STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Robert Durden Inglis and Frank Heindel, Plaintiffs, v. The South Carolina Republican Party and Drew McKissick, State Chairman of the South Carolina Republican Party, in his official capacity, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No. 2019-CP-40-05486 **ORDER DENYING PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF AND GRANTING DEFENDANTS' MOTION TO DISMISS**

This matter came before the Court on Motion for Injunctive Relief, filed by Plaintiffs on October 8, 2019, and Defendants' Motion to Dismiss, filed on October 10, 2019. A hearing was conducted at the Richland County Judicial Center on October 18, 2019. Plaintiffs were represented by attorneys Bess J. DuRant; Thornwell F. Sowell, III; and Cameron Kistler. Defendants were represented by attorneys Robert E. Tyson, Jr.; Robert Bolchoz; Butch Bowers; and Vordman C. Traywick.

For the reasons below, Plaintiffs' Motion for Injunctive Relief is DENIED and Defendants' Motion to Dismiss is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

The South Carolina Republican Party ("the SCGOP") is known for its famous "First in the South" presidential preference primary election. Indeed, the SCGOP has previously opined that its early presidential preference primary "is critically important to the continued status and vitality

of the SCGOP as a leader in presidential politics in our country[1]" and guards against the perception that the party "selects its nominees in a backroom or underhanded fashion.[2]"

However, on September 7, 2019, by a vote of 43-1, the SCGOP's executive committee decided not to hold a presidential preference primary in 2020. As a result, on October 1, 2019, the SCGOP submitted its paperwork to the Republican National Committee ("the RNC") explaining that the state executive committee "voted not to hold a primary" under Rules 11(b) and 2(a) of the SCGOP Rules. The SCGOP also noted that, in light of this decision, none of its delegates will be bound to vote for any specific candidate at the 2020 RNC Convention.

That same day, Plaintiffs filed their Summons and Compliant seeking (1) declarations that the SCGOP violated state law and was required to hold a presidential preference primary under sections 7-11-10 through -30 of the South Carolina Code (2019); (2) a declaration that the SCGOP violated the due process clause in article I, section 3 of the South Carolina Constitution; (3) a declaration that the SCGOP acted *ultra vires* and its actions were void *ab initio*; (4) an order requiring the SCGOP to conduct a presidential preference primary; (5) attorney's fees and litigation costs; and (6) a preliminary and permanent injunction preventing the defendants and others acting in privity with them "from further violations of the law."

On October 8, 2019, Plaintiffs filed a motion for injunctive relief, asking the Court to force the SCGOP to hold a presidential preference primary on February 29, 2020. Plaintiffs also asked the Court to require the SCGOP "to withdraw any delegate allocation plan it may have submitted to the [RNC] by October 1, 2019, and to resubmit a delegate allocation plan following the final

[1] 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 5–6, *Coyne v. S.C. Sec'y of State*, No. 3:15-cv-03669 (D.S.C. Nov. 16, 2015), ECF No. 18.

[2] S.C. Republican Party State Exec. Comm. Res., Support of Integrity, Openness, and Fairness in the Primary Process (May 3, 2014), *available at*, https://www.sc.gop/wp-content/uploads/2014/05/SCGOP-Res-PrimaryNeutrality.pdf.

resolution of this action." The next day, the defendants moved to dismiss the complaint, arguing that this Court lacks subject matter jurisdiction over this dispute and that, even if jurisdiction is proper, Plaintiffs' motion should be denied because it misapprehends relevant law and seeks a drastic remedy.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Justiciability / Subject Matter Jurisdiction

Before turning to the merits of Plaintiffs' claims, the Court must determine whether this case is justiciable. *See Jowers v. S.C. Dep't of Health & Envtl. Control*, 423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018). Defendants contend this case is not justiciable because plaintiffs lack standing and because this case presents a nonjusticiable political question. Plaintiffs disagree and add that the case presents a justiciable controversy subject to the Declaratory Judgment Act. The Court holds that this case is justiciable.

A. Standing

"Standing to sue is a fundamental requirement to instituting an action." *Joytime Distribs. & Amusement Co., Inc. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). A plaintiff may acquire standing by statute, "through the rubric of 'constitutional standing,'" or pursuant to "the 'public importance' exception." *ATC South, Inc. v. Charleston Cty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). Here, Plaintiffs' allegations satisfy the requirements of public importance standing.

