

**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; JENNY  
WOOTEN, in her official capacity as Interim  
Executive Director of the State Election  
Commission; DENNIS SHEDD, in his official  
capacity as Chairman of the State Election  
Commission; JOANNE DAY, CLIFFORD ELDER,  
LINDA MCCALL, and SCOTT MOSELEY, in their  
official capacities as members of the State  
Election Commission,

*Defendants.*

**PLAINTIFFS' CONSOLIDATED  
OPPOSITION TO DEFENDANTS'  
MOTIONS TO DISMISS**

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## INTRODUCTION

Plaintiffs Robert Caldwell, Jonathan Bell, and Sherry Jenkins all plan to vote in the 2026 elections and, because of their respective disabilities, will require assistance to do so. Although Section 208 of the Voting Rights Act of 1965 (“VRA”) promises each Individual Plaintiff the right to vote with assistance from “a person of [their] choice,” 52 U.S.C. § 10508, three provisions of South Carolina law (hereafter, the “Voting Restrictions”) make it difficult, impossible, or potentially even criminal for Plaintiffs to exercise their rights. To resolve the conflict between federal and state law and protect Plaintiffs’ fundamental rights to vote, Plaintiffs filed this action for declaratory and injunctive relief.

Plaintiffs allege three straightforward conflict preemption claims.

**First**, South Carolina law prohibits voting assistance “of any kind” unless a voter is “physically unable or incapacitated from . . . voting.” S.C. Code § 7-13-780. By contrast, Section 208 authorizes voting assistance for “any voter who,” like Individual Plaintiffs, “requires assistance to vote by reason of blindness, disability, or inability to read or write.” 52 U.S.C. § 10508. Because Plaintiffs Caldwell and Bell each allege that they have a “disability” within the meaning of Section 208 but are not “unable” to vote or “incapacitated” from voting within the meaning of Section 7-13-780, Compl. ¶¶ 55, 83, South Carolina law prohibits them from exercising their federal right to vote with assistance. This state law is, therefore, void and unenforceable. *See Maryland v. Louisiana*, 451 U.S. 725, 728 (1981).

**Second**, South Carolina generally prohibits voters from receiving voting assistance from anyone other than an immediate family member. *See* S.C. Code §§ 7-15-310, -330. But under federal law, Section 208 voters are entitled 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 (emphasis added). Plaintiffs Caldwell, Bell, and Jenkins each want to receive voting assistance from a willing member of their nursing home staff, Compl. ¶¶ 73–76, but they

are prohibited from doing so under state law. *See* S.C. Code § 7-15-310(7) (defining who may use an “authorized representative”). Thus, South Carolina law impedes their right to obtain voting assistance from a person of their choice. *See, e.g., League of Women Voters of Ohio v. LaRose*, 741 F. Supp. 3d 694 (N.D. Ohio 2024) (striking down state law limitations on who may provide voter assistance); *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158 (M.D.N.C. 2020) (same); *Disability Rts. N.C. v. N.C. State Bd. of Elections*, No. 5:21-CV-361-BO, 2022 WL 2678884, at \*5 (E.D.N.C. July 11, 2022) (same).

**Third**, South Carolina law prohibits any person from assisting more than 5 voters with requesting or returning an absentee ballot. S.C. Code § 7-15-385. In practice, the Five-Voter Limit frustrates the fulfillment of federal law in places like MUSC Chester and Union Post Acute, where many residents seek voting assistance from one or two qualified staff members. Compl. ¶¶ 69–77. All Individual Plaintiffs in this case have alleged that the Five-Voter Limit will likely deny them the assistor of their choice. Thus, the Five-Voter Limit is preempted by Section 208.

Defendants move to dismiss each of these well-pleaded claims for lack of standing. But their standing arguments are unpersuasive. Plaintiffs easily satisfy Article III because at least one Plaintiff—including a member of organizational Plaintiff NAACP South Carolina State Conference—is injured by every challenged law and their injuries are traceable to (and redressable against) the Attorney General and State Election Commission (“SEC”) Defendants. It is well settled that Plaintiffs need not wait until they are denied a fundamental right (or until they or their assistor is indicted for a felony) to seek relief. Indeed, Plaintiffs’ allegations mirror the harms routinely found to be sufficient to raise Section 208 claims across federal courts.

The Attorney General—but not the SEC Defendants—also wrongly argues that Plaintiffs lack a private right of action under Section 208 and that, despite being sued in his official capacity under *Ex Parte Young*, the Attorney General is entitled to sovereign immunity. The SEC Defendants were right not to venture out on those limbs. Starting with the private right of action,

the Eighth Circuit’s decision in *Arkansas United v. Thurston* is an extreme outlier and is irreconcilable with Supreme Court precedent. Instructively, “every [other] court that has considered the issue—and the Attorney General of the United States—agree[d] that private parties may enforce section 208.” *Fla. State Conf. of NAACP v. Lee*, 576 F. Supp. 3d 974, 990 (N.D. Fla. 2021); *see also id.* at 988–89 (collecting cases). The sovereign immunity argument is even weaker. The *Ex Parte Young* exception applies to Plaintiffs’ official capacity claims and, even if it did not, the VRA validly abrogated the Eleventh Amendment.

South Carolina’s Voting Restrictions significantly limit who is entitled to assistance with voting and from whom that assistance can be received. Given that Plaintiffs are plainly injured by those restrictions and “[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. v. N.C. State Bd. of Elec.*, 602 F. Supp. 3d 872, 878 (E.D.N.C. 2022), Defendants’ motions should be denied in full.

#### STATEMENT OF FACTS

In 1982, Congress amended the VRA, adding Section 208 to remove barriers faced by voters who require assistance because of a disability or an inability to read or write. Compl. ¶ 40. Section 208 provides that “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508. Section 208 prohibits state laws that limit how many voters an individual may assist as well as state laws that limit disabled voters from receiving assistance from an individual of their choice. These protections apply to “all action necessary to make a vote effective in any . . . election,” and therefore guarantee disabled voters the right to choose a person to assist them with requesting, completing, and returning an absentee ballot application as well as filling out and returning an absentee ballot itself. Compl. ¶¶ 44-45; 52 U.S.C. § 10310.

Despite the plain meaning of Section 208, South Carolina law imposes restrictions both on who may receive voting assistance and on who may provide it. Plaintiffs challenge three such restrictions in this case (the “Voting Restrictions”). *First*, the Voting Restrictions limit assistance only to voters who are “physically unable or incapacitated from preparing a ballot or voting” (the “Limits on Voting Assistance Eligibility”). Compl. ¶¶ 51-56; S.C. Code § 7-13-780. *Second*, even where a voter qualifies for assistance, the Voting Restrictions sharply restrict who may provide it: the voter may rely only on an “immediate family” member or, only if several specific conditions are satisfied, an “authorized representative” who must be a registered voter (the “Limits on Possible Assistors”). Compl. ¶¶ 61-66; S.C. Code §§ 7-15-330(A), (C), 7-15-385(A)(3), 7-15-310(7), 7-1-20(14). *Finally*, the Voting Restrictions make it a felony for any individual to assist more than five voters per election with requesting or returning absentee ballots (the “Five Voter Limits”), thereby preventing covered voters from receiving assistance from the person of their choice once that limit is reached. Compl. ¶¶ 67-68; S.C. Code §§ 7-15-330(B)(4), 7-15-385(G).

Plaintiffs are the NAACP South Carolina State Conference (the “South Carolina NAACP”) and three South Carolina voters (Robert Caldwell, Jonathan Bell, and Sherry Jenkins, collectively the “Individual Plaintiffs”) with disabilities who reside in congregate care facilities and intend to vote absentee in the 2026 elections. Compl. ¶¶ 17–30. Mr. Caldwell, who is a member of the South Carolina NAACP, Ms. Jenkins, and Mr. Bell each require assistance to vote because of their disabilities and seek such assistance from a particular staff member at their facility. Compl. ¶¶ 23-24, 26, 30. In addition to Mr. Caldwell, there are other members of the South Carolina NAACP with disabilities who require and plan to rely on assistance to vote absentee. Compl. ¶¶ 20, 83. But due to the Voting Restrictions, the Individual Plaintiffs and affected NAACP members will either not be able to use the assistor of their choice or will not receive assistance at all. Compl. ¶¶ 10, 73, 75, 77, 83, 85, 101.

Specifically, Mr. Caldwell is a 74-year-old resident of MUSC Health Chester Nursing Center, where he has lived for approximately eight years. Compl. ¶ 21. Due to a stroke in 2015, Mr. Caldwell largely lost use of his legs and uses a wheelchair. Compl. ¶ 22. Because of his disability, Mr. Caldwell is entitled to an assistor of his choice throughout the voting process under Section 208 of the VRA. Compl. ¶ 22.

