

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Trudy B. Grant, Sarah Krawcheck,)
Nashonda Hunter, Max Milliken,)
Jordan Mapp, and Caleb Clark,)

Plaintiffs,)

Case No.: 2:23-cv-06838-BHH

v.)

Howard Knapp as the Executive)
Director of the South Carolina)
Election Commission, Dennis Shedd)
(Chair), JoAnne Day, Clifford J.)
Edler, Linda McCall and Scott)
Moseley, as Members of the South)
Carolina Election Commission, and)
Charleston County Board of)
Elections and Voter Registration,)

Defendants.)

_____)

SECOND AMENDED COMPLAINT

1. This suit challenges S.C. Code 7-15-320 because it abridges plaintiffs’ right to vote on account of age, by granting the right to vote by absentee (mail) ballot to all registered voters over age 65 but denying that same right to voters under age 65 unless they fall into one of several limited categories.
2. This suit alleges that S.C. Code 7-15-320 violates the Twenty-Sixth (26th) Amendment to the Constitution of the United States, which provides that citizens over age 18 may not have their right to vote “denied or abridged . . . on account of age.” The suit further alleges that the age distinction drawn by S.C. Code 7-15-320 violates the Equal Protection Clause of the Fourteenth (14th) Amendment as well as abridging free speech and free association

in violation of the First (1st) Amendment which is made applicable to the states through the Due Process Clause of the Fourteenth (14th) Amendment.

Cause of Action, Jurisdiction and Venue

3. This suit is authorized by 42 U.S.C. 1983, which provides a cause of action for any person whose rights under the Constitution or laws of the United States are violated by any person acting under of state law.
4. This Court has jurisdiction under 28 U.S.C. 1331 and 1343(4).
5. Venue is proper in this Court because plaintiffs reside and are registered to vote in this District and this Division.

Parties

6. (a) Plaintiffs Grant, Krawcheck, Hunter, Milliken, Mapp and Clark are all citizens of the United States and South Carolina and are residents and registered voters of Charleston County. Each is under the age of 65. Plaintiffs Mapp and Clark are under the age of 21.
(b) Each Plaintiff wishes to vote by absentee ballot in any election where that is particularly convenient, especially in any election where such plaintiff may be unable to vote at all except by absentee ballot.
(c) However, Section 7-15-320 bars each plaintiff from voting by absentee ballot because they do not meet the statute's requirements (unless events take a plaintiff out of the county 'for the duration of the early voting period, and during the hours the polls are open on election day')."
(d) Further, Section 7-15-320 may completely disfranchise a plaintiff in a particular election, if, for example, such plaintiff leaves the county after the early voting period begins and does not return by Election Day.

7. Defendant Howard Knapp is the Executive Director of the South Carolina Election Commission. Defendants Dennis Shedd (Chair), JoAnne Day, Clifford J. Edler, Linda McCall and Scott Moseley are the members of the South Carolina Election Commission. Under Title 7, Chapter 3, these defendants collectively administer South Carolina's election laws including its laws governing eligibility to vote by absentee ballot.
8. Defendant Charleston County Board of Elections and Voter Registration is responsible (subject to supervision by defendant South Carolina Election Commission and its Executive Director) for administering South Carolina's election laws in Charleston County.
9. All defendants are sued solely in their official capacities.

Facts

10. South Carolina law provides several methods of casting a vote: (1) in person on Election Day, (2) in person during a specified Early Voting Period, and (3) by absentee (mail) ballot.
11. Under S.C. Code 7-15-320, voters over age 65 are entitled to vote by any of these methods, and to choose freely in each primary and general election which method they will use.
12. Voters under age 65 do not have this right. They are entitled to vote in person by methods (1) or (2), on Election Day or during the Early Voting Period, but are not entitled to vote by method (3), absentee (mail) ballot, unless they fit in certain limited categories.
13. The consequence of this express age limitation is that one set of voter rules is applied to voters above a certain age, and a different set of voter rules is applied to those below a certain age.

14. Some of the specific categories that entitle some voters under 65 to vote by absentee ballot include physical disability, membership in the Armed Forces and their families, and absence from the residence county on in-person voting days.
15. In 2020, South Carolina enacted Acts 133 (S. 635) and 143 (H.B. 5305) allowing all voters of any age to vote by absentee ballot, but those laws expired in 2020 and do not apply now.

FIRST CAUSE OF ACTION – TWENTY-SIXTH (26TH) AMENDMENT

16. Granting the right to vote by mail ballot to all voters over age 65 but not to all those under age 65 is an abridgement of the right to vote on account of age in violation of the Twenty-Sixth (26th) Amendment, just as surely as if voters over 65 could vote until 8:00 pm while voters under age 65 could vote only until 7:00 pm.
17. The Twenty-Sixth (26th) Amendment gave constitutional protection to a class of voters defined by age. Granting the right to vote by mail to all voters over the age of 65 but not to all voters under that age is an abridgement of the right to vote “on account of age,” in the same way as distinctions on account of race or sex in eligibility to vote by mail would violate the Fifteenth (15th) and Nineteenth (19th) Amendments.

SECOND CAUSE OF ACTION –
FOURTEENTH (14TH) AMENDMENT EQUAL PROTECTION

18. Granting the right to vote by mail ballot to all voters over age 65 but not to all those under age 65 is a denial of equal protection to plaintiffs and other voters under age 65, in violation of the Fourteenth (14th) Amendment to the Constitution of the United States.

THIRD CAUSE OF ACTION – FIRST (1ST)-FOURTEENTH (14TH) AMENDMENTS
FREEDOM OF SPEECH AND ASSOCIATION

20. Granting the right to vote by mail ballot to all voters over age 65 but not to all those under age 65 is an abridgement of the freedom of speech and association in violation of the First (1st) Amendment to the Constitution of the United States, applicable to the states through the Due Process clause of the Fourteenth (14th) Amendment.

EQUITY

21. Plaintiffs have no adequate remedy at law and will suffer irreparable injury without injunctive relief.

RELIEF

22. Plaintiffs request the following relief:
- a. declaratory judgment and permanent injunction granting all voters under age 65 the same right to vote by mail ballot afforded to voters over age 65;
 - b. Costs and attorneys' fees; and
 - c. Such other relief as may be appropriate.

SIGNATURE PAGE TO FOLLOW

Date: May 30, 2024

s/Armand Derfner

Derfner & Altman, LLC

Armand Derfner, Fed. ID No. 528

Jonathan S. Altman, Fed. ID No. 5796

575 King Street, Suite B

Charleston, SC 29403

aderfner@derfneraltman.com

jaltman@derfneraltman.com

Telephone: (843) 723-9804

Susan K. Dunn, Fed. ID No. 647

37 Charlotte Street, Suite A

Charleston, SC 29403

susandunn1950@gmail.com

Telephone: (843) 830-1571

Chad W. Dunn, Esq. (*Pro Hac Vice*)

Brazil & Dunn, LLP

1900 Pearl Street

Austin, TX 78705

chad@brazilanddunn.com

Telephone: (512) 717-9822

Attorneys for Plaintiffs