IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

NAACP SOUTH CAROLINA STATE CONFERENCE; ROBERT CALDWELL; JONATHAN BELL; SHERRY JENKINS,

Plaintiffs,

v.

ALAN WILSON, in his official capacity as the South Carolina Attorney General; JENNY WOOTEN, in her official capacity as Interim Executive Director of the State Election Commission; DENNIS W. SHEDD, in his official capacity as Chairman of the State Election Commission; JOANNE DAY, CLIFFORD J. ELDER, LINDA MCCALL, and SCOTT MOSELEY, in their official capacities as members of the State Election Commission,

Defendants.

Civil Action No.: 3:25-cv-13754-MGL

ATTORNEY GENERAL WILSON'S RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiffs fail to show a lack of "genuine dispute as to any material fact" and that they're "entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). *First*, they fail on the facts, both as to the merits and as to justiciability. *Second*, they're are wrong on the law. This Court must determine "what the law is," not what Plaintiffs wish it would be. *Marbury v. Madison,* 5 U.S. 137, 177 (1803). Section 208 doesn't mean what Plaintiffs wish it meant. And South Carolina's common-sense election integrity laws don't conflict with it. But even if the Court is inclined to grant relief, it should limit relief to the parties. And this Court should not rush to a decision here. The Court should heed the Supreme Court's admonition and decline to change state election law on the eve of an election. And the Court should await the Supreme Court's adjudication of similar Section 208 challenges, which could impact the outcome of this case.

LEGAL BACKGROUND

Plaintiffs challenge multiple provisions of South Carolina law. The first, characterized by Plaintiffs as "Limits on Voting Assistance Eligibility," provides the following: "Only those persons who are unable to read or write or who are physically unable or incapacitated from preparing a ballot or voting shall be entitled to receive assistance of any kind in voting." S.C. Code Ann. § 7-13-780. The remaining provisions provide that only a qualified elector, member of his immediate family, or authorized representative may request and return an application to vote by absentee ballot depending on the voter's circumstances. *See id.* at §§ 7-15-330(A) and (C); *see also id.* at §§ 7-15-310(7) and -385(A)(3) (collectively referred to by Plaintiffs as "Limits on Possible Assistors"). They also limit the number of ballots a person may request or return during an election cycle. *Id.* at §§ 7-15-330(B)(4), 7-15-385(G) (referred to by Plaintiffs as "Five-Voter Limits").

Section 208 of the Voting Rights Act provides the following: "Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given

assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 52 U.S.C. § 10508. This provision was enacted in 1982 as an amendment to Section 2 of the Voting Rights Act of 1965. 1982 Amendments to the Voting Rights Act, Pub. L. 97-205, § 5, 96 Stat. 131, 134 (1982).

LEGAL STANDARD

"Summary judgment is appropriate if a party shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Asherman v. Rowland*, No. 2:24-CV-1732-RMG, 2025 WL 976494, at *1 (D.S.C. Mar. 31, 2025) (citation modified). "A dispute is 'genuine' if the evidence offered is such that a reasonable jury might return a verdict for the non-movant." *Id.* (citation modified). "A fact is 'material' if proof of its existence or non-existence would affect the disposition of the case under applicable law." *Id.* Thus, "summary judgment should be granted only when it is clear that there is no dispute concerning either the facts of the controversy or the inferences to be drawn from those facts." *Id.* (citation modified). "In determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities in favor of the nonmoving party." *Id.* (citation modified). "The movant bears the initial burden of demonstrating that there is no genuine issue of material fact." *Id.* (citation modified).

ARGUMENT

I. Plaintiffs Lack Standing

Because Plaintiffs invoke this Court's jurisdiction, they "bear[] the burden of establishing standing" under Article III. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 412 (2013). At the summary judgment stage, a "plaintiff can no longer rest on such 'mere allegations,' but must 'set forth' by affidavit or other evidence 'specific facts'" to establish standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)(quoting Fed. R. Civ. P. 56(e)). Plaintiffs have failed to meet their burden.

A. Individual Plaintiffs

To establish standing, the individual Plaintiffs would need to show that they "[(i)] suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). Here, Individual Plaintiffs would need to show: (1) they are entitled to voting assistance from an assistor of their choice under Section 208, and (2) South Carolina law "unduly burden[s] the right recognized" in Section 208. S. Rep. 97-417 at 63. Plaintiffs fail to produce evidence to prove those points.

1. Injury in Fact

In the context of Plaintiffs' pre-enforcement preemption challenge, the injury component of standing requires a plaintiff to show that he violated or will violate the challenged state law and that the state law and federal law actually conflict. *See Babbit v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979) (requiring a plaintiff to show "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute"). As part of this showing, a plaintiff must show a "credible threat of prosecution" under the state statute. *Id*.

Plaintiffs' conclusory claim that they are injured by South Carolina law fails the summary judgment standard. Plaintiffs' blanket reference to "the summary-judgment record" gives the Court nothing on which to hang its hat. (ECF No. 39 at 36).[1] For example, Plaintiffs fail to show which plaintiffs are allegedly injured by which provisions of South Carolina law, and in what concrete and particularized ways. They simply allege that "South Carolina's Voting Restrictions impede Plaintiffs' ability to rely on the assistor of their choice—and for some, to rely on any assistance at

[1] References to page numbers are those associated with the ECF filing listed at the top of each page rather than the page numbers listed at the bottom of the document.

all." (ECF No. 39 at 36). But which voting laws impact which Individual Plaintiffs? In what concrete and particularized ways are Individual Plaintiffs impacted by the voting laws? Which Individual Plaintiffs are prevented from using an assistor of their choice versus those that are allegedly barred from any assistance at all? It's not clear. And that's not enough for summary judgment.

In fact, as shown below, the record contradicts Plaintiffs' arguments. [2] Their claims rely on a "highly attenuated chain of possibilities," which does not reflect a concrete or particularized injury that is "certainly impending" and does not satisfy Article III's injury requirement. *See Clapper*, 568 U.S. at 410; *see also Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009).

a. Limits on Voting Assistance Eligibility

Individual Plaintiffs fail to show that they are both entitled to assistance under Section 208 and that South Carolina's Limits on Voting Assistance prevent them from receiving it. Consider Plaintiffs Bell and Caldwell.[3] They fail to show they "require[] assistance to vote." 52 U.S.C. § 10508. Most glaringly, they admit their disabilities don't prevent them from reading, understanding, and completing a ballot. *See* Pl. Bell Resp. to Def. Wilson's First Requests for Admission, at

[2] Plaintiffs appear to argue that South Carolina law is preempted if it does not allegedly provide assistance to: (1) voters with mental impairments but no physical disabilities; and (2) voters with certain physical disabilities who are not "incapacitated" from voting. (ECF No. 1 at 17, ¶ 83); *see also* (ECF No. 39 at 24). Regarding the first category, individual Plaintiffs argue that non-physical disabilities entitle voters to assistance under the VRA and they thus challenge South Carolina law's requirement that a disabled voter be "physically unable or incapacitated" to receive assistance. (ECF No. 1 at 16-17, ¶¶ 81–83); *see also* (ECF No. 39 at 24). Yet even assuming the VRA covers mental disabilities, no individual Plaintiff has shown they have any mental disabilities that cause them to require assistance under the VRA. Put another way, Plaintiffs fail to show that South Carolina's physical inability or incapacity requirement injures them in any way, so they don't have standing to challenge that requirement. The second category is addressed in more detail below.

[3] Plaintiffs don't argue that Plaintiff Jenkins is injured by South Carolina's Limits on Voting Assistance Eligibility. (ECF No. 39 at 25). And for good reason. Like Section 208, South Carolina law lets voters receive assistance if they're unable to read or write or have a physical disability that prevents them from voting without assistance. S.C. Code Ann. § 7-13-780. Because Plaintiff Jenkins' vision impairment prevents her from reading and writing without assistance, (ECF No. 39-2 at 3), she likely qualifies for assistance under both Section 208 and South Carolina law.