Although Mr. Caldwell does not believe his physical disabilities render him completely physically incapacitated from voting, he previously relied on MUSC Chester staff to assist him with requesting and returning his absentee ballot. Compl. ¶¶ 23, 55. Consistent with past practices, Mr. Caldwell will need assistance to vote by mail in the 2026 primary and general elections and intends to rely on Barvette Gaither, a facility social worker at MUSC Chester in charge of arranging voting assistance for all facility residents. Compl. ¶¶ 22, 24, 70. But the Limits on Voting Assistance Eligibility bar Mr. Caldwell from receiving assistance. Compl. ¶ 55.

Even if the Limits on Voting Assistance Eligibility did not render Mr. Caldwell ineligible to receive assistance under state law, Ms. Gaither will likely not be able to assist him due to the Five Voter Limits. In Ms. Gaither's role at MUSC Chester, she has developed a rapport with facility residents and a familiarity with the voting process. As a result, many residents ask Ms. Gaither to assist them with voting. Compl. ¶¶ 70–71. Before enactment of S.C. Code Sections 7-15-330(B)(4) and -385(G), Ms. Gaither assisted approximately ten to twenty-five residents during each election with requesting and returning absentee ballots. Compl. ¶¶ 70–71. Now, however, Ms. Gaither may assist only five residents per election. Compl. ¶¶ 67–69, 72. As a result, Mr. Caldwell will likely require voting assistance from someone other than Ms. Gaither or will not receive assistance at all. Compl. ¶¶ 72–73.

Similarly, the Voting Restrictions will likely make Mr. Bell and Ms. Jenkins unable to receive voting assistance from the person of their choice or at all. Both Mr. Bell and Ms. Jenkins reside at Union Post Acute and have disabilities. Compl. ¶¶ 20, 25, 26, 29. Both intend to vote by mail in the 2026 primary and general elections and will require assistance voting absentee.

Compl. ¶¶ 26, 27, 30. Although Mr. Bell does not consider himself completely physically incapacitated from voting, he has a physical disability that requires him to use a wheelchair. Compl. ¶¶ 25–26.<sup>1</sup> Mr. Bell has previously received assistance voting from family members, but he is unsure that they can properly assist him this election. Compl. ¶ 76. Ms. Jenkins has multiple physical disabilities that require her to use a wheelchair as well as non-physical, vision-related disabilities that necessitate assistance with reading and completing paperwork. Compl. ¶ 28. Both Mr. Bell and Ms. Jenkins intend to seek assistance from Deborah Allen, Union Post’s Activities Director, who has assisted residents with voting for more than twenty years. Compl. ¶¶ 26, 30.

The Voting Restrictions, however, will likely prohibit Ms. Allen from assisting Ms. Jenkins and Mr. Bell with voting in the upcoming election. Currently, Ms. Allen coordinates voting assistance for approximately 25 residents at Union Post Acute. Compl. ¶ 74. But due to the Five Voter Limits, Ms. Allen cannot assist most of the residents who request her help. Compl. ¶¶ 74–76. Mr. Bell will likely not be prioritized as one of the five voters for Ms. Allen to help in the 2026 elections because he has family members who have previously helped him to vote. Compl. ¶ 76. Accordingly, the Voting Restrictions ensure that Ms. Jenkins and Mr. Bell are likely to be denied assistance from the person of their choice in the upcoming elections.

#### LEGAL STANDARD

When evaluating a motion to dismiss, courts must accept as true all material allegations of the complaint, draw all reasonable inferences from those facts in the plaintiff’s favor, and construe them in the light most favorable to the plaintiff. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Wikimedia Found. v. Nat’l Sec. Agency*, 857 F.3d 193, 207–208 (4th Cir. 2017).

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<sup>1</sup> Like Mr. Caldwell, Mr. Bell is ineligible to receive voting assistance due to the Limits on Voting Assistance Eligibility. Compl. ¶ 55.

Dismissal is appropriate only if “it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief.” *Martin v. Duffy*, 858 F.3d 239, 248 (4th Cir. 2017) (citations omitted). If a complaint contains facts sufficient to state a claim for relief that is plausible on its face, the court must deny the motion. *Iqbal*, 556 U.S. at 678.

## ARGUMENT

### I. Plaintiffs have standing to assert each claim.

For purposes of evaluating standing, “each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). “At the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice.” *Id.* As such, the Court will “accept as true the allegations for which there is sufficient factual matter to render them plausible on [their] face.” *Hutton v. Nat’l Bd. of Exam’rs in Optometry, Inc.*, 892 F.3d 613, 620 (4th Cir. 2018) (citation modified). “Courts must be careful . . . not to subject the complaint’s allegations to the familiar ‘preponderance of the evidence’ standard,” because “[w]hen a court confuses probability and plausibility, it inevitably begins weighing the competing inferences that can be drawn from the complaint.” *SD3, LLC v. Black & Decker (U.S.) Inc.*, 801 F.3d 412, 425 (4th Cir. 2015). Additionally, “the presence of one party with standing is sufficient to satisfy Article III’s case-or-controversy requirement,” so the Court need not address each party’s standing so long as it finds at least one Plaintiff has standing for each claim. *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 53 n.2 (2006).

#### A. *The Individual Plaintiffs have standing.*

To show standing at this stage, the Individual Plaintiffs must allege: (1) that they suffered an injury in fact; (2) with a causal connection to the challenged conduct; that is (3) likely to be redressed by a favorable decision. *Lujan*, 504 U.S. at 560–61. The Individual Plaintiffs have met

that burden. Each Plaintiff pled that they have disabilities that cause them to require assistance in requesting, completing, and returning their ballots; that South Carolina law prevents them from either receiving that assistance altogether or receiving it from the person of their choice without the credible threat of criminal penalties; and that declaring the Voting Restrictions null and void and enjoining Defendants from enforcing them will remediate that injury. As other Section 208 cases demonstrate, such allegations are plainly sufficient to establish standing. *See, e.g., League of Women Voters of Ohio*, 741 F. Supp. 3d at 703, 706–07 (holding that disabled voter had standing to challenge Ohio laws that conflicted with Section 208); *Democracy N.C.*, 476 F. Supp. 3d at 188–89 (holding that disabled voter had standing to challenge North Carolina laws that conflicted with Section 208); *see generally Disability Rts. Miss. v. Fitch*, 684 F. Supp. 3d 517 (S.D. Miss. 2023), *appeal dismissed as moot* by No. 23-60463, 2024 WL 3843803 (5th Cir. Aug. 14, 2024).

Accepting Defendants’ arguments would require the Court to impose proof requirements beyond plausible factual allegations, to disregard reasonable inferences and well-pled factual allegations, and to apply an incorrect legal standard for determining the likelihood of imminent harm under these criminal statutes—harm that is traceable to and redressable by Defendants.

1. Individual Plaintiffs have plausibly alleged that they are entitled to the assistor of their choice under federal law.

The Complaint alleges that the Individual Plaintiffs “rely on assistance to vote absentee,” Compl. ¶ 37; *see also id.* ¶ 48 (Plaintiffs “rely on” staff in their residences to vote), and do so because of their disabilities, *see id.* ¶¶ 22–23, 25–26, 28–29. The Attorney General argues that Plaintiffs “fail to include specific factual allegations that explain why they are entitled to assistance under the VRA.” AG Mot. at 10. This ignores the plain text of the Complaint.

Mr. Caldwell alleges that he had a stroke and “largely lost use of his legs, and now relies on a wheelchair to get around,” and requires “an assistor” to vote because of these disabilities. Compl. ¶¶ 22–23. Mr. Bell “has a physical disability caused by complications from back surgery

and uses a wheelchair,” *id.* ¶ 25, which entitles him “to vote with assistance,” *id.* ¶ 26, and “Ms. Jenkins has both physical and nonphysical disabilities” including “osteoporosis, scoliosis, an optic nerve impairment, and macular degeneration,” and thus “requires assistance to vote,” *id.* ¶¶ 28–29. Even the SEC Defendants agree that because “Individual Plaintiffs have alleged they are disabled, . . . they unquestionably have a right to voter assistance.” SEC Mot. at 15.

Nothing more is required to prove that Plaintiffs fall within the ambit of Section 208. *See, e.g., Ala. State Conf. of the NAACP v. Marshall*, 746 F. Supp. 3d 1203, 1247 (N.D. Ala. 2024) (allegations of “[v]oters who are disabled, blind, or illiterate” that “receive assistance from organizations like Plaintiffs” are sufficient at the pleading stage).

