UNITED STATES DISTRICT COURT
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.	C/A No. 3:25-cv-13754-MGL

SEC Defendants' Response to Plaintiffs' Motion for Summary Judgment

The State Election Commission Defendants (SEC) oppose Plaintiffs' Motion for Summary Judgment. As explained below and in the SEC's Memorandum in Support of Motion for Summary Judgment, Plaintiffs' motion for summary judgment should be denied and summary judgment should be granted to the SEC because Plaintiffs lack Article III standing; the statutes that Plaintiffs challenge are not preempted since they operate in conjunction with the applicable federal law; and the statutes do not in any event unduly burden Plaintiffs' exercise of their rights to vote absentee in South Carolina.

Summary Judgment Standard and Evidentiary Record

1. Standard

In ruling on a motion for summary judgment, the evidence is construed in the light most favorable to the non-moving party and the Court draws all reasonable inferences in that party's favor. *Worden v. SunTrust Banks, Inc.*, 549 F.3d 334, 340 (4th Cir. 2008). A movant is entitled to summary judgment if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Sheet Metal Workers' Health & Welfare Fund of N. Carolina v. Stromberg Metal Works, Inc.*, 118 F.4th 621, 631 (4th Cir. 2024). "Summary judgment is proper 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." *Integon Gen. Ins. Corp. v. C. Smith Enters., LLC*, 716 F. Supp. 3d 408, 412 (D.S.C. 2023) (citing *Pulliam Inv. Co. v. Cameo Props.*, 810 F.2d 1282, 1286 (4th Cir. 1987)).

2. Rule 56(c)(2) objections to summary judgment evidence

The SEC objects to certain portions of Plaintiffs' summary judgment declarations because they are inadmissible and cannot be presented in evidence in admissible form. *See* Fed. R. Civ. P. 56(c)(2) (permitting a party to "object that material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence"); *United States v. Elkins Contractors, Inc.*, 225 F. Supp. 3d 351, 357 (D.S.C. 2016) ("The objection [under Rule 56(c)(2)] is not that the material has not been submitted in admissible form, but that it cannot be." (cleaned up)).[1]

[1] "When a party objects on admissibility grounds, 'the burden is on the proponent to show that the material is admissible as presented or to explain the admissible form that is anticipated.'" *Elkins Contractors, Inc.*, 225 F. Supp. 3d at 357. (internal alterations omitted) (quoting Fed. R. Civ. P. 56, Advisory Committee Notes, 2010 Amendments).

A. Robert Caldwell declaration

The Court should disregard the portion of paragraph 17 of Robert Caldwell's[2] declaration where he states that

> [Barvette] Gaither tried to return residents' ballots and the election official told her that she could only return five ballots. Until South Carolina passed this law, Ms. Gaither would return many residents' absentee ballots, because they trust her to help them vote.

Caldwell Decl. ¶ 17, Dkt. No. 39-1. While there are several evidentiary problems here, most obviously this portion of the declaration is inadmissible under Fed. R. Evid. 801 because it contains multiple levels of hearsay, *i.e.*, hearsay as to Ms. Gaither's alleged attempts to return residents' ballots and double hearsay as to what an unnamed election official allegedly told her. *See Simmons v. Whitaker*, 106 F.4th 379, 386 (4th Cir. 2024) ("Summary judgment affidavits cannot be . . . based upon hearsay."); *Lyons v. City of Alexandria*, 35 F.4th 285, 290 (4th Cir. 2022) ("Hearsay evidence, which is inadmissible at trial, cannot be considered on a motion for summary judgment." (cleaned up)).

Even if not hearsay, Mr. Caldwell's averments in paragraph 17 nevertheless are inadmissible under Fed. R. Civ. P. 56(c)(4) and Fed. R. Evid. 602 because they are not facially based on Mr. Caldwell's personal knowledge, nor can Mr. Caldwell's personal knowledge be reasonably inferred. *See* Fed. R. Civ. P. 56(c)(4) ("An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated."); Fed. R. Evid. 602 ("A witness may testify to a matter only if evidence is introduced sufficient to

[2] Mr. Caldwell is one of the three Individual Plaintiffs in this case, and the only one who appears to be a member of the NAACP. Compl. ¶ 21. Mr. Caldwell's preferred assistor is Barvette Gaither, who is a Social Worker at MUSC Chester. Compl. ¶ 24.

support a finding that the witness has personal knowledge of the matter."); *Simmons*, 106 F.4th at 386 (holding that summary judgment affidavits "must contain admissible evidence and be based on personal knowledge." (cleaned up)).[3] Although Mr. Caldwell's declaration—and every other declaration—facially indicates it is based on personal knowledge, this standing alone is insufficient because the absence of "an *affirmative showing* of personal knowledge of specific facts vitiates the sufficiency of the affidavits . . . ." *Antonio v. Barnes*, 464 F.2d 584, 585 (4th Cir. 1972) (emphasis added) (overruling district court summary judgment decision where "[f]rom the face of the affidavits, they might well be based on mere hearsay . . . ."). Here, Plaintiffs have made no affirmative showing of how Mr. Caldwell has personal knowledge of Ms. Gaither's activities.

