

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Case No. 3:25-cv-13754-MGL

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

Plaintiffs,

v.

ALAN WILSON, in his official capacity as
South Carolina Attorney General; CONWAY
BELANGIA, in his official capacity as Executive
Director of the State Election Commission;
ROBERT BOLCHOZ, in his official capacity as
Chairman of the State Election Commission;
JOANNE DAY, CLIFFORD ELDER, ANGELA
STRINGER, and SCOTT MOSELEY, in their
official capacities as members of the State
Election Commission,

Defendants.

**PLAINTIFFS' RESPONSE IN
OPPOSITION TO DEFENDANTS'
MOTIONS FOR SUMMARY JUDGMENT**

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INTRODUCTION

This matter boils down to a straightforward legal question: Are the challenged Voting Restrictions preempted by Section 208 of the Voting Rights Act (“VRA”)?¹ Section 208’s text, extensive precedent, and all the evidence concerning Congress’s intent say yes.

As to jurisdiction, the undisputed record evidence confirms Plaintiffs’ standing and the ripeness of their challenge; Plaintiffs and their members are entitled to assistance under Section 208, and the Voting Restrictions impede or outlaw that assistance altogether. On the merits, the Voting Restrictions bar or narrow the assistance Plaintiffs are entitled to under Section 208 and are therefore preempted under the Supremacy Clause. This Court should deny Defendants’ motions for summary judgment and grant Plaintiffs’ motion for summary judgment.

Defendants’ arguments that Plaintiffs lack standing and that the Voting Restrictions are not preempted rely on contorted readings of the texts of the Voting Restrictions and Section 208 and misconstrue or ignore binding precedent. Defendants ultimately seek refuge in policy considerations, asking this Court to allow South Carolina to impose far greater voting assistance restrictions than Congress allowed. To do so would violate the Supremacy Clause.

ARGUMENT

I. Plaintiffs have standing and ripe claims.

A. *The Individual Plaintiffs have standing.*

Robert Caldwell, Jonathan Bell, and Sherry Jenkins, (the “Individual Plaintiffs”), have standing to challenge the Voting Restrictions.² Standing requires: (1) a concrete, particularized, actual, or imminent injury; (2) traceable to Defendants; which is (3) redressable by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). The Individual Plaintiffs have met this threshold because they have shown that “(1) they are entitled to assistance under Section

¹ As Plaintiffs showed in their summary-judgment brief, Dkt. No. 39, there are no material facts in dispute in this case, *see* Loc. Civ. Rule 7.05(A)(4). Summary judgment in favor of Plaintiffs is therefore appropriate. *See generally* Pls.’ Mot. for Summ. J. (“Pls.’ Mot.”), Dkt. No. 39.

² Plaintiffs refer to the Limits on Voting Assistance Eligibility, S.C. Code § 7-13-780, Limits on Possible Assistors, *id.* §§ 7-15-310(7), 7-15-330(A), (C), 7-15-385(A)(3), and Five-Voter Limits, *id.* §§ 7-15-330(B)(4), 7-15-385(G), collectively as the “Voting Restrictions.”

208 of the VRA and (2) South Carolina law otherwise denies them that assistance.” Att’y Gen. Wilson’s Mot. for Summ. J. (“AG Mot.”) 8, Dkt. No. 37.³ The record establishes that the Individual Plaintiffs have disabilities that entitle them to voting assistance under Section 208; that they face a concrete and imminent threat of injury because South Carolina law restricts that assistance and subjects them and their chosen assistors to credible threats of criminal liability; and that declaring the Voting Restrictions null and void and enjoining Defendants from enforcing them will remedy their injuries.

1. Individual Plaintiffs have a right to assistance under Section 208.

The Attorney General first argues that Plaintiffs Bell and Caldwell lack standing because they are not entitled to voting assistance under Section 208. AG Mot. 9–11. According to the Attorney General, because neither Plaintiff has shown a complete impossibility of requesting or returning absentee ballot applications or ballots, they have not shown that they “require” assistance to vote under Section 208. *See id.* This argument contorts the text and intent of Section 208 as well as the unrebutted facts showing that both Plaintiffs have severe physical disabilities that cause them to need voting assistance.

On the law, the Attorney General reads the phrase “requires assistance” and the term “disability” in a novel and unduly restrictive manner that is inconsistent with their customary meaning, particularly in the disability law context. Indeed, the Attorney General appears to conflate the very South Carolina standard that Plaintiffs challenge—that an individual must be “physically unable or incapacitated from preparing a ballot or voting” to receive assistance, S.C. Code § 7-13-780—with Section 208’s more inclusive standard, which covers any “voter who requires assistance to vote by reason of blindness, disability, or inability to read or write,” 52 U.S.C. § 10508. But construing “requir[ing] assistance” to mean, in essence, completely unable to perform any aspect of the voting process independently, as the Attorney General does, lacks any textual basis or precedential support. *See, e.g., League of Women Voters of Ohio v. LaRose*

³ Page-number references for docketed documents refer to PDF page numbers at the bottom of each page.

(“*LWV Ohio*”), 741 F. Supp. 3d 694, 703, 706–07 (N.D. Ohio 2024) (disabled voter who was “unable to travel without assistance” had standing under Section 208); *Ala. State Conf. of the NAACP v. Marshall*, 746 F. Supp. 3d 1203, 1243 (N.D. Ala. 2024) (“any voter with a disability or who lacks literacy may have assistance from a person of their choice”), *stay denied sub nom.*, *Ala. State Conf. of the NAACP v. Att’y Gen., Ala.*, No. 24-13111, 2024 WL 4481489 (11th Cir. Oct. 11, 2024), *questions certified*, 161 F.4th 1286 (11th Cir. 2025); *Carey v. Wis. Elections Comm’n*, 624 F. Supp. 3d 1020, 1023–24, 1032 (W.D. Wis. 2022) (plaintiffs with disabilities making it “extremely difficult for them to vote in person” had standing under Section 208).

In passing Section 208, Congress was not merely concerned with outright disenfranchisement, but also with allaying the burdens faced by disabled and illiterate voters. *See Disability Rts. N.C. v. N.C. State Bd. of Elections*, 602 F. Supp. 3d 872, 879 (E.D.N.C. 2022). The text and history of Section 208 focus on the harms of inadequate or untrustworthy assistance to disabled voters, not on gatekeeping who genuinely “needs” help. In *United States v. Berks County*, for example, the court found that policies that barred voting assistance not just for voters “unable” to read English but also those with “limited English proficien[cy]” violated Section 208, explaining that when voters are denied “the right to bring their assistor of choice into the voting booth, voters feel uncomfortable with the process, do not understand the ballot . . . and cannot cast a meaningful vote, in violation of Section 208.” 277 F. Supp. 2d 570, 577–80 (E.D. Pa. 2003); *see also* S. Rep. 97-417, at 62 (1982) (“[T]he 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” assistance from someone “whom the voter trusts and who cannot intimidate him.”). No court has adopted the Attorney General’s interpretation of the statute, with good reason. Requiring voters with disabilities to show that it would be physically impossible for them to vote without assistance would thwart the remedial purpose of the statute and deprive scores of disabled voters of Section 208’s protections.

When the Supreme Court adopted a similarly cramped interpretation of disability protections in a similar context, Congress corrected it. In 2008, Congress passed the ADA

Amendments Act to clarify, in response to the Court’s decision in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), that whether an impairment substantially limits a major life activity must be determined “without regard to the ameliorative effects of mitigating measures such as . . . mobility devices, or oxygen therapy equipment and supplies.” 42 U.S.C. § 12102(4)(E). Like the Americans with Disabilities Act, the text and broad remedial purpose of Section 208 command that its protections be given a “generous, rather than a miserly, construction.” *Sutton*, 527 U.S. at 495 (Stevens, J., dissenting). “The broad language chosen by Congress is determinative” in assessing the scope of Section 208’s protections. *LWV Ohio*, 741 F. Supp. 3d at 711; *see also Disability Rts. N.C. v. N.C. State Bd. of Elections*, No. 5:21-CV-361-BO, 2022 WL 2678884, at *4 (E.D.N.C. July 11, 2022); *Carey*, 624 F. Supp. 3d at 1032. Thus, reading Section 208 as silently imposing limitations on *which* disabled voters may access voting assistance thwarts the broad textual guarantees of Section 208, confirmed by legislative intent, and must be rejected.

The State Election Commission⁴ does *not* follow the Attorney General’s wooden and restrictive view of “requires assistance.”⁵ Rather, the Commission insists that it construes Section 7-13-780 as not “say[ing] anything different than Section 208,” Mem. in Supp. of State Election Comm’n Defs.’ Mot. for Summ. J. (“SEC Mot.”) 16, Dkt. No. 38-1, and that it “does not interpret § 7-13-780 to deny anyone with [a] physical disability an assistor of their choice,” *id.* at 15. The Commission concedes that “because [Plaintiffs] have alleged they are disabled . . . they have a right to voter assistance under the SEC’s interpretation of § 7-13-780.” *Id.* at 16. And

⁴ State Election Commission Executive Director Conway Belangia, Commission Chair Robert Bolchoz, and the Commissioners, sued in their official capacities (collectively the “Commission” or “Commission Defendants”). Under Rule 25(d), Executive Director Belangia is automatically substituted for former Interim Executive Director Jenny Wooten, Chair Bolchoz for former Chair Dennis Shedd, and Commissioner Angela Stringer for former Commissioner Linda McCall. *See* Fed. R. Civ. P. 25(d).

