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

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

Plaintiffs,

v.

Howard Knapp as the Executive Director of 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.

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

STATE ELECTION COMMISSION DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' RULE 12(c) MOTION FOR JUDGMENT ON THE PLEADINGS

Defendants Howard Knapp, Dennis Shedd (Chair), JoAnne Day, Clifford J. Edler, Linda McCall, and Scott Moseley, all of whom have been sued in their official capacities with the State Election Commission (SEC) (collectively, SEC Defendants) submit this Memorandum in Opposition to Plaintiffs' Rule 12(c) Motion for Judgment on the Pleadings filed August 1, 2024.[1]

The Second Amended Complaint (Complaint) seeks a determination that S.C. Code Ann. § 7-15-320(B)(2) violates the Twenty-sixth (26th) Amendment to the Constitution of the United States (Constitution), the Fourteenth (14th) Amendment Equal Protection clause, and abridges Plaintiffs' First Amendment right of free speech and association as applied by the Due Process clause because voters 65 years old and old (Elderly) can vote absentee by mail (Absentee) without excuse and Plaintiffs cannot. Plaintiffs seek a permanent injunction extending the right to vote

[1] Oddly, on July 18 and August 2, 2024, Plaintiffs served the SEC Defendants with Interrogatories.

Absentee to Plaintiffs and all South Carolina voters between the ages of 18 and 64. Plaintiffs' Second Amended Complaint ECF No. 24, ¶ 22.a. Although it is not in their Complaint, Plaintiffs' Motion further requests that if the General Assembly fails to "cure the discrimination" by the end of the 2025 legislative session, the Court adopt "a remedy that neutrally extends the right to vote by absentee ballot to all registered voters of any age." ECF No. 36, p. 1; No. 36-1, pp. 16-17.

For the reasons that follow, and for the reasons set forth in the SEC Defendants' contemporaneously filed Motion for Summary Judgment and Memorandum in Support (Summary Judgment Motion), which the SEC Defendants rely upon as if fully set forth herein, the SEC respectfully contends that Plaintiffs' Motion should be denied.

STANDARD OF REVIEW

A Motion for Judgment on the Pleadings should be granted when,

> accepting the facts set forth in the pleadings, the case can be decided as a matter of law. … The standard is almost identical to the standard employed in considering a Rule 12(b)(6) motion "with the key difference being that on a 12(c) motion, the court is to consider the answer as well as the complaint." … In addition to the complaint, the factual allegations of the answer are taken as true, to the extent "they have not been denied or do not conflict with the complaint." … (Citations omitted)

Crutchfield v. Pfizer Inc., No. CIV.A. 2:12-1462-RMG, 2013 WL 2897023, at *3 (D.S.C. June 13, 2013); *see also Defs. Of Wildlife v. U.S. Fish & Wildlife Serv.*, 539 F. Supp. 3d. 543, 552 (D.S.C. 2021); *Burbach Broad. Co. v. Elkins Radio Corp.*, 278 F.3d 401, 405–06 (4th Cir.2002). In order to grant a motion for judgment on the pleadings, this Court must find, beyond a doubt, that Defendants can prove "no set of facts" resulting in the dismissal of the Complaint. *Bruce v. Riddle*, 631 F.2d 272, 274 (4th Cir. 1980). That is not the case here.

I. PLAINTIFFS' MOTION SHOULD BE DENIED.

A. The State has a constitutional right to regulate the time, places and manner of elections.

Plaintiffs' arguments rely on the language "deny or abridge" used in the Fifteenth (15th), Nineteenth (19th) and Twenty-fourth (24th)[2] Amendments, contending that the cases interpreting these Amendments should be applied to the 26th Amendment "deny or abridge" language. Plaintiffs assert that the State has no right to regulate voting in any manner based on age. Plaintiffs' arguments contain several fatal flaws as explained below and should be denied.

Congress has established no laws governing the manner of exercising the franchise and has left those methods of voting up to the discretion of individual States. Plaintiffs Motion and Memorandum do not recognize or address the State's constitutional duty to regulate the time, places and manner of elections conferred by Art. I, Sec. 4 of the Constitution.