B. Deborah Allen declaration

For similar reasons, the Court should also disregard several portions of Deborah Allen's[4] declaration. Paragraph 9 avers in relevant part that "***[e]ven though it is less convenient for residents and their family members***, I have to ask many residents' families if they can help" their family members vote absentee. Allen Decl. ¶ 9, Dkt. No. 39-4 (emphasis added). Paragraph 10 of Ms. Allen's declaration then avers:

> ***Some families are open to helping but most cannot because they are not familiar with the process or live far away***. For the family members who are open to helping, I communicate with them early on to let them know what they need to do. Still, ***some family members who say they will help residents do not follow through***.

Allen Decl. ¶ 10, Dkt. No. 39-4 (emphasis added). Paragraph 11 of Ms. Allen's declaration follows the same theme:

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[3] *Mitchell v. Sec'y Veterans Affs.*, 467 F. Supp. 2d 544, 552 (D.S.C. 2006) (disregarding summary judgment affidavits where "neither [affiant] testified that they had personal knowledge of either the alleged infractions . . . or the disciplinary actions taken to remedy these alleged infractions").

[4] Ms. Allen is the Activities Director at Union Post Acute. Compl. ¶¶ 26, 30. While Ms. Allen is not herself a plaintiff in this lawsuit, she is named in the Complaint as the preferred assistor for Individual Plaintiffs Jonathan Bell and Sherry Jenkins. Compl. ¶¶ 26, 30.

> It's unfortunate, but ***some family members are not invested in helping residents vote or find the process too difficult***. For residents without family members who can help them vote, I may be able to help them if they are one of the five residents I can help in an election. If [residents] trust a different staff member, I can give instructions to that staff member to help them. ***Otherwise, they just won't get help to vote and they will have to figure out how to apply to vote absentee and turn in their ballot on their own, which they may or may not be able to do.***

Allen Decl. ¶ 11, Dkt. No. 39-4 (emphasis added).

The bolded declarations are inadmissible hearsay because Ms. Allen cannot relay as fact out-of-court conversations describing what the residents and/or their family members allegedly told her. *See* Fed. R. Evid. 801; *Simmons*, 106 F.4th at 386. But even if these are not based on things Ms. Allen heard from others, then they are nevertheless still inadmissible as Ms. Allen's subjective impressions or beliefs about these individuals and their situations and opinions. *See Tomblin v. WCHS-TV8*, 434 F. App'x 205, 212 (4th Cir. 2011) (upholding the district court exclusion of "affiants' subjective impressions" because they "would not be helpful to the trier of fact" on summary judgment).

C. Robin Miller declaration (objection to entirety of declaration)

The Court should reject Robin Miller's[5] declaration entirely. First, Ms. Miller's averments are inadmissible hearsay. *See Simmons,* 106 F.4th at 386. Second, the bulk of Ms. Miller's averments concern the activities of Ms. Allen for which Ms. Miller does not apparently have personal knowledge. The personal knowledge deficiency is particularly obvious here because Ms. Miller avers that she has worked at Union Post Acute "for over seven years," *see* Miller Decl. ¶ 2, and also states that "Ms. Allen has been helping residents exercise their right to vote for decades," Miller Decl. ¶ 5, yet there is no relevant timeframe give for anything she says.

[5] According to her declaration, Robin Miller is the Director of Social Services at Union Post Acute. Miller Decl. ¶ 2, Dkt. No. 39-5.

D. Rev. J.M. Flemming's and Brenda Murphy's declarations

The SEC also objects to the declaration of the Rev. J.M. Flemming (Dkt. No. 39-9), a member of the NAACP, and to portions of South Carolina NAACP President Brenda Murphy's declaration concerning Rev. Flemming. Murphy Decl. ¶¶ 10-13, Dkt. No. 39-8. Through this declaration, Plaintiffs are trying to interject at the last minute new issues and purported evidence attempting to support their associational standing, and the viability of the "Five-Voter Limits" claims, among others.

The SEC's primary objection is relevance. In their Complaint, and throughout the litigation, Plaintiffs have pled their case (1) identifying only one specific plaintiff, Mr. Caldwell, as a member of the NAACP, *see* Compl. ¶ 21;[6] and (2) only three identified Individual Plaintiffs as allegedly affected by any of the challenged statutes, with the Individual Plaintiffs' alleged injury based on their inability to vote with their preferred assistors, Ms. Gaither and Ms. Allen.

Rev. Flemming and the Greenville NAACP were neither mentioned in the Complaint, nor in discovery until March 26, 2026, four days before the discovery deadline, when Plaintiffs submitted supplemental disclosures. Pls. Supp. Disclosures Under Fed. R. Civ. P. 26. In those supplemental disclosures, Rev. Flemming was both an NAACP member and a witness who "may have information relating to . . . [1] His experience helping South Carolina NAACP members vote; [and] [2] The impacts of the challenged laws on South Carolina NAACP members." On April 6, 2026, after discovery had already ended, Plaintiffs filed declarations from both Rev. Flemming and Ms. Murphy trying to place squarely at issue (1) Rev. Flemming's purported harms as a

[6] For reasons more fully discussed *infra*, the identification of a member with standing is necessary to analyzing the NAACP's associational standing. *See, e.g.*, *Lane v. Holder*, 703 F.3d 668, 674 n.6 (4th Cir. 2012) (noting that to have associational standing, at least one member must have standing to sue in their own right).

provider of voter assistance; and (2) the Greenville NAACP's purported harm and that of its unnamed "youth NAACP members" who are under 18 because those under 18 cannot be "authorized representatives" who can provide voter assistance. *See* S.C. Code Ann. §§ 7-1-20(14) and 7-15-310(7)[7]; *see also* Compl. ¶¶ 63, 64.

