UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

NAACP SOUTH CAROLINA STATE CONFERENCE; ROBERT CALDWELL; JONATHAN BELL; SHERRY JENKINS, Plaintiffs, v. ALAN WILSON, in his official capacity as the South Carolina Attorney General; JENNY WOOTEN, in her official capacity as Interim Executive Director of the State Election Commission; DENNIS W. SHEDD, in his official capacity as Chairman of the State Election Commission; JOANNE DAY, CLIFFORD J. ELDER, LINDA McCALL, and SCOTT MOSELEY in their official capacities as members of the State Election Commission, Defendants.	C/A No. 3:25-cv-13754-MGL

SEC Reply to Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment

The State Election Commission Defendants (SEC) respectfully submit this Reply to Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment. Plaintiffs lack standing and the Challenged Statutes[1] are not preempted by Section 208 of the Voting Rights Act, 52 U.S.C.A. § 10508.[2] Therefore, Plaintiffs' motion for summary judgment should be denied and the SEC granted judgment as a matter of law.

[1] The Challenged Statutes are S.C. Code Ann. §§ 7-13-780, 7-15-310(7), 7-15-330(A), (C), 7-15-385(A)(3), 7-15-330(B)(4) and 7-15-385(G).

[2] The SEC expressly incorporates all arguments presented to the Court in their previous filings pertaining to the parties' separate motions for summary judgment.

Discussion

1. Plaintiffs' Response rests heavily on affidavit testimony that is inadmissible or otherwise cannot be considered by the court.

Just as previously argued, *see* SEC Opp'n Mot. Summ. J. at 2-7, Dkt. No. 46, Plaintiffs continue to rely on affidavit testimony that is inadmissible or otherwise cannot be considered by the court in deciding summary judgment. The SEC asserts that the Court should not consider the following[3]:

(1) Rev. J.M. Flemming's declaration (entire declaration) and portions of Brenda Murphy's declaration concerning Rev. Flemming.[4]

(2) Portion of paragraph 17 of Robert Caldwell's declaration.[5]

(3) Portions of paragraphs 9, 10, and 11 of Deborah Allen's declaration.[6]

(4) Robin Miller's declaration (entire declaration).[7]

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[3] *See* Fed. R. Civ. P. 56(c)(2) (permitting a party to "object that material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence"). For the specific portions of the affidavits which are being challenged and the reasons why the Court should not consider them, the SEC refers to its Response, Dkt No. 46, at pages 2-7.

[4] *See* Flemming Decl., Dkt. No. 39-9; Murphy Decl., Dkt. No. 39-8; SEC Opp'n Mot. Summ. J. at 6-7, Dkt. No. 46 (arguing Flemming declaration and references to Flemming in ¶¶ 10 through 13 of Murphy declaration are inadmissible on relevance grounds); Pls.' Opp'n Mot. Summ. J. at 16, 18, Dkt. No. 47 (relying on Flemming declaration and paragraphs 10-13 of Murphy declaration).

[5] *See* Caldwell Decl., Dkt. No. 39-1; SEC Opp'n Mot. Summ. J. at 3-4, Dkt. No. 46 (arguing portion of ¶ 17 of Caldwell declaration is inadmissible based on hearsay and lack of personal knowledge); Pls.' Opp'n Mot. Summ. J. at 9, 14, 15, 17, Dkt. No. 47 (relying on ¶ 17 of Caldwell declaration).

[6] *See* Allen Decl., Dkt. No. 39-4; *See* SEC Opp'n Mot. Summ. J. at 4-5, Dkt. No. 46 (arguing that portions of ¶¶ 9-11 of Allen declaration are inadmissible based on hearsay and lack of personal knowledge); Pls.' Opp'n Mot. Summ. J. at 9, 14, 15, 17, Dkt. No. 47 (relying on ¶¶ 9, 10, and 11 of Allen declaration).

[7] *See* Miller Decl., Dkt. No. 39-5; SEC Opp'n Mot. Summ. J. at 5, Dkt. No. 46 (arguing Miller declaration is inadmissible based on hearsay and lack of personal knowledge); Pls.' Opp'n Mot. Summ. J. at 16-17, Dkt. No. 47 (relying on Miller declaration).