⁵ The Commission does argue that Plaintiffs’ claims are not sufficiently particularized because “they show ‘merely a claim of the right possessed by every citizen, to require that the Government be administrated according to law’” SEC Mot. 21 (quotations omitted). This argument is misplaced. Only voters with “blindness, [a] disability, or inability to read or write” can lodge a challenge under Section 208 based on infringement of their right to “assistance by a person of [their] choice.” 52 U.S.C. § 10508. Plaintiffs and their members with disabilities have a right to assistance under Section 208 that not “every citizen” has.

the Attorney General avers that the Commission’s “interpretation of state law is entitled to deference under South Carolina law,” AG Mot. 28, because the Commission “administers the statute” and it “interprets the state law to have the same meaning as Section 208,” *id.* at 27–28. Thus, the Attorney General urges the Court to defer to the Commission’s interpretation of Section 208 that covers voters with disabilities much more broadly than he asserts.

On the facts, the Attorney General does not (and cannot) contest that, because of his sciatica and mobility-limiting disabilities exacerbated by multiple back surgeries, Mr. Bell “cannot walk more than a few steps on [his] own,” Decl. of Jonathan Bell (“Bell Decl.”) ¶ 5, Dkt. No. 39-3, that his “mobility limitations, and use of a wheelchair make it difficult for [him] to travel outside of Union Post Acute,” *id.* ¶ 6, that he “cannot drive and need[s] assistance getting in and out of a car,” *id.*, and that his “mobility limitations also make it difficult” to access the mailbox where he lives because it is “outside and not easily accessible” to him, *id.* ¶ 7. The same is true for Mr. Caldwell, who offered un rebutted testimony that after his stroke and other injuries, his “limited mobility” and his oxygen tank mean he can “only walk about 30 feet on [his] own,” Decl. of Robert Caldwell (“Caldwell Decl.”) ¶ 10, Dkt. No. 39-1, that he cannot “travel outside MUSC Chester on [his] own,” *id.* ¶ 11, needs “help getting in and out of the car,” *id.*, and that even though he “can read and complete [his] ballot without help, [he needs] help requesting and returning [his] absentee ballot because of [his] disabilities,” *id.* ¶ 13. Faced with that evidence, the Attorney General contends that neither Plaintiff has qualifying disabilities because of Mr. Bell’s “admission that he can move around,” and Mr. Caldwell’s statement that he can occasionally get a ride from family or a medical transportation company. AG Mot. 10. The absurdity of those assertions speak for themselves.

The phrase “requires assistance” cannot bear the weight the Attorney General places on it. No court has construed it to impose the type of severe gatekeeping on who is entitled to assistance under Section 208 that the Attorney General urges. Doing so would transgress both the rights-creating text of Section 208 and Congress’s broad remedial purpose in passing the statute. Plaintiffs Bell and Caldwell are disabled and entitled to assistance under Section 208.

2. The Voting Restrictions cause Plaintiffs concrete harms.

Defendants argue that Plaintiffs have not shown they are harmed by the Voting Restrictions. To do so, Defendants ignore large parts of the summary-judgment record and misconstrue the Article III requirements at issue.⁶ South Carolina’s Voting Restrictions directly interfere with Individual Plaintiffs’ right to receive the assistance to which they are entitled under Section 208. The Limits on Voting Assistance Eligibility unlawfully restrict Mr. Bell’s and Mr. Caldwell’s ability to receive assistance under Section 208 because they have disabilities but are not “physically incapacitated” under South Carolina law, *see* Pls.’ Mot. 7–9, 22, 27, while the Limits on Possible Assistors and Five-Voter Limits jeopardize all three Individual Plaintiffs’ right to the assistor of their choice.

Defendants advance five arguments premised on their assertions that Individual Plaintiffs have not yet been denied assistance and that they don’t face a “realistic danger” of imminent denial. AG Mot. 11, 12, 15–16; SEC Mot. 14–15. Each is without merit.

First, Defendants contend that the Individual Plaintiffs lack standing because they have not shown that they have requested and been denied assistance to vote in 2026. AG Mot. 11, 12, 15–16; SEC Mot. 20. That argument fails as a matter of law. It is well settled that plaintiffs need not wait until they are denied a fundamental right to seek relief. *See infra* Argument § 1.C. So long as they demonstrate “facts showing disadvantage to themselves as individuals [they] have standing to sue.” *Thomas v. Andino*, 613 F. Supp. 3d 926, 946 (D.S.C. 2020) (quoting *Baker v. Carr*, 369 U.S. 186, 206 (1962)); *see also* SEC Mot. 21 n.10. For example, in *Democracy North Carolina v. North Carolina State Board of Elections*, 476 F. Supp. 3d 158 (M.D.N.C. 2020), the court found that an individual covered by Section 208 had standing to challenge North Carolina’s absentee voting restrictions “given the conflict between Section 208 and the North Carolina laws concerning who may assist [plaintiff] in requesting, marking and completing, and returning his absentee ballot, thus directly implicating his rights under Section 208”—without any requirement

⁶ The record demonstrates not just concrete and particularized injuries sufficient to confer standing, but also irreparable harm supporting a permanent injunction. *See* Pls.’ Mot. 21–25.

that he first be denied the right to vote. *Id.* at 188–89, 191. Likewise, the court in *LWV Ohio* held that the ongoing injury of the “depriv[ation] of [plaintiff’s] federally protected rights” under Section 208 conferred standing. 741 F. Supp. 3d at 706.

The same is true here. There is a conflict between Section 208 and South Carolina’s laws restricting who is eligible for assistance and who may assist in requesting, completing, and returning Individual Plaintiffs’ absentee ballots. This conflict directly burdens Individual Plaintiffs’ ability to receive assistance from the person of their choice—assistance they are entitled to under Section 208. The record demonstrates that well over five residents at each facility—MUSC Chester and Union Post Acute—will likely seek assistance requesting and returning their absentee ballots from Barvette Gaither and Deborah Allen, respectively, in the 2026 elections. Based on her decades of experience helping residents vote, Ms. Allen expects that “many more than five residents will want help from [her] to vote absentee, including by requesting and returning their absentee ballots” and that “[a]s a result, [she] will not be able to help all the residents who want help voting.” Decl. of Deborah Allen (“Allen Decl.”) ¶ 15, Dkt. No. 39-4. Indeed, she has already decided not to assist residents like Mr. Bell who have family members who could theoretically assist them because there are more than five residents who will want her help voting, some of whom do not have family who are willing to help them. *Id.* ¶ 9; *see also* Pls.’ Am. Objs. & Resps. to Comm’n Defs.’ First Interrogs. (“Pls.’ Interrog. Resps.”) at 4, Dkt. No. 39-7. Similarly, the record shows that for years Ms. Gaither has helped more than five residents at MUSC Chester with voting, and thus it is likely more than five residents will request her assistance again. *Id.* at 5, 10; Caldwell Decl. ¶¶ 16–19. Indeed, Ms. Gaither and MUSC Chester residents learned about the Five-Voter Limits the hard way, when she sought to turn in more than five absentee ballots at a county election office and was turned away. Caldwell Decl. ¶ 17. Plaintiffs far exceed their required showing to establish a cognizable injury under Section 208. *Democracy N.C.*, 476 F. Supp. 3d at 188.

Second, the Attorney General avers that because Plaintiffs Bell and Caldwell have “previously received assistance,” including from immediate family members, they are not

harm by the Voting Restrictions. AG Mot. 11. That Plaintiffs received assistance in the past has no bearing on the concrete, imminent harm to their right to assistance now. Other decisions interpreting Section 208 show why this is true. In *LWV Ohio*, the individual plaintiff had, in the past, “voted with the assistance of her elderly mother” but “prefer[red] to rely on her professional caregivers to assist her with voting in the future because her mother is not always available.” 741 F. Supp. 3d at 703. Because those state restrictions limited assistance from professional caregivers, and because the plaintiff expressed a preference to rely on professional caregivers for assistance in the future, she had standing even though she had never before attempted to rely on those caregivers for assistance. *Id.* at 706–07. Just so here: Mr. Bell used to rely on his brother for assistance, but his brother works two jobs, takes care of his children and grandchildren, and lives about 45 minutes away. Bell Decl. ¶ 9. Accordingly, Mr. Bell wants to rely on his professional caregiver, Ms. Allen, for voting assistance. *Id.* As explained in Plaintiffs’ opening brief and *infra*, the Voting Restrictions impede his ability to rely on Ms. Allen. Similarly, Mr. Caldwell’s past reliance on assistance from staff at MUSC Chester is of no moment. If anything, these facts only concretize the harm Plaintiffs face now that the Voting Restrictions are in place and their preferred assistors, Ms. Gaither and Ms. Allen, can only help five residents vote each election. *See* Pls. Mot. 23–24.