Under the public importance standing doctrine, "a court may confer standing upon a party when an issue is of such public importance as to require its resolution for future guidance." *Baird v. Charleston Cty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999). When determining whether to confer public importance standing, a court should strike an appropriate balance between affording

"access to the judicial process to address alleged injustices" and avoiding "numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits." *S.C. Pub. Interest Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 118, 804 S.E.2d 854, 859 (2017) (quoting *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004)). The key consideration is whether resolution is needed for future guidance. *Id.*

This controversy presents a significant need for future guidance. Few public functions are as likely to recur as the presidential primary and, as defendants point out, political parties have canceled primaries in the past. The question whether South Carolina law permits a political party's executive committee to cancel a presidential preference primary or whether such cancelations violate the law or the party's rules is, therefore, likely to arise again. In fact, South Carolina courts have granted public importance standing in circumstances far less compelling than these. *See, e.g.*, *Evins v. Richland Cty. Historic Pres. Comm'n*, 341 S.C. 15, 21, 532 S.E.2d 876, 879 (2000); *Baird*, 333 S.C. at 531, 511 S.E.2d at 75.

B. Declaratory Judgment Act

This Court has jurisdiction over the subject matter of this case pursuant to Article V, Section 11 of the South Carolina Constitution; and Plaintiffs bring this dispute before the Court using the "proper vehicle" of a request for a declaratory judgment settling the rights, status, and other legal obligations of the parties under South Carolina Code sections 7–11–10, –20 and –30. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004). In adjudicating this matter, this Court follows the South Carolina Supreme Court, which has regularly heard election cases seeking declaratory and injunctive relief. *See, e.g., S.C. Libertarian Party v. S.C. State Election Comm'n*, 407 S.C. 612, 614, 757 S.E.2d 707, 707 (2014); *Tempel v. S.C. State*

Election Comm'n, 400 S.C. 374, 382, 735 S.E.2d 453, 457 (2012); *Beaufort Cty. v. S.C. State Election Comm'n*, 395 S.C. 366, 377–78, 718 S.E.2d 432, 438–39 (2011).

To state a cause of action, a complaint seeking a declaratory judgment must set forth a "justiciable controversy." *Hardwick v. Liberty Mut. Ins. Co.*, 243 S.C. 162, 167, 133 S.E.2d 71, 72 (1963). The "justiciable controversy" standard is met "[w]here a concrete issue is present, and there is a definite assertion of legal rights and a positive legal duty with respect thereto, which are denied by the adverse party." *Dantzler v. Callison*, 227 S.C. 317, 321, 88 S.E.2d 64, 66 (1955) (citation omitted). Whether to grant declaratory judgment rests in the trial court's sound discretion; and in exercising its discretion, a court should liberally construe the Declaratory Judgments Act to accomplish its purpose. *See Ott v. Tindal*, 297 S.C. 395, 398, 377 S.E.2d 303, 305 (1989); *see also Sunset Cay, LLC*, 357 S.C. at 423–24, 593 S.E.2d at 466. Neither "the existence of another remedy [or] the presence of complicated issues of fact" is grounds for dismissal. *Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co.*, 249 S.C. 561, 567, 155 S.E.2d 618, 621 (1967). Adjudicating declaratory judgment actions is "especially appropriate" where "the meaning of a statute is in question" and "enabling legislation contains no special review provisions." *Ott*, 297 S.C. at 398, 377 S.E.2d at 305.

The Court finds that the complaint presents a justiciable controversy subject to the Declaratory Judgment Act. Defendants' actions have put the meaning of South Carolina Code sections 7–11–10, –20 and –30 squarely in question. However, the relevant statutes contain no special provisions for either a court or a state agency to review the legality of Defendants' actions. In addition, no key facts are in dispute. The Court is, therefore, within its discretion to consider declaratory and injunctive relief in this action.

C. Political Question Doctrine

"The fundamental characteristic of a nonjusticiable 'political question' is that its adjudication would place a court in conflict with a coequal branch of government." *Segars-Andrews v. Judicial Merit Selection Comm'n*, 387 S.C. 109, 121–22, 691 S.E.2d 453, 460 (2010) (citation omitted). This case creates no such conflict. Plaintiffs ask the Court to interpret the language of three provisions of the South Carolina Election Law, as well as the Due Process Clause of the state constitution. Interpreting the law is "emphatically the province and duty of the Judicial Department." *Marbury v. Madison*, 5 U.S. 137, 177 (1803); *accord Segars-Andrews*, 387 S.C. at 123, 691 S.E.2d at 461. Defendants do not posit a genuine conflict between co-equal branches of government; they simply urge a different interpretation of the law.

