

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

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

Plaintiffs,

v.

ALAN WILSON, in his official capacity as the
South Carolina Attorney General; 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 J. ELDER, ANGELA
STRINGER, and SCOTT MOSELEY, in their
official capacities as members of the State
Election Commission,

Defendants.

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

**ATTORNEY GENERAL WILSON'S
REPLY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

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ARGUMENT

I. Plaintiffs Lack Standing and Ripe Claims.

As the Attorney General’s Motion for Summary Judgment and Motion to Dismiss made clear, Plaintiffs have many standing and ripeness problems. Although these problems implicate various doctrinal legal concepts, they generally derive from the same source: Plaintiffs’ failure to show that South Carolina law has denied them a right to voting assistance under Section 208. As a result, Plaintiffs can’t establish standing or show that their claims are ripe.

A. Individual Plaintiffs Do Not Have Standing.

Individual Plaintiffs have failed to demonstrate standing for any of their claims.

1. Injury in Fact

The Individual Plaintiffs have not demonstrated an injury in fact for at least two reasons. *First*, they have not established a right to voting assistance under Section 208. *Second*, and alternatively, they have not shown that South Carolina law denies them that right.

Starting with the right to voting assistance under Section 208, Plaintiffs argue that Section 208 doesn’t require voters with disabilities to show that they are unable to vote without assistance.¹ (ECF No. 47 at 5). And they argue that the Attorney General’s reading of Section 208 “lacks any textual basis or precedential support.” (ECF No. 47 at 4). But in doing so, they ask this Court to ignore both the text of Section 208 (guaranteeing assistance to any voter who “requires” it, 52 U.S.C. § 10508) and its legislative history (explaining that Section 208 was meant to provide

¹ Plaintiffs erroneously tell the Court that “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.” (ECF No. 47 at 7). In reality, the Attorney General urged the Court to defer to the Commission’s interpretation that South Carolina law and Section 208 are coterminous. (ECF No. 37 at 33–34). Those are not the same thing.

assistance to those who are “unable” to vote without assistance, S. Rep. 97-417, at 62 (1982)).² Contemporaneous dictionary definitions of those terms also undercut Plaintiffs’ argument. *The American Heritage Dictionary*, 1982, “Requires” (defined as “[t]o have as a requisite; need.”); *id.*, “Unable” (defined as “[l]acking the necessary power, authority, or means; not able.”). And the cases Plaintiffs cite for support on this point aren’t precedential here. (ECF No. 47 at 4-5).

Plaintiffs’ appeal to the ADA also fails. (ECF No. 47 at 6). Definitions in separate statutes have no bearing on the meaning of terms in Section 208. *See e.g., Robinson v. Shell Oil Co.*, 519 U.S. 337, 341–42 (1997). So an ADA amendment’s discussion of “whether an impairment substantially limits a major life activity” is irrelevant to the meaning of “disability” in Section 208.

What’s more, and as discussed more fully below, persuasive authority from other jurisdictions suggests that Section 208 doesn’t even extend to the requesting and returning of absentee ballots. Such an interpretation necessarily precludes a finding of standing for Individual Plaintiffs.

On the facts, Plaintiffs fare no better. Plaintiffs Bell and Caldwell aren’t entitled to assistance under Section 208, and even if they did, they have access to voting assistance notwithstanding the challenged provisions of South Carolina law. (ECF No. 37 at 15–17). But rather than rebut those arguments, Plaintiffs simply respond that “the absurdity of those assertions speak for themselves.” (ECF No. 47 at 7). And they simply reiterate that Plaintiffs Bell and Caldwell have “limited mobility.” (ECF No. 47 at 7). But that’s not enough to satisfy Plaintiffs’ burden at summary judgment. They haven’t shown that the use of wheelchairs puts Plaintiffs Bell and Caldwell on the same plane as those who are blind or illiterate. *See* 52 U.S.C. § 10508. Nor have they shown that

² Even Plaintiffs admit that “not every citizen” has a “right to assistance under Section 208.” (ECF No. 47 at 6 n.4). The line must be drawn somewhere, and this Court should draw the line where Congress drew it, as shown in both the text and legislative history.