6–7 (attached as Exhibit A); *see also* (ECF No. 1 at 17, ¶ 83); *See* Pl. Caldwell Resp. to Def. Wilson's First Requests for Admission, at 7 (attached as Exhibit B); *see also* (ECF No. 1 at 17, ¶ 83). While they say they've never requested an absentee ballot by phone, they don't show they're unable to. Pl. Bell Resp. to Def. Wilson's First Requests for Admission, at 6; Pl. Caldwell Resp. to Def. Wilson's First Requests for Admission, at 6. Even though Plaintiff Bell claims that the mail-box at his nursing home "is not accessible" to him and that he "need[s] someone else to return my absentee ballot by mail," Plaintiff Bell admits that he uses "a wheelchair or a walker" to move around his nursing home, that he regularly leaves his nursing home to receive dialysis treatments, and that his brother took him "to Chester for Christmas last year." Pl. Bell Resp. to Def. Wilson's First Requests for Admission, at 6–7. Plaintiff Caldwell also uses a wheelchair, his niece "is able to drive [him] to various places," and there is a "Chester Connect shuttle service" available to him at his nursing facility. Pl. Caldwell Resp. to Def. Wilson's First Requests for Admission, at 7.

But even if Plaintiffs Bell and Caldwell were entitled to voting assistance under Section 208, they fail to show they've been denied it by South Carolina law. Both admit they've previously received assistance with requesting and returning absentee ballots in South Carolina. Pl. Caldwell Resp. to Def. Wilson's First Requests for Admission, at 4; Pl. Bell Resp. to Def. Wilson's First Requests for Admission, at 4. And neither has been denied assistance to vote in any 2026 election by a member of a nursing center or by an election official in South Carolina. Pl. Caldwell Resp. to Def. Wilson's First Requests for Admission, at 5–6; Pl. Bell Resp. to Def. Wilson's First Requests for Admission, at 5. In fact, neither has even requested voting assistance this year. Pl. Amend. Resp. to State Election Commission Defendants' First Set of Int. at 3 (attached as Exhibit C).

b. Limits on Possible Assistors

Individual Plaintiffs fail to show that South Carolina's Limits on Possible Assistors

prevents them from receiving voting assistance. Consider Plaintiff Bell. South Carolina law does not prevent immediate family members from serving as assistors. S.C. Code Ann. § 7-15-330(A). Plaintiff Bell admits that he received assistance in voting from a family member using an absentee ballot in an election in South Carolina as recently as 2024. *See* Pl. Bell Resp. to Def. Wilson's First Requests for Admission, at 4. South Carolina law also doesn't bar authorized representatives from providing voting assistance, S.C. Code Ann. § 7-15-330(A)(2), if they're registered to vote in South Carolina and are not "a candidate, a member of a candidate's paid campaign staff, or a campaign volunteer." *Id.* at § 7-15-310(7). Yet Plaintiff Bell has never received assistance in voting using an absentee ballot from a person other than a family member in an election in South Carolina. *See* Pl. Bell Resp. to Def. Wilson's First Requests for Admission, at 5.

Or consider Plaintiff Caldwell. He's received assistance with an absentee ballot from multiple staff members at his nursing center. Pl. Caldwell Resp. to Def. Wilson's First Requests for Admission, at 5. And at least one staff member at his nursing center other than his preferred person is available to provide voting assistance to nursing center residents. *Id.* at 6.

Like Plaintiffs Bell and Caldwell, Plaintiff Jenkins hasn't been denied voting assistance in any 2026 election by a member of a nursing center or by an election official in South Carolina, nor has she asked. Jenkins Resp. to Def. Wilson's First Requests for Admission, at 5 (attached as Exhibit D); Pl. Amend. Resp. to State Election Commission Defendants' First Set of Int. at 3. In fact, Plaintiff Jenkins has never voted absentee, let alone received absentee voting assistance. Pl. Jenkins Resp. to Def. Wilson's First Requests for Admission, at 4. She hasn't demonstrated that she can't receive voting assistance from an immediate family member or an authorized representative.

c. Five-Voter Limits

Individual Plaintiffs also fail to show they'll be denied voting assistance due to the Five-

Voter Limits. Their claims rest on the assumption that only one staff member is available to provide voting assistance to all nursing facility residents and that more than five individuals at their respective facilities will request assistance from that one assistor. Plaintiffs have not presented evidence that there is a hard cap on the number of available assistors at their facilities, that more than five individuals at their respective facilities will request voting assistance, and that Plaintiffs will somehow not be chosen as one of those five individuals.

Plaintiffs argue that "Ms. Allen asked Mr. Bell's family to assist him in the last election because she was already helping five voters." (ECF No. 39 at 33) (citing Bell Decl. ¶ 7; Allen Decl. ¶ 9). But that just confirms Plaintiff Bell's access to voting assistance from family. And it's irrelevant as to Ms. Allen's availability to assist Mr. Bell in a 2026 election.

While Plaintiff Caldwell alleges that his preferred assistor (Ms. Gaither) has previously assisted approximately 10 to 25 voters per election, he revealed in discovery that his basis for that claim is simply that "I know Ms. Gaither has assisted many other residents to vote in previous elections." Pl. Amend. Resp. to State Election Commission Defendants' First Set of Int. at 10. Plaintiffs argue that Mr. Caldwell "knows" that "some residents' ballots were recently rejected by a county election official because of the Five-Voter Limits." (ECF No. 39 at 33) (citing Caldwell Decl. ¶ 17). But even if Mr. Caldwell substantiated this conjecture regarding the ballots of "some" unidentified residents, it would be irrelevant to Plaintiffs' alleged injury.

And once again, Individual Plaintiffs have not been denied assistance to vote in any 2026 election either by a member of a nursing center or by an election official in South Carolina. *See* Pl. Bell Resp. to Def. Wilson's First Requests for Admission, at 5; Pl. Caldwell Resp. to Def. Wilson's First Requests for Admission, at 5; Pl. Jenkins Resp. to Def. Wilson's First Requests for Admission, at 5. And none of them have even *asked* for assistance in an election this year. Pl.

Amend. Resp. to State Election Commission Defendants' First Set of Int. at 3. Individual Plaintiffs say they are "concerned" that their ideal assistor will be assisting five other nursing center residents with voting and will not be able to help them. (ECF No. 39-1 at 6) (Caldwell); (ECF No. 39-2 at 4) (Jenkins); (ECF No. 39-3 at 4) (Bell). But bare speculation isn't enough for summary judgment.

2. Traceability and Redressability

Traceability requires Plaintiffs to show their injury is "fairly traceable" to the "challenged action of the defendant" and not the result of "independent action of some third party not before the court." *Lujan*, 504 U.S. at 560 (citation modified). Redressability and causation are often "flip sides of the same coin," meaning that if injury and causation are established, redressability will typically redress that injury. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380–81 (2024). But "[r]edressability can still pose an independent bar in some cases;" for example, "a plaintiff who suffers injuries caused by the government still may not be able to sue because the case may not be of the kind traditionally redressable in federal court." *Id.* at 381 n.1 (citation modified).

The closest Plaintiffs come to making specific arguments as to traceability and redressability is by asserting that "[i]f Plaintiffs or their preferred assistors violate the Voting Restrictions, they are subject to steep felony criminal penalties;" that "[t]he Attorney General supervises the enforcement of the Voting Restrictions through prosecution of alleged violators under the South Carolina Constitution" and "the Attorney General has not 'disavowed enforcement' of these criminal penalties;" so "this threat of prosecution is traceable to the Attorney General and would be remediated by an injunction." (ECF No. 39 at 37–38). But that presumes Plaintiffs are injured at all. Because Plaintiffs have not established injury in fact, the Attorney General cannot be the source of such non-existent injury, and a court order would not remediate such non-existent injury.

But even if Plaintiffs could show injury, they have a traceability problem.[4] As shown above, Plaintiffs fail to show they've been denied assistance to vote in a South Carolina election this year. Further, as noted above, South Carolina law doesn't bar Plaintiff Jenkins from receiving assistance to vote since her vision impairment likely entitles her to voting assistance under both Section 208 and South Carolina law. Because South Carolina law doesn't bar assistance for Plaintiff Jenkins, injunctive relief wouldn't impact her access to it. That means she has a redressability problem too.

