of the state de facto if not de jure, and as such must observe the limitations of the Constitution.”).

69. The S.C. GOP is therefore subject to the bounds of South Carolina’s constitution when it participates in selecting candidates for a general election.

70. South Carolina’s Due Process Clause provides that no person “shall . . . be deprived of life, liberty, or property without due process of law.” S.C. Const. art. I, § 3. It protects a person from being deprived of cognizable life, liberty or property interests for “arbitrary reasons.” *Worsley Cos., Inc. v. Town of Mount Pleasant*, 339 S.C. 51, 56, 528 S.E.2d 657, 660 (2000).

71. Once granted, the right to vote is a “liberty interest” protected by the Due Process Clause. *Cf. Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983) (explaining that the right to vote is a liberty interest protected by the Fourteenth Amendment). And state actors (which the S.C. GOP is in this context) must follow their own rules before depriving individuals of liberty interests. *See Triska v. Dep’t of Health & Env’tl. Control*, 292 S.C. 190, 194, 355 S.E.2d 531, 533 (1987); *see generally United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

72. By violating Rule 11(b) of its party rules and canceling its primary, the State Executive Committee violated South Carolina’s Due Process Clause.

73. Plaintiffs are harmed by the defendants' arbitrary and unlawful act, as they are Republican voters in South Carolina who intended to, and still wish to, vote in the S.C. GOP's 2020 presidential preference primary election and will now be prevented from doing so.

74. Unless enjoined by the Court, defendants, and those acting in concert with them, will continue to act in an unconstitutional manner and inflict irreparable harm on plaintiffs by denying plaintiffs the ability to vote for the Republican candidate of their choice in a presidential primary.

FOURTH CLAIM FOR RELIEF
Ultra Vires Action

75. Plaintiffs reallege and incorporate by reference all other paragraphs as if fully set forth herein.

76. The South Carolina Supreme Court has "long recognized . . . as the province of the court to see that the established principles of law and order in the conduct of party organizations be maintained, and associations or groups of individuals, although organized on a political basis and having a political nature in purpose, are subject to the jurisdiction of the courts." *Walker v. Grice*, 162 S.C. 29, 159 S.E. 914, 917 (1931).

77. In conducting elections, certified political parties may exercise only those powers granted to them by law and any rules made pursuant thereto. *See Rice*, 165 F.2d at 391 (when party officials conduct elections they are subject to the same legal constraints as state actors); *Triska*, 292 S.C. at 194, 355 S.E.2d at 533 (holding that state agencies must follow their own regulations and any action taken

in contravention of those regulations is null and void); *Converse Power Corp. v. S.C. Dep't of Health & Env't Control*, 350 S.C. 39, 54–55, 564 S.E.2d 341, 350 (S.C. Ct. App. 2002) (same); cf. *Fisher v. Shipyard Vill. Council of Co-Owners, Inc.*, 415 S.C. 256, 271, 781 S.E.2d 903, 911 (2016) (“A corporation may exercise only those powers granted to it by law, its charter or articles of incorporation, and any bylaws made pursuant thereto.”); *Fisher v. Shipyard Vill. Council of Co-Owners, Inc.*, 409 S.C. 164, 180, 760 S.E.2d 121, 130 (S.C. Ct. App. 2014), *aff'd as modified*, 415 S.C. 256, 781 S.E.2d 903 (2016) (same); *Seabrook Island Prop. Owners Ass'n v. Pelzer*, 292 S.C. 343, 348, 356 S.E.2d 411, 414 (S.C. Ct. App. 1987) (same).

78. By violating Rule 11(b) of its party rules and canceling its primary, the State Executive Committee acted *ultra vires* in violation of the S.C. GOP's rules and state law. Therefore, the State Executive Committee's actions are void *ab initio*.

79. Plaintiffs are harmed by the defendants' unlawful act, as they are Republican voters in South Carolina who intended to, and still wish to, vote in the S.C. GOP's 2020 presidential preference primary election and will now be prevented from doing so.

80. Unless enjoined by the Court, defendants, and those acting in concert with them, will continue to act in an *ultra vires* manner and inflict irreparable harm on plaintiffs by denying plaintiffs the ability to vote for the Republican candidate of their choice in a presidential primary.

PRAYER FOR RELIEF

Plaintiffs pray for relief as follows:

- a. that the Court declare that the S.C. GOP has violated section 7–11–20 of the South Carolina Code and its own party Rules;
- b. that the Court declare that the S.C. GOP has violated sections 7–11–10 and 7–11–30 of the South Carolina Code;
- c. that the Court declare that the S.C. GOP is obligated, under sections 7–11–10, 7–11–20, and 7–11–30 of the South Carolina Code, to hold a presidential preference primary;
- d. that the Court declare the S.C. GOP has violated the South Carolina Constitution’s Due Process Clause, art. I, § 3;
- e. that the Court declare that the S.C. GOP has acted *ultra vires*, and its actions are void *ab initio*;
- f. that the Court order the S.C. GOP to conduct a presidential preference primary as required by the South Carolina Code sections 7–11–10, 7–11–20, and 7–11–30, its own party Rules, and the South Carolina Constitution;
- g. that the Court award attorneys’ fees and litigation costs to Plaintiff’s attorneys as provided by law;
- h. that the Court preliminarily and permanently enjoin all defendants and anyone acting in privity with the defendants from further violations of the law; and
- i. that the Court grant all other and further relief as it may deem necessary.

JURY DEMAND

Plaintiffs demand a jury trial of all issues so triable. *See* S.C. R. Civ. P. 38.

Date: October 1, 2019

Respectfully submitted,

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* *Pro hac vice* applications forthcoming.