2. Individual Plaintiffs have shown that the Voting Restrictions threaten them with concrete, particularized harm if they seek assistance in requesting or returning absentee ballots.

As numerous courts have held, individuals suffer injury-in-fact sufficient to satisfy Article III standing when they are denied their federal right to voting assistance. *See League of Women Voters of Ohio*, 741 F. Supp. 3d at 706 (holding that plaintiff’s allegation that “she is deprived of her federally protected rights” to assistance is “sufficient” for injury-in-fact); *Democracy N.C.*, 476 F. Supp. 3d at 188 (holding plaintiff has standing “given the conflict between Section 208 and the North Carolina laws concerning” absentee ballot assistance, “thus directly implicating his rights under Section 208.”); *Nick v. Bethel*, No. 3:07-cv-0098 TMB, 2008 WL 11429309, at \*5 (D. Alaska July 23, 2008) (holding illiterate voter had standing to challenge ballot assistance restriction because of “section 208’s guarantee of a right to voting assistance in the polling booth for illiterate voters.”).

Such is the case here. The Complaint provides facts showing that Plaintiffs Bell and Caldwell have physical disabilities, Compl. ¶¶ 22, 25, that cause them to “rely on assistance to vote absentee,” Compl. ¶ 37, but that do not “physically incapacitate” them from voting, Compl. ¶ 55. Yet, as the Attorney General admits, “S.C. Code Ann. § 7-13-780 . . . applies to all

elections” and “specifies who is eligible for assistance in voting,” AG Mot. at 2, providing that “[o]nly those persons who are unable to read or write or who are physically unable or incapacitated from preparing a ballot or voting shall be entitled to receive assistance of any kind in voting.” Therefore, the plain text of Section 7-13-780 prohibits voters with disabilities covered by Section 208 like Plaintiffs Bell and Caldwell from receiving “assistance of any kind in voting” because they are not “physically unable or incapacitated from preparing a ballot.” Compl. ¶¶ 22, 25, 55. Because Plaintiffs intend to vote by mail in the 2026 elections and want assistance, *id.* ¶¶ 24, 26, including “assistance with requesting and returning” their “absentee ballot[s],” *id.* ¶ 24, Plaintiffs have pled a sufficient injury-in-fact.

Defendants respond principally with two arguments premised on the assertion that Plaintiffs have not established that the Voting Restrictions will prevent them from receiving any ballot assistance to which they are legally entitled. Both arguments fail.

**First**, the Attorney General contends that “Plaintiffs Bell and Caldwell’s subjective beliefs that they are not incapacitated from voting under South Carolina law” are “irrelevant as a matter of law,” AG Mot. at 9–10 (citing *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 416 (2013)), because they lack an “objective component,” AG Mot. at 10 (citing *Laird v. Tatum*). But *Clapper* does not stand for the proposition that Plaintiffs’ fears are irrelevant, only that they cannot be purely “hypothetical” fears of “future harm.” 568 U.S. at 416.

The proper standard, which includes an objective component, is that Plaintiffs “satisf[y] the injury-in-fact requirement” when they allege that they intend to engage in legally protected conduct that is nonetheless “proscribed by a statute, and there exists a credible threat of prosecution thereunder.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (citing *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979)); *see also id.* at 162 (question is whether the conduct sought is “arguably proscribed” by the law). Plaintiffs can establish a sufficient risk of future injury, then, if they allege facts showing that they “fear that their actions will be interpreted to come within the broad terms of the statutes” prohibiting their conduct, and “there

is a credible threat of future enforcement so long as the threat is not ‘imaginary or wholly speculative.’” *Kenny v. Wilson*, 885 F.3d 280, 288 (4th Cir. 2018) (quoting *Babbitt*, 442 U.S. at 302). When a “non-moribund statute . . . facially restrict[s]” the conduct at issue from “the class to which the plaintiff belongs,” this “presents such a credible threat.” *N.C. Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 710 (4th Cir. 1999). The “[t]hreat of prosecution is especially credible when defendants have not ‘disavowed enforcement’” for plaintiffs engaging in the conduct that they allege falls within the ambit of the statute. *Kenny*, 885 F.3d at 288; *see also Babbitt*, 442 U.S. at 302 (plaintiffs have reason to fear prosecution when “the State has not disavowed any intention of invoking the criminal penalty provision” against them).

Plaintiffs’ allegations establish the requisite injury-in-fact, and those allegations are more than reasonable. As Plaintiffs allege, Compl. ¶¶ 9, 59, another provision of South Carolina election law subjects them to felony prosecution if they pursue ballot assistance as guaranteed by federal law. *See* S.C. Code Ann. § 7-25-190. Although the Attorney General criticizes the Plaintiffs for their fear that relying on assistance violates South Carolina law, he does not dispute that straightforward interpretation of the law, nor does he contend that Plaintiffs are even “arguably” mistaken about their knowledge of their own physical condition and whether they are “incapacitated.” This alone should settle the matter. But other objective authorities also support Plaintiffs’ fear that they may not qualify as “physically incapacitated” or be fully unable to vote without assistance.

In *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802 (1969), the Supreme Court explained that an Illinois limitation on absentee voting “to those physically incapacitated,” *id.* at 806, required an “absolute inability to appear personally at the polls,” *id.* at 809. Notably, this Illinois law dealing with physical incapacity was passed in 1955, *id.* at 804, the same decade in which South Carolina enacted S.C. Code Ann. § 7-13-780, *see* AG Mot. at 2. Similarly, Black’s Law Dictionary defines an “incapacitated person” as one who “is impaired . . . by physical illness or disability to the extent that personal decision-making is impossible.”

Black’s Law Dictionary (12th ed. 2024). Both uses of “incapacitated,” the former in the context of voting, denote complete inability or impossibility. Thus, while Plaintiffs Bell and Caldwell have significant physical disabilities entitling them to assistance under federal law, Compl. ¶¶ 22, 25, their belief that they are not completely “physically incapacitated” as required under South Carolina law is reasonable and means that S.C. Code Ann. § 7-13-780 at least “arguably proscribes” their conduct. *Susan B. Anthony List*, 573 U.S. at 162.

Thus, despite being guaranteed assistance under federal law, Plaintiffs have pled facts showing that they reasonably fear that their use of assistance will violate a “non-moribund” South Carolina law, *N.C. Right to Life*, 168 F.3d at 710, under which the Attorney General has not “disavowed enforcement,” *Kenny*, 885 F.3d at 288, and thus that they face “credible threat of prosecution thereunder,” *Susan B. Anthony List*, 573 U.S. at 159. This credible fear of prosecution is sufficient for another, standalone “fairly traceable” injury-in-fact. *See, e.g., League of Women Voters of Ohio*, 741 F. Supp. 3d at 707 (finding individual plaintiff had standing to challenge Ohio law restricting voting assistance based on “credible fear of prosecution” where the prosecuting authority “has not disavowed prosecuting violations”).

**Second**, both the Attorney General and SEC Defendants point to the Commission’s Poll Managers Handbook, which states in relevant part 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.” SEC Mot. at 14–15; *see also* AG Mot. at 10. Based on this Handbook, Defendants contend that Plaintiffs have not alleged a likely injury due to section 7-13-780’s restrictions on who may receive assistance. This argument has several problems.

For one, the Handbook represents only the position of the SEC in its guidance to poll workers concerning in-person voting. *See* Handbook at 65 (link in SEC Mot. at 14 n.7).<sup>2</sup> But it is

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<sup>2</sup> Notably, this guidance does not address the need the Individual Plaintiffs have alleged for assistance with absentee voting.

the Attorney General, not the SEC, who has responsibility for enforcing the State's criminal laws, including supervising the enforcement of criminal penalties for violating the State's restrictions on voting assistance. Compl. ¶ 31; S.C. Const. art. V, § 24. The Attorney General points out the SEC's interpretation, AG Mot. at 10, but he stops short of expressly agreeing with it. He also does not disavow enforcement of section 7-13-780 against voters with disabilities who are not "physically incapacitated," and so does not undermine Plaintiffs' credible threat of prosecution. *See Babbitt*, 442 U.S. at 302; *Kenny*, 885 F.3d at 288. And given the plain text of section 7-13-780, even if Defendants gave some assurance in briefing that Plaintiffs are unlikely to be prosecuted, this would not deprive Plaintiffs of a likelihood of future injury. The Fourth Circuit has explained that the government's "litigation position cannot override the plain text of [a statute] when it comes to establishing a credible threat of enforcement . . . for purposes of establishing standing." *EQT Prod. Co. v. Wender*, 870 F.3d 322, 331 (4th Cir. 2017); *see also Carey v. Wis. Elections Comm'n*, 624 F. Supp. 3d 1020, 1030 (W.D. Wis. 2022) (finding standing in Section 208 challenge and explaining that the "court doesn't have to accept a state's litigation position on its potential enforcement of a statute" because government officials can change their minds). Similarly, federal courts will not "decline to decide" legal questions "based on the Government's promises of good faith," *Trump v. United States*, 603 U.S. 593, 637 (2024), or "promise[s] to use [an unlawful statute] responsibly," *United States v. Stevens*, 559 U.S. 460, 480 (2010).