Even if Individual Plaintiffs showed that third parties declined to serve as assistors, that would be traceable to the decisions of third parties rather than South Carolina law. And standing is "substantially more difficult to establish" in situations where a "causal relation between injury and challenged action depends upon the decision of an independent third party." *California v. Texas*, 593 U.S. 659, 675 (2021) (citation modified). These "decision[s]" of "independent third part[ies]" are fatal to Plaintiffs' ability to demonstrate traceability. *Id*. And there is no reason to suggest that the requested assistors are acting in "a predictable way[]" because of the clarity of the statutory language and the apparent absence of any threatened enforcement against them as individual assistors. *See Murthy v. Missouri*, 603 U.S. 43, 57–58 (2024) (citation modified) (describing standing requirements in cases involving the actions of independent decisionmakers).

[4] All Plaintiffs suffer another traceability problem: none possesses a private right of action under Section 208 to bring this suit in the first place, so this Court cannot provide Plaintiffs the relief they seek. *See United States v. Texas*, 599 U.S. 670, 676 (2023) (citation modified) (To establish redressability, "the alleged injury must be legally and judicially cognizable", which "requires, among other things, that the dispute is traditionally thought to be capable of resolution through the judicial process—in other words, that the asserted injury is traditionally redressable in federal court."); *see also Arkansas United v. Thurston*, 146 F.4th 673, 677–78 (8th Cir. 2025) (citation modified) (Section 208 "itself contains no private enforcement mechanism." "Congress ... knows how to create a cause of action, and it did not do so here." To conclude otherwise would require courts to "conclude that Congress hid the proverbial elephant in a mousehole." Instead, "Congress intended to place enforcement in the hands of the [Attorney General], rather than private parties.").

For similar reasons, Plaintiffs face a redressability problem. *See All. for Hippocratic Med.*, 602 U.S. at 380 (describing causation and redressability as "flip sides of the same coin"). Given the limited scope of relief to the individual parties present in this suit, *see Trump v. CASA*, 606 U.S. 831, 837 (2025), there is no guarantee that the requested assistors would actually choose to provide the requested assistance even if Plaintiffs are successful here. *See Citizens for Resp. & Ethics in Wash. v. U.S. Dep't of the Treasury, Internal Revenue Serv.*, 21 F. Supp. 3d 25, 36 (D.D.C. 2014) (collecting authorities for the proposition that there is no redressability where the court order would not bind the decisions of third parties necessary for the requested relief).

Finally, Plaintiffs cannot cure these jurisdictional defects by resort to the concept of a "chill" to their protected rights. *See La Union Del Pueblo Entero v. Abbott*, 151 F.4th 273, 286 (5th Cir. 2025) (rejecting a "chill" argument in the context of a preemption challenge).

B. NAACP-SC

Plaintiff NAACP-SC also lacks associational standing. To establish associational standing, Plaintiff NAACP-SC must show that: (1) the organization's members would otherwise have standing to sue in their own right; (2) the interests the organization seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief request requires the participation of individual members of the organization in the lawsuit. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023) (citation modified).

On the first prong, to establish standing at the summary judgment stage, NAACP-SC must "submit affidavits or other evidence showing, through specific facts" that "one or more of [its] members" would be "directly affected" by government activity "apart from their special interest in th[e] subject." *Lujan*, 504 U.S. at 563 (citation modified). Plaintiff Caldwell is the only individual plaintiff who purports to be a member of NAACP-SC. (ECF No. 1 at 5, ¶ 21); *see also* (ECF

No. 39-1 at 3). As shown above, he doesn't have standing. And NAACP-SC can't rely on general references to "other members" that "include people with physical and nonphysical disabilities who rely on assistance to vote absentee" to establish associational standing. (ECF No. 39 at 39). Which other members? What disabilities do they have? There's insufficient evidence for the Court to determine whether unidentified individual members have standing in their own right.

For example, NAACP-SC argues that it's harmed by South Carolina's Limits on Possible Assistors because unnamed "youth members who had previously assisted disabled voters with voting are no longer able to." (ECF No. 39 at 33). But no assistors are raising claims in this suit. So any alleged (and unsupported) harm to assistors is irrelevant. Plaintiffs also argue that "other members are not permitted to rely on an 'authorized representative' at all because they don't meet the statutory requirements." (ECF No. 39 at 33). That's because they "can make it out of the house occasionally to go to church or other community events, but they prefer to vote by mail." (ECF No. 39 at 33–34). Such unidentified voters would likely not be entitled to assistance under Section 208 since they're not "unable to exercise their rights to vote without obtaining assistance in voting." S. Rep. 97-417 at 62. But the Court can't even make that determination because Plaintiffs' assertions are not supported by evidence on which to make a fact-intensive inquiry.

NAACP-SC also argues the "Five-Voter Limits deprive other South Carolina NAACP members of their right to their chosen assistor, as described by Rev. Flemming and President Murphy." (ECF No. 39 at 33). But the declarations of Rev. Flemming and President Murphy simply reflect that Rev. Flemming (who is not a party to this suit) assisted "many" Greenville NAACP Branch members before the enactment of the Five-Voter limits, and after passage of the Five-Voter Limits they were "forced to look elsewhere for assistance." (ECF No. 39 at 20) (citing Flemming Decl.). But no members are identified. And no facts are given upon which this Court could

determine whether such alleged members are entitled to assistance under Section 208 and will be barred from receiving it this year by South Carolina law. If Plaintiff NAACP-SC seeks to rely on statistical evidence to bolster its standing argument, such a strategy is insufficient for Article III purposes. *Summers*, 555 U.S. at 498–99 ("This requirement of naming the affected members has never been dispensed with in light of statistical probabilities, but only where *all* the members of the organization are affected by the challenged activity.") (emphasis in original).

As to the third prong, courts consider whether "there is complete identity between the interests of the consortium and those of its member[s] ... and the necessary proof could be presented 'in a group context.'" *Ass'n for Accessible Medicines v. Bonta*, 766 F. Supp. 3d 1020, 1027 (E.D. Cal. 2025) (quoting *N.Y. State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 10 n.4 (1988)). "An organization does not have associational standing when its claims require an ad hoc factual inquiry for each member represented by the association." *Ass'n for Accessible Medicines*, 766 F. Supp. 3d at 1028 (citation modified). And suits to invalidate statutory provisions traditionally require some degree of individualized inquiry to assess their merits. *See, e.g.*, *Ayotte v. Planned Parenthood of N. New Eng.*, 546 U.S. 320, 329 (2006) (a "statute may be invalid as applied to one state of facts and yet valid as applied to another") (citation modified).

NAACP-SC's only argument on the third prong is that individual participation of its members here is unnecessary because Plaintiffs seek declaratory and injunctive relief. (ECF No. 39 at 39–40). But the determination of whether state law preempts Section 208 is "a practical one dependent upon the facts," S. Rep. 97-417 at *63, and that requires individual participation. Indeed, NAACP-SC hasn't shown that its membership is composed even largely of disabled voters. And even if it had, a fact-specific inquiry would still be required to determine which members are entitled to assistance because not all disabilities require voting assistance under Section 208. *Id.* at

*62 (Section 208 affords voting assistance to those who are "*unable* to exercise their rights to vote *without obtaining assistance* in voting") (emphasis added). And then, each disabled voter would have to show that South Carolina law unduly burdens their access to voting assistance. NAACP-SC has failed to show its membership's collective entitlement to relief that could be presented in a group context. NAACP-SC fails to demonstrate associational standing.

II. Plaintiffs' Claims are Not Ripe

Plaintiffs worry they won't receive voting assistance this year due to South Carolina's voting laws. (ECF No. 1 at 5–6). But even if Plaintiffs had standing to challenge those laws, their claims suffer from yet another justiciability deficiency: lack of ripeness. "The doctrine of ripeness arises from the case or controversy requirement of Article III." *Wild Va. v. Council on Env't Quality*, 56 F.4th 281, 293 (4th Cir. 2022) (citation modified). "The plaintiff bears the burden of establishing ripeness." *Id.* (citation modified). "While standing involves the question of *who* may sue, ripeness involves *when* they may sue." *Id.* (citation modified) (emphasis in original). Courts consider "(1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration." *Id. at* 294 (citation modified).

"A claim should be dismissed as unripe if the plaintiff has not yet suffered injury and any future impact remains wholly speculative." *Id.* (citation modified). And "[w]here an injury is contingent upon a decision to be made by a third party that has not yet acted, it is not ripe as the subject of decision in a federal court." *Id.* (citation modified). True, "ripeness can rest on anticipated future injury," but "the future injury cannot be wholly speculative or rest upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Id.* at 295 (citation modified).

