

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,

v.

Howard Knapp as the Executive Director of the South Carolina Election Commission, John Wells (Chair), JoAnne Day, Clifford J. Edler, Linda McCall and Scott Moseley, as Members of the South Carolina Election Commission,<sup>1</sup> and Charleston County Board of Elections and Voter Registration,

Defendants.

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

**STATE ELECTION COMMISSION  
DEFENDANTS' ANSWER TO  
AMENDED COMPLAINT**

Howard Knapp (“Knapp” or “Executive Director”), John Wells (Chair), JoAnne Day, Clifford J. Edler, Linda McCall, and Scott Moseley (together, the “Commission”) (collectively the Commission and Knapp are referred to as the “Election Defendants”), all of whom have been sued in their official capacities with the SEC, submit this answer to the Amended Complaint.

**PRELIMINARY STATEMENT**

Plaintiffs have made a facial challenge to the constitutionality of S.C. Code Ann. § 7-15-320(B)(2) (Supp. 2023), which allows all registered voters 65 years old and older to vote absentee (mail) ballot, alleging that the section violates the:

- 1) Twenty-sixth (26th) Amendment because it abridges the right to vote of citizens under the age of 65;

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<sup>1</sup> S.C. Code Ann. § 7-3-10 created the “State Election Commission.” (SEC)—the proper name of the SEC. There is no South Carolina government agency known as the South Carolina Election Commission.

- 2) Fourteenth (14th) Amendment equal protection clause by granting the right to vote absentee by mail to citizens 65 years old and older and not to citizens under 65; and
- 3) First (1st) Amendment right to freedom of speech and association as applied by the 14th Amendment by granting the right to vote absentee by mail to citizens 65 years old and older and not to citizens under 65.

Plaintiffs ask this Court to rewrite § 7-15-320(B)(2) to authorize all otherwise qualified electors (Qualified Electors or Qualified Voters) in South Carolina to vote absentee by email if they choose.

A rewrite of the statute is not relief this Court has the authority to grant. If successful on a facially constitutional challenge (and they will not be), Plaintiffs' available relief is for the Court to strike the challenged statute, not exercise the legislative function of amending it. The net effect would be to deny absentee voting by mail to all Qualified Electors in South Carolina.

The Election Defendants deny that the Plaintiffs are entitled to any relief. Neither the facts nor the law supports Plaintiffs' claims. Section 7-15-320 allows an otherwise qualified South Carolina elector to choose to vote absentee by mail before Election Day if the voter meets one of the 8 statutory exceptions to the State's historic in-person voting requirement. Section 7-15-320(A) allows an exception for a Qualified Voter who is unable to vote in person during the State's early voting period and during the hours the polls are open on election day to vote by mail if the voter: 1) has an employment obligation with a written certification; 2) is attending a sick or physically disabled person; 3) is in jail; or 4) is going to be absent from his county of residence. Section 7-15-320(B) also allows an exception to in person voting for a Qualified Voter to vote by mail without regard to whether the elector is unable to vote during the State's early voting period or during the hours the polls are open on election day if the voter is: 1) physically disabled; 2) 65 years old or older; 3) a member of the Armed Forces and Merchant Marines, including spouses and dependents residing with the member; or 4) admitted to the hospital as an emergency patient on election day or four days before the election.

Plaintiffs only challenge the age 65 exception in § 7-15-320(B)(2).

Beginning with the State's first constitution in 1790, South Carolina has historically required an elector to vote in person on Election Day. *South Carolina Constitution of 1790*, R. June 3, 1790, section 4. It was not until 1953, shortly after World War II and during the Korean Conflict, that the State first allowed absentee voting—limiting the choice to individuals who served the United States Armed Forces, Merchant Marines, the American Red Cross (Red Cross) or United Service Organization (U.S.O.) attached to and serving with the Armed Forces outside of the country, and employees of the United States Government serving overseas. *1953 S.C. Acts No. 329*, § 1. South Carolina enacted an exception from in person voting for people 72 years old and older to choose to vote by absentee ballot in 1992. *See 1992 S.C. Acts No. 489* § 1. In 1995, the General Assembly lowered that age to 65, where it stands now. *See 1995 S.C. Acts No. 80*, § 1.

