

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2026-CP-40-05213
	)	
DANNY FORD II,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER GRANTING PRELIMINARY
	)	INJUNCTION
SOUTH CAROLINA REPUBLICAN	)	
PARTY, AND SOUTH CAROLINA	)	
ELECTION COMMISSION a/k/a STATE	)	
ELECTION COMMISSION	)	
	)	
Defendants.	)	

Introduction

This matter came before the Court on Plaintiff Danny Ford, II's motion for a preliminary injunction, and on the motion of Defendant South Carolina Republican Party to dissolve the temporary restraining order entered July 31, 2026, and to dismiss the complaint. The Court entered that restraining order and noticed a hearing on August 3, 2026, on notice to all parties, at which the Defendant South Carolina Republican Party (the "SCGOP") and Defendant South Carolina Election Commission (the "Commission") appeared and were fully heard. 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*, No. 2025-001777, 2025 WL 2630725 (S.C. Sept. 11, 2025).

At the hearing, the parties agreed to use the verified complaint as evidence for some foundational issues such as that Plaintiff meets the Constitutional requirements for office. The Plaintiff also moved four exhibits into the record without objection from either Defendant. The Court has had time to consider the filings of the parties in advance of the hearing as well as those arguments heard at the hearing.

I. Facts

On or about July 11, 2026, United States Senator Lindsey O. Graham died in office, creating a vacancy to be filled through a special Republican primary election conducted under S.C. Code Ann. § 7-11-55, scheduled for August 11, 2026. Plaintiff timely filed the documents necessary to appear on the special-primary ballot; Plaintiff meets the constitutional qualifications for office. Defendant SCGOP declined to certify Plaintiff on the ground that he did not satisfy Party Rule 11(a)(6), which requires that a candidate have been a registered Republican elector for at least 90 days and have voted in at least two of the last three statewide Republican primaries, subject to a discretionary waiver. (McKissick Declaration at ¶ 7; McKissick Declaration at ¶ 19). Plaintiff appeared on and voted in the June 9, 2026, statewide Republican primary and the June 23, 2026, runoff before the SCGOP began enforcing Rule 11(a)(6).

II. Mootness

As a preliminary matter, this Court must address Defendants' argument that this action is moot because of the distribution of military and absentee ballots, thus rendering relief by this Court to be impossible. This Court, as well as many others, disagrees.

Mootness has been defined as “when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.” *Byrd v. Irmo High School*, 310 S.C. 426, 431, 468 S.E.2d 861, 864 (1996); *see also Ry. Labor Execs. Ass’n v. Chesapeake W. Ry.*, 915 F.2d 116, 118 (4th Cir. 1990) (Generally, a request for “an injunction to prohibit an act is rendered moot by the happening of the act.”). However, a court may nevertheless take jurisdiction when the issue raised is capable of repetition yet evading review. *See Charleston Cnty School Dist. v. Charleston Cnty Election Com’n*, 336 S.C. 174, 180, 519 S.E.2d 567, 571 (1999) (citing *In Interest of Darlene C.*, 278 S.C. 664, 665, 301 S.E.2d 136, 137 (1983)).

First, Defendants argue that the injunction is moot due to the happening of the act—in this case, the election. However, the mailing of the absentee ballots is but one step in the election process and is not in and of itself the “happening” of the election. To further show this, the tabulation of absentee ballots does not begin until 7:00 am on election day. S.C. Code Ann. § 7-15-420. Here, the August 11, 2026, special election day has not yet occurred and therefore this

issue remains an existing controversy. *See also See Libertarian Party of Virginia v. Virginia State Bd. of Elections*, No. 1:10-CV-615 LMB/TCB, 2010 WL 3732012 (E.D. Va. Sept. 16, 2010) (where the election “has not yet occurred, this controversy remains live”).

Second, Defendants argue that this Court is unable to grant any effectual relief at this stage, such as Plaintiff’s request to be placed as a candidate on the ballot. At this stage in the election, 333 UOCAVA ballots and 1,538 general absentee ballots were distributed on July 29, 2026. The Commission confirmed that 333 is the most UOCAVA ballots there will be and more than 300 of these were sent via e-mail. The roughly 20-30 UOCAVA ballots that were sent by post mail were sent through that method because the voter chose that method; however, the Commission is in agreement with the federal government to reach out and communicate with those individuals to ensure their ballot is returned in time. The Commission has stated that they have e-mail addresses for most, if not all, of the UOCAVA voters. Of these ballots, 28 UOCAVA ballots and 31 general absentee ballots have been returned.¹