Moreover, it has "been long recognized in this state" that it is "the province of the court to see that the established principles of law and order in the conduct of party organizations be maintained." *Walker v. Grice*, 162 S.C. 29, 159 S.E. 914, 917 (1931). Courts have not hesitated to hold political parties accountable under the law and their own rules. *See id.* at 918; *Raines v. Stone*, 112 S.C. 147, 151, 99 S.E. 353, 354 (1919). Therefore, despite Defendants' argument to the contrary, the political question doctrine does not bar justiciability here.

II. Preliminary Injunction

A. Prohibitory or Mandatory Injunction

A party seeking a preliminary injunction must demonstrate (1) irreparable harm, (2) a likelihood of success on the merits, and (3) that there is no adequate remedy at law. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010). "Preliminary injunctions may be categorized as either prohibitory or mandatory." *Billups v. City of Charleston*, 194 F. Supp. 2d 452, 460 (D.S.C. 2016). "Prohibitory preliminary injunctions aim

to maintain the status quo and prevent irreparable harm while a lawsuit remains pending." *Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013). "Mandatory preliminary injunctions do not preserve the status quo and normally should be granted only in those circumstances where the exigencies of the situation demand such relief." *Wetzel v. Edwards*, 635 F.2d 283, 286 (4th Cir. 1980). The U.S. Court of Appeals for the Fourth Circuit "has defined the status quo as the 'last uncontested status between the parties which preceded the controversy.'" *Pashby*, 709 F.3d at 320 (quoting *Aggarao v. MOL Ship Mgmt. Co., Ltd.*, 675 F.3d 355, 378 (4th Cir. 2012)).

"A mandatory injunction is an extraordinary remedy that orders some positive act to be performed." 43A C.J.S. Injunctions § 19 (2019). "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); *see also De La Fuente v. S.C. Democratic Party*, 164 F. Supp. 3d 794, 798 (D.S.C. 2016) ("Mandatory preliminary injunctive relief in any circumstance is disfavored[] and warranted only in the most extraordinary circumstances."). Due to its extreme nature, a request for a mandatory preliminary injunction is met with even greater scrutiny from the Court. *See id.* (asserting that "'application of th[e] exacting standard of review [for preliminary injunctions] is even more searching when' the relief requested 'is mandatory rather than prohibitory in nature'" (alterations in original) (quoting *Perry v. Judd*, 471 F. App'x 219, 223–24 (4th Cir. 2012))).

Because the General Assembly unambiguously vested "the state committee of a certified political party" with the sole discretion whether to hold a presidential preference primary, the plaintiffs are seeking to alter the status quo by requesting that the Court require the SCGOP to hold one. *See* SOUTH CAROLINA CODE ANN. §7-11-20(B). Further, Plaintiffs are asking the Court to

require the SCGOP to perform a positive act. Thus, Plaintiffs are seeking a mandatory preliminary injunction. *See* 43A C.J.S. Injunctions § 19; *see also De La Fuente*, 164 F. Supp. 3d at 798 (holding the plaintiff sought "mandatory injunctive relief" by "asking that the court require the Democratic Party to notify the Secretary of State to include him on the primary ballot").

Having set forth the lens through which the Court must analyze the plaintiffs' request for mandatory injunctive relief, the Court must then determine whether Plaintiffs have demonstrated that they are entitled to such drastic relief. Both parties agree this case turns on the likelihood of success on the merits.[3]

B. Relevant Statutes

At issue in this case is whether state law gives Plaintiffs a right to a presidential preference primary. Plaintiffs argue that South Carolina Code sections 7-11-10, -20, and -30 "are the guts of [their] case." Their "entire case is that [Defendants] have been acting illegal[ly]" since the SCGOP's state executive committee decided not to have a presidential preference primary. The Court therefore finds it necessary to first construe the relevant statutes because this will lay the groundwork for deciding the remaining legal issues. *See Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 555, 725 S.E.2d 704, 706 (2012) (per curiam) ("The construction of a statute is a judicial function and responsibility.").

Here, Plaintiffs concede that presidential preference primaries are different than "garden variety primaries." Indeed, in an opinion upon which Plaintiffs rely, there was at least some recognition by the South Carolina Supreme Court that that presidential preference primaries "are subject to a different set of statutory procedures under our Code than regular primaries." *Beaufort*

[3] Assuming (without deciding) that Plaintiffs made the requisite showing of irreparable harm, the Court notes that a preliminary injunction "has never been regarded as strictly a matter of right, even though irreparable injury may otherwise result to the plaintiff." *Gantt*, 208 F. Supp. at 417.