While the Attorney General faults Plaintiffs Bell and Caldwell for receiving assistance in the past, he curiously argues Ms. Jenkins lacks standing because she’s *never* received assistance to vote. AG Mot. 15. This approach to standing—heads I win, tails you lose—illustrates the error in cherry-picking Plaintiffs’ past conduct to argue they lack standing. Some Plaintiffs did not have disabilities for much of their lives; they now navigate the world with recent or exacerbated disabilities that limit their ability to vote without assistance. *See* Caldwell Decl. ¶¶ 9–12; Bell Decl. ¶¶ 5–7. What matters are the facts *now*, which show each Individual Plaintiff has a disability, needs to rely on assistance, and will be impeded by the Voting Restrictions if they remain in place. *See* Pls.’ Mot. 21–25.

Third, the Attorney General argues that because other individuals are theoretically available to assist Plaintiffs, they aren't harmed by the Voting Restrictions. *See* AG Mot. 15–16. But as explained *infra*, Section 208 guarantees a right to assistance from “a person of the voter’s choice,” 52 U.S.C. § 10508, “not merely . . . a right to make *a choice*, however short or long the list to choose from may be.” *LWV Ohio*, 741 F. Supp. 3d at 713. Defendants cannot defeat Plaintiffs’ ironclad standing by arguing that others are in theory available to assist them in accordance with South Carolina law. This reading would render Section 208 a nullity; after all, Congress passed the statute to remedy the “concern[] that some people . . . forfeit their right to vote . . . [or] have their actual preference overborne *by the influence of those assisting them*” if not afforded “the assistance *of a person of their own choice*.” S. Rep. 97-417, at 62 (emphasis added); *see also Democracy N.C.*, 476 F. Supp. 3d at 234–35 (state restrictions that allowed disabled voters to rely on “a near relative, a legal guardian or a [multipartisan assistance team]” for assistance “impermissibly narrow Section 208’s dictate”). It is no answer that individuals *other than* Plaintiffs’ preferred assistors may be available to help.

Fourth, Commission Defendants argue that the Individual Plaintiffs are “confined to a hospital, nursing home, residence, or somewhere similar,” and therefore not harmed by the Limits on Possible Assistors. *See* SEC Mot. 18. But as made clear in their opening brief, Individual Plaintiffs are not “confined”—or, “unable to leave”—their congregate care facilities, *see Confined*, Dictionary.com⁷; Pls.’ Mot. 23–24. In addition to the South Carolina State Conference of the NAACP (“South Carolina NAACP”), the Individual Plaintiffs therefore have standing to challenge the Limits on Possible Assistors.

Fifth, Commission Defendants contend that Individual Plaintiffs have not shown they face a “realistic danger” of injury in the future if the Voting Restrictions are in place, nor that any of them have a “certainly impending” future injury. SEC Mot. 14–15. They also couch a standing argument as part of the merits: That the “statutes provide minimal restrictions only on

⁷ <https://www.dictionary.com/browse/confined> [<https://perma.cc/2WSG-GPG7>] (last visited Apr. 26, 2026).

who may request and return the ballots.” *Id.* at 29–30. But Plaintiffs do face the “certainly impending” injury of denial of their right to assistance with requesting and returning absentee ballots, among other injuries.

The un rebutted record evidence establishes that each Individual Plaintiff intends to vote absentee in 2026, Bell Decl. ¶ 8; Caldwell Decl. ¶ 12; Decl. of Sherry Jenkins (“Jenkins Decl.”) ¶ 9, Dkt. No. 39-2, and wants to rely on a specific trusted assistor—Ms. Gaither for Mr. Caldwell, and Ms. Allen for Mr. Bell and Ms. Jenkins—for assistance requesting, completing, and returning their ballot, Bell Decl. ¶ 8; Caldwell Decl. ¶ 16; Jenkins Decl. ¶ 9. Because the Voting Restrictions restrict their ability to receive this assistance and Defendants have not disavowed enforcement of the Voting Restrictions, the Individual Plaintiffs face a “realistic, immediate, and non-speculative threat” that they will not receive the assistance to which they are entitled and will thus suffer significant or insurmountable burdens on their right to vote. *LWV Ohio*, 741 F. Supp. 3d at 707 (recognizing “credible fear of prosecution sufficient for a ‘fairly traceable’ injury” where the State “has not disavowed prosecuting violations” even though “no enforcement actions” had yet been filed); *see also Nick v. Bethel*, No. 3:07-CV-0098 TMB, 2008 WL 11429309, at *3–7 (D. Alaska July 23, 2008) (voter established standing through the “the conduct by the [defendants] with regard to the VRA’s language assistance requirements and section 208’s guarantee of a right to voting assistance”).

Moreover, Plaintiffs have standing to challenge the Voting Restrictions because of the “credible fear of prosecution” which threatens to interfere with their rights, especially given the Attorney General “has not disavowed prosecuting violations.” *LWV Ohio*, 741 F. Supp. 3d at 707. Here, the record establishes that Individual Plaintiffs reasonably fear that their use of assistance will violate a “non-moribund” South Carolina law, *N.C. Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 710 (4th Cir. 1999), under which the Attorney General has not “disavowed enforcement,” *Kenny v. Wilson*, 885 F.3d 280, 288 (4th Cir. 2018), and thus they and their assistors face “a credible threat of prosecution thereunder,” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (citation omitted). Indeed, the Attorney General’s brief makes clear he

and other State agencies are tracking potential violations of the Voting Restrictions and he is poised to prosecute violators. *See* AG Mot. 34. For example, the Commission reported an individual who purportedly “returned 12 absentee ballots during the 2022 primary election” in violation of the Five-Voter Limits to “South Carolina Law Enforcement.” Legis. Audit Council, *A Review of the South Carolina Election Process* at 6–7 (Jan. 2024).⁸ Applying the law faithfully, there is no doubt that the Voting Restrictions inflict concrete harms on Plaintiffs.

3. Plaintiffs’ harms are traceable to Defendants.

The traceability requirement ensures that there is a “genuine nexus” between a plaintiff’s injury and the challenged conduct. Plaintiffs have shown that nexus exists here. The Commission Defendants do not even challenge traceability and both of the Attorney General’s arguments fail as a matter of law.

First, the Attorney General contends that the Individual Plaintiffs have not been “denied assistance” by the Limits on Voting Assistance Eligibility. AG Mot. 11–13. Even if that were true, that is not the standard for traceability. Traceability is not “equivalent to a requirement of tort causation.” *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 161 (4th Cir. 2000) (citation modified). Instead, the traceability “requirement ensures that there is a genuine nexus between a plaintiff’s injury and a defendants’ alleged illegal conduct.” *Id.*

Here, there is a genuine nexus between the harm to Individual Plaintiffs and Defendants’ enforcement of the Limits on Voting Assistance Eligibility. Mr. Bell and Mr. Caldwell both intend to vote in the 2026 elections and would like to rely on assistance from Ms. Gaither or Ms. Allen. Bell Decl. ¶¶ 8–9; Caldwell Decl. ¶¶ 15–16. As discussed above, the Limits on Voting Assistance Eligibility prohibit receiving any voting assistance unless “physically unable or incapacitated from preparing a ballot or voting,” S.C. Code § 7-13-780, which Mr. Bell and Mr. Caldwell are not, *see* Pls.’ Mot. 7–9, 22. The Limits on Voting Assistance Eligibility thus

⁸ https://lac.sc.gov/sites/lac/files/Documents/Legislative%20Audit%20Council/Reports/A-K/SEC_2024.pdf [<https://perma.cc/QUV3-VJL4>].

prevent Plaintiffs Bell and Caldwell from receiving the assistance to which they are entitled under Section 208 under threat of criminal penalties.

The Attorney General makes similar, but even less specific arguments about traceability regarding the Limits on Possible Assistors and Five-Voter Limits. AG Mot. 14–16. At bottom, both prevent the Individual Plaintiffs and South Carolina NAACP members from receiving assistance under Section 208. The “facial invalidity” of state laws that restrict the right to assistance under Section 208 is “without question, fairly traceable to and redressable by the State itself and . . . the ‘chief election officer of the state.’” *OCA-Greater Houston v. Texas*, 867 F.3d 604, 613 (5th Cir. 2017) (citation omitted).