As discussed above, prior to the supplemental disclosure, Mr. Caldwell was the only NAACP member identified in the Complaint or in discovery. If Plaintiffs are attempting to belatedly add a member through Rev. Flemming, that is foreclosed by *Maryland Election Integrity, LLC v. Maryland State Bd. of Elections*, 127 F.4th 534 (4th Cir. 2025). Rejecting the plaintiff's attempt to belatedly establish associational standing based on unnamed members not mentioned in the pleadings, the Court only "consider[ed] members who were pleaded in the complaint." *Id.* at 538 n.5 (citation omitted). In sum, the Court should hold Plaintiffs to the theory of relief in their pleadings and disregard this declaration testimony for the purposes of summary judgment.[8]

Finally, to the extent the Court is required to assess the declarations notwithstanding the aforementioned issues, Rev. Flemming's averments suffer from the same lack of specificity discussed *infra*, and Ms. Murphy's averments regarding Rev. Flemming are inadmissible hearsay and not obviously based on her personal knowledge.

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[7] The supplemental disclosures on March 26, 2026, did not put the SEC on notice that Plaintiffs intended to identify Rev. Flemming as a member for associational standing purposes, or that they intended to put Rev. Flemming's purported voter assistance activities with the Greenville NAACP at issue.

[8] *Cf. United States v. Cochran*, 79 F. Supp. 3d 578, 583 (E.D.N.C. 2015) (finding "a case may not proceed to trial on 'an unpleaded theory of recovery' without 'express or implied consent of the parties.'" (citing *Pinkley, Inc. v. City of Frederick, MD.*, 191 F.3d 394, 401 (4th Cir. 1999) & *McLeod v. Stevens*, 617 F.2d 1038, 1040 (4th Cir. 1980)).

Argument

1. Plaintiffs' summary judgment motion should be denied and the SEC's summary judgment motion granted.

A. The Individual Plaintiffs lack Article III standing to bring these claims.

Plaintiffs have not met their burden by demonstrating specific facts to establish Article III standing for any of their claims. Thus, Plaintiffs lack Article III standing to bring their claims, and the Court lacks subject matter jurisdiction to hear them.

"Standing implicates the court's subject matter jurisdiction." *South Carolina v. United States*, 912 F.3d 720, 726 (4th Cir. 2019) (citation omitted). "To establish standing, a plaintiff must demonstrate (i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024). "[T]he party invoking the jurisdiction of the court bears the burden of establishing standing." *Bishop v. Bartlett*, 575 F.3d 419, 424 (4th Cir. 2009). These three elements "must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 561 (1992). "At the summary judgment stage, . . . mere allegations will not suffice. A plaintiff must put forward evidence of 'specific facts' to support its theory of standing." *Pub. Int. Legal Found., Inc. v. Wooten*, 164 F.4th 362, 366 (4th Cir. 2026) (citation omitted).

Additionally, because "standing is not dispensed in gross," standing must be assessed on a plaintiff-by-plaintiff and claim-by-claim basis. *Murthy v. Missouri*, 603 U.S. 43, 61 (2024). In other words, "Plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek (for example, injunctive relief and damages)." *TransUnion LLC v. Ramirez*,

594 U.S. 413, 431 (2021) (cleaned up). Where there are multiple plaintiffs, "at least one plaintiff must have standing to seek each form of relief requested in the complaint." *Town of Chester v. Laroe Ests., Inc.*, 581 U.S. 433, 439 (2017) (cleaned up).

i. The Individual Plaintiffs have neither pled nor proved an injury in fact.

An Article III injury in fact must be "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560 (citations omitted). The Individual Plaintiffs do not have the necessary injury in fact for Article III standing.

A "concrete injury is de facto, meaning that it must actually exist and is real, and not abstract." *Dreher v. Experian Info. Sols., Inc.*, 856 F.3d 337, 344 (4th Cir. 2017) (cleaned up). Relatedly, "[a] plaintiff who challenges a statute must demonstrate a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979).

Significantly, the "injury must be actual or imminent, not speculative—meaning that the injury must have already occurred or be likely to occur soon." *Hippocratic Med.*, 602 U.S. at 381 (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013)). Moreover, the Supreme Court has "repeatedly reiterated that threatened injury must be *certainly impending* to constitute injury in fact, and that allegations of *possible* future injury are not sufficient." *Clapper*, 568 U.S. at 409 (cleaned up).

As amply reflected in the summary judgment record, Plaintiffs have not and cannot establish an Article III injury in fact. While Plaintiffs' evidentiary deficiencies, the relevant indisputable facts, and legal arguments are more fully discussed in the SEC's Memorandum in Support of its Motion for Summary Judgment, *see* Dkt. No. 38-1, which are incorporated herein by reference, the SEC emphasizes the following:

(1) Each Individual Plaintiff represented that they have "not requested assistance to vote in 2026 yet." *See* Pls.' Resp. to Interrog. No. 1, Dkt. No. 38-2.

(2) Each Individual Plaintiff represented that no "staff members at [their] nursing facility refused to provide them with assistance in voting in the 2026 primary or general election in South Carolina." *Id.*, No. 2.

(3) When asked to "[e]xplain with specificity the basis for the allegations that [they] will be denied voting assistance from their preferred assistor, each expressed that they were "worr[ied] that [their preferred assistor] will not be able to assist [them] with absentee voting because [they are] aware that under South Carolina law, she is only able to assist five people with requesting and returning their absentee ballot" *See id.*, Nos. 3 & 4.