Here, it is worth emphasizing again that "[w]hen a party objects on admissibility grounds," as the SEC has done, "'the burden is on the proponent to show that the material is admissible as presented or to explain the admissible form that is anticipated.'" *United States v. Elkins Contractors, Inc.*, 225 F. Supp. 3d 351, 357 (D.S.C. 2016) (internal alterations omitted) (quoting Fed. R. Civ. P. 56, Advisory Committee Notes, 2010 Amendments). In sum, it is Plaintiffs' burden to show the admissibility of its summary judgment evidence.

2. Plaintiffs have not met their burden to demonstrate standing.

Once again, "the party invoking the jurisdiction of the court bears the burden of establishing standing." *Bishop v. Bartlett*, 575 F.3d 419, 424 (4th Cir. 2009).[8] "Where, as here, the parties have taken discovery, the plaintiff cannot rest on 'mere allegations,' but must instead point to factual evidence." *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). Plaintiffs "bear[] the burden of proving the truth of [jurisdictional] facts by a preponderance of the evidence," *U.S. ex rel. Vuyyuru v. Jadhav*, 555 F.3d 337, 347 (4th Cir. 2009), and "supporting those facts with competent proof." *U.S. ex rel Stone v. Rockwell Int'l Corp.*, 282 F.3d 787, 797–98 (10th Cir. 2002) (internal citation and quotation marks omitted). Plaintiffs have not met their burden to show that they have Article III standing.

A. Plaintiffs have not and cannot demonstrate that any Individual Plaintiff has a legally cognizable injury in fact.

An Article III injury in fact must be "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560 (citations omitted). But the Individual Plaintiffs have neither pled nor proved an

[8] Requiring a litigant to have standing "is no troublesome hurdle to be cleared with the most whimsical of attempts on the way to the merits." *Maryland v. USDA*, 151 F.4th 197, 208 (4th Cir. 2025) (cleaned up).

injury in fact. *See* SEC Opp'n Mot. Summ. J. at 9-13, Dkt. No. 46. A litigant's "some day intentions—without any description of concrete plans, or indeed even any specification of *when* the some day will be—do not support a finding of the actual or imminent injury that our cases require." *Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009) (cleaned up). In this case, each Individual Plaintiff has alleged that they have "not requested assistance to vote in 2026 yet." Pls.' Resp. to Interrog. No. 1, Dkt. No. 38-2. And Ms. Allen has alleged that she "ha[s] not yet started contacting residents about whether they want help voting in 2026, but [she] plan[s] to soon." Allen Decl.¶ 15, Dkt. No. 39-4.[9] Without any concrete plans having materialized (even now, less than a month away from the June 9, 2026 primary elections),[10] the Individual Plaintiffs cannot even arguably establish an actual or imminent injury. *See Summers,* 555 U.S. at 496; *Doe v. Obama*, 631 F.3d 157, 163 (4th Cir. 2011) (holding "*Lujan's* requirement that plaintiffs have some concrete plan constrains us here" and finding no standing).

At this stage of the litigation, Plaintiffs cannot rest their injuries on speculation and conjecture; rather, they must show a "substantial risk" of suffering a future injury, and this future injury must be "certainly impending."[11] *See Murthy,* 603 U.S. at 58 ("An allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the

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[9] This allegation is especially instructive on the "Five-Voter Limit" restriction on requesting an absentee ballot, § 7-15-330(B)(4), because these ballots could have been requested as early as January 1, 2026. *See* South Carolina State Election Commission, Absentee Voting, How Can I Vote Absentee (stating that voters are able to "submit [their] request[s] for an application as early as January 1 of the election year."), https://scvotes.gov/voters/absentee-voting/ (last accessed May 8, 2026); *see also* SEC Opp'n Mot. Summ. J. at 19, Dkt. No. 46.

[10] *See* State Election Commission website, Prep for the 2026 Statewide Primaries & Runoffs, at https://scvotes.gov/voters/2026prep/ (accessed May 8, 2026).

[11] While a current or ongoing injury would suffice, the Individual Plaintiffs have not alleged any such injury; rather they say only that they fear that they will not have the help they need in the future, i.e., in the 2026 elections. *See* Compl. ¶¶ 24, 26, 30, 73, 76, Dkt. No. 1.

harm will occur."). "The risk of a future injury must be substantial, not just conceivable." *John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 629 (4th Cir. 2023). "[F]or a future injury to support Article III standing, the claimed harm must not be so speculative as to lie at the end of a highly attenuated chain of possibilities." *Id.* (cleaned up).