Second, the Attorney General contends that Individual Plaintiffs fail to establish traceability for the harms of the Five-Voter Limits because that harm is attributable to the independent choices of third parties rather than Defendants’ enforcement of South Carolina law. AG Mot. 17. That is a misapplication of the law and elides the factual record. Traceability may be satisfied by an “injury produced by determinative or coercive effect[s] upon the action of someone else,” *Bennett v. Spear*, 520 U.S. 154, 169 (1997), or when the injury is “the predictable effect of Government action on the decisions of third parties,” *Dep’t of Com. v. New York*, 588 U.S. 752, 768 (2019); *see also Star Sci. Inc. v. Beales*, 278 F.3d 339, 359 (4th Cir. 2002) (threat of “suffer[ing] large penalties” is a coercive effect of a challenged policy). Just so, here: The Five-Voter Limits exert both a coercive and predictable effect on Ms. Allen and Ms. Gaither’s conduct by requiring them to choose only five of the many residents at Union Post Acute and MUSC Chester who they would typically help, under threat of felony prosecution. *See* Allen Decl. ¶¶ 6–16; Caldwell Decl. ¶¶ 16–19.⁹ Indeed, because of the Five-Voter Limits, Ms. Allen has already disavowed helping residents including Mr. Bell who have family available, even though she recognizes the risk that “some family members who say they will help residents do

⁹ The Court need not speculate about the likely reactions of potential assistors. Ms. Allen has already denied assistance to some Union Post Acute residents as a direct result of the Five-Voter Limits, and Ms. Gaither was prevented from returning more than five residents’ absentee ballots. Allen Decl. ¶¶ 6–16; Caldwell Decl. ¶ 17.

not follow through.” Allen Decl. ¶¶ 9–11. As a result, there is a “genuine nexus” between Ms. Gaither and Ms. Allen’s inability to assist the Individual Plaintiffs and the deprivation of their Section 208 rights. *Friends of the Earth*, 204 F.3d at 161. Plaintiffs’ injuries are “caused by the State Defendants . . . enforcing the Challenged . . . Law.” *LWV Ohio*, 741 F. Supp. 3d at 706.

Defendants’ reliance on cases involving “highly attenuated chain[s] of possibilities” and speculation about independent actors’ choices are inapposite because all involved multiple, contingency-laden links in a chain to reach an injury. *See* AG Mot. 16–17 (citing *California v. Texas*, 593 U.S. 659, 679–80 (2021); *Summers v. Earth Island Inst.*, 555 U.S. 488 (2009); *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 415–18, 422 (2013)). There is no comparable chain of contingencies here. The causal mechanism is direct and immediate: Each of Individual Plaintiff intends to vote in 2026 and wants assistance from Ms. Gaither or Ms. Allen; and the Voting Restrictions impose a hard cap that prevent Ms. Allen and Ms. Gaither from helping more than five of the many voters who rely on their assistance, jeopardizing Individual Plaintiffs’ right to the assistor of their choice.

4. This Court can redress Plaintiffs’ injuries.

The record confirms that Plaintiffs satisfy the redressability requirement of standing, which is “not onerous” and asks only whether Plaintiffs “personally would benefit in a tangible way from the Court’s intervention.” *Friends of the Earth, Inc.*, 204 F.3d at 162 (quoting *Warth v. Seldin*, 422 U.S. 490, 508 (1975)); *Republican Nat’l Comm. v. N.C. State Bd. of Elections*, 120 F.4th 390, 397 (4th Cir. 2024). Removing even a single barrier to the exercise of a right is sufficient. *Republican Nat’l Comm.*, 120 F.4th at 397.

If the Court invalidates the challenged Voting Restrictions, Plaintiffs will undoubtedly benefit. Most immediately, they will be able to receive assistance from their chosen assistors to cast an effective ballot without the looming threat of prosecution from the Voting Restrictions. *See* Caldwell Decl. ¶¶ 17–19; Bell Decl. ¶¶ 8–11; Jenkins Decl. ¶¶ 9–12; Allen Decl. ¶¶ 6–7, 9, 13–16; Decl. of Rev. J.M. Flemming (“Flemming Decl.”) ¶¶ 5–8, Dkt. No. 39-9; Decl. of President Brenda Murphy (“Murphy Decl.”) ¶¶ 10–13, Dkt. No. 39-8. That relief would

eliminate the legal barriers the Voting Restrictions impose on Plaintiffs' exercise of their federally guaranteed right to choose their assistor. The analysis is straightforward: "[T]he relief sought in this Court—if successful—would redress [Plaintiffs'] injuries by allowing [them] an assistor of [their] choice consistent with federal law." *LWV Ohio*, 741 F. Supp. 3d at 706; *see OCA-Greater Houston*, 867 F.3d at 613–14.

The Commission's argument that Plaintiffs have not shown a likelihood of future injury, SEC Mot. 22, conflates redressability with injury-in-fact and fails for the reasons discussed above, *see supra* Argument § I.A.2. The relevant question is whether judicial relief would personally benefit Individual Plaintiffs in a tangible way. *Friends of the Earth, Inc.*, 204 F.3d at 162. It would. Plaintiffs want to exercise their right to vote absentee in 2026 and beyond. The Voting Restrictions undermine their right to assistance and to the assistor of their choice. As such, they face legal obstacles to exercising their right to vote unless the Voting Restrictions are enjoined.

The Attorney General's argument—that relief would not redress Plaintiffs' injuries because assistors might independently decline to help—is both legally baseless and contradicted by the evidence. *See* AG Mot. 16–17. Redressability does not require certainty about third-party conduct; it is enough that the requested relief would remove a barrier to the Individual Plaintiffs' Section 208 right to assistance, which it will. *Republican Nat'l Comm.*, 120 F.4th at 397.

Moreover, the record shows that Ms. Gaither and Ms. Allen have previously assisted all eligible residents who seek their help voting. For decades, Ms. Allen has assisted "all eligible residents who want help voting" because she views it as her "personal responsibility" to ensure residents can exercise their right to vote and because "[p]art of taking care of residents is protecting their rights." Allen Decl. ¶ 4; *see* Decl. of Robin Miller ("Miller Decl.") ¶¶ 4–5, Dkt. No. 39-5. She testified that because "the law" now "limit[s]" her to assisting only five, she "cannot help all the residents who want [her] to help them in each election." Allen Decl. ¶¶ 6, 15, 16. Critically, Ms. Allen explained that she is forced to ration her assistance because of the statutory cap—choosing, for example, not to assist "short-term" residents so she can "save" her

limited allotment for those she believes need help most. *Id.* ¶ 13. In addition, Ms. Allen has already made clear that she will not help residents with family members who could theoretically assist them because “there are more than five residents each election who want [her] help voting and do not have family who are willing to help them,” and so she cannot “request or return the absentee ballot” for residents with family members who can help. Allen Decl. ¶ 9. Ms. Allen thus outlines “the predictable effect of Government action on the decisions of third parties.” *Dep’t of Com.*, 588 U.S. at 768. If Defendants were enjoined from enforcing the Voting Restrictions, Ms. Allen would assist Mr. Bell, Ms. Jenkins, and every other eligible resident at Union Post Acute who asks, as she had done for decades. *See* Allen Decl. ¶ 15; Miller Decl. ¶ 5.

Similarly, Ms. Gaither has historically assisted more than five residents at MUSC Chester with absentee voting. Caldwell Decl. ¶¶ 16–17. However, in a recent election, Ms. Gaither was prevented from returning more than five residents’ ballots. Caldwell Decl. ¶ 17. Enjoining the Voting Restrictions would directly remove the legal barriers to Mr. Caldwell’s right to obtain the assistance to which he is entitled under Section 208.

B. South Carolina NAACP has standing.

Defendants’ arguments against South Carolina NAACP’s standing all fail to consider the full record and properly apply binding precedent. Because its members suffer concrete injuries from the Voting Restrictions, and, like all other Section 208 claims, this does not require members’ participation, South Carolina NAACP has associational standing. *See Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 269 (2015).

The Commission argues only that South Carolina NAACP lacks associational standing because Mr. Caldwell does not have standing. *See* SEC Mot. 13. As Plaintiffs show in their opening brief, Pls.’ Mot. 27–30, and *supra* Argument § I.A., Mr. Caldwell has standing.

The Attorney General’s arguments against the first and third prongs of associational standing fare no better. On the first prong, the Attorney General argues both that Mr. Caldwell lacks standing and Plaintiffs have not demonstrated, “through ‘affidavits or other evidence,’” that other members would have standing. AG Mot. 18–19 (quoting *Lujan*, 504 U.S. at 563). Not so.

In addition to Mr. Caldwell, South Carolina NAACP’s members include individuals “with physical and non-physical disabilities who rely on assistance to vote absentee.” Murphy Decl ¶ 6. As described in Plaintiffs’ opening brief and multiple declarations, specific members of South Carolina NAACP, including elderly members in the Greenville area, are deprived of the assistance they are entitled to under Section 208 by the Voting Restrictions.¹⁰ See Pls.’ Mot. 10–11, 29–31; *see also* Flemming Decl. ¶¶ 6–9; Murphy Decl. ¶¶ 6, 10–13. South Carolina NAACP’s members, who require assistance with voting and are impeded from obtaining that assistance by the Voting Restrictions, would have standing to sue in their own right. *See Democracy N.C.*, 476 F. Supp. 3d at 188; *LWV Ohio*, 741 F. Supp. 3d at 706. The evidence Plaintiffs adduced far exceeds their bar to satisfy the first prong of the associational standing at the summary-judgment stage. *See Lansdowne on the Potomac Homeowners Ass’n, Inc. v. OpenBand at Lansdowne, LLC*, 713 F.3d 187, 198 n.6 (4th Cir. 2013) (Plaintiff “has associational standing . . . because it introduced at the summary judgment stage two affidavits from individual members demonstrating that they suffered injuries in their own right”).