Defendants contend that changes to the ballot now would cause confusion with absentee voters, delays at the polls, and accuracy concerns. The unfortunate and tragic circumstances necessitating this special election, while unprecedented in South Carolina, have been similarly addressed in other courts. Following the death of a candidate for the United States Senate less than 16 days before the general election, the Supreme Court of Minnesota addresses the concerns presented by Defendants demonstrating the court’s ability to grant effectual relief even at this stage. *See Erlandson v. Kiffmeyer*, 659 N.W.2d 724 (Minn. 2003). Reducing confusion, the potential for delays, and inaccuracies, the court required replacement ballots to be sent and accompanied by clear instructions. *Id.* at 735. The instructions explained that if a replacement ballot was cast and returned in time to the election officials, the regular absentee ballot previously returned would not be counted. *Id.* Like in *Erlandson v. Kiffmeyer*, Defendants failed to proffer any rational justification against distributing supplemental ballots to absentee voters. *Id.* at 725-26. Further, the concerns and potential harm raised by Defendants are speculative.

Lastly, Defendants neglect to address the application of the exception to the mootness doctrine. This Court finds, regardless of mootness, this controversy fits squarely within the

¹ As of the morning of the hearing, August 3, 2026, provided by Defendant South Carolina Election Commission.

exception of being capable of repetition yet evading review. *See Norman v. Reed*, 502 U.S. 279 (1992) (stating an “[a]ction involving challenge to statutory requirements for political party to gain place on the ballot would be considered even though the election had been concluded, as the issue was one capable of repetition yet evading review.”). Here, a special election is already working with a truncated timeline, and the application of the statute in controversy will persist as it is applied in future elections. *See Storer v. Brown*, 415 U.S. 724, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974) (stating that even when an “election is long over, and no effective relief can be provided to the candidates or voters, [the] case is not moot, since the issues properly presented, and their effects on independent candidacies, will persist as the ... statutes are applied in future elections.”).

III. Legal Standard

To obtain a preliminary injunction under South Carolina law, the movant must establish three elements: (1) that he will suffer immediate, irreparable harm absent the injunction; (2) that he has a likelihood of success on the merits; and (3) that he has no adequate remedy at law. *Compton v. S.C. Dep’t of Corr.*, 392 S.C. 361, 709 S.E.2d 639 (2011). A separate “balancing of the equities” is not an independent requirement; that consideration “is subsumed by the irreparable harm and inadequate remedy at law components of the three-part test.” *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010). A preliminary injunction issues to preserve the status quo pending a final determination on the merits.

The parties dispute whether the injunctive relief sought is mandatory or prohibitive. While either type of injunction carries a high burden to pass, a mandatory injunction sets an even higher bar. However, this is not an illusory or impossible burden to meet – otherwise courts would have said so. But rather, a court should look to see if extraordinary circumstances exist to warrant such equitable relief. “A mandatory injunction is an extraordinary remedy that orders some positive act to be performed.” 43A C.J.S. *Injunctions* § 19 (2019). “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).

Assuming this is a mandatory injunction, is this case not one of an extraordinary measure: the untimely and unfortunate passing of the state’s senior Senator shortly after winning the runoff; the SCGOP passing a new rule that changed the criteria for who would be certified to run as a Republican; the snap election occurring shortly after the passage of this new rule; the negotiations and agreements between the federal government and the Commission to be in compliance with federal law; the lack of clarity as to what is considered a statewide primary for potential candidates; a former Republican candidate who was certified to run in a statewide primary; the ability for voters to electronically receive and cast their vote; and the short time frame for a court to hear and schedule arguments to rule on the multitude of issues. This Court holds that injunctive relief is warranted in this most extraordinary circumstance.

One could imagine an extraordinary circumstance that would likely warrant a mandatory injunction. Assume the Commission or a political party by complete accident left off a qualified and certified candidate from the ballot. Would that not trigger the most demanding relief by a court to require his or her name placed back on the ballot? The Commission would undoubtedly remedy that situation. If this Court is correct about Plaintiff’s rights being violated, how is his situation any different than the innocent bystander candidate – if not worse.