Cty., 395 S.C. at 379 n.5, 718 S.E.2d at 439 n.5 (Hearn, J., concurring in part and dissenting in part). Further, "a non-binding presidential preference primary" was distinguished from "general elections and regular primaries which are unquestionably core functions of our State government." *Id.* at 379, 718 S.E.2d at 439. A plain reading of the relevant statutes confirms this result.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [General Assembly]." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory construction and the court has no right to look for or impose another meaning." *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994). "Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect." *DomainsNew Media.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce*, 423 S.C. 295, 304, 814 S.E.2d 513, 518 (2018) (quoting *Capco of Summerville, Inc. v. J.H. Gayle Constr. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006)).

The title of South Carolina Code section 7-11-20 reveals the General Assembly's intent to distinguish regular party primary elections from presidential preference primaries. *See* S.C. CODE ANN. §7-11-20 (titling the section "Conduct of party conventions or party primary elections generally; presidential preference primaries"); *see also McInnis v. McInnis*, 348 S.C. 585, 592, 560 S.E.2d 632, 636 (Ct. App. 2002) (noting that "the title and headings of a statute" are relevant "to shed light on" its meaning). And the text of section 7-11-20 gives meaning to the General Assembly's intent as expressed in the title. Subsection (A) excludes presidential preference

primaries from its reach by beginning with "[e]xcept as provided in subsection (B)," in which presidential preference primaries are specifically discussed. S.C. CODE ANN. §7-11-20(A).

Subsection (B)(1) says that a "party wishing to hold a presidential preference primary may do so in accordance with the provisions of this title and party rules." S.C. CODE ANN. §7-11-20(B)(1) (emphasis added). In other words, the first step in the process is a political party deciding whether to hold a presidential preference primary. Subsection (B)(1) is only triggered if and when the party chooses to hold one. *Id.* Likewise, subsection (B)(2) provides "[i]f the state committee of a certified political 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." S.C. CODE ANN. §7-11-20(B)(2). This provision expressly allows the SCGOP's state executive committee to decide whether to hold a presidential preference primary. *Id.* And the duties imposed upon the State Election Commission are only triggered if the SCGOP decides to hold one. *Id.* A plain reading of subsections 7-11-20(B)(1)–(2) unambiguously reveals that the SCGOP's state executive committee is permitted to decide whether to hold a presidential preference primary, and the State has no role in the SCGOP's decision.

Nevertheless, Plaintiffs argue that sections 7-11-10 and -30 restrict the SCGOP's decision whether to hold a presidential preference primary. The Court disagrees. Section 7-11-10, which outlines the methods for nominating candidates, does not include presidential preference primaries. *See* S.C. CODE ANN. §7-11-10 (providing, in relevant part, that "[n]ominations 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"). That makes sense. After all, voters do not directly nominate the Republican candidate for President — the SCGOP's delegates at the RNC Convention make that decision — and South Carolina law cannot dictate that nomination process.

See Cousins v. Wigoda, 419 U.S. 477, 549 (1975) ("The States themselves have no constitutionally mandated role in the selection of Presidential and Vice-Presidential candidates."); *Democratic Party of U.S. v. Wisc. ex rel. LaFollette*, 450 U.S. 107, 124 (1981) ("A political party's choice among the various ways of determining the makeup of a State's delegation to the party's national convention is protected by the Constitution."). Thus, on its face, section 7-11-10 cannot apply to presidential preference primaries. Section 7-11-10 applies only to regular June primaries and general elections.

Similarly, section 7-11-30 has no application here. Subsection 7-11-30(A) applies to "all offices including, but not limited to, Governor, United States Senator, United States House of Representatives, Circuit Solicitor, State Senator, and members of the State House of Representatives." S.C. CODE ANN. §7-11-30(A). Plaintiffs would have the Court read "the President" into the statute, arguing it included a nonexhaustive list, but the offices listed in subsection 7-11-30(A) all have one thing in common—the candidates run in June primaries. To expand section 7-11-30 to include the President would run afoul of the General Assembly's intent to treat presidential preference primaries differently than regular June primaries. *See Domains NewMedia.com*, 423 S.C. at 304, 814 S.E.2d at 518 (quoting *Capco*, 368 S.C. at 142, 628 S.E.2d at 416). The Court declines to do so. Sections 7-11-10 and -30 only apply to elections in which South Carolina voters can directly elect a party nominee. As Plaintiffs concede, South Carolina voters do not directly elect a party's Presidential nominee; therefore, these provisions do not apply to the process of selecting the President, whether it be via presidential preference primary or otherwise.