As to the third prong of associational standing, the Attorney General argues that South Carolina NAACP “hasn’t shown that its membership is composed of disabled voters” or that it “only represent[s] disabled voters.” AG Mot. 19–20. But the third prong imposes only a prudential requirement that “neither the claim made nor the relief requested requires the participation of individual members in the suit.” *Friends for Ferrell Parkway, LLC v. Stasko*, 282 F.3d 315, 320 (4th Cir. 2002); *see United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.*, 517 U.S. 544, 546 (1996) (holding that *Hunt*’s third prong is prudential). That prong is

¹⁰ Lest Defendants complain that additional members are not named, even the caselaw they cite makes clear that South Carolina NAACP must simply “establish[] that *at least one* identified member had suffered or would suffer harm.” *S. Walk at Broadlands Homeowner’s Ass’n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 184 (4th Cir. 2013) (emphasis added) (citation modified). South Carolina has done just that through Mr. Caldwell, who is himself a named Plaintiff. And the Supreme Court has time and again cautioned against “[c]ompelled disclosure of membership in an organization” such as the NAACP. *NAACP v. State of Ala. Ex rel. Patterson*, 357 U.S. 449, 462 (1958); *see also, e.g., Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 616 (2021).

satisfied “when an association seeks prospective or injunctive relief for its members”—exactly the relief plaintiffs seek here. *United Food & Com. Workers Loc. 751*, 517 U.S. at 546; *see also NAACP v. Molly Darcy, Inc.*, No. 4:11-CV-01293-RBH, 2012 WL 4473138, at *3 & n.3 (D.S.C. Sept. 26, 2012) (“Having found that Plaintiffs NAACP and Conway Branch have met the requirements for associational standing, the Court finds no basis to dismiss them under the prudential limitation on third-party standing.”). There is no additional burden to show that *all* of an association’s members are harmed—one injured member is enough. *Va. Hosp. & Healthcare Ass’n v. Roberts*, 671 F. Supp. 3d 633, 652–53 (E.D. Va. 2023) (“To establish standing, an association must allege that its members, *or any one of them*, are suffering immediate or threatened injury”) (quoting *Retail Indus. Leaders Ass’n v. Fielder*, 475 F.3d 180, 186 (4th Cir. 2007)).

The Attorney General offers only a single California district court decision about a consortium of pharmaceutical companies in support of his position. *See Ass’n for Accessible Meds. v. Bonta*, 766 F. Supp. 3d 1020 (E.D. Cal. 2025). But in that decision, the court found that plaintiffs *did* establish associational standing and recognized that associational standing is more readily established where “the challenge raises a pure question of law that is not specific to individual members.” *Id.* at 1027 (citation omitted). Here, Plaintiffs bring preemption claims, which present “a question of law.” *Knight v. Boehringer Ingelheim Pharms., Inc.*, 984 F.3d 329, 337 (4th Cir. 2021).¹¹ Decisions upholding associational standing for Section 208 plaintiffs—including other state chapters of the NAACP—undermine the Attorney General’s argument that South Carolina NAACP lacks standing because its membership includes individuals without disabilities. *See, e.g., Disability Rts. N.C.*, 2022 WL 2678884, at *2 (Section 208 claim “does not require the participation of any one member”); *Fla. State Conf. of the NAACP v. Lee*, 576 F. Supp. 3d 974, 981–82 (N.D. Fla. 2021) (Florida State Conference of the NAACP had

¹¹ Defendant Wilson’s only contrary case is *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320 (2006). But *Ayotte* did not deal with standing. Rather, it concerned what was the appropriate relief in an abortion rights case. *Id.* at 328.

associational standing in Section 208 challenge because “neither the claims asserted, nor the relief requested requires the participation of the individual members in this lawsuit”).

C. Plaintiffs’ claims are ripe.

The Attorney General also asserts that Plaintiffs’ claims are not yet ripe, because—as of their interrogatory response date, more than three months before the June 2026 primaries, and two months before voters can even receive an absentee ballot¹²—they had not yet asked anyone for assistance. AG Mot. 21–22. According to the Attorney General, because Plaintiffs do not know with certainty that their preferred assistor will be unable to assist them, “any future impact remains wholly speculative,” because it is “contingent upon a decision to be made by a third party,” *id.* at 22. This reflects a misunderstanding of the law of standing and ripeness and omits key facts that, together, show Plaintiffs’ claims are ripe.

When a prospective injury could only occur due to a third party’s yet-to-occur *independent* action, a plaintiff cannot show a substantial risk of harm traceable to the defendants, and lacks standing and ripeness. *See Bennett*, 520 U.S. at 169. But this “independent action” doctrine does not cover “injury produced by determinative or coercive effect upon the action of someone else.” *Id.* As noted *supra*, a plaintiff can show sufficient likelihood of an imminent injury based on evidence that “relies . . . on the predictable effect of Government action on the decisions of third parties.” *Dep’t of Com.*, 588 U.S. at 768.

Here, that coercive and predictable effect is that Plaintiffs’ preferred assistors will not risk felony convictions to return more than five absentee ballots. The undisputed evidence shows that Plaintiffs’ preferred assistors in the past were regularly relied on by more than five—in some cases more than twenty—fellow nursing home residents to assist with their absentee ballots, and that they expect this reliance to continue. *See supra* Argument § 1.A.2; *see also* Pls.’ Mot. 10–11 (discussing similar reliance on assistance by South Carolina NAACP members). As a result, it is likely and “predictable” that these trusted assistors will be unable to assist Plaintiffs due to the

¹² *See* S.C. Election Comm’n, *Absentee Voting*, <https://scvotes.gov/voters/absentee-voting/> [<https://perma.cc/B5EA-KF9P>] (last accessed Apr. 27, 2026).

Voting Restrictions. It defies logic to say that assistors' decisions not to subject themselves to felony penalties are not the predictable or coercive effect of the Voting Restrictions. Plaintiffs' claims are ripe.

II. Section 208 preempts the challenged Voting Restrictions.

The Voting Restrictions violate the plain text of Section 208, which guarantees to “[a]ny voter” with a disability the right to “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; *see* Pls.’ Mot. 13–21. As Plaintiffs proved, the Limits on Voting Assistance Eligibility bar Plaintiffs and other disabled voters from receiving the assistance to which they are entitled under Section 208, *see id.* at 14–16, while the Limits on Possible Assistors and Five-Voter Limits “impermissibly narrow[] the right guaranteed by Section 208,” *OCA-Greater Houston*, 867 F.3d at 615, by allowing assistance only from persons *approved of by the State*, *see* Pls.’ Mot. 16–21.

Defendants urge the Court to adopt anomalous, self-contradictory textual interpretations and rely on a few out-of-circuit decisions interpreting Section 208. These are easily rebutted by the plain text of Section 208, its ordinary usage, statutory construction, and the overwhelming weight of precedent and legislative history. Defendants’ attempts to use various canons of construction to elide the Supremacy Clause altogether are also without merit.

A. The Voting Restrictions conflict with and are preempted by Section 208.

1. The challenged provisions restrict voting assistance.

Both sets of Defendants attempt to argue that, somehow, the challenged Voting Restrictions do not impact ballot assistance and present no obstacle for Plaintiffs to receive assistance. AG Mot. 27–29; SEC Mot. 28–29. They undeniably do.

Start with the Limits on Voting Assistance Eligibility. Defendants argue that the Limits on Voting Assistance Eligibility permit Plaintiffs to receive absentee voting assistance for three main reasons: (1) “the ordinary meaning of the state law aligns with Section 208,” AG Mot. 27; (2) the Commission’s Poll Managers Handbook (the “Handbook”) “interprets the state law to have the same meaning as Section 208,” AG Mot. 27–28, and the Court should defer to that

interpretation, *see* SEC Mot. 26–27; and (3) the Voting Restrictions do not implicate voting assistance at all, *see id.* 28–29, 32–33. None of these arguments withstand basic scrutiny.

The first argument ignores the plain text of the two statutes. Section 208 provides a right to any voter “who requires assistance to vote by reason of . . . *disability*,” 52 U.S.C. § 10508 (emphasis added), while the Limits on Voting Assistance Eligibility permit “assistance of any kind in voting” only for individuals “who are *physically unable or incapacitated* from preparing a ballot or voting,” S.C. Code § 7-13-780 (emphasis added). South Carolina’s law is more restrictive than Section 208: It excludes voters with disabilities who are not physically unable or incapacitated from preparing a ballot or voting. The Limits on Voting Assistance Eligibility leave out, at minimum, voters with non-physical disabilities and voters who require assistance to vote because of their disability but are not physically unable or incapacitated from voting. As the Attorney General acknowledges, “the state law does not track Section 208,” AG Mot. 27; South Carolina has chosen to maintain a more restrictive law despite the opportunity to precisely track Section 208’s text.