However, the United States Supreme Court (Supreme Court) and the Fourth Circuit Court of Appeals (4th Circuit) have repeatedly recognized that States must substantially regulate elections to ensure that "some sort of order, rather than chaos, is to accompany the democratic processes." *See e.g.*, *Burdick v. Takushi*, 504 U.S. 428, 433, 112 S. Ct. 2059, 2063 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 788, 103 S. Ct. 1564, 1569 (1983); *Storer v. Brown*, 415 U.S. 724, 730, 94 S. Ct. 1274, 1279 (1974); *Buscemi v. Bell*, 964 F.3d 252, 262 (4th Cir. 2020). "A State indisputably has a compelling interest in preserving the integrity of its election process." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 651 (2021) (*citing Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006)). Thus, Courts regularly reject challenges to election statutes based on the States' "important regulatory interests" in election administration. *See*, *e.g.*, *Fusaro v. Howard*, 19 F.4th 357, 369 (4th Cir. 2021); *Nelson v. Warner*, 12 F.4th 376, 390 (4th Cir. 2021); *Buscemi*, 964 F.3d

[2] Plaintiffs' do not rely on the 24th Amendment in their Complaint, only referencing it in their Motion.

at 263; *Marcellus v. Virginia State Bd. of Elections*, 849 F.3d 169, 175 (4th Cir. 2017); *Lee v. Virginia State Bd. of Elections*, 843 F.3d 592, 605 (4th Cir. 2016). States have an important regulatory interest "in ensuring orderly, fair, and efficient procedures for the election of public officials." *S.C. Green Party v. S.C. State Election Comm'n*, 612 F.3d 752, 759 (4th Cir. 2010).

To succeed on their constitutional challenges to § 7-15-320(B)(2), Plaintiffs must allege facts that articulate how and why their lack of access to Absentee voting is a material burden and outweighs the State's interest in preserving the integrity of the election process by allowing only the Elderly to vote Absentee and not extending this right to Plaintiffs. Plaintiffs' Complaint alleges no such facts and their Memorandum does not even attempt such an analysis or explain why the analysis is not needed or even address the level of scrutiny this Court should apply to their facial constitutional challenges.

B. Plaintiffs misunderstand "deny or abridge" in the 26th Amendment.

Plaintiffs argue that the phrase "deny or abridge" should mean "no discrimination"[3] and point to the Amendments to the Constitution which have expanded the right to vote—15th (not denied or abridged on account of race); 19th (not denied or abridged on account of sex); 24th (not denied or abridged for failure to pay poll tax);[4] and 26th (not denied or abridged on account of age). The cases Plaintiffs cite interpreting these Amendments concern statutes that would **deny** the right to vote to a Voter. The adoption of § 7-15-320(B)(2) did not deny the right to vote to any Voter. Rather, it extended the manner of voting to the Elderly.

[3] Memorandum, ECF 36-1, p. 11.

[4] The statutes scrutinized in the 15th and 24th Amendment cases cited by Plaintiffs each involve statutes which abridged or denied the right to vote. Yet Plaintiffs completely ignore the extended passage of time between the passage of the 15th (1870), 19th (1920), 24th (1964) and 26th (1971). SEC Defendants adopt the discussion of their Summary Judgment Motion ECF No.39-1, pp.15-18 of the understanding of "right to vote" when the 26th Amendment was debated and adopted in 1971.

Lane v. Wilson, 307 U.S. 268, 59 S.Ct. 872 (1939), is a 15th Amendment challenge to Oklahoma statutes designed to suppress black voting using registration restrictions and literacy tests. *Lane* stands for the proposition that the 15th Amendment denies or abridges the right to vote on account of race when the challenged "procedural requirements … *effectively handicap exercise of the franchise*" on the basis of race, "although the abstract right to vote may remain unrestricted as to race." *Id.* at 275, 59 S. Ct. at 876 (emphasis added). Under the facts before the Supreme Court in *Lane,* absent the ability to register, an Oklahoman could not vote. To meet the *Lane* 15th Amendment test, Plaintiffs must allege facts sufficient to show that § 7-15-320(B)(2) effectively handicaps their exercise of the franchise. There are no well pled facts in the Complaint alleging that § 7-15-320(B)(2) effectively handicaps Plaintiffs' exercise of the franchise.