Plaintiffs Bell or Caldwell will be unable to receive assistance if they are entitled to it.³

Assuming *arguendo* that Individual Plaintiffs are covered under Section 208, the Individual Plaintiffs fail to show that South Carolina law denies them assistance. This is true for at least two reasons. *First*, the Individual Plaintiffs have not rebutted the notion that the actions of third parties are the true source of their injury—not South Carolina law itself. *Second*, the Individual Plaintiffs have not demonstrated that they are not eligible for assistance under South Carolina law.

The first deficiency is most apparent in the context of Individual Plaintiffs’ challenge to the Five-Voter Limits. If Ms. Gaither and Ms. Allen choose not to assist Individual Plaintiffs, that’s their choice, not a requirement of South Carolina law. Even if the Attorney General could be liable for the third-party actions, Individual Plaintiffs haven’t even asked if they could be among the five voters assisted by Ms. Gaither and Ms. Allen. And plaintiffs may not “manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 416 (2013).

Importantly, Ms. Allen hasn’t refused to assist Mr. Bell in any election in 2026. But even if she said she definitely won’t assist Mr. Bell, she acknowledged that Mr. Bell has family members who can assist him. (ECF No. 39-4 at 4). In the same way, Plaintiffs argue that “more than five residents will request” Ms. Gaither’s assistance, and then insinuate that Mr. Caldwell likely will not be one of the five residents that Ms. Gaither chooses to assist. (ECF No. 47 at 9). But this speculation isn’t enough to demonstrate a concrete injury in fact. *Clapper*, 568 U.S. at 414–15.

With respect to the second deficiency, Plaintiffs fail to show that South Carolina law

³ Plaintiffs do not respond to the Attorney General’s argument that no plaintiff has standing to challenge the physical disability requirement of South Carolina’s voting law. (ECF No. 37 at 14–15). That is, no plaintiff alleges a mental disability that would grant them standing to challenge South Carolina law requiring a disability to be physical, in line with the purpose of Section 208.

prevents them from receiving assistance, either from family or from nursing home staff. More specifically, Plaintiffs fail to show *how* each challenged law injures each Individual Plaintiff. Such a showing is necessary because standing isn't dispensed in "gross." *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 581 U.S. 433, 439 (2017) (citation modified). And as previously explained by the Attorney General, the Individual Plaintiffs have not made this showing because they can't. With respect to their Voting Assistance Eligibility Claim and their Limits on Possible Assistors Claim, to the extent Individual Plaintiffs are entitled to assistance under Section 208, they are entitled to assistance from a broad range of possible assistors under state law.

Individual Plaintiffs haven't demonstrated that the Five-Voter Limits preclude them from receiving assistance. Consider Plaintiff Jenkins. She has vision impairment, so she's likely eligible for voting assistance under South Carolina Limits on Voting Assistance Eligibility. S.C. Code Ann. § 7-13-780. And Ms. Allen, the person from whom Plaintiff Jenkins would like to receive assistance, can assist up to five voters, so South Carolina's Five Voter Limit doesn't prevent Ms. Jenkins from being one of the five voters that Ms. Allen assists. Even if Ms. Allen chooses not to assist Plaintiff Jenkins, Plaintiff Jenkins hasn't shown she can't receive voting assistance from others. And even if Section 208 guarantees assistance to Plaintiffs Bell and Caldwell (which it doesn't), the Five-Voter Limits don't prevent them from being among the five voters assisted by Ms. Gaither or Ms. Allen. Plaintiffs Bell and Caldwell also have family members that can assist them.

Plaintiffs offer several responses, but none are availing. First, Plaintiffs appear to argue that it's irrelevant whether other trusted assistors are available; what matters is that they get assistance from *the* "[p]referred assistor[]" (whether or not that person actually agrees to help them). (ECF No. 47 at 11). But that's not the guarantee of Section 208. As discussed further below, Plaintiffs are entitled to assistance from "a" person of their choice, not "the" person of their choice. Plaintiffs

also argue that Plaintiffs Bell and Caldwell's receipt of assistance from family in the past doesn't mean they can receive assistance from family this year. (ECF No. 47 at 9–10). But in the same breath, Plaintiffs also argue that because Ms. Allen and Ms. Gaither have previously been asked to assist more than five people in the past, that's proof they'll be asked to assist more than five people this year. (ECF No. 47 at 9). Plaintiffs can't have it both ways. Even Ms. Allen seems to think that residents "like Mr. Bell" have family members who can assist them. (ECF No. 47 at 9). And Mr. Bell doesn't say that his family members can't or won't help him, or that he doesn't trust his family members to provide assistance. He simply "wants" to rely on Ms. Allen for assistance, regardless as to whether she is willing and able to help him. (ECF No. 47 at 10).