(4) When asked to "[e]xplain with specificity the allegation . . . that 'Ms. Gaither assisted approximately 10 to 25 voters per election,' Mr. Caldwell responded that he "know[s] Ms. Gaither has assisted many other residents to vote in previous elections." *See id.,* No. 11.

(5) When asked to "[e]xplain with specificity the allegation . . . that it is 'likely' that Ms. Gaither will not assist [him] with voting in the 2026 primary and general elections," Mr. Caldwell nonspecifically expressed only "worr[y]" and "concern[]" that Ms. Gaither will not be able to assist him. *See id.*, No. 12.

Plaintiffs' summary judgment declarations add nothing new or concrete to bolster the Individual Plaintiffs' injury in fact. More specifically,

(1) Each of the Individual Plaintiffs still express only "worry" and "concern" that their preferred assistor will not be available. *See* Caldwell Decl. ¶ 18, Dkt. No. 39-1 (Mr. Caldwell "worr[ied] that more than five of us will want Ms. Gaither's help voting in the 2026 elections, and only five of us will be able to rely on her."); *id.* ¶ 19 (Mr. Caldwell "concerned that in the future,

Ms. Gaither will not be able to help me return my ballot if she helps five other residents vote."); Jenkins Decl. ¶ 12, Dkt. No. 39-2 (Ms. Jenkins is "concerned that Ms. Allen will be limited to helping five other residents vote in 2026 and she will not be able to help me."); Bell Decl. ¶ 10, Dkt. No. 39-3 (Mr. Bell is "concerned that I will not be able to get the help I need to vote from Ms. Allen.").

(2) Ms. Allen's declaration does not mention Mr. Bell, Ms. Jenkins, or any other individual by name, but nonspecifically refers to helping "residents" with voter assistance. Allen Decl., Dkt. No. 39-4.

(3) Ms. Allen avers, but only in a conclusory and non-specific manner, that she has had prior issues with the "Five-Voter Limits." *See, e.g.*, *id*., ¶ 8 ("After the five-voter limit was passed, I can only request and return an absentee ballot for five voters."); *id*., ¶ 11 ("For residents without family members who can help them vote, I may be able to help them if they are one of the five residents I can help in an election."); *id*., ¶ 13 ("Now, because more than five long-term residents want help each election, I cannot help any of the short-term residents by requesting or returning their absentee ballot.").

(4) Ms. Allen also avers: "I have not yet started contacting residents about whether they want help voting in 2026, but I plan to soon." *Id*., ¶ 15.

At bottom, Plaintiffs' speculative and conclusory summary judgment declarations cannot be considered on summary judgment. *See*, *e.g.*, *Shirvinski v. U.S. Coast Guard*, 673 F.3d 308, 320 (4th Cir. 2012) (affirming the grant of summary judgment where plaintiff "offer[ed] nothing more than sheer speculation to support [his] claim"); *Barwick v. Celotex Corp.*, 736 F.2d 946, 962 (4th Cir. 1984) (rejecting summary judgment affidavit that was "not made on personal knowledge and

[did] not really set forth facts, but mere conclusions"); *Integon Gen. Ins. Corp.*, 716 F. Supp. 3d at 414 (rejecting "mere speculation unsupported by evidence" at the summary judgment stage).

More to the point, nothing at all in the summary judgment record is even arguably admissible to the issue of Plaintiffs facing a "realistic danger" of any injury from the challenged statutes, *see Babbitt*, 442 U.S. at 298, let alone a "certainly impending" future injury, *see Clapper*, 568 U.S. at 409. Even if the Court were to give Plaintiffs the benefit of the doubt on all evidentiary inferences and assumptions, it still would be left with the following inescapable facts:

(1) Absolutely no allegations—let alone evidence—are in the record that the Individual Plaintiffs have even explored the available option of requesting an absentee application by telephone, nor that they are prevented by their disabilities from doing so. Reading together the absence of allegations on an inability to request an application by telephone and the admission (whether express or implied) that they have never tried to do so, *see* Caldwell RFA Response, No. 20; Bell RFA Response, No. 20; Jenkins RFA Response, No. 20, the only conclusion is that all that is at stake is Plaintiffs' preference on the method of absentee voting, not the right to vote itself. *See In re Georgia Senate Bill 202*, No. 1:21-CV-01284-JPB, 2023 WL 5334615, at *7 (N.D. Ga. Aug. 18, 2023) ("A mere preference for one method of absentee voting over another is not enough to show a denial of meaningful access to absentee voting. [*See Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017)] (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).").

(2) Because each of the Individual Plaintiffs has expressed the affirmative intention to "vote by mail" in the 2026 primary and general elections, *see* Compl. ¶¶ 24, 26, 30, they beyond

question do not need an assistor pursuant to § 7-15-385(A)(3) for assistance in taking return-addressed stamped envelopes to the post office.

(3) The Individual Plaintiffs' claims rest on a "speculative chain of possibilities," which is insufficient to show standing. *See Clapper*, 568 U.S. at 414 (rejecting standing theory premised on a "speculative chain of possibilities [that did] not establish" an alleged future injury is "certainly impending"). "While it is true that threatened rather than actual injury can satisfy Article III standing requirements, a threatened injury must be certainly impending to constitute injury in fact." *Md. Election Integrity, LLC*, 127 F.4th at 540 (cleaned up). "For a future injury to support Article III standing, the claimed harm must not be so speculative as to lie at the end of a highly attenuated chain of possibilities." *John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 629 (4th Cir. 2023) (cleaned up). In other words, "[t]he risk of a future injury must be substantial, not just conceivable." *Id.* This is simply not the case here.