Plaintiffs' reliance on *Reno v. Bossier Par. Scho. Bd.,* 528 U.S. 320, 120 S. Ct. 866 (2000), is equally misplaced. *Reno* is a case seeking preclearance under Section 5 of the Voting Rights Act (Section 5) regarding the redistricting of a school board. Section 5 authorizes preclearance of a voting change statute that "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." *Id.* at 328, 120 S. Ct. at 871. The application of Section 5 does not involve the State's constitutional right to regulate the "time, places and manner" of elections.

Finally, Plaintiffs rely on *Harman v. Forssenius,* 380 U.S. 528, 85 S. Ct. 1177 (1965), for the proposition that if the statute at issue "subverts the effectiveness of the 24th Amendment," it "must fall under its ban." *Id.* at 542, 85 S. Ct. at 1186. *Harman*, in striking Virginia's poll tax, determined that "[i]t has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution." *Id.* at 540. As discussed above, *Harman* dictates that Plaintiffs must demonstrate that the effect of § 7-15-320(B)(2) is to impose a

"material requirement solely on those who [are not 65 years old]." *Id.* at 541. Plaintiffs' Complaint does not allege that § 7-15-320(B)(2) imposes a material requirement only on Voters under 65. They complain only that they do not have the same convenience of voting Absentee that the Elderly have, unless they are "out of the county for the duration of the early voting period, and during the hours the polls are open on election day." ECF No. 24, ¶ 6(b), (c), and (d) (internal quotation marks omitted).

S.C. Code Ann. § 7-15-340 establishes the form of application for requesting an absentee ballot. A request for an absentee application can be submitted beginning January 1 of any election year and can be requested by calling, going to the county registration office in person or by mail. The application deadline this general election is October 25, 2024. *See* § 7-15-330*;* SEC 2024 Election Calendar at https://scvotes.gov/wp-content/uploads/2024/07/2024-Election-Calendar-scVOTES-2024-07-23.pdf (accessed August 30, 2024). Thus, even assuming Plaintiffs' hypothetical were true, § 7-15-320 does not prohibit them from voting Absentee, as they claim.

The SEC Defendants' Answer specifically alleges that the General Assembly's "determination not to extend voting by mail to qualified electors under 65 years old does not create an undue burden or an onerous procedural requirement that effectively handicaps those voters' exercise of the franchise." ECF No. 27, ¶ 29. This well pled allegation is not contradicted by Plaintiffs' Complaint. *See* ECF No. 24, *Passim.* For purposes of this 12(c) Motion, the SEC Defendants' allegation must be taken as true.

The State clearly has the right to set the time, places and manner of elections. *See supra* at 3-4. Section 7-15-320(B)(2) does not impose a material requirement on Plaintiffs or other Voters under 65 or otherwise handicap their abilities to exercise the franchise. They still have the

effective right to exercise the franchise, just not to pick the manner that they allege is most convenient for a particular election. The Court should deny Plaintiff's Motion.

C. The California and Colorado state court opinions do not advance Plaintiffs' position.

It is ironic that Plaintiffs ask this Court to follow State Court applications of the 26th Amendment to their respective State statutes but request that the Court not follow the holdings of the Fifth (5th) and Seventh (7th) Circuit Courts of Appeals. That being said, neither *Jolicouer v. Mihaly,* 5 Cal. 3rd 565, 488 P.2d 1 (1971), nor *Colorado Project-Common Cause v. Anderson,* 178 Colo. 1, 495 P.2d 220 (1972), advance Plaintiffs' position and both cases have easily distinguishable facts. Both *Jolicouer* and *Colorado Project* addressed state statutes that either placed a substantial burden on the right to vote or denied it outright.

Jolicouer involved a California statute that required minors, emancipated or otherwise, unless they were married, to register to vote in the precinct where their parents reside. Citing to *Lane*, the California court analogized the 26th Amendment to the 15th Amendment, concluding that this interpretation of residence requirement for voter registration purposes was an "onerous procedural requirement[] which effectively handicap[ped] exercise of the franchise ... although the abstract right to vote may remain unrestricted...." 5 Cal.3rd at 571 (internal citations omitted). The California court concluded that requiring minors to register at their parents' residence necessitated plaintiffs traveling and/or voting absentee for elections in locations they know little about was materially burdensome and unduly handicapped the right to vote. *Id.* at 577-578. In this case, Plaintiffs do not allege § 7-15-320(B)(2) is unduly burdensome.