Plaintiffs Bell and Caldwell have therefore provided sufficient factual allegations to support concrete, non-speculative future injuries based on South Carolina law's restrictions on which voters with disabilities may receive absentee-voting assistance.

3. Individual Plaintiffs have shown that the Voting Restrictions threaten them with concrete, particularized harm by denying them the ability to rely on assistors of their choice.

The Individual Plaintiffs have sufficiently pled that the Voting Restrictions will also likely injure them by preventing them from relying on their assistor of choice in two key ways.

*First*, South Carolina law criminalizes the request or return of an absentee ballot by anyone other than a member of their “immediate family”—who may request an absentee ballot application by phone, mail, or in person—or an “authorized representative,” who may only request an application by mail or in person. Compl. ¶¶ 6, 61–62, 89–90; S.C. Code §§ 7-15-330(A), (C), 7-15-385(A)(3). South Carolina law further constrains Plaintiffs’ choice of assistors in two ways: (1) it restricts use of an “authorized representative” other than an immediate family member for ballot request and return assistance to voters who: (a) are confined to a hospital, nursing home, residence, or somewhere similar, (b) have a physical disability which renders transportation to a polling place impossible, or (c) are physically incapable of accessing voting spaces because of architectural barriers, S.C. Code § 7-15-310(7); and (2) it restricts such assistors to South Carolina registered voters who are not candidates or candidate’s staff or volunteers, S.C. Code § 7-15-310(7); Compl. ¶¶ 6, 62–64, 89–90. These provisions conflict with Section 208 of the Voting Rights Act and injure Plaintiffs by illegally narrowing their selection of assistors. Compl. ¶¶ 8, 10–11, 87–92; *see also Democracy N.C. v. N.C. State Bd. of Elec.*, 590 F. Supp. 3d 850, 869–70 (M.D.N.C. 2022) (holding that the plaintiff sufficiently alleged standing where he showed that state law prevented him from “choosing nursing home staff to assist him in voting”).

Defendants argue that Individual Plaintiffs are not harmed by these provisions because they are each “confined to a hospital, nursing home, residence, or somewhere similar,” and thus can rely on an authorized representative other than an immediate family member without running afoul of the law. SEC Mot. at 17. But nursing homes are where Plaintiffs “reside,” *see* Compl. ¶¶ 21, 25, 27, not where they are “confined”—*i.e.*, “unable to leave a place because of illness [or

imprisonment,” *Confined*, Dictionary.com, <https://www.dictionary.com/browse/confined> (last visited Feb. 2, 2026); *cf.* S.C. Code § 7-15-320(A)(3) (permitting absentee voting for “persons *confined* to a jail or pretrial facility” (emphasis added)). Thus, Plaintiffs face the reality of relying on an “assistor other than one of their choice (if one is even available to them), sacrificing their autonomy; refrain[ing] from voting at all or doing so without necessary assistance; or expos[ing] their assistor . . . to steep felony criminal penalties.” Compl. ¶ 59. All of these are non-speculative, cognizable injuries. *See, e.g., Carey*, 624 F. Supp. 3d at 1027 (“Plaintiffs risk an imminent injury regardless of what they do.”); *Democracy N.C.*, 590 F. Supp. 3d at 869.

**Second**, Individual Plaintiffs have alleged facts showing that the Five-Voter Limit on Assistors in S.C. Code §§ 7-15-330(B)(4), 7-15-385(G), will likely deny them the assistor of their choice, which no one disputes would give them a concrete injury sufficient for standing. Compl. ¶¶ 24, 26, 28, 70–77, 95–101. Each Individual Plaintiff has pled facts that: (a) there are typically ten to twenty-five other residents of their facilities who want to rely on their preferred assistors; and (b) this creates a likelihood that they will be unable to rely on their assistor of choice, particularly Mr. Bell, who has family members nearby, which means he will not be prioritized for assistance by his preferred assistor. Compl. ¶¶ 70–76.

Defendants offer several arguments for why the Five-Voter Limit does not impose concrete injuries on Plaintiffs. All of these arguments either ignore facts in the Complaint or attempt to impose a much greater burden than Plaintiffs face at the pleading stage: providing only *plausible* allegations of injury, *see Hutton*, 892 F.3d at 620, not meeting a preponderance standard that “inevitably begins weighing the competing inferences that can be drawn from the complaint,” *SD3*, 801 F.3d at 425.

Both the Attorney General and SEC Defendants argue that because the Five-Voter Limit only applies to assistance with requesting and returning ballots, Plaintiffs have failed to allege a concrete injury. AG Mot at 12; SEC Mot at 19. The SEC Defendants imply that Plaintiffs have

only made general allegations that they require voting assistance, not specifically requesting and returning ballots. SEC Mot. at 19. Beyond its failure to draw the reasonable inference that requesting and returning ballots are subsumed within assistance, this ignores several facts pled in the Complaint. For example, “Mr. Caldwell intends to vote by mail in the 2026 primary and general elections and wants assistance with requesting and returning his absentee ballot,” Compl. ¶ 24, and “Ms. Jenkins intends to vote by mail in the 2026 primary and general elections and wants assistance with requesting, filling out, and returning her absentee ballot,” *id.* ¶ 30.

Defendants also assert that Plaintiffs’ allegations are too attenuated, AG Mot. at 12, or speculative, SEC Mot. at 20-21, to allege a future injury from the Five-Voter Limit. To the contrary, Individual Plaintiffs each identified their preferred assistor, provided facts showing that before the Five-Voter Limit each preferred assistor assisted up to 25 voters per election, and explained that the number of residents who want these individuals to assist them remains much higher than five. Compl. ¶¶ 70–77. Mr. Bell even explained specifically why he was unlikely to receive assistance from his preferred assistor with the Five-Voter Limit in place: “Because Mr. Bell has available family members, he will not be prioritized as one of the five voters for Ms. Allen to help in the 2026 elections.” Compl. ¶ 76. These factual allegations are more specific and plausible than needed to satisfy Plaintiffs’ pleading burden; what Defendants demand far exceeds the level of proof and certainty needed at this stage of the case. *See, e.g., Democracy N.C.*, 590 F. Supp. 3d at 869–70 (rejecting argument for dismissal based of standing that the plaintiff would not be harmed by restricting his access to assistance by nursing home staff because his wife could assist him, because “Section 208’s unambiguous language does not limit [the plaintiff] from using more than one person’s help or changing his mind about who he would like to help him vote”).

Viewing all of Plaintiffs’ allegations in the Complaint under the proper plausibility standard, Individual Plaintiffs have alleged sufficient injuries for standing purposes from the Limits on Voter Assistance and the Five-Voter Limit.

4. Individual Plaintiffs have plausibly alleged that their injuries are traceable to, and redressable against, Defendants.

Individual Plaintiffs also meet the traceability and redressability prongs of the standing inquiry. The traceability “requirement ensures that there is a genuine nexus between a plaintiff’s injury and a defendant’s alleged illegal conduct,” but 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). Traceability does not require a plaintiff’s injury to arise *directly* from the defendant’s conduct; rather, traceability may be satisfied by an “injury produced by determinative or coercive effect upon the action of someone else.” *Bennett v. Spear*, 520 U.S. 154, 169 (1997). The requirement of redressability merely “ensures that a plaintiff ‘personally would benefit in a tangible way from the court’s intervention,’” shown by “‘alleg[ing] a continuing violation or the imminence of a future violation’ of the statute at issue.” *Friends of the Earth, Inc.*, 204 F.3d at 162 (quoting *Warth v. Seldin*, 422 U.S. 490, 508 (1975)).

Plaintiffs have alleged facts showing that their likely injuries are traceable to the SEC’s guidance and implementation of the challenged laws and the Attorney General’s ability to prosecute (and direct prosecutorial decisions) under them, and that enjoining those actions will redress Plaintiffs’ injuries. *See* Compl. ¶¶ 5–10, 31–34. As other courts have found, allowing a voter protected by Section 208 “an assistor of her choice consistent with federal law” without fear of criminal penalties is sufficient “to redress [the plaintiff’s] injuries.” *League of Women Voters of Ohio*, 741 F. Supp. 3d at 706.