(4) Even if the Court were to find the Individual Plaintiffs had adequately established a past injury, which they have not, they have not and cannot establish the future injury necessary to obtain the forward-looking relief of injunctive or declaratory relief. *See Wells v. Johnson*, 150 F.4th 289, 300 n.4 (4th Cir. 2025) ("To redress an injury that has already happened, the plaintiff can get only backward-looking relief, like damages."); *id.* ("A plaintiff may use past injury to justify forward-looking relief, but forward-looking relief remedies only future or ongoing injuries." (citing *Murthy*, 603 U.S. at 5)).

ii. The Individual Plaintiffs do not have a redressable claim for relief.

For reasons stated *supra*, as well as those previously argued, Plaintiffs have not alleged a redressable right to seek declaratory or injunctive relief. *See Wells*, 150 F.4th at 300 n.4. To meet the redressability prong of standing, it must be "[l]ikely, as opposed to merely speculative, that the

injury will be redressed by a favorable decision." *Bishop*, 575 F.3d at 423 (quoting *Friends of the Earth, Inc. v. Laidlaw Env't. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000)).

Also impacting redressability is the fact that, even assuming the challenged statutes violate the VRA, the requested remedy (overturning various state statutes) greatly outstrips the harm alleged (three individuals not being afforded assistance in requesting absentee applications or taking completed ballots to the post office). *See Murthy*, 603 U.S. at 73 ("To determine whether an injury is redressable, we consider the relationship between the judicial relief requested and the injury suffered." (cleaned up)). Any "'remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established,'" *Maryland v. USDA*, 151 F.4th 197, 212 (4th Cir. 2025) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006)), "must be tailored to redress the plaintiff's particular injury," *Gill v. Whitford*, 585 U.S. 48, 73 (2018), and it "must not be more burdensome to the defendant than necessary to redress the complaining parties[,]" *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (cleaned up). And "the nature of the remedy is to be determined by the nature and scope of the constitutional violation." *Lewis v. Casey*, 518 U.S. 343, 357 (1996) (Thomas, J., concurring) (cleaned up). "[A] plaintiff must 'justify the exercise of the court's remedial powers on their behalf.'" *Wells*, 150 F.4th at 299 (quoting *Town of Chester*, 581 U.S. at 439). "Only if there has been a systemwide impact may there be a systemwide remedy." *Lewis*, 518 U.S. at 359 (cleaned up); *see also United States v. Texas*, 599 U.S. 670, 702 (2023) (Gorsuch, J., concurring) ("In equity it all connects—the broader and deeper the remedy the plaintiff wants, the stronger the plaintiff 's story needs to be." (cleaned up)).

Here, if the Court finds a remedy is warranted, it would necessarily be premised on a finding that one or more of the Individual Plaintiffs were denied some form of voter assistance to which they were legally entitled. In that case, the appropriately tailored relief would be that those

particular Individual Plaintiffs use their preferred assistor when requesting an application and/or returning a completed ballot, regardless of the numerical limitations in any statutes.

B. The NAACP does not have associational standing.

As discussed *supra*, Plaintiffs have not and cannot establish associational standing for the NAACP by demonstrating that "its members would otherwise have standing to sue in their own right." *Lane*, 703 F.3d at 674 n.6. "To show that its members would have standing, an organization must make specific allegations establishing that at least one *identified member* had suffered or would suffer harm." *Southern Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 184 (4th Cir. 2013) (cleaned up).

Notwithstanding the apparent belated attempt to identify Rev. Flemming as a member with standing, *see* discussion *supra*, Plaintiffs have only identified Mr. Caldwell as a member of the NAACP. *See* Compl. ¶ 21.[9] And because Mr. Caldwell does not have standing, *see* discussion *supra,* the NAACP lacks associational standing. *See Lane*, 703 F.3d at 674 ("Because [the identified members of the organization] do not have standing to sue, it follows that [the organization] does not have associational standing.").

C. Plaintiffs cannot make claims on behalf of unnamed and unidentified members.

Plaintiffs' attempts to make claims on behalf of unnamed and unidentified members fail as a matter of law. As a general principle, "Article III does not give federal courts the power to order relief to any uninjured plaintiff . . . ." *TransUnion*, 594 U.S. at 431; *id.* at 427 (holding that "an uninjured plaintiff may not bypass the standing requirement to ensure a defendant's compliance with regulatory law" (cleaned up)).

[9] For reasons also discussed *supra*, Rev. Flemming's declaration does not demonstrate specific facts for Article III standing, even if the Court were to consider it.

Likewise, the associational standing doctrine is clear that standing cannot be premised on allegations about how the challenged statutes affect members of the NAACP who are not named in the Complaint. *See Md. Election Integrity, LLC,* 127 F.4th at 538 (in evaluating associational standing, only "consider[ing] members who were pleaded in the complaint"); *Southern Walk,* 713 F.3d at 184 ("[T]o show that its members would have standing, an organization must make specific allegations establishing that at least one *identified member* had suffered or would suffer harm.") (cleaned up); *Lane*, 703 F.3d at 674 (explaining that to have associational standing, at least one *identified* member must have "standing to sue in their own right"); *Am. Fed'n of Lab. & Cong. of Indus. Organizations v. Dep't of Lab*., 766 F. Supp. 3d 32, 37 (D.D.C. 2025) (explaining that to show that one of an organization's members has standing in their own right "necessitates more than generalizations about the organization's members" and that the "organization must point to *a particular member* and establish she would have standing if she were a plaintiff herself").

