No. 25-1413

In the United States Court of Appeals for the Fourth Circuit

TRUDY B. GRANT, et al.,

Plaintiffs-Appellants,

v.

HOWARD M. KNAPP, as the Executive Director of the South Carolina Election Commission, et al.,

Defendants-Appellees.

On Appeal from the United States District Court for the District of South Carolina

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL

Elizabeth B. Wydra
Brianne J. Gorod
David H. Gans
Anna K. Jessurun
CONSTITUTIONAL ACCOUNTABILITY CENTER
1730 Rhode Island Ave. NW, Suite 1200
Washington, D.C. 20036
(202) 296-6889
brianne@theusconstitution.org

Counsel for Amicus Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* states that no party to this brief is a publicly held corporation, issues stock, or has a parent corporation.

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INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring that constitutional provisions, including the Twenty-Sixth Amendment, are interpreted in accordance with their text and history and accordingly has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Under South Carolina law, voting opportunities are allocated on account of age, giving voters aged 65 years or older the right to vote by mail without excuse, while generally requiring younger voters to cast their ballots in person. This explicit age-based voting classification violates the plain text of the Twenty-Sixth Amendment, which provides that "[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age." U.S. Const. amend. XXVI, § 1. The court below, however, upheld South Carolina's age-based restriction on mail-

[1] *Amicus* states that no counsel for a party authored this brief in whole or in part, and no person other than *amicus* or its counsel made a monetary contribution to the brief's preparation or submission. A motion for leave to file this brief has been filed herewith.

in voting, holding that South Carolina's absentee ballot law does not implicate the right to vote, but instead "merely extends a privilege" to older voters. J.A. 109.

The district court's decision is wrong. The Twenty-Sixth Amendment means what it says: the first-time voter who has just turned eighteen must be treated on equal terms as the octogenarian voter who has cast a ballot for many decades. In holding otherwise, the decision below violates the Twenty-Sixth Amendment, as its text and history make clear.

The immediate impetus for the Twenty-Sixth Amendment's adoption was the desire to enfranchise eighteen- to twenty-one-year-old U.S. citizens. But the "words on the page" adopted by Congress and ratified by the states sweep more broadly, promising voting equality for adult citizens regardless of age. *Bostock v. Clayton County*, 590 U.S. 644, 654 (2020). The Twenty-Sixth Amendment, like other amendments protecting the right to vote free from discrimination, "is cast in fundamental terms, terms transcending the particular controversy which was the immediate impetus for its enactment." *Rice v. Cayetano*, 528 U.S. 495, 512 (2000).

Indeed, in writing the Twenty-Sixth Amendment, its Framers consciously chose this sweeping language, modeled specifically on the Fifteenth Amendment's prohibition on racial discrimination in voting and the Nineteenth Amendment's prohibition on sex discrimination in voting. All three of these Amendments were

adopted to eradicate voting discrimination and bring our nation closer to our foundational promise of a democracy of, by, and for the people. By forbidding the denial and abridgement of the right to vote on account of race, sex, and age, the American people fundamentally altered our nation's constitutive charter to "establish[] a national policy . . . not to be discriminated against as voters in elections to determine public governmental policies or to select public officials, national, state, or local." *Terry v. Adams*, 345 U.S. 461, 467 (1953). As the Supreme Court said of the Fifteenth Amendment's prohibition on racial discrimination in voting, "[p]revious to this amendment, there was no constitutional guaranty against this discrimination: now there is." *United States v. Reese*, 92 U.S. 214, 218 (1876). In all three of these Amendments, the Constitution strictly forbids all voting discrimination on account of the protected characteristic—race, sex, or age—without exception. And in each context, by prohibiting both denial and abridgement of the right to vote, the Constitution outlaws state efforts "to fence out whole classes of its citizens from decisionmaking in critical state affairs," *Rice,* 528 U.S. at 522, recognizing that the use of invidious classifications "is corruptive of the whole legal order democratic elections seek to preserve," *id.* at 517.