In 2022, South Carolina legislatively authorized all Qualified Voters to choose early voting,<sup>2</sup> albeit it in person, adding another method of voting. *See 2022 S.C. Acts No. 150* § 1. Section 4 of Act 150 rewrote § 7-15-320 but did not change the age requirement for absentee voting.

As a part of the executive branch of state government, neither the Commission nor Knapp has the authority to modify the plain meaning of statutes or to add to or otherwise modify statutes and must faithfully carry out the duties assigned to them under law. The modification or amendment of a statute is reserved for the legislative branch of the State government.

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<sup>2</sup> Early voting allows any qualified elector to vote early without excuse (as required by Absentee voting). S.C. Code Ann. § 7-15-25(A) (Supp. 2023).

**FOR A FIRST DEFENSE**

Each allegation not specifically admitted in this Answer is expressly denied. The headings in the First Defense are quoted from the Amended Complaint and are included solely for ease of reference. To the extent any of these headings contain an allegation against the Election Defendants, the allegations are denied.

In response to the Paragraphs in the Amended Complaint:

1. Paragraph 1 of the Amended Complaint consists of legal conclusions to which no response is required. To the extent a response is required, the Election Defendants crave reference to § 7-15-320 and deny any allegations or characterization inconsistent with the statute.

2. Paragraph 2 of the Amended Complaint consists of legal conclusions to which no response is required. To the extent a response is required, the Election Defendants crave reference to § 7-15-320, the 26th Amendment, the Equal Protection Clause of the 14th Amendment and the free speech and free association provision of the 1st Amendment as applied to the states by the Due Process Clause of the 14th Amendment and deny any allegations or characterization inconsistent with the statute and United States constitutional provisions.

**Cause of Action, Jurisdiction and Venue**

3. Paragraph 3 of the Amended Complaint is a statement of the Plaintiffs' legal contentions to which no response is required. The Election Defendants crave reference to 42 U.S.C. §1983.

4. Paragraph 4 of the Amended Complaint is a statement of the Plaintiffs' legal contentions to which no response is required. The Election Defendants do not contest this Court's jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) and crave reference thereto.

5. Paragraph 5 of the Amended Complaint is a statement of the Plaintiffs' legal contentions to which no response is required. The Election Defendants do not contest that venue is proper.

Parties

6. As to Paragraph 6, the Election Defendants admit, on information and belief, that Plaintiffs Grant, Krawcheck, Hunter, Milliken, and Clark are each registered voters in Charleston County and citizens of the United States. On information and belief, Plaintiff Mapp is a registered voter of Dorchester County and a citizen of the United States. As to the remaining allegations of Paragraph 6, the Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, they are denied.

7. As to Paragraph 7, the Election Defendants admit Knapp is the executive director of the SEC and John Wells (Chair), JoAnne Day, Clifford J. Edler, Linda McCall, and Scott Moseley are the members of the Commission and all are sued in their official capacities. As to Knapp's duties and responsibilities, the Election Defendants crave reference to § 7-3-20(C) (2018 and Supp. 2023) and other applicable laws under Title 7 of the S.C. Code, which prescribe the Executive Director's duties and responsibilities<sup>3</sup> and deny any inconsistent allegations or characterizations. As to the duties and responsibilities of the Commission, the Election Defendants crave reference to S.C. Code Ann. §§ 7-3-10 and 7-3-20(A) (2018 and Supp. 2023) and other applicable laws under Title 7 of the S.C. Code and deny any inconsistent allegations or

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<sup>3</sup> The Executive Director's duties include, but are not limited to, supervising the conduct of the county boards of elections and voter registration (County Boards): maintaining a complete master list of qualified voters by county and precinct; and serving as the chief state election official for implementing and coordinating the State's responsibilities under the National Voter Registration Act of 1993 and for the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). S.C. Code Ann. § 7-3-20(C).

characterizations. As creatures of statute, the Election Defendants possess “only those powers expressly conferred or necessarily implied for [them] to effectively fulfill the duties with which [they are] charged.” *Captain’s Quarters Motor Inn, Inc. v. S.C. Coastal Council*, 306 S.C. 488, 490, 413 S.E.2d 13, 14 (1991).