The only Defendant who challenges any elements of traceability or redressability is the Attorney General, who does so only with respect to the Five-Voter Limit.<sup>3</sup> He argues that the Plaintiffs’ injuries are not traceable to (and thus redressable by an injunction against) the

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<sup>3</sup> The SEC Defendants include a short section in their brief that mentions the concept of redressability but then make arguments about failing to show likely injuries justifying declaratory or injunctive relief. SEC Mot. at 21–22. Plaintiffs addressed those arguments in the sections concerning injury-in-fact.

Defendants' enforcement of the Five-Voter Limit because "independent third parties—the requested assistors—have voluntarily determined that they may no longer assist residents with the actual act of voting itself," and there is no reason that this behavior is predictable. AG Mot. at 13. This argument confounds both logic and the Complaint's specific allegations. South Carolina law plainly threatens anyone who returns "more than five return-addressed envelopes in an election" with felony criminal violations. S.C. Code Ann. § 7-15-385(G). It is entirely predictable that Plaintiffs' assistors will refrain from helping more than five people, including Plaintiffs, in the face of a criminal penalty of up to five years in prison. *See generally Dep't of Com. v. New York*, 588 U.S. 752, 768 (2019) (holding that traceability exists for Article III standing where injury "does not rest on mere speculation about the decisions of third parties; it relies instead on the predictable effect of Government action on the decisions of third parties."); *Bennett*, 520 U.S. at 169. The Complaint pleads just that. *See* Compl. ¶¶ 72, 74.

Finally, the Attorney General contends that any relief Plaintiffs seek in this case "would necessarily be limited to the parties to the case." AG Mot. at 14 (citing *Trump v. CASA*, 606 U.S. 831, 837 (2025)). This position is incorrect as a matter of law both because under conflict preemption, "a state statute is void to the extent it conflicts with a federal statute," *Louisiana*, 451 U.S. at 747, and because affording Plaintiffs full relief here will necessarily require an injunction that affects more than the individual Plaintiffs or the NAACP members. *See CASA*, 606 U.S. at 851 (explaining that in some cases, affording "[c]omplete relief" may incidentally advantage nonparties as well). Regardless, the Court need not and should not contend with the scope of relief at the pleading stage because the "distinction between facial and as-applied challenges . . . goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331 (2010); *accord Thorpe v. Clarke*, 37 F.4th 926, 947 (4th Cir. 2022).

***B. NAACP-SC has associational standing.***

To assert standing on behalf of its members (*i.e.*, “associational standing”), NAACP-SC must show that: “(1) its members would otherwise have standing to sue as individuals; (2) the interests at stake are germane to the group’s purpose; and (3) 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) (citing *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977)). The first two prongs have constitutional dimensions, but the third prong is prudential. *See United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.*, 517 U.S. 544, 554–58 (1996). SC-NAACP easily satisfies each prong.<sup>4</sup>

1. NAACP-SC plausibly alleges that it has members who have standing to sue as individuals.

At the pleading stage, the allegations in the complaint need only support a “reasonable inference” that NAACP-SC has at least one member with standing. *Democratic Party of Va. v. Brink*, 599 F. Supp. 3d 346, 355 n.10 (E.D. Va. 2022). Here, NAACP-SC does so in two ways.

**First**, the Complaint alleges that Robert Caldwell—a member of NAACP-SC—has a disability that requires voting with assistance under Section 208 and will be denied assistance from the person of his choosing because of the challenged laws. *See* Compl. ¶¶ 21–24, 55, 73, 83, 99. Mr. Caldwell’s standing to sue alone ensures that NAACP-SC satisfies the first prong of associational standing. *See supra* Arg. I.A.; *Friends for Ferrell Parkway*, 282 F.3d at 320.

**Second**, NAACP-SC’s claim that it has other members with similar injuries, *see* Compl. ¶¶ 18–20, 54, 83, is independently sufficient to establish standing at the pleading stage. A recent case from this District specifically rejects the Attorney General’s argument. *See S.C. State Conf. of NAACP v. Alexander*, Case No. 3:21-cv-3302-JMC-RMG-TJH, 2022 WL 453533, at \*3

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<sup>4</sup> Defendants do not dispute the second prong—that the interests at stake in this action are germane to NAACP-SC’s purpose.

(D.S.C. Feb. 14, 2022) (“Absent contrary evidence, a plausible allegation suffices [at the pleading stage]” and does not require NAACP-SC to disclose specific members at that stage); *see also Do No Harm v. Pfizer Inc.*, 126 F.4th 109, 122 n.7 (2d Cir. 2025) (explaining that organizational plaintiffs “need not identify specific injured members by name at the pleading stage”) (citation modified). Chartered in 1939, NAACP-SC represents over 13,000 members and is the state’s oldest civil rights organization. Compl. ¶¶ 17–18. Given the scale and purpose of the organization, it is more than plausible that (as the Complaint alleges) Mr. Caldwell is but one of many NAACP-SC members who is eligible to vote with assistance under Section 208 but whose right to do so is encumbered by South Carolina’s various restrictions on who may give or receive voting assistance. Compl. ¶ 20; *Alexander*, 2022 WL 453533 at \*2–3.

The Attorney General argues that *Summers v. Earth Island Institute*, 555 U.S. 488 (2009) requires NAACP-SC to specifically identify its harmed members in its complaint. AG Mot. at 6–7. Not so. *Summers* “arose in the context of review of a final adjudication on the merits,” *Do No Harm*, 126 F.4th at 122 n.7, not at the pleading stage, and thus requires only “general allegations”—not the same “manner and degree of evidence required” at later stages of litigation. *Lujan*, 504 U.S. at 561 (citation modified). Moreover, six years after *Summers*, in *Alabama Legislative Black Caucus v. Alabama*, the Supreme Court held that evidence that a plaintiff organization has members “statewide” and in “almost every county” was sufficient to support the inference that it had harmed members “in each majority-minority district.” 575 U.S. 254, 270 (2015). As courts in the Fourth Circuit have subsequently held, “*Alabama* moderates [*Summers*]” such that at the pleading stage, “organization[s] need not identify individual members so long as a reasonable inference can be drawn that such individuals exist.” *Brink*, 599 F. Supp. 3d at 355 n.10; *see also Hancock Cnty. Bd. of Sup’rs v. Ruhr*, 487 F. App’x 189, 198 (5th Cir. 2012) (noting that the court is “aware of no precedent holding that an association must set forth the name of a particular member in its complaint in order to survive a Rule 12(b)(1) motion to dismiss based on a lack of associational standing”).

2. This case does not require individual participation of NAACP-SC members.

The Attorney General also argues (without citation or explanation) that NAACP-SC cannot assert associational standing because “the lawsuit necessarily depends on the participation of individual members.” AG Mot. at 7. But “individual participation is ordinarily not necessary” when plaintiffs only seek declaratory and injunctive relief. *Am. Fed’n of State, Cnty. & Mun. Emps., AFL-CIO v. Soc. Sec. Admin.*, 771 F. Supp. 3d 717, 783 (D. Md. 2025). Because “neither the claim asserted, nor the relief requested requires participation of the individual members,” NAACP-SC may properly assert associational standing. *Fla. State Conf. of Branches & Youth Units of the NAACP v. Cord Byrd*, Case No. 4:23-cv-215-MW/MAF, 2024 WL 2699899, \*5 (N.D. Fla. Mar. 5, 2024) (holding that NAACP-FL had associational standing to challenge provisions of Florida law as preempted by Section 208); *see also Greater Birmingham Ministries v. Sec’y of State for State of Ala.*, 992 F.3d 1299, 1316 (11th Cir. 2021) (holding neither “the . . . voting rights claims asserted, [n]or the declaratory or injunctive relief requested, require the participation of the individual members in this lawsuit.”).

## **II. Plaintiffs allege plausible claims for relief under Section 208 of the VRA.**

Federal law preempts state law when the two conflict: “[A]ny state law . . . which interferes with or is contrary to federal law, must yield.” *King v. McMillan*, 594 F.3d 301, 309 (4th Cir. 2010) (citation modified). Born of the Supremacy Clause, U.S. Const., art. VI cl. 2, conflict pre-emption “arises when the state law stands as an obstacle to the accomplishment of the full purposes and objectives of the relevant federal law.” *Brinn v. Tidewater Transp. Dist. Comm’n*, 242 F.3d 227, 233 (4th Cir. 2001) (citation modified). Contrary to the Attorney General’s arguments, the Complaint sufficiently alleges that South Carolina’s Voting Restrictions conflict with Section 208 of the VRA and are therefore preempted by federal law.