In discovery responses, Plaintiffs admit that no one has refused to provide them with voting

assistance for any 2026 election in South Carolina.[5] Pl. Amend. Resp. to State Election Commission Defendants' First Set of Int. at 3. What's more, Plaintiffs *have not even requested assistance to vote* in a 2026 election in South Carolina. *Id.* Thus, the legal issues arising in this case aren't fit for judicial decision because Plaintiffs "ha[v] not yet suffered injury and any future impact remains wholly speculative." *Wild Virginia*, 56 F.4th at 294 (citation modified). Even if Plaintiffs' legal arguments were sound, Plaintiffs' alleged injuries are "contingent upon a decision to be made by a third party that has not yet acted," and therefore are "not ripe as the subject of decision in a federal court." *Id.* at 294 (citation modified).

III. Plaintiffs Fail to Show Facts Warranting Summary Judgment in Their Favor

Even if Plaintiffs' claims are justiciable, Plaintiffs claims fail on the merits. A plaintiff seeking a permanent injunction must demonstrate: "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; 3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156–57 (2010). The final two elements "merge when the Government is an opposing party." *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

A. Irreparable harm

As the legislative history shows, State laws can only be preempted by Section 208 "to the extent that they *unduly burden* the right recognized in this section, with that determination being

[5] The declarations submitted in support of Plaintiffs' Motion for Summary Judgment do not even cure this defect, as they do not indicate that the individual Plaintiffs have been denied the assistance they seek. *See*, *e.g.*, (ECF 39-4 at 6) ("I have not yet started contacting residents about whether they want help voting in 2026, but I plan to soon.").

a practical one dependent upon the facts." S. Rep. 97-417 at 63 (emphasis added). This fact-intensive inquiry requires everyone who hopes to be exempted from South Carolina's voting laws to show they're entitled to asssitance and that they're being denied assistance by South Carolina law.

Without pointing to evidence, Plaintiffs assert that they qualify as disabled voters under Section 208 and that they are harmed by South Carolina law. But simply asserting an injury is not sufficient for summary judgment. *Rowland*, No. 2:24-CV-1732-RMG, 2025 WL 976494, at *1 ("In determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities in favor of the nonmoving party.") (citation modified). As discussed above relating to injury-in-fact for standing, Plaintiffs Bell and Caldwell fail to show their disabilities are of the kind that would entitle them to assistance under Section 208, and even if they were entitled to assistance, they have not shown they've been denied assistance under South Carolina law. Likewise, Plaintiff Jenkins fails to demonstrate that South Carolina law prohibits her from receiving assistance. And NAACP-SC has failed to identify any members who are entitled to assistance under Section 208 and whose right to assistance is unduly burdened by South Carolina law.

B. The Equities and Public Interest

Plaintiffs propose a false dichotomy between promoting state interests and protecting disabled voters from disenfranchisement. While the Supreme Court has said that each state "indisputably has a compelling interest in preserving the integrity of its election process," *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (*per curiam*) (citation modified), Plaintiffs call that interest "meager." (ECF No. 39 at 34). Defendant Wilson disagrees. And this Court should disagree too. South Carolina election integrity laws promote the public interest, and they don't offend Section 208.

As discussed below, South Carolina's election laws are not preempted. South Carolina has an interest in enforcing its validly enacted laws. And as discussed above, Plaintiffs are not denied

assistance in voting by South Carolina's election integrity laws. Instead, ensuring the integrity of elections is undoubtedly in the public interest. Moreover, the challenged laws advance vital government interests, and those interests are in the public interest. As the Supreme Court has recognized, States have a "strong and entirely legitimate interest" in the "prevention of fraud" in voting, which can "undermine public confidence in the fairness of elections and the perceived legitimacy of the announced outcome." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647,672 (2021). And States have a "valid and important" interest in ensuring "that every vote is cast freely, without intimidation or undue influence." *Id*.

The right to vote is the right to "participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). States have broad authority to regulate elections within those bounds. *Lassiter v. Northampton Cnty. Bd. of Elections*, 360 U.S. 45, 50 (1959). And for good reason. The virtues of state regulation of elections can be seen from the early days of the Republic, when polling places could be boisterous, even "chaotic," "akin to entering an open auction." *Minn. Voters All. v. Mansky*, 585 U.S. 1, 7 (2018) (citation modified). Voters generally relied on ballots printed by parties rather than the government. *Id.* at 6. But by the late nineteenth century, States began "implementing reforms to address these vulnerabilities and improve the reliability of elections." *Id.* at 7. Those reforms are now taken for granted—voting in private using state-printed ballots instead of party-printed ballots. *Id.*

States continue to make efforts to promote election integrity. While some may dismiss concerns about voter fraud or undue influence as unfounded, voter fraud has "been documented throughout this Nation's history by respected historians and journalists." *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 195 (2008)(plurality opinion). Absentee ballots in particular pose a risk for fraud and undue influence. For example, "the North Carolina Board of Elections

invalidated the results of a 2018 race for a seat in the House of Representatives for evidence of fraudulent mail-in ballots." *See Brnovich*, 594 U.S. at 686. And two years ago, the South Carolina Legislative Audit Council found evidence of ballot harvesting in South Carolina. *See* LEGISLATIVE AUDIT COUNCIL, *A Review of the South Carolina Election Process* at 6 (Jan. 2024) (describing an instance of a person returning 12 absentee ballots during the 2022 primary election) (https://perma.cc/QUV3-VJL4) (accessed Apr. 6, 2026).

True, the benefits of regulation come with burdens. But as the Supreme Court said in *Brnovich*, "mere inconvenience" is insufficient to "demonstrate a violation" of the right to vote. 594 U.S. at 669; *see id.* ("[B]ecause voting necessarily requires some effort and compliance with some rules, the concept of a voting system that is 'equally open' and that furnishes equal 'opportunity' to cast a ballot must tolerate the 'usual burdens of voting.'") (citation modified). And Justice Alito, writing for three Justices, emphasized "[e]ven the most permissive voting rules must contain some requirements, and the failure to follow those rules constitutes the forfeiture of the right to vote, not the denial of that right." *Ritter v. Migliori*, 142 S. Ct. 1824, 1825 (2022) (Alito, J., dissental). Balancing the benefits and burdens of election regulation, the South Carolina General Assembly acted appropriately to safeguard our elections through safety protocols on absentee ballots.

IV. Plaintiffs' Preemption Claims are Wrong on the Law

Even if Plaintiffs could overcome justiciability defects and show a lack of genuine dispute of material facts in their favor, they aren't entitled to judgment as a matter of law. That's because South Carolina's election integrity laws aren't preempted by Section 208.

Plaintiffs rely on a theory of conflict preemption. Conflict preemption "occurs [1] when compliance with both federal and state regulations is impossible or [2] when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of

Congress." *Hillman v. Maretta*, 569 U.S. 483, 490 (2013) (citation modified). To assess a conflict preemption claim, a court engages in a "two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question of whether they are in conflict." *N. Virginia Hemp & Agric., LLC v. Virginia*, 125 F.4th 472, 493 (4th Cir. 2025) (citation modified). When engaging in this analysis, a court is guided by various tools of statutory construction, including substantive canons that are unique to a preemption analysis.

First is the "presumption against pre-emption." *Hillman*, 569 U.S. at 490 (citation modified). In all preemption cases, "federalism principles baked into the Constitution" require a court to begin its analysis with "the basic assumption that Congress did not intend to displace state law." *N. Va. Hemp*, 125 F.4th at 492 (citation modified). In other words, "a federal statute is *presumed not to preempt* a state provision." *Id*. (emphasis added). Although this presumption can be overcome, "courts should not seek out conflicts where none clearly exist." *Id*. at 493.