Here, in order to find the Individual Plaintiffs have adequately demonstrated a future injury in fact, the Court would have to pile speculation on top of speculation that multiple "highly attenuated chain[s] of possibilities" would actually occur. Start with the so-called "Five-Voter Limits." At bottom, the Court would have to find actual evidence that (1) more than five requestors will choose Ms. Gaither (in the case of Mr. Caldwell)[12] or Ms. Allen (in the case of Mr. Bell or Ms. Jenkins) for assistance with *requesting* or *returning* an absentee ballot; and (2) that Mr. Caldwell, Mr. Bell, or Ms. Jenkins will not be one of the five selected. Aside from Plaintiffs' uncorroborated, speculative, and conjectural allegations, nothing is in the record to show any risk (let alone a "substantial risk") that Plaintiffs' contentions will actually come to fruition. *See Murthy,* 603 U.S. at 58 (holding there must be a "substantial risk" of future injury to be constitutionally sufficient); *Graves v. Lioi*, 930 F.3d 307, 324 (4th Cir. 2019) (holding that "surviving summary judgment . . . requires evidence, not unsupported conjecture," and holding that "a claim was ripe for an adverse summary judgment determination when it was based upon a theory without proof and dependent on speculation and the piling of inferences") (cleaned up).[13]

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[12] Plaintiffs did not even attempt to present evidence from Ms. Gaither or anyone at MUSC Chester about Ms. Gaither's availability (or lack thereof) to provide voting assistance to Mr. Caldwell. Thus, the record contains nothing that relating to Mr. Caldwell's purported injury vis-à-vis his ability to get voting assistance aside from his uncorroborated "worry" or "concern." *See* Pls.' Resp. to Interrog. No. 1 at 12, Dkt. No. 38-2; Caldwell Decl. ¶ 18, Dkt. No. 39-1; *see also* SEC Opp'n Mot. Summ. J. at 9-12, Dkt. No. 46.

[13] Additionally, specific to § 7-15-330(B)(4) (the "Five-Voter Limit" statute specific to *requesting* an absentee ballot), the Court would have to find that Individual Plaintiffs (or each of them) is incapable of personally making a telephone call to their County Board of Voter

Additionally, Plaintiffs' claims which are premised on a hypothetical interpretation of § 7-13-780, which differs from the SEC's or the Attorney General's interpretation, rest on *additional* "highly attenuated chain[s] of possibilities." *Clapper,* 568 U.S. at 410. Specifically, the Court would have to accept that there is a "substantial risk" that Mr. Caldwell and Mr. Bell will be denied the right to voting assistance, even though (1) neither has alleged they have ever previously been denied the right to assistance; (2) Mr. Caldwell has been afforded an assistor in past elections;[14] (3) the SEC and Attorney General have repeatedly insisted *in this very litigation* that § 7-13-780 gives any disabled person the right to voting assistance; and (4) no one except Plaintiffs is arguing for a contrary interpretation of § 7-13-780. It goes well beyond mere speculation to into something far less plausible to assume that either Mr. Caldwell or Mr. Bell will be denied the right to voting assistance based on a change in enforcement position.

Plaintiffs have not yet responded to the SEC's position that it interprets § 7-15-385(G) narrowly to only numerically limit the *return* of absentee ballots personally delivered to the County BVREs, i.e., that the statute does not limit anyone from dropping more than five completed absentee ballots in the mail. *See* SEC Opp'n Mot. Summ. J. at 17-18, Dkt. No. 46. Because the Individual Plaintiffs have each alleged that they will "vote by mail" in the 2026 primary and general elections, *see* Compl. ¶¶ 24, 26, 30, Dkt. No. 1, their injury under § 7-15-385(G) hinges on whether the SEC's interpretation is correct. Thus, as is the case under § 7-13-780, the Court

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Registration and Elections (County BVREs) and providing their "name, date of birth and last four digits of her Social Security Number," in which case an application can be mailed to them. *See* § 7-15-330(A)(2). There is no evidence that the Individual Plaintiffs ever sought to obtain an absentee application by telephone and no allegation that they are prevented from doing so by their disabilities. SEC Opp'n Mot. Summ. J. at 12, Dkt. No. 46.