If a state enacted a law limiting the right to vote by mail to white persons, men, or those financially able to pay a poll tax, there is no doubt that it would be a plain affront to the commands of the Fifteenth, Nineteenth, and Twenty-Fourth

Amendments. *See id.* at 512 ("'[B]y the inherent power of the Amendment the word white disappeared' from our voting laws, bringing those who had been excluded by reason of race within 'the generic grant of suffrage made by the State.'" (quoting *Guinn v. United States*, 238 U.S. 347, 363 (1915))); *Gray v. Sanders*, 372 U.S. 368, 379 (1963) ("If a State in a statewide election weighted the male vote more heavily than the female vote or the white vote more heavily than the Negro vote, none could successfully contend that that discrimination was allowable."); *Harman v. Forssenius*, 380 U.S. 528, 542 (1965) ("For federal elections, the poll tax is abolished absolutely as a prerequisite to voting, and no equivalent or milder substitute may be imposed."). The same is true here. Age, like race, sex, and wealth, "cannot qualify some and disqualify others from full participation in our democracy." *Rice*, 528 U.S. at 523. South Carolina here has done precisely what the Twenty-Sixth Amendment forbids.

The court below, however, reasoned that the South Carolina law does not deny or abridge the right to vote because, in its view, "South Carolina's absentee voting law merely extends a privilege, convenience, or accommodation to those older than 65." J.A. 109. In doing so, the district court aligned itself with the Fifth and Seventh Circuits' flawed interpretations of the Twenty-Sixth Amendment. *See id.*; *see also Tex. Democratic Party v. Abbott*, 978 F.3d 168, 192 (5th Cir. 2020); *Tully v. Okeson*, 977 F.3d 608, 614 (7th Cir. 2020). But under this view, states can

give older citizens additional voting opportunities, such as the right to vote by mail, while denying those same opportunities to younger voters solely because of age. In other words, according to the court below, the Twenty-Sixth Amendment does not, in fact, protect younger voters from facially discriminatory voting laws or guarantee voting equality.

This construction of the Twenty-Sixth Amendment would curtail the scope not only of that Amendment, but also all of the Constitution's other voting rights Amendments. It would allow states to regulate mail-in voting, and perhaps other aspects of the electoral process, in a discriminatory manner. This result cannot be squared with the text and history of the Twenty-Sixth Amendment, which conferred "a plenary right on citizens 18 years of age or older to participate in the political process, free of discrimination on account of age." 117 Cong. Rec. 7535 (1971) (quoting H.R. Rep. No. 92-37, at 7 (1971)). Laws that discriminate against younger voters and give them less opportunity to exercise their right to vote abridge that right.

The court below also erred by looking to the Supreme Court's Fourteenth Amendment precedents that predated ratification of the Twenty-Sixth Amendment to understand the meaning of the "right to vote." J.A. 109. In so doing, the court ignored the constitutional transformation wrought by the Twenty-Sixth Amend-

ment. The American people added the Twenty-Sixth Amendment to the Constitution after the Supreme Court held in *Oregon v. Mitchell*, 400 U.S. 112 (1970), that Congress's power to enforce the Fourteenth Amendment did not permit it to lower the voting age to eighteen in state elections. In other words, the Twenty-Sixth Amendment was necessary because the Fourteenth Amendment had been interpreted to permit states leeway to enact laws that treat older and younger persons differently on account of age. By sanctioning a state law that classifies voters on account of age and denies equal voting opportunities to those aged eighteen to sixty-four years old, the court below effectively rendered the Twenty-Sixth Amendment's broad prohibition on age discrimination in voting a dead letter. This Court should reverse.

ARGUMENT

I. The Text and History of the Twenty-Sixth Amendment Prohibit State Laws that Deny Equal Voting Opportunities on Account of Age.

The Twenty-Sixth Amendment provides that "[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age." U.S. Const. amend. XXVI, § 1. This language was chosen by the Framers of the Twenty-Sixth Amendment to establish a broad constitutional prohibition on voting discrimination on account of age. Adults eighteen years or older—whether young or old—are entitled to basic equality when it comes to the right to vote, a right long recognized as

"preservative of all rights," *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). States are not required to grant the vote to citizens who have not reached the age of eighteen, but once citizens reach adulthood, the Twenty-Sixth Amendment declares age constitutionally irrelevant. In short, the Amendment protects young and older voters alike and forbids the government from curtailing or diminishing the rights of some adult voters on account of age.