Perhaps attempting to bolster their standing arguments, Plaintiffs argue they have a "credible fear of prosecution" under South Carolina's voting laws. (ECF No. 47 at 12-13). But once again, they don't identify which Individual Plaintiffs fear prosecution for violating which voting laws. That alone fails to satisfy the summary judgment standard. But even if the Court considers each plaintiff and each law, Plaintiffs "credible fear of prosecution" argument doesn't hold water.

2. Traceability

Individuals Plaintiffs also have a traceability problem. *First*, Plaintiffs appear to be confused about the traceability legal standard. They reject the Attorney General's argument that Individual Plaintiffs haven't been "denied assistance" by the Limits on Voting Assistance Eligibility by arguing that traceability does not require as much. (ECF No. 47 at 13). But then they argue that those provisions "prevent" Plaintiffs Bell and Caldwell "from receiving assistance." (ECF No. 47 at 14). At any rate, Plaintiffs' theory is incorrect. Plaintiffs Bell and Caldwell are not entitled to assistance under Section 208, so South Carolina law cannot take away what is not theirs.

Second, Plaintiffs erroneously argue that the Five-Voter Limits "exert both a coercive and

predictable effect on Ms. Allen and Ms. Gaither’s conduct,” (ECF No. 47 at 14), and that Ms. Allen has thus “disavowed helping residents” with family members.⁴ But her actions are neither coerced nor predictable. The Five-Voter Limits don’t require or pressure Ms. Allen into refusing to assist nursing home residents with family members. It only says that assistors can assist five voters.

Consider the cases Plaintiffs cite for their theory. In *Bennett v. Spear*, the Supreme Court concluded that an advisory opinion issued by the Fish and Wildlife Service to the Secretary of the interior had a coercive effect on the Secretary, and therefore established traceability for standing to challenge the advisory opinion. *Bennett v. Spear*, 520 U.S. 154, 169 (1997). That’s because the Secretary bore a statutory burden of articulating in its administrative record the reasons for disagreeing with the advisory opinion. *Id.* The opinion’s recommendations had a “virtually determinative effect” on the Secretary because, if he proceeded in opposition to the advisory opinion, that could subject the agency and its employees to substantial civil and criminal penalties. *Id.* at 170.

Unlike *Bennett*, the law here doesn’t require a third party to affirmatively do anything. It doesn’t require assistors to only assist people without family members. And Plaintiffs fail to identify any aspect of the law that pressures anyone to provide voting assistance in the first place, let alone pressures them to assist certain individuals over others.⁵ Ms. Allen is also not a party to this case, so any alleged fear of enforcement she may have is irrelevant to Plaintiffs’ standing.

Turn to another case cited by Plaintiffs, *Department of Commerce v. New York*, 588 U.S. 752 (2019). In that case, the Secretary of Commerce’s decision to reinstate a census question concerning citizenship status was challenged by local governments on a theory that noncitizens will

⁴ Plaintiffs say Ms. Allen has “disavowed” assisting residents with family members, “including Mr. Bell.” (ECF No. 47 at 14). But her declaration just says that she “asked families of most residents to see if they are willing to help them vote absentee.” (ECF No. 39-4 at 4).

⁵ *Bennett* also addressed the pleading stage—not summary judgment. 520 U.S. at 170–71.

respond to the census at lower rates. *Id.* at 766–67. The Supreme Court held that the plaintiffs established traceability because of the predictable effect of government action on the decisions of third parties. *Id.* at 768. That’s because “the evidence at trial established that noncitizen households have historically responded to the census at lower rates than other groups.” *Id.*

Unlike *Department of Commerce*, Plaintiffs haven’t provided any evidence of historical response to prove that third parties will respond to government action in a predictable way. No evidence has been presented suggesting that assistors operating under the Five-Voter Limit over the past several years have “historically” chosen only to assist those who don’t have family members to assist them. Plaintiffs’ anecdotal declarations don’t establish that such behavior is predictable. Indeed, assistors can offer assistance in a variety of configurations, such as first-come-first-serve basis or prioritizing assistance to their own family members.