IV. Likelihood of Success on the Merits

Plaintiff has shown a likelihood of success. South Carolina law ties a party’s certification duty to the qualifications for the office: a political party “must not certify any candidate who does not ... meet the qualifications for the office for which the candidate has filed,” and must certify those who do. S.C. Code Ann. § 7-13-40; S.C. Code Ann. § 7-13-350. Party primaries certifying candidates to the Commission are valid only if “not in conflict with” Title 7 of SC Code or “the Constitution and laws of this State or of the United States.” S.C. Code Ann. § 7-11-20(A). South Carolina resolves doubts in favor of ballot access, distinguishing the fixed qualifications for office from other requirements. S.C. Code Ann. § 7-11-15.

a. State Action

Because South Carolina channels the parties' certification decisions directly onto the state-printed primary ballot, that decision is state action subject to constitutional constraint. *Baskin v. Brown*, 174 F.2d 391 (4th Cir. 1949). As the U.S. Supreme Court has made clear, political parties have First Amendment protections to associate with those like-minded people they want to be associated with. This Court could not agree more with the U.S. Supreme Court's long held rule that "a [s]tate, or a court, may not constitutionally substitute its own judgment for that of the Party." *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 224 (1986) (quoting *Democratic Party of United States v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 123-24 (1981)). A political party's "determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution." *Id.* at 224; *see also La Follette*, 450 U.S. at 124 ("And as is true of all expressions of First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational.") .

The government cannot force political parties to open its door to anyone that it does not desire, nor can the government force political parties to abolish rules that limit those that may join. However, there is a spectrum to this rule. Private membership, group meetings, general rules and procedural regulations, and the like, are well within a party's constitutional right to make its own decisions without governmental interference. *California Democratic Party v. Jones*, 530 U.S. 567, 567, 120 S. Ct. 2402, 2404, 147 L. Ed. 2d 502 (2000) ("This Nation has a tradition of political associations in which citizens band together to promote candidates who espouse their political views."). On the other hand, the Supreme Court has stricken party primary rules that discriminated based on race. *Smith v. Allwright*, 321 U.S. 649 64 S. Ct. 757, 88 L. Ed. 987 (1944). As conceded by all parties in the present action, race is not at issue here. The Supreme Court has not clearly defined the gray area between racial discrimination and purely First Amendment private club actions.

But recently, courts have hesitated to find state action when, as in this case, racial discrimination is not involved. *See Cousins v. Wigoda*, 419 U.S. 477, 483, n. 4, 95 S.Ct. 541, 545, n. 4, 42 L.Ed.2d 595 (1975) (reserving the question); *O'Brien v. Brown*, 409 U.S. at 4 & n. 1, 92 S.Ct. at 2720 & n. 1 (1972) (not deciding and entertaining "grave doubts" as to actionability of the claim); *Ripon Society, Inc. v. National Republican Party*, 525 F.2d at 574–76 (reserving the question but deciding the merits for the defendants).

Wymbs v. Republican State Exec. Comm. of Fla., 719 F.2d 1072, 1077 (11th Cir. 1983). But it is clear that the spectrum moves into a gray area as political parties become involved with elections generally, and ballot access specifically.

This Court will look to South Carolina case law for guidance when determining if a private party's actions cross into the realm of state action and thus be curtailed by constitutional protections. In *Bruce v. S.C. High Sch. League*, students challenged the eligibility of transfer rules promulgated by the South Carolina High School League, which was a voluntary organization consisting of both public and private schools. *Bruce v. S.C. High Sch. League*, 258 S.C. 546, 549, 189 S.E.2d 817, 818 (1972). The students argued that these rules arbitrarily “deprive[d] them of their right to participate in interscholastic athletics...” and “that interscholastic athletics is a ‘fundamental segment of the educational process of our public schools[.]’” *Bruce*, 258 S.C. at 551. The High School League argued “that participation in high school interscholastic athletics is a mere privilege and not a right; that the rule in question is not arbitrary; and that the courts are without jurisdiction to enjoin its enforcement.” *Id.* The South Carolina Supreme Court held, “It is well established that courts will not interfere with the internal affairs of voluntary associations, except in such cases as fraud, lack of jurisdiction, or the **invasion of property or pecuniary rights or interests**. The decisions of the tribunals of an association with respect to its internal affairs will, in the absence of mistake, fraud, illegality, collusion, or **arbitrariness**, be accepted by the courts as conclusive.” *Id.* (emphasis added). The supreme court further held that the “rule in question does not infringe upon any constitutionally guaranteed right of respondents.” *Id.*

In conjunction with *Bruce*, the seminal case of *Rice v. Elmore* is also instructive. *See Rice v. Elmore*, 165 F.2d 387 (4th Cir. 1947). The Fourth Circuit upheld Judge Waties Waring when he ruled that the South Carolina Democratic Party was indeed a state actor when it held a private primary that excluded Black voters, and thus the political party was constrained by the Constitution. *Id.* at 391 (“When these 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. Having undertaken to perform an important function relating to the exercise of sovereignty by the people, they may not violate the fundamental principles laid down by the Constitution for its exercise.”).