Section 7-13-15 does not change the analysis. *See* S.C. CODE ANN. §7-13-15 (2019). That statute outlines the primaries that the State Election Commission and county election commissions

must conduct on the second Tuesday in June. *Id.* (titling the statute "Primaries to be conducted by the State Election Commission and county boards of voter registration and elections on second Tuesday in June; filing fees"). The date of the SCGOP's presidential preference primary, if any, is controlled by RNC rule, not by South Carolina statute. The General Assembly recognized this by expressly "excluding a presidential preference primary for the Office of President of the United States as provided pursuant to [s]ection 7-11-20(B)" from the reach of the statute. S.C. CODE ANN. §7-13-15(B)(1).

A plain reading of these statutes reveals that the General Assembly carved out specific rules for presidential preference primaries as an expression of its intent to treat them differently than regular June primary elections. *See DomainsNewMedia.com*, 423 S.C. at 304, 814 S.E.2d at 518 (quoting *Capco*, 368 S.C. at 142, 628 S.E.2d at 416). This interpretation is also consistent with the legislative history of section 7-11-20.[4] Any attempt to conflate these statutes to apply primary rules to presidential preference primaries contravenes legislative intent. Based upon its review of the statutes, the Court finds (1) sections 7-11-10 and -30 do not apply to presidential preference primaries; (2) the SCGOP therefore was not required to follow the processes outlined in those statutes; (3) section 7-13-15 is inapplicable; (4) the General Assembly vested political parties with the sole discretion whether to hold presidential preference primaries, meaning they are not held as a matter of right; and (5) section 7-11-20 is not triggered until a political party's state committee "wishing to hold a presidential preference primary" has "decide[d] to hold a presidential preference primary." S.C. CODE ANN. §7-11-20(B)(1)-(2).

[4] Political parties used to self-fund and administer presidential preference primaries before the General Assembly changed the law in 2007. The statute was amended only to appropriate money and direct the state and county election commissions to conduct these elections if the political parties so desired. The General Assembly, however, made no effort to insert itself into the parties' decisions whether to hold one.

C. SCGOP Rules

Plaintiffs also argue that the SCGOP violated its own rules in choosing not to hold a presidential preference primary. At the outset, it is important to note the U.S. Supreme Court has long held 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 *LaFollette*, 450 U.S. at 123–24). Indeed, 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. "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." *LaFollette*, 450 U.S. at 124. As the U.S. Court of Appeals for the District of Columbia Circuit recognized,

> What is important . . . is that a party's choice, as among various ways of governing itself, of the one which seems best calculated to strengthen the party and advance its interests, deserves the protection of the Constitution as much if not more than its condemnation. The express constitutional rights of speech and assembly are of slight value indeed if they do not carry with them a concomitant right of political association. Speeches and assemblies are after all not ends in themselves but means to effect change through the political process. If that is so, there must be a right not only to form political associations but to organize and direct them in the way that will make them the most effective.

Ripon Soc'y, Inc. v, Nat'l Republican Party, 525 F.2d 567, 585 (D.C. Cir. 1975).

In 1972, the U.S. Supreme Court predicted the challenging constitutional questions that would accompany judicial intervention in political intraparty disputes, including justiciability, whether party action is state action, the reach of the Due Process Clause, and the vital rights of freedom of association guaranteed by the First Amendment. *See O'Brien v. Brown*, 409 U.S. 1, 4 (1972) (per curiam). After all, "Political parties have strong and time honored rights of free speech

and association." *Wymbs v. Republican State Exec. Committee of Florida*, 719 F.2d 1072, 1084 (11th Cir. 1983). And "it is the essence of the First Amendment right, which the parties exercise, that they make their own . . . judgments without interference from the courts." *Ripon Soc'y*, 525 F.2d at 588. The Court has since held that states "have no constitutionally mandated role in the great task of the selection of Presidential and Vice-Presidential candidates." *Cousins*, 419 U.S. at 489–90. According to the Court, a political party's national convention "serves the pervasive national interest in the selection of candidates for political office, and this national interest is greater than any interest of an individual [s]tate." *Id.* at 490. Thus, "[j]udicial intervention in this area traditionally has been approached with great caution and restraint." *O'Brien*, 409 U.S. at 4.