This is particularly true since the Five-Voter Limits don’t purport to limit how many people an assistor can assist in filling out a ballot. And as the State Election Commission points out, there are multiple ways voters can request and return ballots without assistance. (ECF No. 46 at 19).

Plaintiffs also rebut the Attorney General’s argument that Plaintiffs’ standing to challenge the Five-Voter Limits rests on speculation about third party choices by arguing there’s no “chain of contingencies here” and that the “causal mechanism is direct and immediate.” (ECF No. 47 at 15). But Plaintiffs’ conclusion rests on the faulty premise that the Five-Voter Limits require Ms. Allen and Ms. Gaither to exclude Individual Plaintiffs from the group of five voters they can assist. In reality, Ms. Allen or Ms. Gaither don’t have to assist anyone. But they are also not barred by the Five-Voter Limits from doing so, provided Individual Plaintiffs are entitled to receive assistance.

3. Redressability

Plaintiffs argue that “removing even a single barrier to the exercise of a right is sufficient”

for redressability here. (ECF No. 47 at 15). But that has no application in this case, where there are independent and unchallenged laws governing Plaintiffs' access to voting assistance. *See, e.g., Covenant Media Of SC, LLC v. City Of N. Charleston*, 493 F.3d 421, 430 (4th Cir. 2007) (finding no redressability where a plaintiff challenged the constitutionality of a regulation but the plaintiff's conduct was proscribed by an independent and unchallenged law). *First*, Section 208's voting assistance eligibility requirements are the same as those found in South Carolina law. So, if South Carolina's voting assistance eligibility provisions are enjoined, Plaintiffs Bell and Caldwell will likely still not be eligible for voting assistance under federal law. And Plaintiff Jenkins will likely continue to be eligible for assistance under federal law as she is currently under state law. *Second*, even if South Carolina law governing assistors is enjoined, that wouldn't guarantee the assistors Plaintiffs want to use will actually assist them.

Further, while Plaintiffs hope the Court ignores *Arkansas United v. Thurston*, 146 F.4th 673 (8th Cir. 2025), (ECF No. 47 at 33–34), they don't rebut the argument that Plaintiffs' claims aren't redressable for lack of a private enforcement mechanism. (ECF No. 37 at 26–27).

B. NAACP-SC Does Not Have Standing.

For the first prong of associational standing, the Attorney General points out that NAACP-SC has failed to identify any members who have standing. (ECF No. 37 at 25). Plaintiffs respond, not by naming members with standing, but by doubling down on their threadbare standing argument. They argue they're aware of unnamed "individuals" who have standing, such as "elderly members." (ECF No. 47 at 18). But that's not enough. The "requirement of *naming* the affected members has never been dispensed with" except "where *all* the members of the organization are affected by the challenged activity." *Summers v. Earth Island Inst.*, 555 U.S. 488, 498–99 (2009).

As shown above, Mr. Caldwell doesn't have standing. And NAACP-SC hasn't named any

other member whose standing can even be tested, let alone established by evidence. Neither does NAACP-SC claim that all, or even most, of its members are affected by the challenged laws.

For the third prong, NAACP-SC argues that its individual members don't need to participate here because NAACP-SC seeks prospective or injunctive relief. (ECF No. 47 at 18–19). And further that only one member needs to show they're injured. (ECF No. 47 at 19). But NAACP-SC forgets that the third prong is about showing whether “there is complete identity between the interests of the consortium and those of its member[s] ... and the necessary proof could be presented ‘in a group context.’” *Ass'n for Accessible Medicines v. Bonta*, 766 F. Supp. 3d 1020, 1027 (E.D. Cal. 2025) (quoting *N.Y. State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 10 n.4 (1988)). Plaintiffs have failed to show that NAACP-SC's membership is so composed of disabled voters that it can adequately represent the interests of disabled voters “in a group context.”

Plaintiffs also try to satisfy the third prong by arguing their suit “raises a pure question of law that is not specific to individual members.” (ECF No. 47 at 19) (quoting *Ass'n for Accessible Meds.*, 766 F. Supp. 3d at 1027). But that's wrong. Plaintiffs seek to invalidate state statutes, and that generally requires individualized inquiry to assess merits because a “statute may be invalid as applied to one state of facts and yet valid as applied to another.” *Ayotte v. Planned Parenthood of N. New Eng.*, 546 U.S. 320, 329 (2006) (citation modified). Thus, participation of individual members is necessary and NAACP-SC's associational standing fails.