Defendants’ second group of arguments about why the Court should defer to the Commission’s interpretation of Section 7-13-780 in the Handbook to avoid conflict with Section 208 suffer at least three fatal problems.

First, the Handbook does not control the Court’s preemption analysis. It provides guidance for the administration of in-person voting on Election Day and says nothing about absentee voting. It also references both South Carolina Code Section 7-13-780 and Section 208 of the Voting Rights Act in instructing that “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,” S.C. Election Comm’n, *Poll Managers Handbook* 65 (Sept. 2024), Dkt. 38-3, making it unclear whether the Commission is interpreting South Carolina law as-written or providing guidance based on the more inclusive Section 208. The far better read is the latter, given that this same section of the Handbook instructs that assistors “may include, but are not limited to, spouses, family members, friends, Candidates, Poll Watchers, Poll Managers, voters

waiting in line, and minors,” *id.*, despite South Carolina law explicitly prohibiting assistance from candidates or minors (who cannot be registered voters), *see* S.C. Code § 7-15-310(7).

Second, even if the Handbook constitutes agency guidance about Section 7-13-780, the Commission’s attempt to rely on the *Erie* Doctrine for agency deference is of no moment. SEC Mot. 27. *Erie* stands for the proposition that “federal courts *sitting in diversity* apply state substantive law and federal procedural law.” *Gasperini v. Ctr. for Humans., Inc.*, 518 U.S. 415, 426–27 (1996) (emphasis added). This is a federal question case, and the Commission offers no state case on point.

Third, the South Carolina Supreme Court has long held that where “the plain language of the statute is contrary to the agency’s interpretation, the Court will reject the agency’s interpretation.” *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581, S.E.2d 836, 838 (2003). It would be a great stretch to interpret a provision that allows assistance only for voters “who are physically unable or incapacitated from preparing a ballot or voting,” S.C. Code § 7-13-780, to actually cover all voters with disabilities as the Commission contends. Even if well intentioned and geared to comply with federal law, a regulation “of course” cannot “trump a statute,” *Monsalvo Velázquez v. Bondi*, 604 U.S. 712, 728 (2025).¹³ And the Handbook is not a regulation at all; it thus “does not have the force or effect of law,” S.C. Code § 1-23-10(4).

As for the Voting Restrictions more generally, the Commission argues that they somehow do not implicate ballot assistance because they are “directed specifically to requesting and returning ballots and not completing the ballot itself.” SEC Mot. 28, 32–33 (specifically with regard to the Five-Voter Limits). This is a meaningless distinction. As the Commission concedes on the next page, it “is true” that “Section 208 applies to all parts of the voting process,” *id.* at 29—specifically to “all action necessary to make a vote effective in any primary, special, or

¹³ As to the correct interpretation of State law, the Attorney General appears to talk out of both sides of his mouth. On one hand, he asks the Court to defer to the Commission’s interpretation of the statute—that “the state law” has “the same meaning as Section 208,” and both include all voters with a “physical disability an assistor of their choice,” AG Mot. 27–28. Yet on the other hand, he argues that Plaintiffs Bell and Caldwell do not have severe enough physical disabilities to qualify for coverage under Section 208. *Id.* at 9–10. Both cannot be true.

general election, including, but not limited to, registration,” or any “other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast,” 52 U.S.C. § 10310(c)(1). Indeed, courts have rejected this exact argument: “Requesting an absentee ballot is part of ‘voting’ and, therefore, is encompassed in Section 208.” *Disability Rts. N.C.*, 2022 WL 2678884, at *5 (citing 52 U.S.C. § 10310(c)(1)); *see also OCA-Greater Houston*, 867 F.3d at 614–15 (the right “[t]o vote” protected by Section 208 “plainly contemplates more than the mechanical act of filling out the ballot sheet” as “‘casting a ballot’ is only one example in a nonexhaustive list of actions that qualify as voting”); *Ala. State Conf. of the NAACP*, 746 F. Supp. 3d at 1243 (“There can be no genuine dispute that the voter assistance contemplated by Section 208 extends to applications for absentee ballots.”); *Carey*, 624 F. Supp. 3d at 1032 (“The application of the VRA to the facts of this case is straightforward. Returning a ballot is one of the ‘action[s] necessary to make a vote effective.’”) (quoting 52 U.S.C. § 10310(c)(1)).

The Commission Defendants then get to their true issue, which is not on the merits but on standing—that Plaintiffs have not sufficiently established that they require assistance from people other than their family members when it comes to requesting and returning an absentee ballot. *See* SEC Mot. 30. As explained above, *see supra* Argument § 1.A., this misses the point as related to Plaintiffs’ standing. Regardless, the “broad language chosen by Congress” in adopting Section 208, *LWV Ohio*, 741 F. Supp. 3d at 711, was designed to protect against precisely this sort of too-fine parsing exercise that could prevent voters from obtaining their federal right to assistance, *see Democracy N.C.*, 476 F. Supp. 3d at 235–36 (restrictions that “delineate[] [a] list of people to deliver an absentee ballot” are preempted by the “unambiguous language of the VRA”) (citation omitted); *Disability Rts. N.C.*, 602 F. Supp. 3d at 878.

Finally, the Commission Defendants argue that the Five-Voter Limits do not implicate Section 208 because those Limits “are generally applicable laws regarding absentee voting whereas Section 208 addresses assistance in voting to persons with specified disabilities. . . .” SEC Mot. 33 (citing *DSCC v. Simon*, 950 N.W.2d 280, 290 (Minn. 2020)). But the Supreme

Court and Fourth Circuit have acknowledged that federal laws protecting specific groups of people can “displace[] a state’s generally applicable . . . laws” in any number of areas. *See Air Evac EMS, Inc. v. Cheatham*, 910 F.3d 751, 762 (4th Cir. 2018) (citing several Supreme Court decisions). Indeed, another federal court held that Section 208 preempted a virtually identical, generally applicable Arkansas law that prohibited individuals from assisting more than six voters with their ballots. *Ark. United v. Thurston*, 626 F. Supp. 3d 1064, 1085–87 (W.D. Ark. 2022), *rev’d on other grounds* 146 F.4th 673 (8th Cir. 2025). Even in *DSCC*, the state court decision on which the Commission Defendants chiefly rely, the court upheld the decision that Section 208 likely preempted another generally applicable law that restricted the number of people who could help mark ballots. 950 N.W.2d at 290–91. There is no reason why Section 208 cannot preempt generally applicable laws.

2. The challenged provisions conflict with the plain text of Section 208.

As Plaintiffs already showed, the statutory text, overwhelming weight of authority, and evidence of congressional intent all demonstrate that Section 208 preempts the Voting Restrictions. Pls.’ Mot. 13–21. Defendants’ arguments to the contrary all fail.

The Attorney General argues that Section 208’s use of the phrase “a person” rather than “the person” indicates that the statute entitles voters to assistance, “but not from *the* singular person of their choice.” AG Mot. 25 (citing *Priorities USA v. Nessel*, 487 F. Supp. 3d 599, 619 (E.D. Mich. 2020)). But as Plaintiffs made clear, common usage and precedent confirm that “a person of the voter’s choice” means “*any* person of the voter’s choice.” Pls.’ Mot. 17. In this way, the Attorney General focuses on an irrelevant textual distinction. A voter entitled to assistance under Section 208 can have one preferred assistor, or twenty, or one hundred. Indeed, it is only natural that a voter’s preferred assistor may change from election to election based on their life circumstances—this is precisely why “Congress placed the voter’s *choice* at the center of its § 208 guaranteed right.” *Ala. State Conf. of the NAACP v. Marshall*, No. 2:24-cv-00420-RDP, 2024 WL 4448841, at *4 (N.D. Ala. Oct. 4, 2024); *see* Pls.’ Mot. 32. The Attorney General ignores that voters must be able to choose from any number of people “*of the voter’s choice*,” not an assistor that the Attorney

General deems should be good enough for the voter. *See LWV Ohio*, 741 F. Supp. 3d at 717 (“*Priorities USA* discusses ‘a person’ but does not address ‘of the voter’s choice.’”); *see also generally Disability Rts. N.C.*, 602 F. Supp. 3d at 878 (“The use of the indefinite article ‘a’ does not show intent by Congress to allow states to restrict a federally created right, for Congress does not ‘hide elephants in mouseholes.’”) (quoting *Whitman v. Am. Trucking Ass’n, Inc.*, 531 U.S. 457, 468 (2001)). After all, “[i]f a state can limit who ‘a person’ is, as the [Attorney General] . . . assert[s], then the statutory phrase ‘of a voter’s choice’ is either superfluous or loses all meaning.” *LWV Ohio*, 741 F. Supp. 3d at 713. Defendants have no explanation for how their interpretation defines “person of the voter’s choice.”