"When seeking to discern the meaning of a word in the Constitution, there is no better dictionary than the rest of the Constitution itself." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 829 (2015) (Roberts, C.J., dissenting). This is particularly true of the Twenty-Sixth Amendment, which was modeled specifically on the Fifteenth and Nineteenth Amendments' prohibitions on voting discrimination. As the history of the Twenty-Sixth Amendment shows, its mandate of voting equality regardless of age "embodies the language and formulation of the 19th amendment, which enfranchised women, and that of the 15th amendment, which forbade racial discrimination at the polls." S. Rep. No. 92-26, at 2 (1971). During debates over the Amendment, speaker after speaker reiterated this basic point. *See* 117 Cong. Rec. 7539 (1971) (Rep. Claude Pepper) ("What we propose to do . . . is exactly what we did in . . . the 15th amendment and . . . the 19th amendment. Therefore, it seems to me that this proposed amendment is perfectly in consonance with those precedents."); *id.* at 7534 (Rep. Richard Poff)

("Just as the 15th amendment prohibits racial discrimination in voting and just as the 19th amendment prohibits sex discrimination in voting, the proposed amendment would prohibit age discrimination in voting . . . ."); *id.* at 7533 (Rep. Emanuel Celler) ("[Section 1 of the Twenty-Sixth Amendment] is modeled after similar provisions in the 15th amendment, which outlawed racial discrimination at the polls, and the 19th amendment, which enfranchised women.").

The Twenty-Sixth Amendment was added to the Constitution in the wake of the Supreme Court's decision in *Oregon v. Mitchell*, which struck down a provision of the Voting Rights Act Amendments of 1970 that lowered the voting age from twenty-one to eighteen in state elections by prohibiting states from "den[ying] the right to vote in any such primary or election on account of age if such citizen is eighteen years of age or older." Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, § 302, 84 Stat. 314, 318. There, the Court held that Congress could not use its power to enforce the Fourteenth Amendment to grant citizens aged eighteen- to twenty-one years old the right to vote in state elections. *Mitchell*, 400 U.S. at 130 (opinion of Black, J.) (concluding that "Congress has attempted to invade an area preserved to the States by the Constitution without a foundation for enforcing the Civil War Amendments' ban on racial discrimination"); *id.* at 294 (Stewart, J., concurring in part and dissenting in part) ("[N]one of the opinions filed today suggest that the States have anything but a constitutionally

unimpeachable interest in establishing some age qualification as such."). In other words, *Mitchell* allowed states to "discriminate on the basis of age without offending the Fourteenth Amendment if the age classification in question is rationally related to a legitimate state interest." *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 83 (2000).

In response, the Twenty-Sixth Amendment established a specific constitutional rule that guaranteed voting equality for young and older adults alike, "echo[ing] the language of the Black Suffrage and Woman Suffrage Amendments" and extending them "along the *youth* axis." Akhil Reed Amar, *America's Constitution: A Biography* 445 (2005). Rather than simply lower the voting age from twenty-one to eighteen, the Framers of the Twenty-Sixth Amendment chose broad sweeping language, modeled on the Fifteenth and Nineteenth Amendments, mandating a rule of voting equality on account of age. The text and history of the Twenty-Sixth Amendment make plain its design to "confer[] a plenary right on citizens 18 years of age or older to participate in the political process, free of discrimination on account of age." 117 Cong. Rec. 7535 (1971) (quoting H.R. Rep. No. 92-37, at 7).

Significantly, while the statutory precursor to the Twenty-Sixth Amendment prohibited only vote denial, the Twenty-Sixth Amendment explicitly bars the gov-

ernment from either denying *or abridging* the right to vote of citizens aged eighteen years or older on account of age. This language, as the Supreme Court's Fifteenth Amendment precedents reflect, is both "explicit and comprehensive," requiring the government to respect "the equality" of young and older adult citizens "at the most basic level of the democratic process, the exercise of the voting franchise." *Rice*, 528 U.S. at 511-12. The Twenty-Sixth Amendment forbids laws that discriminate against younger voters on the basis of age and saddle them with burdens older voters need not bear. The Framers of the Twenty-Sixth Amendment were concerned that "forcing young voters to undertake special burdens" in order to "exercise their right to vote might well serve to dissuade them from participating in the election." S. Rep. No. 92-26, at 14. To guarantee equality for all adult voters regardless of age, the Twenty-Sixth Amendment prohibits both denial and abridgment of the right to vote of citizens who are eighteen or older on account of age.