***A. The Voting Restrictions conflict with the text and purpose of Section 208 of the VRA.***

Analysis of whether a state law conflicts with a federal statute and is pre-empted “must begin with [the] text” of the statutes. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 484 (1996). Like all statutory analysis, pre-emption analysis “must interpret the statute with reference to its history and purpose.” *United States v. Bryant*, 949 F.3d 168, 175 (4th Cir. 2020) (citations omitted).

The broad language of Section 208 of the VRA makes clear that Congress intended that the VRA “provide[] a right to assistance with the *voting process* by a person of the voter’s choice.” *Disability Rts. N.C.*, 2022 WL 2678884, at \*4 (emphasis added). The VRA itself explicitly defines the phrase “vote” as including “all action necessary to make a vote effective.” 52 U.S.C. § 10310(c)(1). Accordingly, as many courts have found, this “unambiguous language ... plainly contemplates more than the mechanical act of filling out the ballot sheet” and instead includes all parts of the voting process to make sure a ballot is properly counted. *OCA-Greater Houston v. Texas*, 867 F.3d 604, 614–15 (5th Cir. 2017).<sup>5</sup>

Moreover, Section 208’s text grants covered voters a substantive right to choose “a person of the voter’s choice” to help them vote and excludes only two categories of potential assistors: a “voter’s employer or agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508. According to common usage and applicable principles of statutory construction, “a person of the voter’s choice” means “any person of the voter’s choice” other than the specifically excluded categories. U.S. Dep’t of Just., Voting Rights Fact Sheet (Sept. 2024), <https://www.justice.gov/crt/media/1366636/dl> (“Section 208 allows voters to choose *any assistor* who is available and willing. State and local authorities may not impose further restrictions on a voter’s choice of an assistor.”) (emphasis added); *see also Hillman v. Mareta*,

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<sup>5</sup> *See also Disability Rts. N.C. v. N.C. State Bd. of Elections*, 602 F. Supp. 3d 872, 877 (E.D.N.C. 2022) (“In the context of assisting voters in congregate settings like nursing homes, ‘voting’ includes the delivery of an absentee ballot to a county board of elections as an action ‘necessary to make a vote effective.’”); *accord Democracy N.C.*, 476 F. Supp. 3d at 234–35; *League of Women Voters of Ohio*, 741 F. Supp. 3d at 711; *Carey*, 624 F. Supp. 3d at 1032–33.

569 U.S. 483, 496 (2013) (“[W]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.”) (citation modified). Indeed, the very South Carolina Election Commission Poll Managers Handbook that both the Attorney General and SEC Defendants tout as an authoritative source of statutory interpretation, *see* AG Mot. at 10; SEC Mot. at 14–15, provides the same reading of Section 208, explaining after quoting the text of Section 208, that “[a]ssistants may include, but are not limited to, spouses, family members, friends, Candidates, Poll Watchers, Poll Managers, voters waiting in line, and minors.” Handbook at 65 (link provided at SEC Mot. at 14 n.7). Because of Section 208’s clear text, “[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 (collecting cases).

Section 208’s clear text means the inquiry can end here. However, this textual reading is buttressed by other evidence of congressional intent. *See Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992) (congressional purpose is “the ultimate touchstone of pre-emption analysis.”) (citation modified). Congress passed Section 208 cognizant 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 [rely on] a person whom the voter trusts and who cannot intimidate him.” S. Rep. 97-417, at 62 (1982). Without such assistance, covered voters would be “forced to choose between casting a ballot under the adverse circumstances of not being able to choose their own assistance or forfeiting their right to vote” altogether. *Id.* As the court observed in *Alabama State Conference of NAACP*, “the legislative history of the statute contains a ‘clear statement’ of intent to preempt certain state laws that would contravene a Section 208 voter’s right to assistance.” 746 F. Supp. 3d at 1244 (citing S. Rep. No. 97-417, at 63 (1982)).

Here, South Carolina’s Voting Restrictions conflict with the plain text of the VRA and Congress’ manifest intent. As set forth in the Complaint and explained above, the Voting

Restrictions frustrate Congress's intent by limiting who is entitled to assistance, who can act as an assistor, and the number of people an assistor can help in preparing a ballot.

In terms of who can receive voting assistance without facing felony prosecution, S.C. Code Ann. § 7-13-780 does not extend assistance to all voters with disabilities who need assistance to vote: only those persons “who are physically unable or incapacitated from preparing a ballot or voting.” This conflicts with the plain text of Section 208, which guarantees assistance to “[a]ny voter who requires assistance to vote by reason of blindness [or] disability,” 52 U.S.C. § 10508, not just voters who lack any physical capacity to cast a ballot. *See Ala. State Conf. of the NAACP*, 746 F. Supp. 3d at 1243 (“[T]he VRA directs that *any* voter with a disability or who lacks literacy may have assistance from a person of their choice”) (emphasis in original).

Section 208's plain language forbids voters with disabilities from receiving assistance only from two categories of people: “the voter's employer or agent of that employer or officer or agent of the voter's union.” 52 U.S.C. § 10508. As another court explained, “Section 208 does not say . . . that disabled voters are limited to ‘a person of the voter's choice *from a list to be determined by the several states.*’” *League of Women Voters of Ohio*, 741 F. Supp. 3d at 714 (emphasis in original). Two other provisions of South Carolina law restricting who can assist are also in direct conflict with Section 208.

To start, South Carolina law conflicts with Section 208 by limiting the ability of individuals other than “immediate family” members to provide assistance requesting and returning absentee ballots unless the disabled voter is “confine[d] in a hospital, sanatorium, nursing home, or place of residence,” (b) has a physical disability which renders transportation to a polling place impossible, or (c) is physically incapable of accessing voting spaces because of architectural barriers. S.C. Code Ann. § 7-15-310(7). It also forbids all voters covered by Section 208 from receiving assistance from individuals who are not South Carolina registered voters and who are candidates or candidate's staff or volunteers. *Id.* None of these restrictions are intended

by Section 208's text or congressional intent. *See, e.g., Democracy N.C.*, 476 F. Supp. 3d at 235 (restrictions on assistance to family members or guardians "impermissibly narrow Section 208's dictate"); *Disability Rts. N.C.*, 2022 WL 2678884, at \*6 (holding several laws preempted by Section 208 because they "impermissibly narrow[] the right to assistance by a person of the voter's choice by prohibiting the mailing or delivery of a voter's ballot by anyone except a near relative or legal guardian").

Furthermore, although "the VRA requires that plaintiffs be allowed to choose a person to assist them with mailing or delivering their absentee ballot," *Carey*, 624 F. Supp. 3d at 1033, South Carolina's criminal Five-Voter Limit conflicts with this mandate by denying Plaintiffs and other South Carolinians the assistor of their choice when the chosen individual has already assisted five other people. S.C. Code Ann. §§ 7-15-330(B)(4), 7-15-385(G). Just because this law does not explicitly deny assistance by a category of persons like the other provisions discussed, it has the same effect for many individuals like Plaintiffs in congregate care settings who wish to rely on the same assistor. *See Compl.* ¶¶ 48, 70–76. This restriction "impermissibly narrows the right guaranteed by Section 208 of the VRA," *OCA-Greater Houston*, 867 F.3d at 615, and is thus preempted.

***B. The Attorney General's various arguments against preemption all fail.***

The Attorney General puts forward several arguments for why the Voting Restrictions do not conflict with Section 208. None have merit.

***First***, the Attorney General argues that South Carolina law does not impede assistance with "filling out or completing a ballot" because "the law only restricts the requesting and returning of ballots." AG Mot. at 13. As noted *supra*, the VRA defines "vote" as including "all action necessary to make a vote effective," 52 U.S.C. § 10310(c)(1), which encompasses requesting and returning ballots, *see, e.g., Carey*, 624 F. Supp. 3d at 1032–33 (noting it is "straightforward" that "[r]eturning a ballot is one of the actions necessary to make a vote

effective”) (quotations omitted); *Disability Rts. N.C.*, 602 F. Supp. 3d at 877 (“[V]oting includes the delivery of an absentee ballot to a county board of elections as an action necessary to make a vote effective.”) (citation modified).

**Second**, the Attorney General’s cases do not rebut Plaintiffs’ case for preemption. AG Mot. at 18. For instance, in *DSCC v. Simon*, the court analyzed Section 208’s preemptive effect on two state law provisions: a limitation on the number of people someone could assist in marking or filling out a ballot (the “marking provision”) and a limitation on how many people someone could assist in delivering a ballot to a ballot collection site (the “delivery provision”). 950 N.W.2d 280, 288-91 (Minn. 2020). The *Simon* court found that the marking provision was pre-empted because it threatened the “assistor of choice” rights of Section 208 voters, since marking a ballot is a part of voting that Section 208 sought to protect. *Id.* (“Minnesota’s three voter limit on marking assistance ... could disqualify a person from *voting if the assistant of choice is ... no longer eligible to serve as the voter’s ‘choice’*”) (emphasis added).