In *Colorado Project,* the Colorado statute at issue prohibited registered voters between the ages of 18 and 20 from participating in the initiative process. In striking the statute, the Colorado court opined: public opinion "has moved in a direction favoring full participation of young voters

in the political process. They are constantly implored to enter the legitimate political arena as a means of expressing their youthful dissatisfactions. And the Congress, by the [26th] Amendment, has opened the door to this full participation." 495 P.2d at 223. Thus, unlike in this challenge to § 7-15-320(B)(2), the Colorado statute completely denied voters' ability to participate in the initiative voting process. Here, Section 7-15-320(B)(2) allows Plaintiffs to participate fully in voting, while providing the Elderly Voters another manner to participate.

D. The decisions from the 5th and 7th Circuits are persuasive authority against Plaintiffs

While Plaintiffs are correct that opinions from the 5th and 7th Circuit Courts of Appeals are not binding on this Court, *Texas Democratic Party v. Abbott,* 961 F.3d 389 (5th Cir. 2020) (*TDP I*), *Texas Democratic Party v. Abbott*, 978 F.3d 168 (5th Cir. 2020) (*TDP II*), *Tully v. Okeson*, 977 F.3d 608 (7th Cir. 2020) (*Tully I*), and *Tully v. Okeson*, 78 F.4th 377 (7th Cir. 2023) (*Tully II*), are persuasive authority for the Court to reject Plaintiffs' position and affirm that § 7-15-320(B)(2) is constitutional. The *TDP* and *Tully* cases involve age-based discrimination arising from State statutes similar to South Carolina's which allow Elderly Voters to vote Absentee but do not allow those under 65 to do so. The Courts in these cases heavily relied on *McDonald v. Bd. of Election Comm'rs of Chicago*, which upheld an absentee statute "designed to make voting more available to some groups who cannot easily get to the polls," but which did not itself deny … the exercise of the franchise …." 394 U.S. 802, 807–08, 89 S. Ct. 1404, 1408 (1969).[5]

1. *Texas*. The *TDP* decisions involved challenges to the Texas Absentee statute during the COVID pandemic. In denying Plaintiffs' request for an injunction in *TDP I*, the Court found that the state officials defending the statute "will likely succeed in showing that *McDonald* controls." *TDP I*, 961 F.3d at 403. Plaintiffs argue that *TDP I* should not be followed because it

[5] *McDonald* is more fully discussed in the contemporaneously filed Summary Judgment Motion incorporated herein.

misinterpreted the 26th Amendment's use of the word "abridged" to mean "'retrogression' that takes away an entitlement once possessed by that voter." ECF No. 36-1, p. 14.

In considering the meaning of the 26th Amendment in *TDP II*, the Fifth Circuit rightly determined that it was appropriate to look both at Congressional sources and *McDonald*, which defined the meaning of the "right to vote," closely in time with the adoption of the Amendment. *See TDP II*, 978 F.3d at 188 ("The Supreme Court distinguished between a right to vote and a right to vote absentee: 'It is thus not the right to vote that is at stake here but a claimed right to receive absentee ballots.'") (internal citations omitted). In holding that plaintiffs' right to vote was not abridged on account of age, the Court in *TDP II* stated that it was "seeking a clear understanding of the right itself, from which we then can determine whether something the government has done in its election rules has abridged the right." *Id.* Ultimately, *TDP II* concluded that in 1971 when the 26th Amendment was ratified, the right to vote did not include absentee voting. *Id.* at 189. Thus, the Court found the Texas Absentee statute abridged the right to vote only if it made it more difficult to vote before the law was passed, and it did not. *Id.* at 191-192.

2. *Indiana*. The *Tully* decisions involved an Indiana statute allowing voters 65 years old and older to vote absentee by mail without excuse. In the context of COVID, plaintiffs alleged the Indiana Absentee statute violated the 26th Amendment and sought an injunction prohibiting its enforcement prior to the 2022 general election,.

In *Tully* I, the Court sought to determine whether "Indiana's age-based absentee-voting law abridges 'the right … to vote' protected by the Twenty Sixth Amendment or merely affects a privilege to vote by mail." *Tully I*, 977 F.3d at 613. Applying *McDonald*, *Tully I* denied plaintiffs' injunctive relief, finding that even in the context of the pandemic, plaintiffs "did not put

forth evidence showing that the challenged law 'impact[ed their] ability to exercise the fundamental right to vote' or that it 'absolutely prohibited' them from voting," but instead "'ma[de] voting more available to some groups.'" 977 F.3d at 613 (*quoting McDonald*, 394 U.S. at 807, 808 n.7, 89 S.Ct. 1404). at 807, 89 S.Ct. 1404. Therefore, it was "not the right to vote that [was] at stake ... but a claimed right to receive absentee ballots." *Id.* In short, *Tully I* held that the fundamental right to vote means the ability to cast a ballot, but not the right to do so in a voter's preferred manner. 977 F.3d at 617.