The Attorney General, *see* AG Mot. 30–32, relies principally on the anomalous few cases that have read Section 208 far more narrowly than the overwhelming weight of precedent cited in Plaintiff’s motion, *see* Pls.’ Mot. 18. For example, the Attorney General cites *La Union Del Pueblo Entero v. Abbott*, a divided Fifth Circuit panel decision that upheld a Texas law that prevents ballot assistors from receiving monetary compensation. 151 F. 4th 273 (5th Cir. 2025), *petition for cert. filed*, No. 25-904 (U.S. Jan. 24, 2026). Despite the Supreme Court’s instruction that preemption analyses must “begin with [the] text,” *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 484–85 (1996), the *Abbott* majority explicitly rejected that approach, concluding that “the district court erred by relying on the text of Section 208” in analyzing whether Section 208 preempts Texas’s ban on providing compensation for assistance, *Abbott*, 151 F. 4th at 293 (emphasis added). The majority offers little textual analysis of Section 208, instead focusing on policy consequences and the absurdity canon to reason that a “broad reading of Section 208” “would vaporize numerous state laws” and therefore adopted a more “restrained reading.” *Id.* at 292. But the controlling inquiry is, and only can be, the meaning of the statutory text that Congress enacted. *See Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (“courts must presume that [the] legislature says in a statute what it means and means in a statute what it says there”) (citing cases); *accord Bostock v. Clayton Cnty.*, 590 U.S. 644, 674 (2020). The *Abbott* majority never explains how to define “a person of the voter’s choice,” and therefore offers no

explanation for how, under its approach, *any* state restrictions on voter assistance might ever violate Section 208. *See Abbott*, 151 F.4th at 292 (stating Section 208 “allow[s] states to superintend voter assistance”). This court should disregard this atextual opinion that is out of step with the overwhelming weight of the caselaw.¹⁴ *See* Pls.’ Mot. 13–21 (citing cases).

Other than relying on *Abbott* and the flawed textual analysis in *Priorities USA* discussed *supra*, the Attorney General relies on a handful of older cases, mostly from state courts. The federal case, *Ray v. Texas*, No. 2-06-cv-385 (TJW), 2008 WL 3457021 (E.D. Tex. Aug. 7, 2008), was decided years before the Fifth Circuit’s decision in *OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017), which Plaintiffs cite several times in their opening brief, *see* Pls.’ Mot. 14, 18, 28. *Ray* is likely “abrogated by” *OCA-Greater Houston*, *see LWV Ohio*, 741 F. Supp. 3d at 717 n.6, “where the Fifth Circuit adopted a broader view of § 208’s protections” than in *Ray*, *Ark. United*, 626 F. Supp. 3d at 1087 n.15; *see also Democracy N.C.*, 476 F. Supp. 3d at 236.

The other two decisions on which the Attorney General relies are decades-old state court cases that were decided well before federal courts fully grappled with Section 208. *See Qualkinbush v. Skubisz*, 357 Ill. App. 3d 594, 608 (2004) (noting that, at that time, the court was aware of “only one case that ha[d] directly addressed the question of whether the Voting Rights Act preempts a state law restricting the individuals who may mail disabled voter’s absentee ballots.”); *DiPietrae v. City of Philadelphia*, 666 A.2d 1132 (Pa. Commw. Ct. 1995). Like *Abbott*, these decisions eschew Section 208’s text “to create exceptions not found within the statute based on improper policy considerations this Court is prohibited from making.” *LWV Ohio*, 741 F. Supp. 3d at 717 n.6.

These stray cases depart from the weight of authority and are wrongly decided in part because they engage in an improper balancing test, weighing the state laws’ burdens and benefits. *See Ray*, 2008 WL 3457021, at *7 (reasoning state restrictions on assistance are not

¹⁴ As Plaintiffs have noted previously, the *Abbott* court’s interpretation of Section 208 also conflicts with the Commission’s Handbook that Defendants now herald. *See* Pls.’ Opp’n to Defs.’ Mots. to Dismiss (“Pls.’ Opp’n”) 27, Dkt. No. 21.

preempted if they “do[] not unduly burden the right to vote”); *Qualkinbush*, 357 Ill. App. 3d at 610 (upholding state law in part because ballot assistance purportedly has “the potential for undue influence and manipulation”); *DiPietrae*, 666 A.2d at 1136 (upholding state law as “a reasonable means of balancing the rights of a disabled person who wishes to vote with the public need to insure a fair election”). These decisions make a similar legal error as the Commission, seizing on a stray piece of legislative history to argue that Section 208 can preempt state laws only to the extent those state laws “unduly burden” the right to vote. SEC Mot. 26 (quoting S. Rep. 97-417 at 63); *see also id.* at 31 (“Whatever burden Individual Plaintiffs experience as a result of these state statutes, it is not an undue burden, especially when compared to the State’s interest in combatting fraud.”). But “[t]here is nothing contained in the text of the statute that requires a court to consider undue burden.” *LWV Ohio*, 741 F. Supp. 3d at 712 n.5.

More fundamentally, courts do not assess preemption cases using a burden-shifting framework. Federal preemption claims are “question[s] of law.” *Knight*, 984 F.3d at 337; *accord Epps v. JP Morgan Chase Bank, N.A.*, 675 F.3d 315, 320 (4th Cir. 2012) (“Whether a state law is preempted by federal law is a legal question”). “Under the Supremacy Clause of the Federal Constitution, ‘[t]he relative importance to the State of its own law is not material when there is a conflict with a valid federal law,’ for ‘any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield.’” *Felder v. Casey*, 487 U.S. 131, 138 (1988) (quoting *Free v. Bland*, 369 U.S. 663, 666 (1962)). There is nothing in Section 208’s text, or the overwhelming weight of authority in Section 208 and other preemption cases, that contemplates this sort of “undue burden” standard or balancing test.

The *Democracy North Carolina* decision helpfully shows how that portion of the Senate Report should guide a preemption analysis, if at all. *See* 476 F. Supp. 3d at 233–35. There, the court recognized the plaintiff was “in need of assistance in marking and completing his absentee ballot, and delivering it.” *Id.* at 234. Yet North Carolina law did “not allow [the] Plaintiff . . . to choose the person who will assist him” and, along with other restrictions on absentee ballot assistance, those “regulations impermissibly narrow Section 208’s dictate.” *Id.* at 235. Therefore,

because the challenged laws “impermissibly narrow[ed]” the plaintiff’s Section 208 right to assistance, he was *a fortiori* burdened by them. *See id.* The same is true here.

The only legal question at issue is whether the Voting Restrictions curtail the federal right guaranteed by Section 208. They do. *See* Pls.’ Mot. 13–21. Under the correct test, the Commission essentially concedes the case, admitting that the Voting Restrictions place “restrictions on who may request or return [absentee] ballots” for Plaintiffs. SEC Mot. 32. But “[f]ederal courts have shown little tolerance for any narrowing of the Section 208 right to assistance with the voting process.” *Disability Rts. N.C.*, 602 F. Supp. 3d at 878; *see also OCA-Greater Houston*, 867 F.3d at 615. The Voting Restrictions are thus preempted.

B. The presumptions Defendants rely on cannot cure the legal infirmities of the Voting Restrictions.

Defendants rely on two related canons of construction in arguing that Section 208 does not preempt the Voting Restrictions: the “presumption against preemption” and the “clear-statement rule.”¹⁵ They have not shown that either applies here, but regardless, the plain text of Section 208, its legislative history, and precedent all overcome any such presumptions. Congress clearly intended that Section 208 preempt state laws that create “obstacle[s] to the full purposes and objectives of Congress” in guaranteeing disabled voters assistance from their assistor of their choice throughout the voting process. *LWV Ohio*, 741 F. Supp. 3d at 719.

The “presumption against preemption” comes into play when considering “the pre-emption of state police power regulations.” *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 518 (1992). Relatedly, the “clear-statement rule” provides that if “Congress intends to alter the ‘usual constitutional balance between the States and the Federal Government,’ it must make its intention to do so ‘unmistakably clear in the language of the statute.’” *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 65 (1989) (citation omitted). Here, however, Section 208 covers both federal and state elections. Because “states have no inherent or reserved power [over] the regulation of

¹⁵ Some courts have recognized that “the plain statement rule is not independent of the presumption against preemption; instead, it is one way the presumption is applied.” *Fish v. Kobach*, 840 F.3d 710, 731 (10th Cir. 2016). To avoid any doubt, Plaintiffs address each in turn.

federal elections,” *Gonzalez v. Arizona*, 677 F.3d 383, 392 (9th Cir. 2012), *aff’d sub nom. Arizona v. Inter Tribal Council of Ariz., Inc.* (“ITCA”), 570 U.S. 1 (2013), the presumption against preemption does not apply to Elections Clause cases, *see ITCA*, 570 U.S. at 13. Thus, “[i]t is not altogether clear that the presumption against preemption actually applies in [a Section 208] case,” *LWV Ohio*, 741 F. Supp. 3d at 718 n.7, and so too with the clear-statement rule. Even considering the regulation of *state* elections, the Fourth Circuit has explained that states “are not without limit in this field,” and “must yield to other constitutional provisions that protect the rights of voters and candidates.” *Sharma v. Hirsch*, 121 F.4th 1033, 1038 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 1966 (2025). And “the chief congressionally imposed limit on the states is the Voting Rights Act,” *id.*, which “[i]nvok[es] the power conferred by § 2 of the Fifteenth Amendment,” *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 656 (2021).