This assumption is at its "strongest" when Congress legislates in an area the States have traditionally occupied. *See S. Blasting Servs., Inc. v. Wilkes Cnty., NC*, 288 F.3d 584, 590 (4th Cir. 2002) (citation modified). This strengthened presumption requires a plaintiff to show that the challenged law does "major damage" to "clear and substantial" federal interests. *Hillman*, 569 U.S. at 491 (citation modified). When the presumption applies, "if there is any ambiguity as to whether the local and federal laws can coexist, [a court] must uphold the ordinance." *U.S. Smokeless Tobacco Mfg. LLC v. City of New York*, 708 F.3d 428, 433 (2d Cir. 2013); *see also See Abbott*, 151 F.4th at 291–92 (applying presumption against preemption in a Section 208 case).

Second is the clear-statement rule. That canon requires Congress to speak "clearly" when it alters the traditional balance between federal and state power. *See Torcasio v. Murray*, 57 F.3d 1340, 1346 (4th Cir. 1995). Horizonal separation-of-powers principles also require plaintiffs to

clear a "high threshold" to establish that "a state law is to be preempted for conflicting with the purposes of a federal Act." *Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 607 (2011) (citation modified). This threshold is imposed because it is ultimately "Congress rather than the courts" that preempts state law. *Id*. (citation modified).

Third, the canon of constitutional avoidance instructs courts to construe a statute to avoid constitutional problems. *See United States v. Simms*, 914 F.3d 229, 251 (4th Cir. 2019) (describing constitutional avoidance); *see also Gonzales v. Carhart*, 550 U.S. 124, 153 (2007) (describing constitutional avoidance as the "elementary rule" that "every reasonable construction must be resorted to, in order to save a statute from unconstitutionality.") (citation modified). Courts have applied this canon to preemption cases. *See Torres v. Precision Indus.*, 938 F.3d 752, 755 (6th Cir. 2019) ("For good reason, then, many of our sister circuits have applied avoidance principles to questions of preemption.") (collecting cases); *see also Bell Atl. Md., Inc. v. Prince George's Cnty.*, 212 F.3d 863, 865–66 (4th Cir. 2000) (applying avoidance principle to avoid preemption analysis).

If the Court applies these tools here as a part of the "two-step process" of analyzing a conflict preemption claim, Plaintiffs' preemption claims must fail as a matter of law.

A. Step One: Construction of the Two Statutes

Two things are clear from Plaintiffs' Motion for Summary Judgment: (1) Plaintiffs' challenge regarding South Carolina's Limits on Voting Assistance Eligibility turns on the meaning of "disability" in Section 208, and (2) Plaintiffs' challenge to South Carolina's Limits on Possible Assistors and Five-Voter Limits turns on the meaning of "a person of the voter's choice" in Section 208. A review Section 208's construction reveals that Plaintiffs are wrong about its meaning. A review of South Carolina law's construction reveals that it's not preempted by Section 208.

1. Construction of Section 208

Section 208 isn't nearly as broad as Plaintiffs say. The full text of Section 208 provides the following: "Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 52 U.S.C. § 10508.

a. The Meaning of "Disability" in Section 208

Plaintiffs argue that the term "disability" in the VRA includes "both physical and mental impairments" because Congress "always uses 'disability' to include both physical and mental impairments." (ECF No. 39 at 24). Plaintiffs then cite to three federal statutes that are contained in different sections of the federal code. (ECF No. 39 at 24) (citing 29 U.S.C. § 705(9) (Rehabilitation Act of 1973); 42 U.S.C. § 3602(h) (Fair Housing Act); 42 U.S.C. § 12102 (Americans with Disabilities Act); 42 U.S.C. §§ 423, 1382 (Social Security Act)). But the reality is that the VRA, as well as other federal statutes such as the Rehabilitation Act and the ADA, are often decried by mental disability advocates for "readily protecting the right to vote for those with physical disabilities while failing to consider the voting rights of persons with mental disabilities." Courtney Schiffler, *Voting Rights for People with Diminished Mental Capacity*, 48 Mitchell Hamline L. Rev. 657, 665 (2022) (citation modified). And the National Voter Registration Act explicitly permits states to "enact laws authorizing removal of voters from the registration rolls based on mental incapacity." *Id.* at 666 (citation modified).[6] But even if Plaintiffs were right about those other statutes, it's irrelevant because the meaning of "disability" in the VRA is not controlled by definitions in other statutes. *See e.g.*, *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341–42 (1997) (concluding that the

[6] If "states are able to define voter qualifications with regard to mental capacity." 48 Mitchell Hamline L. Rev. at 666, then they can regulate whether persons with mental capacity are entitled to voting assistance.

meaning of "employees" in Title VII was not elucidated by other statutes' definitions of that term).

Plaintiffs also argue that "contemporaneous definitions confirm that the ordinary meaning of 'disability' … includes both physical and mental impairments." (ECF No. 39 at 24). But instead of a contemporaneous definition, Plaintiffs provide a self-serving dictionary definition from September 2025, even though Section 208 was enacted in 1982. (ECF No. 39 at 24); 96 Stat. 135.

What did the authors of Section 208 say in 1982? They said the purpose of Section 208 was to afford voting assistance to those "unable to exercise their rights to vote without obtaining assistance in voting." S. Rep. 97-417 at 62. And they reasoned that "since blind, disabled, or illiterate voters have the right to 'pull the lever of a voting machine', they have the right to do so without fear of intimidation or manipulation." *Id.* The presumption that "disabled" voters have the right to vote, combined with the NVRA letting States remove mentally incapacitated individuals from voting rolls, suggests that mental disabilities don't qualify for Section 208 voting assistance.

Additionally, looking to context, the placement of "disability" between "blindness" and "inability to read or write" shows a series of similar incapacities. If "disability" was intended to be all-encompassing, there would be no need to enumerate additional specific disabilities. *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

b. The Meaning of "A Person of the Voter's Choice" in Section 208

The text of Section 208 suggests a modest congressional purpose. Section 208 merely ensures that qualified voters receive assistance from "a person of the voter's choice." 52 U.S.C. § 10508. As other courts have concluded, the use of the indefinite article "a" in descripting "a person of the voter's choice" is significant and reveals a more flexible—and modest—approach by Congress, that voters are entitled to assistance in voting but not from "*the* person of his or her choice

or *any* person of his or her choice." *See Priorities USA v. Nessel*, 487 F. Supp. 3d 599, 619 (E.D. Mich. 2020), *rev'd and remanded on other grounds*, 860 F. App'x 419 (6th Cir. 2021); *see id.* ("[Section 208] employs the indefinite article 'a' which by its very term is non-specific and non-limiting, as opposed to the definite article 'the,' which by its terms is specific and limiting.").

The Supreme Court and Fourth Circuit view the distinction between definite and indefinite articles as salient in statutory analyses. *See McFadden v. United States*, 576 U.S. 186, 191 (2015) ("When used as an indefinite article, 'a' means '[s]ome undetermined or unspecified particular.'") (quoting Webster's New International Dictionary 1 (2d ed. 1954)); *see also United States v. McCauley*, 983 F.3d 690, 695 (4th Cir. 2020) ("Distinguishing between 'the' and 'a' is not picking at the district court's instruction in this instance—here, there is a fundamental difference between the definite and indefinite article."); *Indem. Ins. of N. Am. v. United States*, 569 F.3d 175, 181 (4th Cir. 2009) ("Second, the use of the indefinite article 'a' at the beginning of the sentence upon which Plaintiffs seize means that such sentence does not specify a particular stability proof test.").

Even though Plaintiffs' Complaint argues that Section 208 entitles disabled voters to receive assistance from "the" person of their choice, (ECF No. 1 at 3, 6, 14, 15), Plaintiffs shift gears in their motion for summary judgment by admitting Section 208's use of "a" instead of "the." (ECF No. 39 at 26). But Plaintiffs try to construe Section 208's use of that article to mean the statute is broader than it is. (ECF No. 39 at 25–26). Plaintiffs can't have it both ways.

Other portions of the text of Section 208 also point to a more limited view of its scope. Section 208's exclusion of certain assistors, "the voter's employer or agent of that employer or officer or agent of the voter's union," necessarily suggest that Congress did not intend for Section 208 to create some unlimited right to assistance. And nothing in the text suggests those exclusions were meant to constitute an exhaustive list of the only individuals who may be excluded from

providing assistance. *See Abbott*, 151 F.4th at 294 ("The far more sensible inference from Section 208 is that Congress specified two groups who, it feared, might influence vulnerable voters—without implying any judgment about other circumstances that might bear on voter assistance.").