[14] *See* Compl. ¶ 23, Dkt. No. 1 ("In the past, Mr. Caldwell has relied on MUSC Chester staff to assist him with requesting and returning his absentee ballot.").

would be required to make a large leap of logic to conclude that any of the Individual Plaintiffs has a "substantial risk" of an injury under § 7-15-385(G).

Finally, especially with respect to Plaintiffs' claimed injury in the 2026 primary elections, the Court would have to step past the *Purcell* principle to assume Plaintiffs have any appreciable risk of harm if the SEC flip-flops its position on either § 7-13-780 or § 7-15-385(G). *See Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam). Under the *Purcell* principle, "Court orders affecting elections . . . can . . . result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Purcell*, 549 U.S. at 4–5 (per curiam).[15] As of the date of this filing, the 2026 primary elections are less than a month away. Voting for military and overseas voters under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 U.S.C.A. §§ 20301, *et. seq.*, S.C. Code Ann. §§ 7-15-600, *et. seq.*[16] has already begun.

Bottom line, there is no risk at all, and certainly no substantial risk that agency enforcement interpretations of these statutes will shift in a manner that substantially threatens the Individual Plaintiffs' rights in the 2026 election.

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15 *See also Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026) (Alito, J., concurring) (the *Purcell* principle concerns "late judicial tinkering that can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others") (cleaned up); *Andino v. Middleton*, 141 S. Ct. 9, 10 (2020) (Kavanaugh, J., concurring) (this "Court has repeatedly emphasized that federal courts ordinarily should not alter state election rules in the period close to an election . . . ."); *S.C. Progressive Network Educ. Fund v. Andino*, 493 F. Supp. 3d 460, 470 (D.S.C. 2020) (finding a court "must abide by the law laid down by the Supreme Court 'that federal courts ordinarily should not alter state election rules in the period close to an election'" (quoting *Middleton*, 141 S. Ct. at 10)).

16 Under both the federal UOCAVA statute and the state statute, election officials are required to send absentee ballots to covered voters requesting them by forty-five (45) days before any election. *See* 52 U.S.C.A. § 20302(a)(8) (requiring absentee ballots be sent to covered voters within 45 days of an election); § 7-15-680 (same). As noted *supra,* the 2026 primary election is on June 9, 2026. Therefore, the UOCAVA ballots for that election were sent to covered voters by on or before April 25, 2026.

B. Plaintiffs have not and cannot demonstrate that any Individual Plaintiff has a redressable right to relief.

For reasons more fully explained elsewhere, *see* SEC Mem. Supp. Mot. Summ. J. at 22, Dkt. No. 38-1, SEC Opp'n Mot. Summ. J. at 13-15, Dkt. No. 46, Plaintiffs have not established redressability. Plaintiffs argue that "it is enough that the requested relief would remove a barrier to the Individual Plaintiffs' Section 208 right to assistance." *See* Pls'. Opp'n Mot. Summ. J. at 15-16, Dkt. No. 47 (citing *Republican Nat'l Comm. v. N.C. State Bd. of Elections*, 120 F.4th 390, 397 (4th Cir. 2024)). But that is insufficient because Plaintiffs still are required to "show that they personally would benefit in a tangible way from the court's intervention," *Deal v. Mercer Cnty. Bd.of Educ.,* 911 F.3d 183, 190 (4th Cir. 2018), which they have not done. Because Plaintiffs have not established anything but hypothetical or conjectural "barriers," they have not and cannot show that it is "[l]ikely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Bishop*, 575 F.3d at 423 (cleaned up)).[17]

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

Finally, as explained in the SEC's Response at 15-16, Dkt. No 46, Plaintiffs cannot make claims on behalf of unnamed and unidentified members. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) ("Article III does not give federal courts the power to order relief to any uninjured plaintiff . . . ."); *Lujan,* 504 U.S. at 563 ("The 'injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured.") (cleaned up); *Md. Election Integrity, LLC v. Md. State Bd. of Elections*, 127 F.4th 534,

[17] Additionally, redressability is absent because the requested remedy (overturning various state statutes) is grossly disproportionate to the modest harm alleged. *See*, *e.g.*, *Murthy*, 603 U.S. at 73; *Gill v. Whitford*, 585 U.S. 48, 73 (2018).

538 (4th Cir. 2025) (in evaluating associational standing, only "consider[ing] members who were pleaded in the complaint").