C. Plaintiffs' Claims Are Not Ripe.

Plaintiffs fault the Attorney General for basing his ripeness argument on Plaintiffs' discovery responses that are “more than three months before the June 2026 primaries, and two months before voters can even receive an absentee ballot” showing Plaintiffs hadn't asked anyone for assistance yet. (ECF No. 47 at 20). But the windup is followed by a wild pitch. Even in their

response brief, Plaintiffs *still* don't provide any evidence that they've asked for assistance.

Plaintiffs argue that they don't need to show they've been denied assistance, just that denial of assistance is "predictable." (ECF No. 47 at 20). And they argue that such denial is predictable because the Five-Voter Limit will make Plaintiffs' preferred assistors "unable to assist Plaintiffs" unless they "subject themselves to felony penalties." (ECF No. 47 at 20–21). But that's not right. Once again, Plaintiffs erroneously claim that the Five-Voter Limits preclude assistors from including Plaintiffs in their list of five voters they may assist. That's simply not required by the law.

II. Section 208 Does Not Preempt the Challenged Provisions.

As explained in the Attorney General's Motion for Summary Judgment, this Court's preemption analysis must be informed by a heightened presumption against preemption. *See S. Blasting Servs. v. Wilkes Cnty., NC*, 288 F.3d 584, 590 (4th Cir. 2002). This presumption also applies to the potential scope of preemption. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). And although Plaintiffs argue that Defendants haven't shown the presumption applies here (ECF No. 47 at 29), courts have easily concluded that the presumption applies in context of administering elections. *See La Union Del. Pueblo Entero v. Abbott*, 151 F.4th 273, 291 (5th Cir. 2025). Moreover, Plaintiffs' argument that a clear congressional desire for preemption overcomes the presumption here misses the mark given the absence of an express preemption provision in Section 208.

Other tools of statutory construction are relevant to this Court's analysis, including the clear statement rule, the canon of constitutional avoidance, and basic separation of powers principles. *See* (ECF No. 37 at 29–30). Plaintiffs do little to undermine the importance of these tools and do nothing to rebut the role of federalism principles in resolving this case. *See Murphy v. Dulay*, 768 F.3d 1360, 1367–68 (11th Cir. 2014). Applying these principles and tools here, this Court can readily determine that Section 208 does not preempt the challenged provisions. *See N. Va. Hemp*

& Agric., LLC v. Virginia, 125 F.4th 472, 493 (4th Cir. 2025).

The Court isn't without guidance here. Courts from around the country have routinely concluded that Section 208 doesn't preempt analogous state election laws. *See* (ECF No. 37 at 36) (collecting cases); *see also* (ECF No. 13 at 18) (collecting cases). These courts have pointed to the text, structure, and legislative history of Section 208 to conclude that the statute doesn't provide an unlimited right to voting assistance and doesn't otherwise preempt state election laws.

A careful review of these decisions reveals at least three reasons why courts have concluded that state absentee laws aren't preempted: (1) Section 208 doesn't extend to the requesting and returning of absentee ballots; (2) Section 208 doesn't provide unfettered choice in voting assistance; and (3) the challenged provisions don't unduly burden Section 208's right to voting assistance. Each reason provides this Court sufficient grounds to reject Plaintiffs' preemption claims.

Starting with the first rationale, some courts have concluded that state laws restricting the requesting and returning of absentee ballots are not preempted because Section 208 does not afford the right to assistance in that context. Consider *Qualkinbush v. Skubisz*, 357 Ill. App. 3d 594, 826 N.E.2d 1181 (2004). In that case, the court concluded that "even in light of the federal provisions, states may impose restrictions on those individuals who may return a disabled voter's absentee ballot, and that such restrictions may be above and beyond those set forth in the Voting Rights Act." *Qualkinbush*, 357 Ill. App. 3d at 610, 826 N.E.2d at 1196. In support of this conclusion, the court noted that there was "nothing" in the relevant legislative history to suggest that the federal voting assistance rights extended to "absentee ballot voting, and, more specifically, to the return of absentee ballots." 357 Ill. App. 3d at 610, 826 N.E.2d at 1196–97.