To the extent the Court finds some ambiguity in the text, legislative history favors the more modest view of Section 208. A Senate Report explained that Section 208 would preempt state election laws "only to the extent that they unduly burden the right recognized in [Section 208], with that determination being a practical one dependent upon the facts." S. Rep. 97-417 at 63; *see also Ray v. Texas*, No. CIV.A.2-06-CV-385TJW, 2008 WL 3457021, at *7 (E.D. Tex. Aug. 7, 2008) ("The legislative history evidences an intent to allow the voter to choose *a* person whom the voter trusts to provide assistance. It does not preclude all efforts by the State to regulate elections by limiting the available choices to certain individuals.") (emphasis in original).

Plaintiffs cite to 2024 guidance from the U.S. Department of Justice for the proposition that "Section 208 allows voters to choose any assistor who is available and willing." (ECF No. 39 at 26). And they point to the State Election Commission's Handbook for a similar proposition. (ECF No. 39 at 26). But this Court need not defer to a federal agency's interpretation of a statute. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412 (2024). And even the State Election Commission interprets South Carolina law to be coterminous with Section 208. *See* SOUTH CAROLINA ELECTION COMMISSION, *Poll Managers Handbook* at 65 (Sept. 2024) (https://tinyurl.com/k7f7pfzr) (accessed Apr. 27, 2026).

But if the Court isn't persuaded by textual analysis alone, the presumption against preemption, the clear statement rule, and the canon of constitutional avoidance all favor a more limited reading of Section 208. *See*, *e.g.*, *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005) ("Even if [the plaintiff] had offered us a plausible alternative reading of [the federal statute that allegedly

preempts state law]—indeed, even if its alternative were just as plausible as our reading of that text—we would nevertheless have a duty to accept the reading that disfavors pre-emption.").

c. The Meaning of "Vote" in Section 208

Notably, legislative history is silent as to whether Section 208 applies to absentee voting, much less to the mere acts of requesting and returning ballots. *See* S. Rep. 97-417 at 62 ("The committee has concluded that the only kind of assistance that will make fully 'meaningful' the vote of the blind, disabled, or those who are unable to read or write, is to permit them to bring *into the voting booth* a person whom the voter trusts and who cannot intimidate him. Since blind, disabled, or illiterate voters have the right to '*pull the lever of a voting machine*', they have the right to do so without fear of intimidation or manipulation.") (emphasis added).

2. Construction of South Carolina's Voting Laws

Moving to the South Carolina laws at issue, all three challenged provisions allow voters with disabilities various forms of assistance in voting. And more precisely for purposes of this preemption analysis, these provisions allow Individual Plaintiffs assistance in voting, to the extent they have a right to receive it. *See United States v. Moffitt, Zwerling & Kemler, P.C.*, 83 F.3d 660, 669 (4th Cir. 1996) ("And '[t]he existence of a hypothetical or potential conflict is insufficient to warrant [] preemption.") (quoting *Rice v. Norman Williams Co.*, 458 U.S. 654, 659 (1982)).

Start with Plaintiffs' Voting Assistance Eligibility claim. The relevant state law provides the following: "Only those persons who are unable to read or write or who are physically unable or incapacitated from preparing a ballot or voting shall be entitled to receive assistance of any kind in voting." S.C. Code Ann. § 7-13-780. Although that law isn't a word-for-word copy of Section 208, the ordinary meaning of the state law aligns with Section 208. *Cf.* S.C. Code Ann. § 7-13-780 (providing assistance to those unable to read or write and to those "who are physically unable or

incapacitated from preparing a ballot or voting"); *with* 52 U.S.C. § 10508 (providing voting assistance to those who require it "by reason of blindness, disability, or inability to read or write").

Further, the State Election Commission interprets § 7-13-780 to have the same meaning as Section 208. *See* SOUTH CAROLINA ELECTION COMMISSION, *Poll Managers Handbook* at 65 (Sept. 2024) (citing both S.C. Code Ann. § 7-13-780 and Section 208) (https://tinyurl.com/k7f7pfzr) (accessed Apr. 27, 2026). This interpretation is entitled to deference under state law. *See Dunton v. S.C. Bd. of Exam'rs In Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987) ("The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.").[7]

Turning to Plaintiffs' Limits on Possible Assistors and Five-Voter Limits claims, a few provisions of South Carolina law are relevant. First, S.C. Code Ann. § 7-15-330 generally outlines the process for requesting and returning an absentee ballot in South Carolina. Under subsections (A) and (C), only a voter, a member of his or her immediate family, or in certain circumstances, an authorized representative, may request and return an absentee ballot for a voter. *See* S.C. Code Ann. §§ 7-15-330(A) and (C). Pursuant to S.C. Code Ann. § 7-15-310, a voter may rely on an authorized representative to request and return an absentee ballot if the voter is "unable to go to the polls because of illness or disability resulting in his confinement in a hospital, sanatorium, nursing home, or place of residence" or if a voter is "unable because of a physical handicap to go to his polling place or because of a handicap is unable to vote at his polling place due to existing architectural barriers that deny him physical access to the polling place, voting booth, or voting apparatus or machinery." S.C. Code Ann. § 7-15-310(7). South Carolina law places few limitations

[7] While deference to federal agency interpretation of federal law has been recently undercut, *see Loper Bright*, 603 U.S. at 412, not so for South Carolina state agency interpretation of state law.

on who may serve as an authorized representative, requiring they be a registered voter and forbidding a candidate, a member of a candidate's paid campaign staff, or a campaign volunteer from serving. *Id*. Finally, S.C. Code Ann. §§ 7-15-330(B)(4) and -385(G) preclude a person from requesting and returning more than five absentee ballots in an election, in addition to their own.

B. Step Two: Whether the Two Statutes Conflict

Moving to the second step of the analysis, the Court must determine the constitutional question of whether the federal and state statutes in question conflict. This Court's conflict preemption analysis is guided by a variety of tools. *See supra*, IV.; *see also Abbott*, 151 F.4th at 292 ("Recall, moreover, that we are reading the phrase, not in the abstract, but in the context of a preemption claim that faces steep odds."). Applying these tools here, Plaintiffs haven't cleared their high threshold. South Carolina law and Section 208 can readily be interpreted to avoid a conflict. Section 208 merely guarantees qualifying individuals the opportunity to receive voting assistance. South Carolina law doesn't deprive them of this right. Under South Carolina law, if any of the Individual Plaintiffs are entitled to assistance in voting, they may seek assistance from a wide range of individuals in requesting, filling out, and returning absentee ballots.

Legislative history also supports the lack of conflict between Section 208 and South Carolina law. In passing Section 208, Congress recognized the need for state regulation in this space: "The committee recognizes the legitimate right of any state to establish necessary election procedures, subject to the overriding principle that such procedures shall be designed to protect the rights of voters." S. Rep. 97-417 at 63. That is, "State provisions would be preempted only to the extent that they unduly burden the right recognized in this section, with that determination being a practical one dependent upon the facts." *Id.*

And legislative history suggests Section 208 doesn't extend to requesting and returning

absentee ballots. *See supra* IV(A)(1)(c); *see also New Georgia Project v. Raffensperger*, 484 F. Supp. 3d 1265, 1302 (N.D. Ga. 2020) (denying a motion to preliminarily enjoin Georgia's limits on possible assistors because the plaintiffs didn't show a "substantial likelihood of success on the merits" of their argument that "voting" in the context of the VRA "includes delivery of ballots"); *see also DSCC v. Simon*, 950 N.W.2d 280, 290 (Minn. 2020) (distinguishing between state law that limited assistance in marking a ballot and state law that limited assistance in delivering a ballot). If Section 208 doesn't extend to these acts, Plaintiffs' claims must fail as a matter of law.

As discussed above, Plaintiffs fail to show that South Carolina's common-sense election integrity laws "unduly burden" their alleged right to voting assistance under Section 208.