3. The SEC is entitled to judgment as a matter of law because the Challenged Statutes are not preempted by Section 208.

Initially, Plaintiffs disagree with Defendants that S.C. Code Ann. § 7-13-780 is interpreted the same as Section 208 and that the Court should determine the meaning of the state statute based on state law. Plaintiffs erroneously contend that the Commission's reliance on *Erie Railroad Company v. Tompkins*, 304 U.S. 64 (1938), is wrong. *See* SEC Mem. Supp. Mot. Summ. J. at 27, Dkt. No. 38-1. But the *Erie* doctrine applies anytime a federal court needs to determine the content of a state law.[18] 28 U.S.C.A. § 1562 ("The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."); *Erie R. Co.*, 304 U.S. at 78 (holding that there "is no federal general common law" and that a federal court must apply state substantive law); *Maternally Yours v. Your Maternity Shop*, 234 F.2d 538, 541 (2d Cir. 1956) ("Thus, the *Erie* doctrine applies, whatever the ground for federal jurisdiction, to any issue or claim which has its source in state law."). Because evaluating Plaintiffs' claims regarding each of the Challenged Statutes requires determining the content of those laws to determine if there is anything for a federal law to preempt, this Court must turn to South Carolina law to determine the content and meaning of the state laws that Plaintiffs seek to preempt.

To that end, the Handbook is a source of information regarding how the SEC interprets S.C. Code Ann. § 7-13-780. *See Est. of Dancy v. Comm'r*, 872 F.2d 84, 85 (4th Cir. 1989) ("It is

[18] *See also* 19 FED. PRAC. & PROC. JURIS. § 4520, APPLICATION OF STATE LAW IN NONDIVERSITY CASES, (3d ed.) ("It frequently is said that the doctrine of *Erie Railroad Company v. Tompkins* applies only in diversity of citizenship cases; *this statement simply is wrong*." (footnote omitted & emphasis added)).

our duty in determining state law to attempt diligently to ascertain it from all available data. Federal courts must employ the materials for decision at hand. In the absence of judicial and legislative guidance, diligent inquiry should include a review of applicable administrative determinations." (cleaned up)). And deference to the SEC's position is appropriate under state law, *contra* Pls.' Opp'n Mot. Summ. J. at 21, Dkt. No. 47, because applying § 7-13-780 requires determining what constitutes a voter who is "physically unable or incapacitated." *Cf. Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014). Viewed in this light, there is no conflict between Section 208 and § 7-13-780 because the two statutes are interpreted the same by the responsible state agency.

Neither is there a conflict between Section 208 and S.C. Code §§ 7-15-310(7), 7-15-330(A), (C), or 7-15-385(A)(3). At a minimum, these statutes do not limit a qualified voter in receiving help in marking and completing an absentee ballot.[19] Nor do they restrict a voter from receiving help in returning an absentee ballot by mail. *See* SEC Opp'n Mot. Summ. J. at 18, Dkt. No. 46. And there is no undue burden on an absentee voter's right to help in asking for an absentee ballot because an absentee application can be requested "***by telephone***, or by mail from the county board of voter registration and election [County BVRE]." § 7-15-330(A)(1) (emphasis added); SEC Opp'n Mot. Summ. J. at 19, Dkt. No. 46. In sum, with respect to Plaintiffs' claims, Section 208 and these state statutes do not conflict.

The same is true for Section 208 and S.C. Code Ann. §§ 7-15-330(B)(4) & 7-15-385(G). Again, these state statutes are generally applicable laws regarding absentee voting and, thus, are

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[19] Thus, much of the analysis in *Democracy North Carolina v. North Carolina State Board of Elections*, cited by Plaintiffs, is inapposite here. 476 F. Supp. 3d 158, 235 (M.D.N.C. 2020) ("Regarding the marking and completing of absentee ballots, the court finds North Carolina essentially does not allow Plaintiff Hutchins to choose the person who will assist him." (emphasis in original)).

not preempted by Section 208. SEC Mem. Supp. Summ. J. at 30, Dkt. No. 38-1. They similarly apply only to requesting and returning absentee ballots for someone else, not marking the ballots. And they do not otherwise restrict someone from helping Plaintiffs or any absentee voter with disabilities in requesting a ballot by phone or returning the ballot by mail. And even if Plaintiffs' interpretations were to apply, these state statutes do not unduly burden Plaintiffs' voting rights because they impose only minimal restrictions in furtherance of the State's significant interest in combatting fraud. *See* SEC Opp'n Mot. Summ. J. at 20, Dkt. No. 46.