8. As to Paragraph 8, the Election Defendants admit that the Defendant Charleston County Board of Elections and Voter Registration (“Charleston Board”) is responsible for administering elections held in Charleston County, South Carolina pursuant to Chapter 5 of Title 7 of the S.C. Code, other applicable laws under Title 7 of the S.C. Code, Art. II, sections 4 and 10 of the S.C. Constitution, and other applicable laws and deny any inconsistent allegations or characterizations to the contrary.

9. As to Paragraph 9, the allegations are admitted.

Facts

10. As to Paragraph 10, the Election Defendants admit that South Carolina authorizes three methods of voting: 1) in person (“In Person”), 2) early voting during a period before the election (“Early”), and 3) absentee voting (“Absentee”). The Election Defendants crave reverence to Chapters 5, 13, and 15 of Title 7 of the S.C. Code and other applicable laws and deny any inconsistent allegations or characterizations. The Election Defendants aver that at least since 1790, South Carolina has mandated in person voting. In 1953, shortly after World War II and during the Korean Conflict, South Carolina authorized absentee voting but limited to our military, those assisting them overseas, and those with the Red Cross and U.S.O. assisting the military overseas. *See 1953 S.C. Acts No. 329.*

11. As to Paragraph 11, the Election Defendants admit that registered electors 65 years old and older can chose to vote In Person, Early, or Absentee and deny any inconsistent allegations

or characterizations. The Election Defendants crave reverence to § 7-13-25 (Early Voting), § 7-15-320 (Absentee Voting), §§ 7-15-600, et seq. (2018) (South Carolina Uniform Military and Overseas Voters Act),<sup>4</sup> Chapters 5, 7, 13, and 15 of Title 7, and other applicable laws and deny any inconsistent allegations or characterizations.

12. As to Paragraph 12, the Election Defendants admit that voters under the age of 65 can chose to vote In Person, Early, and, in many cases, Absentee, using an exception other than age, and deny any inconsistent allegations or characterizations. The Election Defendants crave reverence to § 7-13-25 (Early Voting), § 7-15-320 (Absentee Voting), §§ 7-15-600, et seq. (2018) (South Carolina Uniform Military and Overseas Voters Act), Chapters 5, 7, 13, and 15 of Title 7, and other applicable laws and deny any inconsistent allegations or characterizations.

13. Paragraph 13 of the Amended Complaint is a statement of the Plaintiffs' legal contentions, rather than allegations of fact, to which no response is required. To the extent a response is required, the Election Defendants deny Plaintiffs' legal contentions and crave reference to § 7-13-25, § 7-15-320, §§ 7-15-600, et seq., Chapters 5, 7, 13, and 15 of Title 7 of the S.C. Code, Art. II of the S.C. Constitution, and other applicable laws and deny any inconsistent allegations or characterizations.

14. As to Paragraph 14, the Plaintiffs' paraphrase the provision of §§ 7-15-320 and 7-15-610 (2018). The Election Defendants crave reference to §§ 7-15-320 and 7-15-610 and deny any inconsistent allegations or characterizations.

15. As to Paragraph 15, the Plaintiffs' paraphrase the provisions of *2020 S.C. Acts*, No. 133. The Election Defendants crave reference to Act 133 and deny any inconsistent allegations or

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<sup>4</sup> This Art. 9 of Chapter 15 of Title 7 was enacted in 2015 in response to the Uniformed and Overseas Citizens Absentee Voting Act (UAOCAVA). *See* 2015 S.C. Acts No. 79.

characterizations. The Election Defendants aver that section 2 of Act 133 allowed unrestricted absentee voting in response to the declared State of Emergency based on COVID-19 in South Carolina and was only applicable to the June 2020 South Carolina primary elections and no elections in the State thereafter.

FIRST CAUSE OF ACTION – TWENTY-SIX (26th) AMENDMENT

16. Paragraph 16 of the Amended Complaint is a statement of the Plaintiffs' legal contentions and editorial comments to which no response is required. To the extent a response is required, the Election Defendants deny the allegations.

17. As to Paragraph 17, the first sentence of the Paragraph paraphrases the 26th Amendment and the Election Defendants crave reference to the 26th Amendment and deny any inconsistent allegations or characterizations. The second sentence of Paragraph 17 is a statement of the Plaintiffs' legal contentions and editorial comments to which no response is required. To the extent a response is required, the Election Defendants deny the allegations of the second sentence.