What's more, courts around the country have rejected similar preemption arguments about state absentee voting laws. Last year, the Fifth Circuit rejected the argument that Section 208 preempted a Texas law that generally prohibited a person from serving as an assistor if he or she received compensation for those services. *See Abbott*, 151 F.4th at 295 (concluding that district court erred in ruling that Section 208 preempts Texas law). The Fifth Circuit adopted a more restrained view of Section 208, rejecting the district court's "breathtakingly broad" view that Section 208 preempts any state law that "restrict[s] the class of people who are eligible to provide voting assistance beyond the categories of prohibited individuals identified in the text of [Section 208]." *Id*. at 292 (citation modified). According to the Fifth Circuit, "nothing" compelled it to read Section 208 in a "maximalist way that erases swaths of state election laws." *Id*. Instead, both "[c]ontext and common sense counsel a more restrained reading—one guaranteeing eligible voters help from 'a person' of their choice, while allowing states to superintend voter assistance." *Id*.

Elsewhere, a district court in Michigan reached a similar conclusion, holding that Section 208 did not preempt Michigan's absentee-ballot law, which imposed limitations on who may return

a voter's absentee ballot. *See Priorities USA v. Nessel*, 628 F. Supp. 3d 716, 731 (E.D. Mich. 2022) ("Even if Plaintiffs had established standing, the claim would have still failed because the VRA does not preempt the absentee-ballot law. "). There, the plaintiffs made the same arguments the Plaintiffs do here, arguing that the state "absentee-ballot law unlawfully limits the rights afforded to voters by Section 208 by prohibiting voters who need help returning their absentee ballot applications from receiving assistance from the person of their choice." *Id*. at 732 (citation modified).

As should be done here, the district court in *Nessel* rejected the plaintiffs' reading of Section 208 as "too broad[]," concluding that "Section 208's natural effect allows some wiggle room: a voter may select 'a person' to assist them, but not *the* person of their choice." *Id*. at 732–33 (quoting 52 U.S.C. § 10508) (emphasis in original). As a result, the court concluded that the federal and state laws were "harmonious" and "the VRA does not preempt the absentee-ballot law." *Id*. at 732.

Similarly, a court in Texas held the "language of Section 208 allows the voter to choose a person who will assist the voter, but it does not grant the voter the right to make that choice without limitation." *Ray*, 2008 WL 3457021, at *7. The court noted that Section 208's legislative history supported its conclusion, observing it "evidences an intent to allow the voter to choose *a* person whom the voter trusts to provide assistance. It does not preclude all efforts by the State to regulate elections by limiting the available choices to certain individuals." *Id*. (emphasis in original).[8]

True, courts have found Section 208 preempts some state laws, but those cases are

[8] In support of its holding, the Texas district court cited two separate state court decisions that reached similar conclusions. *See Qualkinbush v. Skubisz*, 357 Ill. App. 3d 594, 610, 826 N.E.2d 1181, 1196 (2004) ("[E]ven in light of the federal provisions, states may impose restrictions on those individuals who return a disabled voter's absentee ballot, and [] such restrictions may be above and beyond those set forth in the Voting Rights Act."); *see also DiPietrae v. City of Philadelphia*, 666 A.2d 1132, 1133 (Pa. Commw. Ct. 1995) (upholding a Pennsylvania court ruling that limited the persons for whom individuals may act as agents to obtain absentee ballot applications, deliver absentee ballot applications, obtain absentee ballots, or deliver completed absentee ballots).

distinguishable from this one. For example, a court in Wisconsin concluded a state law was preempted where it allowed disabled voters no assistance in returning their absentee ballots. *Carey v. Wis. Elections Comm'n*, 624 F. Supp. 3d 1020, 1023 (W.D. Wis. 2022). And a court in North Carolina concluded a state law was preempted where it barred disabled voters in nursing homes from receiving voting assistance from nursing home staff during COVID lockdowns. *See Democracy N. Carolina v. N. Carolina State Bd. of Elections*, 476 F. Supp. 3d 158, 235 (M.D.N.C. 2020).

V. The Scope of Relief, if any, Should be Narrowly Crafted

If this Court concludes that any of the challenged provisions are preempted, it should narrowly tailor an injunction to Plaintiffs who have demonstrated standing. Plaintiffs' argument to the contrary, that the challenged provisions are void as a matter of law and must be universally enjoined, should be rejected for at least two reasons. First, the argument misunderstands the role of a court in enjoining state law. Second, it ignores binding precedent and persuasive authority.

A. Plaintiffs Misunderstand the Role of a Court.

By asking this Court to "enjoin and "declare null and void" the challenged provisions, Plaintiffs fundamentally misconstrue the role of a court in enjoining state laws. Under Article III, federal courts generally lack the authority to declare laws held to be unconstitutional "null and void." *See Steffel v. Thompson*, 415 U.S. 452, 469 (1974) ("Of course, a favorable declaratory judgment may nevertheless be valuable to the plaintiff though it cannot make even an unconstitutional statute disappear.") (citation modified); *see also* Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933, 936 (2018) ("The federal courts have no authority to erase a duly enacted law from the statute books, and they have no power to veto or suspend a statute.").

Instead, courts have a more limited authority to decline to enforce a statute in a particular case or to enjoin officials from enforcing the statute while any injunction remains in effect. *See Ex*

parte Young, 209 U.S. 123, 155–56 (1908). Any relief broader than this sort of injunction runs into a host of problems under the Eleventh Amendment—and potentially under Article III. *See Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 255 (2011) (explaining that the *Ex Parte Young* exception to sovereign immunity is "limited to [the] precise situation" in which "a federal court commands a state official to do nothing more than refrain from violating federal law.").

And in the context of preemption cases specifically, there are sound reasons to reject the argument that any decisions in the case renders state law "null and void." *See, e.g.*, *Close v. Sotheby's, Inc.*, 909 F.3d 1204, 1209 (9th Cir. 2018) ("When we adjudge a state law preempted under this provisions, we do not render the law null and void in some ultimate sense, such as a presidential veto; rather, our judgment renders the law unenforceable in the case before us.").

After all, the doctrine of preemption merely provides "'a rule of decision' that 'instructs courts what to do when state and federal law clash.'" *Id.* (quoting *Armstrong v. Exceptional Child Ctr., Inc.*, 135 S. Ct. 1378, 1383 (2015)); *see also Trollinger v. Tyson Foods, Inc.*, 370 F.3d 602, 608 (6th Cir. 2004) (the preemption doctrine "generally concerns the merits of the claim itself—namely, whether it is viable and which sovereign's law will govern its resolution."). Further, finding a state law preempted by federal law doesn't "render the entire state law 'nonexistent'" but merely makes that law "unenforceable in court until Congress removes the preemptive federal law or the courts reverse course on the effect of the federal law." *Close*, 909 F.3d at 1209–10.

B. Plaintiffs Ignore Precedent and Ask for an Impermissibly Broad Injunction.

In asking this Court to "enjoin the Limits on Voting Assistance Eligibility and Five-Voter Limits in whole, and the Limits on Possible Assistors as to all South Carolina voters covered by Section 208," Plaintiffs ask this Court for a universal injunction. (ECF No. 39 at 40). Indeed, Plaintiffs appear to ask for an injunction even as to non-disabled voters. In other words, Plaintiffs

seek to use a federal disabilities statute to invalidate state election laws in toto.

Such a request runs contrary to longstanding precedent about the proper scope of equitable relief, recent precedent foreclosing universal injunctions, precedent on facial challenges, and recent persuasive authority regarding injunctions in the context of Section 208. All lead to the conclusion that this Court must reject Plaintiffs' breathtakingly broad request for relief.

Longstanding precedent instructs that equitable or injunctive relief "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Under this equitable tradition, courts generally only "administer complete relief between the parties"—not the public at large. *Kinney-Coastal Oil Co. v. Kieffer*, 277 U.S. 488, 507 (1928).

Recent precedent and guidance from the Supreme Court underscores these principles, generally disavowing the concept of universal injunctions. For example, in *Trump v. Casa, Inc.*, the Court rejected a universal injunction against the Executive Branch and noted there is no "historical pedigree" to support the idea that federal courts have authority to issue universal injunctions. *Trump v. Casa, Inc.*, 606 U.S. 831, 846 (2025). And although it declined to expressly reach the question, the Court suggested the idea of a universal injunction could be in considerable tension with Article III's case or controversy requirement. *See id.* at 861; *see also id.* at 862–63 (Thomas, J., concurring) ("As the Court recognizes, the complete-relief principle operates as a ceiling: In no circumstance can a court award relief beyond that necessary to redress the plaintiffs' injuries. This limitation follows from both Article III and traditional equitable practice.) (citation modified).