Indeed, as the Supreme Court's precedents make clear, the "core meaning" of "'abridge'" is to "'shorten.'" *Reno v. Bossier Par. Sch. Bd.*, 528 U.S. 320, 333-34 (2000) (quoting *Webster's New International Dictionary* 7 (2d ed. 1950)). This "necessarily entails a comparison" and "refer[s] . . . to discrimination." *Id.* at 334; *see Lane v. Wilson*, 307 U.S. 268, 275 (1939) (observing that the Fifteenth Amendment "nullifies sophisticated as well as simple-minded modes of discrimination"

and "hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race"); *Harman*, 380 U.S. at 541-42 (holding that any "material requirement" imposed "solely" on voters who refused to pay a poll tax was an unconstitutional abridgement of the right to vote forbidden by the Twenty-Fourth Amendment); *Jolicoeur v. Mihaly*, 5 Cal. 3d 565, 571 (1971) (holding that the word "'abridge'" in the Twenty-Sixth Amendment "means diminish, curtail, deprive, cut off, reduce" (citing *Webster's New International Dictionary* 6 (3d ed. 1961))). Facially discriminatory voting laws, like the South Carolina statute challenged here, that "qualify some and disqualify others from full participation in our democracy" abridge the right to vote. *See Rice*, 528 U.S. at 523; *cf. Allen v. Milligan*, 599 U.S. 1, 25-26 (2023) (finding discriminatory map that diluted Black voting strength resulted in an abridgment of the right to vote on account of race).

This understanding of the meaning of "abridge" is long-standing and deeply rooted in constitutional text and history. *See* Cong. Globe, 42d Cong., 1st Sess. app. 71 (1871) (prohibition against unconstitutional abridgement "secures equality toward all citizens on the face of the law" and means that "one man shall not have more rights upon the face of the laws than another man"); Steven G. Calabresi & Andrea Matthews, *Originalism and* Loving v. Virginia, 2012 BYU L. Rev. 1393, 1417-18 (demonstrating that "[t]he word 'abridge' in 1868 meant . . . [t]o lessen"

or "to diminish" and that laws that gave "African Americans a lesser and diminished" set of freedoms unconstitutionally abridged their rights); Travis Crum, *Reconstructing Racially Polarized Voting*, 70 Duke L.J. 261, 323 (2020) ("The Reconstruction Framers' use of the word 'abridged' militates in favor of broadly protecting the right to vote. At the time, dictionaries defined 'abridge' as 'to contract,' 'to diminish,' or '[t]o deprive of' . . . . And since the term 'denied' adequately captures the scenario where a voter is prevented from casting their ballot, the term 'abridge' presumably carries this broader meaning."); Richard L. Hasen & Leah M. Litman, *Thin and Thick Conceptions of the Nineteenth Amendment Right to Vote and Congress's Power to Enforce It*, 108 Geo. L.J. 27, 39 (2020) (arguing that, under the Nineteenth Amendment, "[a]bridgment occurs when a state 'diminishes' or 'shortens' a voting right on account of sex," such as when "a state passes a law that results in greater burdens on women being able to register and vote compared to men"). Thus, "when a state uses a facial classification based on race, sex, or age to condition access to voting in general or to any method of voting in particular, the government abridges the voting equality rights explicitly written into the Constitution." Vikram David Amar, *Taking (Equal Voting) Rights Seriously: The Fifteenth Amendment as Constitutional Foundation, and the Need for Judges to Remodel Their Approach to Age Discrimination in Political Rights*, 97 Notre Dame L. Rev. 1619, 1636 (2022).

In short, under this settled meaning of "abridge," discrimination is the sine qua non of abridgement. Laws that deny younger citizens voting opportunities available to older citizens violate the promise of voting equality enshrined in the Twenty-Sixth Amendment.

The South Carolina law at issue here is such a law. The Constitution does not require states to establish a system of mail-in voting, but having done so, South Carolina may not discriminate against voters on the basis of age by saddling voters aged eighteen to sixty-four with burdens voters aged sixty-five or older do not face. The statute is based on a premise—that voters aged sixty-five or older deserve additional voting opportunities—that is fundamentally inconsistent with the Twenty-Sixth Amendment's prohibition on voting discrimination on account of age. The Twenty-Sixth Amendment demands that adult voters be treated equally regardless of age. Younger voters, no less than voters sixty-five or older, are entitled to vote without the inconvenience of waiting many hours at a crowded, overburdened polling place to exercise their constitutional right to vote.