Against this backdrop, the Court must act with the requisite restraint in passing upon this political intraparty dispute that puts its face square against the First Amendment to the U.S. Constitution. *See* U.S. CONST. amend. I. And the Court must proceed with further caution when asked to insert itself into a process in which the State has no constitutional role. *Cousins*, 419 U.S. at 489–90; *Tashjian*, 479 U.S. at 224. This case does not concern the conduct of a presidential preference primary in South Carolina; rather, Plaintiffs complain about the SCGOP's internal decision not to hold a presidential preference primary at all.

Courts have "generally held that where questions [related to party policies or organization] have been submitted to and determined by the proper party tribunal, according to the rules and customs of the party, the courts will give effect to, and will not attempt to review such decision, but, in the absence of fraud, will regard it as conclusive." Determination of Controversies Within Political Party, 169 A.L.R. 1281 § III (1947); *see also Bruce v. S.C. High Sch. League*, 258 S.C. 546, 551, 189 S.E.2d 817, 819 (1972) ("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 tribunal 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.").

Plaintiffs allege only that the illegality exception applies. However, Plaintiffs' interpretation of the relevant statutes is inaccurate, and the SCGOP did not act illegally when the state executive committee decided not to hold a presidential preference primary. *See* S.C. CODE ANN. §7-11-20(B)(1)-(2). Plaintiffs nevertheless argue that the state executive committee violated the clear language of SCGOP Rule 11(b), which governs the manner in which the SCGOP will decide whether to hold a presidential preference primary. But the SCGOP also has SCGOP Rule 2(a), which instructs the SCGOP to follow the spirit, not the letter, of its own rules. Following this guidance, the SCGOP has twice before decided not to hold a presidential preference primary in 1984 and 2004. Thus, in reaching its decision on September 7, 2019, the SCGOP's state executive committee followed its rules, customs, and precedent. It also followed the law. *See* S.C. CODE ANN. §7-11-20(B)(1)-(2). Under these circumstances, the SCGOP's decision cannot be deemed illegal or arbitrary, and the Court has no role over this dispute other than to accept the decision of the executive committee as conclusive. *See Bruce*, 258 S.C. at 551, 189 S.E.2d at 819.

D. Due Process

Finally, Plaintiffs' due process claim is without merit. *See* S.C. CONST. art. I, §3 (stating "nor shall any person be deprived of life, liberty, or property without due process of law"). "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.

Plaintiffs failed to identify a liberty or property interest rooted in state law that entitles them to a presidential preference primary. More importantly though, the SCGOP was not a state actor at the time the state executive committee decided not to hold the presidential preference primary. 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. Because Plaintiffs cannot prove a governmental decision deprived them of a liberty or property interest rooted in state law, their due process claim fails as a matter of law on both procedural and substantive grounds.[5] *See id.* at 393–94, 675 S.E.2d at 781–82.

Plaintiffs have failed to show they are likely to succeed on the merits in this litigation. The law does not give Plaintiffs a legal right to a presidential preference primary, and the Court will not substitute its own judgment for that of the General Assembly or the SCGOP. The SCGOP's state executive committee acted well within its discretion according to state law and party rules, customs, and precedent. The decision was not illegal or arbitrary. Therefore, Plaintiffs are not entitled to a mandatory preliminary injunction.

III. Motion to Dismiss

The Court disagrees with the grounds for Defendants' Motion to Dismiss, finding that the Court has jurisdiction to decide the issues raised in Plaintiffs Complaint and Motion for

[5] Likewise, Plaintiffs' attempt to impose corporate and administrative law in this setting is unavailing. Even if the *ultra vires* doctrine applies to a political party, the Court finds the state executive committee acted well within its rights under the law and the SCGOP's rules in reaching its decision in this case.

Preliminary Injunction; however, the Court also acknowledges that in this action Plaintiffs seek only declaratory and injunctive relief. The findings of fact and conclusions of law set forth herein are dispositive of all issues raised in this action. Therefore, this action is dismissed with prejudice.

IT IS, THEREFORE, ORDERED that Plaintiffs Motion for Injunctive Relief is DENIED.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss is GRANTED.

AND IT IS SO ORDERED.

Richland Common Pleas

Case Caption:	Robert Durden Inglis , plaintiff, et al vs South Carolina Republican Party , defendant, et al
Case Number:	2019CP4005486
Type:	Order/Temporary Injunction

So Ordered

Jocelyn Newman