Plaintiffs inveigh against Defendants' undue burden analysis. But there are several reasons that analysis is warranted here. First, an oft-cited Senate Report[20] uses exactly that language:

> *State provisions would be preempted only to the extent that they unduly burden the right recognized in this section, with that determination being a practical one dependent upon the facts*. Thus, for example, a procedure could not deny the assistance at some stages of the voting process during which assistance was needed, nor could it provide that a person could be denied assistance solely because he could read or write his own name.

S. Rep. 97-417, 63, 1982 U.S.C.C.A.N. 177, 241 (emphasis added).[21] Second, although part of the voting process, absentee voting is different than the in-person voting that was the norm when Section 208 was adopted. *Brnovich*, 594 U.S. at 669–70 ("[T]he degree to which a voting rule

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[20] *Brnovich v. Democratic National Committee*, 594 U.S. 647, 669–70 (2021) (addressing same legislation adopting Section 208 and noting the "oft-cited Report of the Senate Judiciary Committee accompanying the 1982 amendment," S. Rep. 97-417).

[21] Plaintiffs cite to *Democracy North Carolina* to support their position against reading the Senate Report to mean anything. Understandably so, because *Democracy North Carolina* gives lip service to the "unduly burden" language without reading it to mean anything. 476 F. Supp. 3d at 233–34 (referencing Senate Report 97-417 without ever otherwise applying it); *see also* Pls.' Opp'n Mot. Summ. J at 26, Dkt. No. 47 (citing 476 F. Supp. 3d at 233–35). But in a case like this, where the state law allows absentee voters to get help from anyone they choose in requesting, completing, and mailing their ballot, it is appropriate to consider the undue burden analysis in evaluating preemption because Section 208 does not expressly preempt the Challenged Statutes. That is especially so here, because the Challenged Statutes do not impose an obstacle to the fulfillment of Congress's objectives.

departs from what was standard practice when § 2 was amended in 1982 is a relevant consideration."). Third, Section 208 does not directly address absentee voting procedures and issues and instead, consistent with the previous point, focuses on in-person voting:

> The Committee has concluded that the only kind of assistance that will make fully 'meaningful' the vote of the blind, disabled, or those who are unable to read or write, *is to permit them to bring into the voting booth a person whom the voter trusts* and who cannot intimidate him. *Since blind, disabled, or illiterate voters have the right to 'pull the lever of a voting machine,'* they have the right to do so without fear of intimidation or manipulation.

S. Rep. 97-417, 62 (emphasis added). Fourth, states have an interest in preventing fraud, and absentee voting is, unfortunately, the vehicle by which that is most likely to happen. *Id.* at 686 ("Fraud is a real risk that accompanies mail-in voting.").

Taken together, these points illustrate that the Challenged Statutes are not preempted because, at a minimum, they do not unduly burden Plaintiffs' right to vote absentee. They do not pose an obstacle to the operation of Section 208. They do not restrict who may help Plaintiffs or anyone else in completing their absentee ballot. And they do not restrict who may help Plaintiffs in requesting an absentee ballot application or in returning the application or the absentee ballot by U.S. Mail—which is the point of the discussion on pages 29–31, not standing as Plaintiffs would characterize it, *see* Pls.' Opp'n Mot. Summ. J. at 22, Dkt. No. 47. Although there is a limit on who may return the applications or ballots to the voting centers in person, that five-person limit does not constitute an undue burden on Plaintiffs' right to vote absentee based on the statutory framework as a whole. In sum, applying the challenged statutes to the facts as alleged shows that there is no undue burden imposed on Plaintiffs' rights.