2. The challenged statutes are not preempted either because there is no actual conflict or because the state statutes do not unduly burden Plaintiffs' Section 208 rights.

"The purpose of Congress is the ultimate touchstone in every pre-emption case." *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008) (cleaned up). "In [preemption analysis], as in any field of statutory interpretation, it is our duty to respect not only what Congress wrote but, as importantly, what it didn't write." *Va. Uranium, Inc. v. Warren*, 587 U.S. 761, 765 (2019) (plurality opinion). "Assessing a conflict preemption claim requires 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. Va. Hemp & Agric., LLC v. Virginia*, 125 F.4th 472, 493 (4th Cir. 2025) (cleaned up). "But a court should not find conflict preemption unless preemption was 'the clear and manifest purpose of Congress.'" *Id.* (quoting *Arizona v. United States*, 567 U.S. 387,

399 (2012)). "Stated more clearly, courts should not seek out conflicts where none clearly exist." *Id.* (internal citation omitted).

A. Plaintiffs' motion should be denied because there is no irreconcilable conflict between Section 208 and S.C. Code § 7-13-780.

As argued in the SEC's Memorandum in Support of Summary Judgment (Dkt. No. 38-1), there is no conflict between Section 208 and § 7-13-780. As explained there and confirmed by the Affidavit of Conway Belangia (Dkt. No. 38-3), § 7-13-780 is understood and applied as conforming to Section 208 and there is no difference in its application. Plaintiffs claim that § 7-13-780 should be declared preempted because it "prohibit[s] certain voters with disabilities—such as Mr. Caldwell and Mr. Bell—from exercising their federal right to absentee ballot assistance under Section 208 merely because they have physical disabilities that do not render them completely physically incapacitated from voting." Pls' Mot. Summ. J. at 16, Dkt. No. 39. But because the SEC interprets § 7-13-780—like Section 208—as allowing anyone who identifies any physical disability to receive assistance from a helper of their choice without regard to whether a disability may actually inhibit their ability to vote or not, § 7-13-780 does not and need not be read as conflicting with Section 208.

B. Plaintiffs' motion should be denied because S.C. Code §§ 7-15-310(7), 7-15-330(A), (C), or 7-15-385(A)(3) do not conflict with Section 208 and, in any event, do not unduly burden Plaintiffs in requesting or returning an absentee ballot.

For several reasons, Plaintiffs have failed to articulate a cognizable reason for declaring that Section 208 preempts S.C. Code §§ 7-15-310(7), 7-15-330(A), (C), or 7-15-385(A)(3). First, and importantly, S.C. Code §§ 7-15-310(7), 7-15-330(A), (C), or 7-15-385(A)(3) do not limit who can actually help Plaintiffs or anyone else mark and complete the absentee ballot. Therefore, these state statutes do not limit the ability of an absentee voter with a physical disability to receive help in completing the ballot from anyone they choose.

Second, although these statutes do place some minimal limits on who may independently request an absentee ballot on behalf of someone, they do not limit an absentee voter in receiving help in returning the absentee ballots by mail. Specifically, the statutes require that, after marking the ballot, and then "plac[ing] [it] in the return-addressed envelope," "[t]he applicant must return the return-addressed envelope ***only***" in one of three ways:

> (1) mail to the main office of the county board of voter registration and elections;
>
> (2) personal delivery to an election official during office hours at the main office of the county board of voter registration and elections or to an election official during office hours at an early voting center; or
>
> (3) ***authorizing a member of the applicant's immediate family, as defined in Section 7-15-310(8), or an authorized representative, to return the return-addressed envelope for him to an election official during office hours at the main office of the county board of voter registration and elections*** or to an election official during office hours at an early voting center.

§ 7-15-385(A) (emphasis added). Thus, the statutes do not prohibit an absentee voter from receiving help from anyone of their choice in returning the ballot by mail.[10] Rather, the statutes only allow certain persons to actually return absentee ballots by delivery directly to the county board of voter registration and elections or during early voting. *See id.* The purpose of this statutory scheme undoubtedly is to impair the ability of nefarious actors to obtain absentee ballots and complete and return them on behalf of unknowing voters. But these statutes do not prohibit absentee voters with physical disabilities from receiving help in marking the absentee ballot and returning it by mail.

[10] The Authorization to Return Absentee Ballot form published by the SEC is entirely consistent with this analysis. https://scvotes.gov/wp-content/uploads/2023/11/SEC-FRM-1050-202205-Authorization-to-Return-Absentee-Ballot.pdf. Specifically, that form governs only delivering the ballot to the county elections office or early voting center in person on behalf of someone else. The form, like the statutes, does not prohibit any person helping the absentee voter to mail their completed ballot in the return envelope that is provided along with the ballot.