Even when the presumption against preemption or clear-statement rule operates with full force, it “can be overcome where, as here, Congress has made clear its desire for pre-emption.” *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 151 (2001). As in analogous Section 208 cases, here “the presumption against preemption cannot save the Challenged . . . law[s].” *LWV Ohio*, 741 F. Supp. 3d at 719. “[T]he purpose [of the VRA] was to create a guaranteed right to the voting process that could not be narrowed or limited by state legislation.” *Disability Rts. N.C.*, 2022 WL 2678884, at *4. As explained in Plaintiffs’ opening brief and *supra*, the text of Section 208 itself provides ample evidence of Congress’s desire to preempt state laws that “impermissibly narrow[] the right to assistance by a person of the voter’s choice.” *Id.* at *6. Put simply, “[t]he presumption against preemption is rebutted by the plain text of Section 208.” *LWV Ohio*, 741 F. Supp. 3d at 719.

By the same token, Congress *has* spoken clearly in its desire to preempt state restrictions on assistance. “Section 208 provides such a clear statement” in its text. *Ala. State Conf. of the NAACP*, 746 F. Supp. 3d at 1243. The Court need not rely on legislative history because Section 208 “is clear and unambiguous,” *LWV Ohio*, 741 F. Supp. 3d at 712 n.5—“*any* voter with a disability or who lacks literacy may have assistance from a person of their choice.” *Ala. State*

Conf. of the NAACP, 746 F. Supp. 3d at 1243. “Looking simply at the text of the statute and applying the ordinary meaning of ‘a person of the voter’s choice,’ Section 208 gives disabled voters the right to choose who will facilitate the submission of their absentee ballot without further restriction by the state.” *LWV Ohio*, 741 F. Supp. 3d at 713 (internal quotation marks omitted). Plaintiffs’ textual analysis in their opening brief and *supra* supports the straightforward understanding that “other than these two excluded groups, the plain language of Section 208 gives voters unrestricted choice over who may assist them with the voting process.” *Disability Rts. N.C.*, 2022 WL 2678884, *4.

Even when looking to legislative history, Congress was direct in its “intent to preempt certain state laws that would contravene a Section 208 voter’s right to assistance.” *Ala. State Conf. of the NAACP*, 746 F. Supp. 3d at 1244. It “emphasized the importance of affording voters with disabilities unfettered choice in assistants.” *Disability Rts. N.C.*, 2022 WL 2678884, at *4 (citing S. Rep. 97-417, at 62). And “given the context of the legislative discussion around Section 208, it is unlikely that the Senate intended to permit state election procedures that directly restrict rights guaranteed by the text of Section 208.” *Disability Rts. N.C.*, 602 F. Supp. 3d at 880.

Were there any doubt, Congress “holds a decided advantage in this delicate balance: the Supremacy Clause. As long as it is acting within the powers granted it under the Constitution, Congress may impose its will on the States.” *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (citing U.S. Const. art. VI, cl. 2). No one disputes Congress acted pursuant to its enforcement authority under the Reconstruction Amendments to enact the VRA, thereby preempting any state laws that contravene Section 208. *E.g. Brnovich*, 594 U.S. at 656; *Katzenbach v. Morgan*, 384 U.S. 641, 646–47 (1966); *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 373 (2001).

III. Defendants’ remaining arguments lack merit.

Defendants throw out several other arguments that are wholly inapt: (1) their purported governmental interests supporting the Voting Restrictions; (2) the canon of constitutional

avoidance; (3) a misplaced appeal to *Purcell v. Gonzalez*; and (4) the Attorney General's Sisyphian private-right-of-action argument. Each fails.

First, Defendants suggest that even if the Voting Restrictions violate the text of Section 208, the governmental interests of “combatting fraud,” SEC Mot. 31–32, and preventing “undue influence” in elections, AG Mot. 34, carry the day.¹⁶ But as noted *supra*, unlike some voting-rights claims based on broad constitutional language that have required court-imposed balancing tests—such as those against unduly burdensome voting restrictions, *see Burdick v. Takushi*, 504 U.S. 428 (1992)—this not how statutory preemption analysis functions. The text of Section 208 outright prohibits restricting disabled voters' right to an assistor of their choice beyond Congress's two exceptions. *See Disability Rts. N.C.*, 2022 WL 2678884, at *5 (Defendants cannot rely on “warding off election fraud” to “limit the right to assistance further” than Congress's two exceptions); *Ark. United*, 626 F. Supp. 3d at 1086 n.14 (“because the State's ‘compelling interests’ are not the focus of the preemption inquiry, these issues are immaterial to the Court's analysis”). In short, “such election integrity and policy arguments should be put to Congress, not the courts.” *LWV Ohio*, 741 F. Supp. 3d at 714; *see also Ala. State Conf. of NAACP*, 2024 WL 4448841, at *4 (Section 208 “is actually designed to protect § 208 voters (along with other voters), and to maintain election integrity” and therefore “itself supplies the response” to Defendants' policy arguments).

Second, the Attorney General asks this Court to “construe” the Voting Restrictions to “avoid any constitutional problems.” AG Mot. 24. But courts may interpret a statute to avoid constitutional questions “only if such a reading is ‘fairly possible,’ ‘after the application of ordinary textual analysis.’” *United States v. Simms*, 914 F.3d 229, 251 (4th Cir. 2019) (en banc) (citation omitted). For the reasons explained *supra*, the Voting Restrictions directly conflict with Section 208, and thus the Court cannot merely “construe” away a direct conflict. *Armstrong v.*

¹⁶ In support of his anti-fraud arguments, the Attorney General references a purported violation of the Five-Voter Limits themselves. *See* AG Mot. 34. This only proves that Plaintiffs have standing and their claims are ripe, as “ballot harvesting” in the Attorney General's terminology simply means collecting more than five ballots to return. *See id.*

Exceptional Child Ctr., Inc., 575 U.S. 320, 324 (2015) (courts “must not give effect to state laws that conflict with federal laws”).

Third, the Attorney General alone raises *Purcell* concerns with the immediacy of injunctive relief. AG Mot. 35. Those arguments go neither to the merits, *see Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006), nor—as Plaintiffs explained in their motion for summary judgment, *see Pls.’ Mot.* 25–26—do they carry any weight as to the equities.

Fourth, only the Attorney General argues that Plaintiffs lack private enforcement power to bring this suit under Section 208. AG Mot. 20–21. He dedicates just one paragraph to this argument, relying on a single, non-binding Eighth Circuit decision. *Id.* at 21 (citing *Ark. United*, 146 F. 4th at 677). This argument lacks merit for the reasons Plaintiffs already detailed in their opposition to Defendants’ motions to dismiss. *See Pls.’ Opp’n* 29–32.

Thurston is out of step with “every [other] court to consider the issue” and the U.S. Attorney General, who have agreed “that section 208 *does* implicitly allow private enforcement.” *Fla. State Conf. of the NAACP*, 576 F. Supp. 3d at 988–89 (citing cases). Even if this Court applied the prevailing test for implied private rights of action under *Alexander v. Sandoval*, 532 U.S. 275 (2001), on a blank slate, “all evidence points to the same conclusion: Congress intended for private parties to enforce Section 208.” *Fla. State Conf. of the NAACP*, 576 F. Supp. 3d at 989. As myriad courts have found, “[t]here is no question that Section 208 confers a federal right on individuals with disabilities,” *LWV Ohio*, 741 F. Supp. 3d at 711, and Section 3 of the VRA provides for a private remedy because it authorizes relief for any “aggrieved person . . . under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment,” 52 U.S.C. § 10302(a).

Plaintiffs can alternatively enforce their Section 208 rights under Section 1983, which “can presumptively be used to enforce unambiguously conferred federal individual rights” including the right to voting assistance Section 208 guarantees. *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 172 (2023). This presumption can be rebutted only in

“exceptional cases,” *Livadas v. Bradshaw*, 512 U.S. 107, 133 (1994), which no party argues exist here.

CONCLUSION

Plaintiffs respectfully request that the Court deny Defendants’ Motions for Summary Judgment, grant Plaintiffs’ Motion for Summary Judgment, and declare the Voting Restrictions null and enjoin their enforcement.

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Respectfully submitted,

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** Motion for admission Pro Hac Vice forthcoming*

*** Admitted Pro Hac Vice*