The spectrum between a political party's First Amendment rights of freedom of association on one end, and on the other the party's participation in something as fundamental as state elections is wide-ranging and fraught with dicta. However, this Court cannot ignore that the spectrum does exist and at some point a political party may cross it and be subject to constitutional limitations just as state actors are. This Court holds that the SCGOP has waded into the gray area of state action when it certifies to the Commission who is and who is not on the ballot. After that certification, the SCGOP moves from a merely private association comprised of like-minded individuals to a state actor. *See* Order Den. Inj. & Dismissing Compl. at 16, *Inglis v. S.C. Republican Party*, Case No. 2019-CP-40-05486 (S.C. Ct. Comm. Pl. Dec. 10, 2019) (“The SCGOP only becomes a state actor once it decides to hold a presidential preference primary, notifies the State Election Commission of that decision, and undertakes the duty to assist in the administration of the election. **Before** that occurs, the SCGOP is merely a private association comprised of like-minded individuals.” (emphasis added)). This in no way means they lose their First Amendment protections, but merely that they must meet due process requirements.

b. Due Process

On the present record, Plaintiff is likely to establish that Rule 11(6)(a), as applied to him excluding him from the ballot violated his substantive due process rights. If a political party is taking actions of a state actor, then the next question is whether those actions deprived someone of their due process rights under the South Carolina Constitution. Under our Constitution, no person shall “be deprived of life, liberty, or property without due process of law[.]” S.C. Const. art. I, § 3. “Procedural due process imposes constraints on governmental decisions that deprive individuals of liberty or property interests within the meaning of the Due Process Clause.” *Harbit v. City of Charleston*, 382 S.C. 383, 393, 675 S.E.2d 776, 781 (Ct. App. 2009). To prevail on a substantive due process claim, Plaintiffs must show they were “arbitrarily and capriciously deprived of a cognizable property interest rooted in state law.” *Id.* at 394, 675 S.E.2d at 782. In her order denying injunctive relief against the SCGOP for failing to hold a presidential primary, Circuit Court Judge Jocelyn Newman held, “Plaintiffs failed to identify a **liberty or property interest rooted in state law** that entitles them to a presidential preference primary.” Order Den. Inj, at 16, *Inglis v. S.C. Republican Party*, No. 2019CP-40-05486 (S.C. Ct. Comm. Pl. Dec. 11, 2019) (emphasis added).

However, an internal decision by a private, political party on whether or not to hold a presidential primary is distinct from a party certifying or not certifying names to the Commission for a statewide election. S.C. Const. art. I, § 5 (“All elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for in this Constitution **shall have an equal right to elect officers and be elected to fill public office.**”) (emphasis added). The SCGOP framed this action not as any type of guaranteed right, but simply as a person wanting to run as the *Republican* nominee for U.S. Senate, which is by no means a guaranteed right rooted in state law. The specific facts of this case make it clear to this Court that that is not the circumstances facing the Plaintiff. Plaintiff timely filed the documents necessary to appear on the special-primary ballot, and he meets the constitutional qualifications for office. However, the SCGOP declined to certify Plaintiff on the ground that he did not satisfy Party Rule 11(a)(6), which requires that a candidate have been “a registered Republican elector for at least 90 days,² and who has voted in at least two of the last three statewide Republican primaries...” and is subject to a discretionary waiver. SCGOP R. 11(a)(6)(a) (2026).

Evidence presented at the hearing regarding the SCGOP interpretation, use, and application of its own rules reveals a lack of consistency, which tends to present its decisions on candidate certification as capricious and arbitrary.³ The Court heard testimony and reviewed evidence that the term “statewide primary” was not defined and subject to multiple, credible interpretations. This is made clear by the Defendant’s citing of the Commission’s interpretation of “statewide primary.” The Commission had to release a press release titled, “SEC Addresses Voter Eligibility Question.” *SEC Addresses Voter Eligibility Question*, STATE ELECTION COMM’N (July 15, 2026), <https://scvotes.gov/statement-from-the-south-carolina-state-election-commission/>. Having to release a statement to the public explaining and clarifying who and who is not eligible to vote is far from an assurance of clarity. *Id.* (“The South Carolina State Election Commission (SEC) has completed its review of South Carolina election law regarding voter eligibility for the

² All parties appear to agree that the first requirement of being a registered Republican elector is not possible in this state. The point of this is not to challenge its authority but to bolster the argument that the Party Rule is floundering in arbitrariness.