Plaintiffs argue that *Tully I* only held that absentee voting is not really not part of the 'right to vote,' thus not covered by the 26th Amendment is a curious argument. ECF No. 36-1 at 14. The fact is, Plaintiffs' argument itself is the curious one in light of *McDonald*—which they do not address, much less distinguish or otherwise explain. *Tully I* held that, for the 14th Amendment challenge, the Indiana statute was equally sound under both the rational basis test used in *McDonald* and the *Anderson/Burdick* test. 977 F.3d at 616-619. As discussed in SEC Defendants Motion for Summary Judgment, § 7-15-320(B)(2) is also equally sound under either level of scrutiny.

In *Tully II*, decided after the 2022 general election, plaintiffs, again at the district court, proceeded only on the 26th Amendment claim, abandoning their earlier 14th Amendment claim. *Tully II* agreed with the plaintiffs that the language of the 26th Amendment mirrors the language of the 19th and 24th Amendments, but concluded to reach plaintiffs endpoint, the Court had to ignore the "understanding of the right to vote at the time of the Twenty-Sixth amendment's ratification." 78 F.4th at 382-383. The Court determined that *McDonald's* "concept of 'the right to vote' as the *effective* exercise of the franchise is also consistent with the Court's interpretation of the right to vote under the [15th] Amendment." *Id.* at 384.

Tully II addressed the meaning of "abridged" as used in the 26th Amendment. Relying on *Harman,* the Court found that "'abridgement' must involve the imposition of a 'material requirement.'" *Id.* at 386. The *Tully* plaintiffs, as do Plaintiffs here, argued that *Tully*'s interpretation of "abridge" cannot be squared with *Reno.* Determining whether a statute makes plaintiffs "worse off" is not the "equivalent of asking whether [plaintiffs'] right to vote has been abridged" and concluded that *Reno* requires the Court to set a starting point for determining "abridgment." *Id.* at 387. The starting point is "the right to vote." Indiana, like South Carolina, affords its Voters myriad ways to exercise the franchise. *Id.* Just like South Carolina, "Indiana imposes no requirements, much less *material* requirements, on the exercise of the franchise through this accommodation of the elderly." *Id.*

The 5th and 7th Circuit Courts' opinions firmly argue in favor of the denial of Plaintiffs' Motion and the grant of SEC Defendants' Summary Judgment Motion.

E. Plaintiffs fail to identify the level of scrutiny which must applied here.

Plaintiffs do not identify the level of scrutiny it wishes the Court to apply in resolving their constitutional challenges to § 7-15-320(B)(2). The same was the case with the plaintiffs in TDP II. See 978 F.3d 168 (Court noting "plaintiffs' current briefing exercised some caution by not explicitly identifying a standard [of constitutional scrutiny]."). The Constitution, while not explicitly (although implicitly) conferring the right to vote, confers on the States broad authority to regulate the conduct of State and federal elections. As the 7th Circuit held in *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004), *cert.* denied, 125 S.Ct. 2798 (2005):

> Because of this grant of authority and because balancing the competing interests involved in the regulation of elections is difficult and an unregulated election system would be chaos, state legislatures may without transgressing the Constitution impose extensive restrictions on voting. Any such restriction is going to exclude, either de jure or de facto, some people from voting; the constitutional

> question is whether the restriction and resulting exclusion are reasonable given the interest the restriction serves.

Id. As fully discussed at pages 20-22 in SEC Defendants' Summary Judgment Motion, the *Anderson/Burdick* balancing test is the correct level of scrutiny for constitutional challenges to State classifications on regulations regarding absentee voting. *See Crawford* 553 U.S. at 190.

II. PLAINTIFFS LACK STANDING.

For reasons more fully discussed in pages 27-31 SEC Defendants' Summary Judgment Motion, Plaintiffs lack standing to pursue this case and therefore this Court does not have jurisdiction to hear the case and the instant Motion should be dismissed.