Although the *Simon* court also found that the delivery provision was *not* pre-empted, subsequent federal decisions have rejected this line of reasoning in holding that Section 10310(c)’s inclusive definition of voting applies to Section 208 preemption analyses. *See OCA-Greater Houston*, 867 F.3d at 614–15 (Section 208 is not limited to “the mechanical act of filling out the ballot sheet.”). Courts in this Circuit have applied that definition to find Section 208 *does* cover absentee and mail-in ballot delivery. *Democracy N.C.*, 476 F. Supp. 3d at 234–35 (“[V]oting’ includes the delivery of an absentee ballot to a county board of elections as an action ‘necessary to make a vote effective’—an absentee ballot must be delivered in order to be counted.”).

The Attorney General’s second case, *La Union Del Pueblo Entero v. Abbott*, 151 F.4th 273, 291–92 (5th Cir. 2025), also doesn’t control the outcome here. That case dealt with Texas provisions that “bar[red] assistance from persons who are compensated or who are paid ballot harvesters.” *Id.* South Carolina’s unjustified Voting Restrictions are a far cry from the paid ballot

collection at issue in *La Union Del Pueblo Entero*, and the analysis there was unpersuasive. Not only was its reasoning unmoored from the text and purpose of Section 208 and far out of step with the overwhelming weight of authority (including in this Circuit), but its view of Section 208 conflicts with the SEC's own interpretation of the law. *Compare id.* at 292 (“States bar voter assistance by minors, by candidates, by candidates’ relatives, by election judges, and by poll watchers. . . . Is each preempted by Section 208? Unlikely.”), with S.C. Election Comm’n Poll Manager’s Handbook at 65 (explaining that Section 208 allows assistance by, among others, “spouses, family members, friends, Candidates, Poll Watchers, Poll Managers, voters waiting in line, and minors”).

**Third**, Defendants’ facial preemption argument is deficient. Defendants suggest that Plaintiffs are making an “apparent facial challenge,” which requires a showing that “no set of circumstances exists under which the [state statute] would be valid.” AG Mot. at 19 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). But the Plaintiffs are *not* making a facial challenge to the Voting Restrictions. Rather, the relief sought is based on pre-emption, which is not subject to the same legal standard as facial challenges. Further, the scope of relief and thus any “distinction between facial and as-applied challenges . . . goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint.” *Citizens United*, 558 U.S. at 331.

As explained above, pre-emption is a conflict of laws question. *City of Charleston, S.C. v. A Fisherman’s Best, Inc.*, 310 F.3d 155, 169 (4th Cir. 2002). Facial challenges, on the other hand, directly invoke some specific constitutional provision to argue that a state law is facially violative of the Constitution itself. *See Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008). While the Supremacy Clause provides the rule of decision for the conflict of laws analysis, its invocation does not convert a preemption case into a facial constitutional challenge.

**Fourth**, the Attorney General’s strained attempt to find “some wiggle room” to harmonize the Voting Restrictions with Section 208 is without merit. AG Mot. at 18 (quoting *Priorities USA v. Nessel*, 628 F. Supp. 3d 716, 733 (E.D. Mich. 2022)). As explained, the phrase “a person of the voter’s choice” in Section 208 means “any person of the voter’s choice” other than the two specifically excluded categories. *See United States v. Alabama*, 778 F.3d 926, 932 (11th Cir. 2015) (“[i]n common terms, when ‘a’ or ‘an’ is followed by a restrictive clause or modifier, this typically signals that the article is being used as a synonym for either ‘any’ or ‘one.’”).<sup>6</sup> Any argument that “the narrowing of Section 208 voters’ choice is justified by the state’s desire to provide additional protections . . . falls flat.” *Disability Rts. N.C.*, 602 F. Supp. 3d at 880.

**Finally**, the Attorney General is wrong about the effects of a preemption finding. He argues that “the federal judiciary has no authority to alter or annul a statute.” AG Mot. at 20 (quoting Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933, 933 (2018)). But this argument again misunderstands the nature of the relief Plaintiffs seek.

When a statute is pre-empted, it is unenforceable. *Cipollone*, 505 U.S. at 516 (“[S]ince our decision in *M’Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 427 (1819), it has been settled that a state law that conflicts with federal law is ‘without effect’”) (citations omitted); *Drager v. PLIVA USA, Inc.*, 741 F.3d 470, 475 (4th Cir. 2014) (where federal law and state law conflict, “the state law is preempted and without effect”); *Antilles Cement Corp. v. Fortuno*, 670 F.3d 310, 323 (1st Cir. 2012) (“[S]tate laws that interfere with, or are contrary to the laws of Congress are void ab initio”) (citation modified). Thus, while a preempted law may literally remain on the books, it does so only as dead letter.

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<sup>6</sup> Multiple circuit courts have come to the same conclusion as the Eleventh Circuit did in *Alabama*. *See Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm’n*, 971 F.3d 340, 354 (D.C. Cir. 2020); *United States v. Thigpen*, 848 F.3d 841, 845 (8th Cir. 2017); *United States v. Naranjo*, 259 F.3d 379, 382 (5th Cir. 2001).

### III. Plaintiffs have a private right of action under Section 208 and 42 U.S.C. § 1983.<sup>7</sup>

In arguing that Section 208 does not provide a private right of action, the Attorney General relies on a single case—*Arkansas United v. Thurston*, 146 F.4th 673, 676 (8th Cir. 2025). *See* AG Mot. at 14–16. This is because, before this recent, non-binding Eighth Circuit decision, “every court that has considered the issue—and the Attorney General of the United States—agree[d] that private parties may enforce section 208.” *Fla. State Conf. of NAACP*, 576 F. Supp. 3d at 974, 990; *see also id.* at 988–89 (collecting cases). More broadly, several federal courts of appeals have held that “private parties can sue to enforce the VRA,” full stop. *Ala. State Conf. of NAACP v. Alabama*, 949 F.3d 647, 651 (11th Cir. 2020), *rev’d and vacated as moot by* 141 S. Ct. 2618 (2021); *see also id.* at 652 (“The VRA, as amended, clearly expresses an intent to allow private parties to sue the States.”); *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 624 (6th Cir. 2016) (“[W]ith regard to the cause of action, the VRA permits suit by the Attorney General *or aggrieved voters*”) (emphasis added).

The Supreme Court’s holding in *Morse v. Republican Party of Virginia*, 517 U.S. 186, 230 (1996), explains courts’ near unanimity on this issue. There, the Court held that Section 10 of the VRA—which “only authorizes enforcement proceedings brought by the Attorney General and does not expressly mention private actions”—provides a private right of action. *Id.* at 230; *see also id.* at 231 (noting that when Congress reauthorized the VRA in 1975, “it recognized that private rights of action were ... available” to enforce various provisions); *cf. id.* at 289 (“As appellants accurately state, § 3 explicitly recognizes that private individuals can sue under the Act.”) (quotations omitted) (Thomas, J., dissenting). In fact, “the Supreme Court has permitted

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<sup>7</sup> The Fourth Circuit has not decided whether “private right of action” arguments should be resolved under Rule 12(b)(1) or 12(b)(6). *Compare Carey v. Throwe*, 957 F.3d 468, 478–83 (4th Cir. 2020) (affirming dismissal under Rule 12(b)(6)) *with Va. Hosp. & Healthcare Ass’n v. Kimsey*, 2022 WL 604049, \*4 & n.3 (4th Cir. Mar. 1, 2022) (affirming under Rule 12(b)(1) and noting that whether such arguments go to standing under 12(b)(1) or the viability of the claim under 12(b)(6) “is a question that we acknowledge but need not resolve today.”).

private suits under sections 2, 5, and 10 of the VRA.” *Lee*, 576 F. Supp. 3d at 988. Here, the AG provides no textual basis for concluding otherwise about Section 208.

***A. Section 208 of the VRA provides an implied private right of action.***

“[E]ven if this Court were writing on a blank slate”—which it decidedly is not—“all evidence points to the same conclusion: Congress intended for private parties to enforce Section 208.” *Lee*, 576 F. Supp. 3d at 989. The Supreme Court set out the prevailing test to evaluate whether a statute provides an implied private right of action in *Alexander v. Sandoval*, 532 U.S. 275 (2001). *Alexander* outlines two requirements to determine that private plaintiffs can enforce a statute: (1) the statutory provision contains a “private right,” as evinced by “rights-creating” language; and (2) the statute provides for “a private remedy.” *Id.* at 286–88.