Although Plaintiffs attempt to distinguish *Qualkinbush* on the grounds that it's a "decades-old state court case[]" that was "decided well before federal courts fully grappled with Section

208,” (ECF No. 47 at 27), they don’t refute its analysis of Section 208’s text or legislative history.

Or consider the more recent decision of *DSCC v. Simon*, 950 N.W.2d 280 (Minn. 2020). In that case, the court concluded that Section 208 did not preempt a state law imposing a three-voter limit on delivery of a completed absentee ballot. In reaching that conclusion, the court held that “the plain language of Section 208 is not as broad” as the plaintiffs suggested—that it “extends to all phases of the voting process, including delivery of a marked ballot.” *Id.* at 290.

Section 208’s text and legislative history show that it doesn’t afford voting assistance for returning and requesting absentee ballots. Given the legislative history’s emphasis on in-person voting, there is a strong argument that Section 208 may not extend to absentee voting at all. *See* (ECF No. 45 at 30). Of course, if this Court adopts this view of Section 208, Plaintiffs’ preemption claims must fail across the board. And if this Court were to only adopt the more modest approach outlined in *Qualkinbush* or *Simon*, Plaintiffs’ Five-Voter Limit claim would still fail.

Moreover, if this Court adopted either view of Section 208, Plaintiffs would also lack standing because they would lack injury to a legally protected interest. *See Sprint Communications Co., L.P. v. APCC Services, Inc.*, 554 U.S. 269, 273 (2008).⁶ But even if this Court concludes that Section 208 provides a right to some form of voting assistance in absentee voting, there are at least two other independent reasons as to why Plaintiffs’ preemption claims should fail on the merits.

Turning to the second rationale, various courts have held that the text of Section 208 doesn’t grant a disabled voter “choice without limitation” in receiving voting assistance. *Ray v. Texas*, No. CIV.A.2-06-CV-385TJW, 2008 WL 3457021, at *7 (E.D. Tex. Aug. 7, 2008). Put another way,

⁶ This Court should technically first address the standing question because it is a jurisdictional issue, which may be raised at any time. *See Public Interested Legal Foundation, Inc. v. Wooten*, 164 F.4th 362, 365 (4th Cir. 2026) (“Standing is a threshold requirement for jurisdiction that may be raised at any time. Where standing is in question, the federal court must decide the issue before reaching the merits of any claim presented.”) (citation modified).

these courts have suggested that Section 208 has a more modest purpose—and preemptive effect—than Plaintiffs say. In support of this conclusion, these courts point to the text of Section 208, which only guarantees “assistance by a person of the voter’s choice.” 52 U.S.C. § 10508.

Consider *Priorities USA v. Nessel*, 628 F.Supp.3d 716 (E.D. Mich. 2022). In that case, the court criticized the plaintiffs for reading Section 208 “too broadly,” noting that the section merely “allows certain voters who need help voting to select ‘a person of the voter’s choice’—not ‘any person,’ not ‘the person.’” *Id.* at 732 (citing 52 U.S.C. § 10508) (emphasis in original). The court emphasized the use of an indefinite article—“a”—as “non-specific and nonlimiting,” leading to the conclusion that “a State law that limits a voter’s choice does not automatically flout Section 208.” *Id.* at 733. The court added that the “natural effect” of Section 208 allows “some wiggle room: a voter may select ‘a person’ to assist them, but not the person of their choice.” *Id.*

Although Plaintiffs cast this drafting choice as “an irrelevant textual distinction” (ECF No. 47 at 25), that ignores the Fourth Circuit’s consistent recognition of this distinction in various contexts. *United States v. McCauley*, 983 F.3d 690, 695 (4th Cir. 2020); *Indem. Ins. of N. Am. v. United States*, 569 F.3d 175, 181 (4th Cir. 2009). It also ignores Congress’s use of a definite article in other parts of the statute. 52 U.S.C. § 10508. Courts “must assume that Congress made a deliberate choice to use different language.” *Cunningham v. Scibana*, 259 F.3d 303, 308 (4th Cir. 2001). Plaintiffs downplay this distinction by emphasizing the phrase “person of the voter’s choice” (ECF No. 47 at 25), but that only clarifies that a disabled voter enjoys a measure of choice in assistance. It doesn’t necessarily follow that the choice is “without limitation.” *Ray*, 2008 WL 3457021, at *7.