Third, §§ 7-15-310(7), 7-15-330(A), (C), or 7-15-385(A)(3) also do not unduly burden the right of absentee voters with physical disabilities from receiving help in requesting an absentee ballot. Pertinent here, an absentee application can be requested "***by telephone***, or by mail from the county board of voter registration and election [County BVRE]." § 7-15-330(A)(1) (emphasis added).[11] If a qualified elector telephones their County BVRE, and provides their "name, date of birth and last four digits of her Social Security Number," an application will be mailed to them. *See* § 7-15-330(A)(2); South Carolina State Election Commission, Absentee Voting, https://scvotes.gov/voters/absentee-voting/ (SEC Absentee Website) (last accessed Apr. 27, 2026). The qualified elector can request the application anytime between January 1 of any given election year, and it must be returned by eleven (11) days prior to the election. *See* § 7-15-330(C); *see also* SEC Absentee Website, (accessed April 27, 2026).[12] Importantly, there are no limitations on who may help an absentee voter with physical disabilities in requesting an absentee ballot by phone.[13]

Moreover, as addressed in the SEC's Summary Judgment Memorandum (Dkt. No. 38-1) at 29-30, the Individual Plaintiffs have not established that family members cannot help them

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[11] Because the Individual Plaintiffs each allege they have a disability impacting their access to the polling place, we assume for these purposes that the third statutory option—going in person—is not an option for them.

[12] In South Carolina, all nursing home "facilit[ies] shall make at least one (1) telephone available and easily accessible on each floor of the facility for use by residents and/or visitors for their private, discretionary use." S.C. Code Ann. Regs. 60-17.2608.

[13] The Attorney General sent Requests for Admission to the three Individual Plaintiffs asking them to "[a]dmit that your disability does not prevent you from requesting an absentee ballot application ***by phone*** or by mail," RFA No. 20 (emphasis added), but none of the three directly answered the request. Mr. Caldwell and Mr. Bell denied, and then in relevant part answered "that they "have never attempted to request an absentee ballot by phone . . . ." *See* Caldwell RFA Response, No. 20, Dkt. No. 37-4; Bell RFA Response, No. 20, Dkt. No. 37-2. Ms. Jenkins denied, but then only addressed the point that "[b]ecause of [her] limited mobility and visual impairments, [she] need[s] someone else to return [her] absentee ballot by mail."). Jenkins RFA Response, No. 20, Dkt. No. 37-1.

request a ballot. They also have not established that the facilities in which they reside cannot arrange sufficient persons to help them even under their interpretation of the state statutes. And they have not yet asked for help in voting in 2026, so they cannot actually say that they will experience any limitations on who can help them vote.

Fourth, even if there is some minimal restriction on who can help the Individual Plaintiffs in requesting or returning an absentee ballot, those restrictions do not unduly burden their right to vote in view of the State's interest in combatting fraud. *See* SEC Mem. Supp. Summ. J. at 30-32, Dkt. No. 38-1.

C. Plaintiffs' motion should be denied because the Five-Voter Limit in S.C. Code §§ 7-15-330(B)(4) and 7-15-385(G) do not conflict with Section 208 and, in any event, do not unduly burden Plaintiffs in requesting or returning an absentee ballot.

There also is no conflict between Section 208 and §§ 7-15-330(B)(4) & 7-15-385(G). Section 208 requires allowing any "voter who requires assistance to vote by reason of blindness, disability, or inability to read or write" to be "given assistance by a person of the voter's choice." In contrast, § 7-15-330(B)(4) simply provides that a "person must not *request* absentee applications for more than five qualified electors per election, in addition to himself," and § 7-15-385(G) makes it "unlawful for a person to *return* more than five return-addressed envelopes in an election, in addition to his own." (emphases added).

Importantly, the Five-Voter Limit about which Plaintiffs complain applies only to requesting and returning absentee ballots and not marking them. *See* SEC Mem. Supp. Summ J. at 32-33, Dkt. No. 38-1. Thus, Plaintiffs may receive help from anyone of their choice in completing the ballot. Moreover, as explained above, there are no restrictions on someone helping Plaintiffs or any absentee voter with disabilities from personally requesting a ballot by phone or returning the ballot by placing it in the mail.

Even assuming Plaintiffs' interpretations apply, these state statutes do not unduly burden Plaintiffs' voting rights because they impose only minimal restrictions in furtherance of the State's significant interest in combatting fraud. As such, any burden that the statutes may impose is not an undue burden and does not warrant a declaration that Section 208 preempts §§ 7-15-330(B)(4) or -385(G). *Cf. Ziriax*, 487 F. Supp.3d at 1234 (finding that, "[u]nder a *Burdick-Anderson* balancing, the state's interests are weighty in comparison to any burden imposed upon a potential absentee voter's right to vote" based on statutes criminalizing requesting or returning absentee ballots for others).

3. Plaintiffs do not meet the factors for injunctive relief.

"The standard for a permanent injunction is 'essentially the same' as the standard for a preliminary injunction, except that plaintiffs must show 'actual success' on the merits rather than just a 'likelihood.'" *Sustainability Inst. v. Trump*, 165 F.4th 817, 824 (4th Cir. 2026) (quoting *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 546 n.12 (1987)). Thus, to obtain a permanent injunction, "plaintiffs must show (1) [actual success] on the merits, (2) that they are likely to suffer irreparable harm in the absence of . . . [injunctive] relief, (3) that the balance of equities tips in their favor, and (4) that the injunction is in the public interest." *Id.* (internal citation and quotation marks omitted). "As used in [the permanent injunction] standards, the term 'merits' includes jurisdictional issues." *Id.* (internal citation omitted). "When the defendant is the government, factors (3) and (4) merge." *Anatol Zukerman & Charles Krause Reporting, LLC v. USPS*, 64 F.4th 1354, 1364 (D.C. Cir. 2023) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

"All four requirements must be satisfied." *Cantley v. W. Va. Reg'l Jail & Corr. Facility Auth.*, 771 F.3d 201, 207 (4th Cir. 2014) (cleaned up). "Satisfying these four factors is a high bar, as it should be." *SAS Inst., Inc. v. World Programming Ltd.*, 874 F.3d 370, 385 (4th Cir. 2017). "A court should not impose an injunction lightly, as it is an extraordinary remedy involving the

exercise of a very far-reaching power, which is to be applied only in the limited circumstances which clearly demand it." *Cantley*, 771 F.3d at 207 (cleaned up). Thus, "plaintiffs meet a heavy burden before being granted injunctive relief." *SAS Inst*., 874 F.3d at 385. Plaintiffs have not met their burden.