The Attorney General wisely does not contest step one of the *Sandoval* test. *See* AG Mot. at 15. “There is no question that Section 208 confers a federal right on individuals with disabilities.” *League of Women Voters of Ohio*, 741 F. Supp. 3d at 711; *see also OCA-Greater Houston*, 867 F.3d at 614 (“Section 208 guarantees to voters the right to choose any person they want, subject only to employment-related limitations, to assist them throughout the voting process”). This is plain from Section 208’s text, which focuses “on the individuals protected,” rather than “the person regulated.” *Alexander*, 532 U.S. at 289; *see* 52 U.S.C. § 10508 (“Any voter who requires assistance to vote by reason of ... disability ... may be given assistance by a person of the voter’s choice...”) (emphasis added). No court has ever held that Section 208 does not create a private right; even the court in *Arkansas United* declined to reach that question, finding only that Section 208 does not provide for a private remedy, *e.g. Sandoval* step two. *Ark. United*, 146 F.4th at 677.

The Attorney General—relying exclusively on the analysis in *Arkansas United*—contests that Section 208 passes *Sandoval* step two because the statutory provision “itself contains no private enforcement mechanism.” AG Mot. at 15. Yet Section 3 of the VRA provides broadly for

relief in “proceeding[s]” brought by “the Attorney General *or an aggrieved person* ... under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment.” 52 U.S.C. § 10302(a) (emphasis added). Under Section 3’s plain language and its legislative history, as well as the Supreme Court’s decision in *Morse* and holdings from multiple courts of appeals, private plaintiffs whose voting rights have been violated are plainly “aggrieved” persons. *See Morse*, 517 U.S. at 233 (noting the Senate Report accompanying the 1975 VRA amendments explained that the purpose of adding the phrase “or an aggrieved person” to Section 3 “was to provide the same remedies to private parties as had formerly been available to the Attorney General alone.”); *Husted*, 837 F.3d at 624; *Roberts v. Wamser*, 883 F.2d 617, 624 (8th Cir. 1989) (“aggrieved persons” under Section 3 is “a category that we hold to be limited to persons whose voting rights have been denied or impaired.”); *see also* S. Rep. No. 94-295, at 39-40 (1975) (noting “aggrieved person” means “any person injured by an act of discrimination.”). The Attorney General’s interpretation of Section 3, *see* AG Mot. at 15, renders the phrase “or an aggrieved person” “empty ... of meaning.” *United States v. Simms*, 914 F.3d 229, 241 (4th Cir. 2019).

Further, a lawsuit brought to enforce Section 208 is “a proceeding” brought “under any statute to enforce the voting guarantees of the fourteenth and fifteenth amendment.” 52 U.S.C. § 10302(a). The Supreme Court has found that the VRA’s purpose is “to achieve at long last what the Fifteenth Amendment had sought to bring about 95 years earlier...” *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 655 (2021); *see also Ala. State Conf. of NAACP*, 949 F.3d at 653 n.6 (“[T]he VRA is, by definition, ... designed to enforce the voting guarantees of the Fourteenth and Fifteenth Amendments.”). As such, the Supreme Court in *Morse* found that Sections 2, 5, and 10 could be enforced by private action because they constitute “statute[s] designed for enforcement of the guarantees of the Fourteenth and Fifteenth Amendments.” *Morse*, 517 U.S. at 233-34; *see also id.* at 232 (analysis of Sections 2 and 5). This is also why *all nine justices* in *Morse* rejected the view that Section 3 provides private remedies only for actions alleging direct Fourteenth or Fifteenth Amendment violations. *See Morse*, 517 U.S. at 289 (Thomas, J.,

dissenting) (four-judge dissent finding that “§ 3 explicitly recognizes that private individuals can sue under the [VRA]”) (internal quotation marks omitted).

***B. Section 208 of the VRA is separately enforceable under 42 U.S.C § 1983.***

Even if this Court departs from the overwhelming consensus and finds that Section 208 lacks a private right of action, Plaintiffs can alternatively enforce their Section 208 rights under 42 U.S.C. § 1983. *See* Compl. at 16–17, 19 (listing Section 1983 in header for all three causes of action). The Supreme Court has held that “§ 1983 can presumptively be used to enforce unambiguously conferred federal individual rights, unless a private right of action under § 1983 would thwart any enforcement mechanism that the rights-creating statute contains for protection of the rights it has created.” *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). As noted *supra*, it is uncontested that Section 208 unambiguously confers an individual right. Recognizing that private plaintiffs can vindicate their rights to vote with assistance under Section 208—as they have done uninterrupted since the provision’s enactment more than 40 years ago—can in no way thwart any enforcement mechanism.

**IV. The Attorney General is not immune under the Eleventh Amendment.<sup>8</sup>**

The Attorney General’s sovereign immunity argument fails in two ways. *First*, he skips past the fact that Plaintiffs are suing him in his official capacity under *Ex Parte Young*, which is a long-accepted exception to the Eleventh Amendment. *Second*, even had Plaintiffs sued the state itself (which they did not), Section 208 of the Voting Rights Act validly abrogates the Eleventh Amendment.

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<sup>8</sup> The SEC defendants do not assert sovereign immunity and thus waive its protection. *See Hutto v. S.C. Ret. Sys.*, 773 F.3d 536, 543 (4th Cir. 2014) (“Because a defendant otherwise protected by the Eleventh Amendment can waive its protection, it is . . . structurally necessary to require the defendant to assert the immunity.”).

**A. Under *Ex Parte Young*, Plaintiffs can sue the Attorney General for prospective relief.**

State officials are not entitled to sovereign immunity when they, like the Attorney General here, are sued in their official capacities for prospective relief. *Gibbons v. Gibbs*, 99 F.4th 211, 214 (4th Cir. 2024) (holding that it is “well-settled” that *Ex Parte Young* “allows suits for declaratory or injunctive relief against state officers in their official capacities.”). Strangely, the Attorney General’s only rebuttal is a vague footnote suggesting that there are “real reasons to think” *Ex Parte Young* “may be inapplicable here.” AG Mot. at 17–18 n.8 (emphasis added). But his sole “reason”—that Plaintiffs failed to show an “ongoing” violation of federal law, *id.*—fails on the facts and law. Plaintiffs’ Complaint alleges ongoing violations of federal law. *See, e.g.*, Compl. ¶¶ 67–77 (showing how the Five-Voter Limits impede voters’ access to an assister of their choice); *see League of Women Voters of Ohio*, 741 F. Supp. 3d at 708 (“The [*Ex Parte*] *Young* exception readily applies to these facts.”). And even had they not, *Ex Parte Young* authorizes plaintiffs to seek relief from future enforcement. *Cf. Whole Woman’s Health v. Jackson*, 595 U.S. 30, 45–46 (2021) (holding that *Ex Parte Young* allowed a pre-enforcement suit against Texas SB-8); *see also Universal Life Church Monastery Storehouse v. Nabors*, 35 F.4th 1021, 1040 (6th Cir. 2022). The Attorney General’s cursory footnote falls well short of satisfying his burden to prove that he is immune from suit. *See Hutto*, 773 F.3d at 543 (holding that “sovereign immunity is akin to an affirmative defense, which the defendant bears the burden of demonstrating”).

**B. Section 208 of the VRA validly abrogates the Eleventh Amendment.**

As multiple federal courts of appeals have held, Section 208 abrogates the Eleventh Amendment. *See, e.g., OCA-Greater Houston*, 867 F.3d at 614 (“The VRA, which Congress passed pursuant to its Fifteenth Amendment enforcement power, validly abrogated state sovereign immunity.”); *Mixon v. Ohio*, 193 F.3d 389, 398 (6th Cir. 1999). In arguing otherwise, the Attorney General opines that (1) Section 208 did not authorize private actions *at all*, “much

less a private lawsuit against a State”; and (2) Congress cannot abrogate sovereign immunity under the Fifteenth Amendment. AG Mot. at 17.

Both arguments are meritless. As noted *supra*, private plaintiffs can sue to vindicate their rights under Section 208, as they have done for decades. And Congress possesses broad authority under the Fifteenth Amendment to abrogate state sovereign immunity. *See South Carolina v. Katzenbach*, 383 U.S. 301, 325 (1966); *Mixon*, 193 F.3d at 399; *see also Reaves v. S.C. Democratic Party*, No. 4:04-2047-25BH, 2005 WL 8165107, \*1 (D.S.C. Feb. 11, 2005) (“Congress has the equal power to abrogate immunity through § 2 of the Fifteenth Amendment.”) (citing *City of Boerne v. Flores*, 521 U.S. 507, 518 (1997)).

#### CONCLUSION

Wherefore, Defendants’ motions to dismiss should be denied in full.

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Respectfully submitted,

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