Plaintiffs also point to Section 208’s exclusion of two groups of assistors as supportive of a more expansive right, but that argument should be rejected for at least two reasons. (ECF No. 47 at 31). *First*, nothing in the text or legislative history of Section 208 suggests a congressional intent

that “no other group could be barred” by the States from providing assistance. *Abbott*, 151 F.4th at 294 (emphasis in original). In other words, nothing in the text or history of Section 208 suggests the list of excluded assistors was intended to be an exhaustive list. Such a reading would prevent States from barring assistance from “candidates, candidates’ relatives, electioneers, minors, or prisoners”—precisely in part what the challenged provisions attempt to do. *Id.* The better reading is that Congress simply “specified two groups who, it feared, might influence vulnerable voters—without implying any judgment about other circumstances that might bear on voter assistance.” *Id.*

Second, if Plaintiffs rely on *expressio unius*, it’s inapplicable here for multiple reasons. For one, the canon only applies when it’s “fair to suppose that Congress considered the unnamed possibility and meant to say no to it.” *Barnhart v. Peabody*, 537 U.S. 149, 168 (2003). Given the absence of any discussion of absentee voting in the text or the legislative history, it would be impossible to suggest that Congress considered further restrictions on assistors in absentee voting and meant to say no to them. For another, the canon doesn’t apply when an omitted item is “conceptually different” from the listed items. *Abbott*, 151 F.4th at 294 (citation modified). While Section 208 bars “two classes based on their relationship to the voter,” the restrictions in South Carolina law involve restrictions on ballot harvesting and improper influence of political actors. *Id.*

Even if the Court concludes that Section 208 extends to absentee voting, Plaintiffs’ preemption claims must fail in their entirety. After all, the challenged provisions afford disabled voters relatively wide latitude in absentee voting. As Defendants have repeatedly emphasized, the challenged provisions allow voters with disabilities significant assistance in voting. (ECF No. 37 at 33–34); *see also* (ECF No. 38-1 at 28–29). Disabled voters and certain individuals residing in nursing homes can receive absentee voting assistance from a wide range of individuals, so long as the individual is a registered elector who acts with the voter’s permission and is not a candidate, a

member of a candidate's paid staff, or a campaign volunteer. *See* S.C. Code Ann. § 7-15-310(7).

Finally, as to the third rationale, courts have concluded that state laws aren't preempted if they don't "unduly burden" Section 208's assistance right. *See Abbott*, 151 F.4th at 295 (citation modified). They've looked to the legislative history of Section 208, which provides that the section would preempt state election laws "only to the extent that they unduly burden the right recognized in [Section 208], with that determination being a practical one dependent upon the facts." S. Rep. 97-417, at 63. Under this framework, courts have upheld a variety of state restrictions, including a restriction limiting the number of early voting ballots a witness may sign and a restriction limiting who may serve as an assistor. *See Abbott*, 151 F.4th at 295; *Ray*, 2008 WL 3457021, at *7.

Plaintiffs accuse Defendants of "seizing on a stray piece of legislative history," but Plaintiffs often invoke legislative history for support. (ECF No. 47 at 28); (ECF No. 47 at 29) (attempting to invoke legislative history to overcome presumption against preemption). As do the cases Plaintiffs frequently cite. *See, e.g., Alabama State Conf. of the NAACP v. Marshall*, 746 F. Supp. 3d 1203, 1244 (N.D. Ala. 2024). They can't have it both ways. But even considering Section 208's legislative history, the challenged provisions don't "unduly burden" Section 208's assistance right for at least three reasons. *First*, as noted above, it's not clear that the right to assistance in Section 208 extends to absentee voting at all. *Second*, the challenged provisions provide additional opportunities for people with disabilities to vote. *Third*, the challenged provisions only minimally restrict absentee voting, well within the State's authority to regulate elections. *See* S. Rep. 97-417, at 63.

CONCLUSION

The Court should grant the Attorney General's Motion for Summary Judgment.⁷

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⁷ Plaintiffs also fail to show how *Purcell v. Gonzalez*, 549 U.S. 1 (2006) is inapplicable here. (ECF No. 47 at 33). The Court shouldn't change election rules right before an election. 549 U.S. at 5-6.

Respectfully submitted,

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