A. Plaintiffs have not demonstrated actual success on the merits.

Plaintiffs cannot succeed on the merits because they lack Article III standing. "[F]or a plaintiff to ultimately succeed on the merits, he must first have Article III standing." *Am. Fed'n of State, Cnty. & Mun. Emps., AFL-CIO v. Soc. Sec. Admin*., No. 25-1411, 2026 WL 969670, at *20 n.16 (4th Cir. Apr. 10, 2026) (Richardson, J., concurring) (en banc) (citing *Murthy*, 603 U.S. at 58). The Individual Plaintiffs do not have Article III standing, insofar as they have no injury in fact nor a redressable right to relief. Because no identified NAACP member has standing, the NAACP does not have associational standing. And Plaintiffs cannot seek relief on behalf of unnamed individuals, whether or not they are NAACP members.

Plaintiffs also cannot succeed on the merits because their preemption claims fail as a matter of law. The challenged statutes are not preempted because there is no actual conflict or because these statutes do not unduly burden Plaintiffs' Section 208 rights**.**

B. Plaintiffs have not demonstrated an irreparable injury.

Along the same lines of why they do not have an Article III injury in fact, Plaintiffs cannot demonstrate an injury, let alone an irreparable one. As discussed *supra*, Plaintiffs cannot show a "realistic danger" of any injury from the challenged statutes, *see N. Va. Hemp*, 125 F.4th at 489, nor a "certainly impending" future injury, *see Clapper*, 568 U.S. at 409. Although Plaintiffs couch this lawsuit as implicating fundamental voting rights, they have alleged no fact sufficient to establish the existence of irreparable harm to the Individual Plaintiffs or anyone else's right to vote

because of the challenged statutes. At best, the Individual Plaintiffs' claims are hypothetical and speculative, hinging on a misapprehension about what the statutes do and how they apply to them.

At bottom, the Individual Plaintiffs cannot be irreparably injured by the challenged statutes that do not affect their right to exercise the franchise and operate in harmony with Section 208. For that reason, neither can the NAACP as an organization assert it would be irreparably harmed absent injunctive relief.

C. The balance of equities and the public interest weigh in the SEC's favor.

In this case, the balance of the equities and the public interest are co-extensive and both weigh heavily against the issuance of a permanent injunction and in favor of the SEC, not Plaintiffs.

As discussed more fully in the SEC's Memorandum in Support of its Motion for Summary Judgment, the SEC and the State of South Carolina have a strong interest in combatting fraud. As the Supreme Court recently opined in *Brnovich v. Democratic National Committee*:

> One strong and entirely legitimate state interest is the prevention of fraud. Fraud can affect the outcome of a close election, and fraudulent votes dilute the right of citizens to cast ballots that carry appropriate weight. Fraud can also undermine public confidence in the fairness of elections and the perceived legitimacy of the announced outcome.

594 U.S. 647, 672 (2021). Significant to this controversy, the Court noted that "[f]raud is a real risk that accompanies mail-in voting." *Id.* at 686. Indeed, preventing voter fraud and ensuring the integrity of elections and the State's confidence in the election system is of paramount concern to the General Assembly. *See also N. Carolina State Conf. of the NAACP v. Raymond*, 981 F.3d 295, 302 (4th Cir. 2020) (recognizing "the state's legitimate interests in preventing voter fraud, election modernization, and safeguarding voter confidence") (citing *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 194–97, 200–04 (2008) (plurality opinion)); *Grant v. Knapp*, No. 2:23-CV-6838-BHH, 2025 WL 1145042, at *7 (D.S.C. Mar. 27, 2025) (noting the Supreme Court has held

that states have "an undeniably legitimate interest in preventing voter fraud and other abuses that are facilitated by absentee voting").

Plaintiffs' claims as to the implicated public interest are misguided. For one thing, the challenged statutes are not preempted, and the SEC, therefore, is trying to enforce a law in conflict with federal law. For another, the challenged statutes do not disenfranchise voters or otherwise abridge their rights guaranteed by state and federal law.

Finally, especially given the fact that Plaintiffs have only articulated at most a speculative and hypothetical harm by virtue of the challenged statutes, the equities are all in the SEC's favor in this case.

Conclusion

For the reasons discussed above and in its Memorandum in Support of Motion for Summary Judgment, the SEC should be granted judgment as a matter of law. Because the Complaint fails to adequately allege an injury in fact or a redressable right to relief, the Individual Plaintiffs lack standing. And because the only member of the NAACP identified in the Complaint lacks standing, the NAACP lacks associational standing as well. And even if the Court should determine that one or more Plaintiffs have standing, the SEC is entitled to judgment as a matter of law because none of the state statutes are preempted by Section 208 of the Voting Rights Act.

[*Signature Page Follows*]

Respectfully submitted,

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