III. PLAINTIFFS ARE NOT ENTITLED TO THE RELIEF THEY SEEK.

In Plaintiffs' Motion, but not in their Complaint, they demand that if the General Assembly does not act by the end of the 2025 legislative session, the Court open Absentee voting to every Voter, irrespective of the exceptions outlined in § 7-15-320. Even assuming the Plaintiffs are right, and they are not, that any age-based distinction in voting procedures violates the 26th, 14th or 1st Amendments, Plaintiffs are not entitled to a mandatory permanent injunction "neutrally extend[ing] the right to vote by mail to all voters, under age 65 as well as over age 65." ECF No. 36-1, p. 17.

"[W]hen confronting a constitutional flaw in a statute, we try to limit the solution to the problem." *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328, 126 S. Ct. 961, 967 (2006). That means "enjoin[ing] only the unconstitutional applications of statute while leaving other applications in force, or … sever[ing] its problematic portions while leaving the remainder intact." *Id.* at 329, 126 S. Ct. at 967.

The Supreme Court has taken this modest approach to remedies in voting cases. *See Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 203 (2008). This restrained approach flows

from multiple considerations. First to strike more of a statute than the constitutionally offensive provision would "nullify" the legislature's work and "frustrate[] the intent of the elected representatives of the people." *Ayotte*, 546 U.S. at 329. Second, courts cannot "rewrit[e]" statutes, as that is a legislative function. *Id.* And third, courts must be mindful of the legislature's intent for how the statute should operate if the offensive provision were removed. *Id.*

South Carolina has historically had in person voting. It chose to allow Early voting in 2022 and in 2022 provided for voting absentee by mail for seven categories of voters who otherwise could not be physically present to vote in person, thus being deprived of the right to exercise the franchise. Only the Elderly were allowed to vote Absentee without excuse. Moreover, in 2020, the one year the General Assembly opened voting by mail to all voters (due to COVID-19), that change was expressly limited to the primary and not extended to the general election. *See* 2020 S.C. Acts No. 133, § B(2); 2020 S.C. Acts No. 143, § 10. *See Middleton v Andino,* 990 F.3d 768 (2020). There can be no better evidence of the General Assembly's intent than its repeated rejection of the very thing the Plaintiffs seek.

Under these principles, there is no basis (if Plaintiffs prevailed on their challenge to § 7-15-320(B)(2)) to expand absentee voting by mail to all voters. Instead, the remedy would be to hold § 7-15-320(B)(2) unconstitutional, thus striking the exception and prohibiting anyone from voting absentee by mail unless she met another excuse in § 7-15-320. Striking only § 7-15-320(B)(2) would avoid nullifying the General Assembly's decision about who should have the benefit of voting absentee, in light of its desire to keep in person voting to maintain integrity of the election process, minimize fraud and instill voter confidence in the results of elections. The Constitution allows State legislatures to establish the "times, places and manner of holding elections." U.S. Const. art. I, § 4. The South Carolina Constitution directs the General Assembly

to provide for holding of elections. *See* S.C. Const. art. II, § 10 ("The General Assembly shall . . . provide for the administration of elections and for absentee voting . . . .").[6]

Further, a remedy limited to striking § 7-15-320(B)(2) is consistent with the Constitution. Nothing in that social compact guarantees a right to vote by absentee ballot. *See McDonald,* 394 U.S. at 807–08. Thus, the remedy does not *have* to expand absentee voting. If the General Assembly wants to do that, it can. If it does not, it does not have to do so. But whatever happens, it is the General Assembly's choice. *See* S.C. Const. art. II, § 10. And its choice has consistently been (absent a pandemic) for in-person voting to be the norm.

Therefore, the Plaintiffs should be able to obtain—at most—only an order striking § 7-15-320(B)(2).

CONCLUSION

For the reasons stated above the Court should deny Plaintiffs' Motion.

Respectfully Submitted,

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[6] The General Assembly has had multiple bills introduced that would allow all voters to vote by absentee ballot, but it has never passed any of them. *See, e.g.*, S.209, 119th Sess. (S.C. 2011); S.142, 118th Sess. (S.C. 2009); S.58, 114th Sess. (S.C. 2001); S.595, 113th Sess. (S.C. 1999).

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August 30, 2024
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