Relatedly, Plaintiffs also seek to evade the presumption against preemption. However, they correctly present this case as one involving the Supremacy Clause. *See, e.g.*, Compl. ¶ 13, Dkt. No. 1 ("This is a civil rights action arising under 42 U.S.C. § 1983; Section 208 of the Voting

Rights Act, 52 U.S.C. § 10508; and the Supremacy Clause, U.S. Const. art. VI, cl. 2.") ; *see also* Compl. ¶¶ 1, 11, 84, & Prayer for Relief (a) & (c)), Dkt. No. 1. *See generally* S. Rep. 97-417 (referencing U.S. Const. amends XIV & IV). And in a conflict preemption case under the Supremacy Clause, there is a presumption against preemption of state laws. *E.g.*, *Guthrie v. PHH Mortg. Corp.*, 79 F.4th 328, 336 (4th Cir. 2023) ("But we must not presume federal law preempts state law. In fact, any analysis of preemption begins with the basic assumption that Congress did not intend to displace state law." (cleaned up)).

But Plaintiffs now for the first time reference the Elections Clause as authority for Section 208. Pls.' Opp'n Mot. Summ. J at 27–28, Dkt. No. 47. However, the Senate Report pertaining to Section 208 references only the Fourteenth and Fifteenth Amendments and Congress's general Article I powers. As such, this is a Supremacy Clause preemption case, and the Court should "find preemption of the [state statutes] only if Section 208 expresses Congress's clear and manifest purpose to do so." *La Union Del Pueblo Entero v. Abbott*, 151 F.4th 273, 291, n.15 (5th Cir. 2025) ("The presumption against preemption does not apply where Congress legislates pursuant to its authority under the Elections Clause to regulate elections of federal Representatives and Senators. No one argues that VRA Section 208 was enacted under the Elections Clause, however—presumably because the provision applies to state and federal elections." (cleaned up)).[22] So too it

[22] Plaintiffs mischaracterize the discussion of Section 208 in *Abbott* when they cite, without context, the Fifth Circuit's statement that "the district court erred by relying on the text of Section 208 to find preemption of the Compensation Provisions." 151 F.4th at 293. But that court, applying the appropriate preemption analysis, correctly ruled that the plain text of Section 208 did not compel a conclusion that a state cannot prohibit "persons who are compensated" or who are "paid ballot harvesters" from helping voters. *Id.* at 291–92. That is because the text of Section 208 does not expressly limit state regulation, a common-sense conclusion reflected in the language of the "oft-cited" Senate Report.

is here. This is a Supremacy Clause case, and Plaintiffs must reckon with the presumption against preemption that analysis requires.

Plaintiffs' argument is that Section 208 is so broad that it obviously preempts any state statute presenting any impediment to assisting voters at any stage of the absentee balloting process. Pls.' Opp'n Mot. Summ. J at 27–28, Dkt. No. 47.[23] But that is not quite so. Section 208 itself says nothing about preemption of state statutes. *See, e.g.*, *Abbott*, 151 F.4th at 291–93 ("At bottom, nothing compels us to read 'a person of the voter's choice' in a maximalist way that erases swaths of state election laws."). As such, it is necessary for a court to determine whether a challenged state statute conflicts with Section 208 or if it is a permissible state regulation of voter conduct, harmonious with federal law. *See, e.g.*, *id.* The Senate Report thus properly serves as an authoritative expression of Congressional intent regarding the extent of its preemption wishes. At the very least, reading the Senate Report together with the statutory text shows that Section 208's preemptive effect is not as obviously broad as Plaintiffs assert.

Finally, it is true that "[n]o 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." Pls.' Opp'n Mot. Summ. J at 29, Dkt. No. 47. But that proves nothing because the question is if and to what extent Section 208's preemptive effect extends to the Challenged Statutes.

In sum, for the reasons set forth above, Section 208 does not preempt the Challenged Statutes and Plaintiffs' motion should be denied.

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[23] In pertinent part, Plaintiffs argue that "[e]ven when the presumption against preemption . . . operates with full force, it 'can be overcome where, as here, Congress has made clear its desire for preemption.'" Pls.' Opp'n Mot. Summ. J, Dkt. No. 47 (quoting *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 151 (2001)).

Conclusion

For the reasons discussed above and in its other filings with the Court in this matter, the SEC should be granted judgment as a matter of law. Because they have not established an injury in fact or a redressable right to relief, the Individual Plaintiffs lack standing. And because the only member of the NAACP identified in the Complaint lacks standing, the NAACP also lacks associational standing. And even if the Court should determine that one or more Plaintiffs have standing, the SEC is entitled to judgment as a matter of law because none of the state statutes are preempted by Section 208 of the Voting Rights Act.

Respectfully submitted,

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May 11, 2026
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