³ This Court disagrees with Plaintiff’s contention that any rule requiring previous voting criteria runs afoul of the U.S. Constitution or South Carolina Constitution – that would be a court subjecting its views and judgments onto a private party. Rather, this Court is only concerned with substantive due process of an arbitrarily and capriciously applied rule.

August 11 Special Republican Primary.”). Assume the Commission had interpreted the definition of “statewide primary” in the opposite direction – would Plaintiff need to follow the SCGOP’s interpretation or the Commission’s? *But see also* S.C. Att’y Gen. Op. at 2 (Aug. 23, 2024) (interpreting the definition in the same manner as the Commission actually did, and not as was presented in the hypothetical).

Another confusing point is to consider whether the June 9, 2026, primary is considered the same primary as the current special election to be held August 11, 2026. If a potential candidate next year sought to run as a Republican nominee and these were the only two primaries he had voted in, the SCGOP would likely say he does not qualify because the June 9 and August 11 primaries are in fact still only one primary. But then how can the current Plaintiff have been certified for the June 9 primary as a Republican candidate for Commissioner of Agriculture and then have the rules changed so that he is decertified mid-stream? If the June 9 and August 11 primaries are the same, surely due process does not allow this. Again, there are no easy answers, and this Court does not castigate the SCGOP or any political party for promulgating rules to enhance the party. *See* Order Den. Pl.’s Pet. for Dec. Relief, *Ali v. S.C. Democrat Party*, No. 2024-CP-10-1918, at 4 (Apr. 23, 2024) (“Political parties have the right to decide whether or not to certify a candidate for their primary pursuant to their Party Rules under SC Code of Laws §7-13-40.”). But this Court must look to due process in this situation and examine whether it was afforded to Plaintiff.

Given this asymmetry and the lack of safeguards around the SCGOP process and Party Rule 11(a)(6), the Court finds that there is a likelihood of success that Plaintiff can show his state constitutional rights were violated by the SCGOP action.

V. Irreparable Harm and Inadequate Remedy at Law

Turning to remainder of the elements of a preliminary injunction, Plaintiff has also satisfied the remaining elements. The loss of an imminent election is irreparable, and the loss of rights can create an irreparable damage. *Elrod v. Burns*, 427 U.S. 347 (1976). No award of damages could restore the opportunity to appear on the August 11 ballot, so Plaintiff has no adequate remedy at law.

VI. Conclusion

While Defendants brought the Court's attention to the existing military and absentee ballots and the impact a Court's ruling would have on them, Plaintiff requested a prospective option at the August 3, 2026, hearing, requesting to be restored to ballot for early voting and election day, August 11. Plaintiff made no request as to rescission of existing ballots. This means that the Court's Order can be tailored to impose minimal impact on the election.

For the foregoing reasons, Plaintiff's motion for a preliminary injunction is GRANTED, and the Party's motion to dissolve and to dismiss is DENIED. It is hereby ORDERED:

1. Defendant South Carolina Republican Party is ENJOINED from declining or refusing to certify Plaintiff Danny Ford, II, as a candidate in the August 11, 2026, special Republican primary election for United States Senator on the basis of Rule 11(6)(a) or his prior primary-voting history, and SHALL certify Plaintiff to the Commission as a qualified candidate within twenty-four (24) hours of entry of this Order.
2. Defendant South Carolina Election Commission is ORDERED 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.
3. This Order is limited to Plaintiff and to the August 11, 2026, special Republican primary election (and any ensuing runoff for that office) and grants no relief beyond placing Plaintiff's name on the ballot as provided above.
4. This preliminary injunction shall remain in effect pending final resolution of this action or further order of this Court.

AND IT IS SO ORDERED

Daniel Coble

Presiding Judge, Court of Common Pleas Fifth
Judicial Circuit

Columbia, South Carolina

Dated: _____, 2026



Richland Common Pleas

Case Caption: Danny Ford II vs South Carolina Republican Party , defendant, et al
Case Number: 2026CP4005213
Type: Order/Other

So Ordered

s/ Daniel Coble, 2774