II. There Is No Mail-in Voting Exception to the Twenty-Sixth Amendment.

The court below compounded its flawed reading of the Twenty-Sixth Amendment by relying on the Supreme Court's Fourteenth Amendment jurisprudence to bolster its conclusion that states may discriminate against younger voters and deny them the right to vote by mail accorded to those over the age of 65. Citing *McDonald v. Board of Election Commissioners*, 394 U.S. 802 (1969), the court below concluded that "the right to vote" is not "at issue here," but rather the "Plaintiffs' wish to vote by absentee ballot for convenience." J.A. 109. This analysis was fundamentally flawed.

In *McDonald*, the Supreme Court rejected an equal protection challenge to an Illinois law that denied unsentenced inmates awaiting trial the opportunity to obtain an absentee ballot, while affording others unable to make it to the polls the right to vote by mail. Finding that the state had not allocated voting opportunities based on constitutionally forbidden criteria, the Court upheld it, affirming "the wide leeway" the Fourteenth Amendment "allow[s] the States . . . to enact legislation that appears to affect similarly situated people differently." *McDonald*, 394 U.S. at 808.

The court below was wrong to find *McDonald*'s equal protection analysis relevant to the question of whether South Carolina's denial of the right to vote by mail solely based on the age of the voter violated the Twenty-Sixth Amendment.

Indeed, the whole point of the Twenty-Sixth Amendment was to abrogate "the wide leeway" the Fourteenth Amendment "allow[s] the States . . . to enact legislation that appears to affect similarly situated people differently," *id.*, in the voting context. In looking to the Supreme Court's equal protection precedents, the court below effectively stripped the Twenty-Sixth Amendment of independent meaning and turned a blind eye to its text and history.

As the text and history recounted earlier show, the Twenty-Sixth Amendment was necessary because the Fourteenth Amendment did not forbid age discrimination in voting and gave states wide leeway to treat younger and older citizens differently. *Cf. Reese*, 92 U.S. at 218 ("Previous to this amendment, there was no constitutional guaranty against this discrimination: now there is."). When Congress enacted legislation to enforce the Fourteenth Amendment by lowering the voting age to eighteen in state elections, the Court held that Congress had exceeded its enforcement power. In response, Congress adopted, and the states ratified, the Twenty-Sixth Amendment, mandating that adult voters be treated equally on the basis of age. The suggestion that the Twenty-Sixth Amendment "contributes no added protection to that already offered by the Fourteenth Amendment" ignores its text and history. *See Walgren v. Bd. of Selectmen of Amherst*, 519 F.2d 1364, 1367 (1st Cir. 1975).

Importantly, the Supreme Court has rejected the suggestion that compliance with the Fourteenth Amendment "somehow excuses compliance" with "the race neutrality command of the Fifteenth Amendment." *Rice*, 528 U.S. at 522. The same is true here. Regardless of the reach and scope of the Fourteenth Amendment, the government must respect the age-neutrality command of the Twenty-Sixth Amendment, which is an explicit constitutional prohibition on state laws that deny or abridge the right to vote of citizens aged eighteen years or older on account of age. The court below erred in sanctioning a facially discriminatory electoral regulation that gives lesser voting opportunities to younger voters. This is precisely what the Twenty-Sixth Amendment forbids.

CONCLUSION

For the foregoing reasons, this Court should reverse.

Respectfully submitted,

/s/ Brianne J. Gorod
Elizabeth B. Wydra
Brianne J. Gorod
David H. Gans
Anna K. Jessurun
CONSTITUTIONAL
ACCOUNTABILITY CENTER
1730 Rhode Island Ave. NW, Suite 1200
Washington, D.C. 20036
(202) 296-6889
brianne@theusconstitution.org

Counsel for Amicus Curiae

Dated: August 6, 2025

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(a)(5) because it contains 3,643 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I further certify that the attached brief *amicus curiae* complies with the type-face requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Executed this 6th day of August, 2025.

/s/ Brianne J. Gorod
Brianne J. Gorod

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on August 6, 2025.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed this 6th day of August, 2025.

/s/ Brianne J. Gorod
Brianne J. Gorod

Counsel for Amicus Curiae