Just a year prior, Justice Gorsuch (writing for three justices) applied a similar critique to universal injunctions against state laws. *See Labrador v. Poe by & Through Poe*, 144 S. Ct. 921, 921 (2024) (Gorsuch, J, joined by Thomas, J. and Alito, J., concurring in grant of stay) ("Today,

the Court stays the district court's injunction to the extent it applies to nonparties, which is to say to the extent it provides 'universal' relief. That is a welcome development."). In doing so, he invoked similar "foundational principles" of equity that undermine arguments in favor of universal injunctions. *Id*. at 923. And as a practical matter, "universal injunctions circumvent normal judicial processes and 'tend to force judges into making rushed, high-stakes, low-information decisions' at all levels." *Id.* at 927 (citation modified).

Plaintiffs attempt to distinguish *CASA* and its underpinnings, but their attempts to do so largely fall flat. Plaintiffs suggest that because two of the challenged provisions depend on the actions of third parties, a universal injunction is necessary to afford "complete relief" in this case. (ECF No. 39 at 41). But this argument only underscores Plaintiffs' lack of standing in this case, because their alleged injuries are traceable to third parties—not the state defendants. *See Frank Krasner Enters. v. Montgomery Cnty., MD*, 401 F.3d 230, 234 (4th Cir. 2005) (noting that the injury must not be the result of the independent action of a third party not before the court).

Plaintiffs' argument also finds no support in *CASA*, which held that the concept of "complete relief" is necessarily "narrower" than the concept of "universal relief." *CASA*, 606 U.S. at 851. And the Court disavowed the notion that the "complete-relief principle" could justify a universal injunction. *See id*. at 852 ("Under this principle, the question is not whether an injunction offers complete relief to *everyone* potentially affected by an allegedly unlawful act; it is whether an injunction will offer complete relief *to the plaintiffs before the court*.") (emphasis in original).

The Court clarified that to the extent an injunction could practically benefit a nonparty, it does so only "incidentally." *Id*. at 851. And there is nothing incidental about the relief that Plaintiffs seek here. After all, Plaintiffs seek injunctive relief on behalf of all non-parties in South Carolina for at least two claims—including those who aren't disabled voters under Section 208. Plaintiffs'

suggestion that the Court left these aspects of the question "open" is incorrect. (ECF No. 39 at 41).

But even if the Court did leave the question open, Plaintiffs' theory of complete relief in this case rests on too much speculation. *See Commonwealth v. Biden*, 57 F.4th 545, 557 (6th Cir. 2023) (declining to extend injunction to non-parties where request for injunction rested on "pure speculation"). Plaintiffs' theory appears to rest on the speculative notion that every citizen in South Carolina could serve as a possible assistor and may intend to assist more than five voters. Nothing in the record supports this speculation. *See CASA*, 606 U.S. at 854 ("[T]he broader and deeper the remedy the plaintiff wants, the stronger the plaintiff's story needs to be.") (citation modified). What's more, their theory assumes that third party assistors would behave as Plaintiffs intend.

Plaintiffs also attempt to distinguish *CASA* by invoking associational standing principles, but this argument again misreads *CASA* and ignores the fact that one of the plaintiffs in *CASA* was an association. Associational or organizational status alone, therefore, cannot justify a universal injunction. *See CASA*, 606 U.S. at 865 (Thomas, J., concurring) ("[T]he Court today readily dispatches with the individual and associational respondents' position that they require a universal injunction, notwithstanding their argument that a 'plaintiff-specific injunction' would be difficult to administer and would subject the associations' members to the burden of having 'to identify and disclose to the government' their membership.") (citation modified).

Even if this Court concludes that NAACP-SC has associational standing, relief for NAACP-SC should arguably be limited only to identified members with disabilities who have otherwise been denied assistance under South Carolina law. *See Council for Opportunity in Educ. v. U.S. Dep't of Educ.*, No. 25-CV-03491 (TSC), 2026 WL 120984, at *17 (D.D.C. Jan. 16, 2026) ("[T]he court cannot conclude that a preliminary injunction as to all of [an association's] named and unnamed affected members is as narrow as 'necessary to provide complete relief.'") (quoting

CASA, 606 U.S. at 861). After all, it would be difficult—if not impossible—to see how NAACP-SC members without disabilities could assert a preemption claim under Section 208.

Although *CASA* itself is enough to foreclose the requested relief in this case, Plaintiffs' request also runs headlong into the standard for facial challenges, which applies because Plaintiffs seek to enjoin the challenged provisions across all settings. *See Mont. Med. Ass'n v. Knudsen*, 119 F.4th 618, 623–24 (9th Cir. 2024) ("[B]ecause plaintiffs seek to enjoin HB 702 across all health care settings—which 'implicate[s] the enforcement of the law against third parties'—plaintiffs' ADA preemption theory is properly analyzed as a facial challenge.") (citation modified). To succeed on their facial challenge, Plaintiffs must show that the challenged laws are preempted in all their applications. *See Am. Apparel & Footwear Ass'n v. Baden*, 107 F.4th 934, 938 (9th Cir. 2024) ("The *Salerno* rule applies to a federal preemption facial challenge to a state statute."). Plaintiffs have not made this showing. Nor could they, as South Carolina law affords voters with disabilities the same protections as Section 208. *See supra*. And Plaintiffs' own briefing undercuts their argument in support of a universal injunction, as nearly all the cases cited by the Plaintiffs limited relief to disabled voters covered under Section 208. (ECF No. 39 at 42).

Finally, any relief should be limited to national elections. *See In re Thirteen Ballots Cast in 1985 Gen. Election in Burlington Cnty.*, 209 N.J. Super. 286, 289, 507 A.2d 314, 316 (Law. Div. 1985) (finding the VRA's protections for disabled voters inapplicable to local elections).

VI. This Court Should not Rush to Rule on Plaintiffs' Motion

The Supreme Court "has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (citing *Purcell*, 549 U.S. at 1). Indeed, "[c]ourt orders affecting elections" can "result in voter confusion and consequent incentive to remain away from the polls."

Purcell, 549 U.S. at 4–5. "As an election draws closer, that risk will increase." *Id.* at 5.

Plaintiffs want to enjoin multiple provisions of South Carolina election law before upcoming statewide primary elections. (ECF No. 1 at 5–6, 20–21); (ECF No. 39-3 at 4). But summary judgment briefing won't finish until May 11, 2026, (ECF No. 31 at 2). And the deadline to request an absentee ballot for the primaries is May 29, 2026. (ECF No. 39-10 at 8). This Court shouldn't accept Plaintiffs' invitation to "alter the election rules on the eve of an election" and should "avoid this kind of judicially created confusion." *Republican Nat'l Comm.*, 589 U.S. at 424–25.[9]

Plus, the ACLU (counsel to Plaintiffs here) has already raised a Section 208 challenge to a Texas state law at the Supreme Court. *OCA-Greater Houston v. Paxton*, 25-916. The response to ACLU's cert petition is due May 20, 2026. *OCA-Greater Houston v. Paxton*, 25-916 (Mar. 26, 2026). Yet another cert petition is pending at the Supreme Court relating to an Arkansas state law on Section 208 grounds, with a response due May 18, 2026. *Arkansas United v. Thurston*, 25-890 (Mar. 23, 2026). This Court should wait for the Supreme Court to resolve those cases, as those decisions could impact the Court's Section 208 analysis.

CONCLUSION

This Court should deny Plaintiffs' motion for summary judgment. At the very least, this Court should decline to rule on the motion until after upcoming elections are complete and relevant Supreme Court decisions are rendered. And if any relief is awarded, it should be narrow in scope.

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[9] Just last week, the Seventh Circuit stayed an injunction of a state election law. *Count US IN v. Morales*, No. 26-1783, 2026 WL 1067135, at *1 (7th Cir. Apr. 20, 2026). The court viewed "the risk of disruption to Indiana's primary election as very serious," recognizing there is "particular risk when 'a federal court … swoop[s] in and re-do[es] a State's election laws in the period close to an election.'" *Id.* at *2 (quoting *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (mem.) (Kavanaugh, J., concurring). This Court should likewise heed the Supreme Court's concerns.

Respectfully submitted,

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