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

18. Paragraph 18 of the Amended Complaint is a statement of the Plaintiffs' legal contentions to which no response is required. To the extent a response is required, the Election Defendants deny the allegations of the second sentence.



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

19. Paragraph 20<sup>5</sup> of the Amended Complaint is a statement of the Plaintiffs' legal contentions to which no response is required. To the extent a response is required, the Election Defendants deny the allegations.

EQUITY

20. Paragraph 21 of the Amended Complaint is a statement of the Plaintiffs' legal contentions to which no response is required. To the extent a response is required, the Election Defendants deny the allegations.

RELIEF

21. Paragraph 22 of the Amended Complaint is Plaintiffs' request for relief to which no response is required. The Election Defendants deny that Plaintiffs are entitled to any relief. The Election Defendants aver, that, even if Plaintiffs' Amended Complaint were successful (and it will not be), Plaintiffs are not entitled to the relief they request and are not entitled to have the Court rewrite § 7-15-320(B)(2) to grant Qualified Voters under 65 years of age an exception to choose to vote Absentee. Rather, the Court can only strike § 7-15-320(B)(2) as being unconstitutional (which it is not).

**FOR A SECOND DEFENSE**

22. The provision of § 7-15-320(B)(2) that authorizes all Qualified Voters 65 years old or older to vote Absentee by mail but does not allow Qualified Voters under 65 years of age that

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<sup>5</sup> The paragraph numbering in the Amended Complaint skips from Paragraph 18 to Paragraph 20. There is no Paragraph 19.

same choice does not violate the 26th Amendment because it does not abridge the right to vote on account of age.

**FOR A THIRD DEFENSE**

23. The right of Qualified Electors to vote is a fundamental right protected under the 1st and 14th Amendments of the U.S. Constitution. The method of voting, *i.e.*, In Person, Early, or Absentee, is not a fundamental right protected by the United States Constitutions.

24. The South Carolina General Assembly's grant, through § 7-15-320(B)(2), of the choice to vote Absentee to all Qualified Voters 65 years old or older but not to Qualified Voters under 65 years old does not violate the 26th Amendment because the age distinction applied to the method of voting does not violate the fundamental right to vote of Qualified Electors under the ages of 65.

25. The South Carolina General Assembly's grant, through § 7-15-320(B)(2), of the choice to vote Absentee to all Qualified Voters 65 years old or older but not to Qualified Voters under 65 years old does not violate the 26th Amendment because it does not abridge the right to vote for Qualified Voters under 65 years old.

26. The South Carolina General Assembly's grant, through § 7-15-320(B)(2), of the choice to vote Absentee to all Qualified Voters 65 years old or older but not to Qualified Voters under 65 years old does not violate the equal protection clause of the 14th Amendment. Age is not a suspect classification and is not subject to strict scrutiny but to the rational relationship test. The Absentee voting age distinction in § 7-15-320(B)(2) bears a rational relationship to a legitimate state interest.

27. The South Carolina Legislature's grant, through § 7-15-320(B)(2), of the choice to vote Absentee to all Qualified Voters 65 years old or older but not to Qualified Voters under 65

years old does not violate the free speech and free association provision of the 1st Amendment as applied to the states by the Due Process Clause of the 14th Amendment because age is not a suspect classification. Age is not subject to strict scrutiny but to the rational relationship test.

28. The South Carolina General Assembly's determination to allow only Qualified Electors 65 years old or older to vote Absentee is a legislative decision rationally related to a legitimate State interest.

29. The South Carolina General Assembly's determination not to extend absentee 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.

#### **FOR A FOURTH DEFENSE**

30. In 1970, the State electorate adopted Article II, Right of Suffrage, to the Constitution of South Carolina and the General Assembly ratified it in 1971. On April 28, 1971, South Carolina became the 28th state to ratify the Amendment. The 26th Amendment was ratified by the necessary 38 states effective June 30, 1971.

31. In 1992, 21 years after the 26th Amendment was ratified, South Carolina created an exception to In Person voting by allowing people 72 years of age and older the ability to vote Absentee by mail. *1992 S.C. Acts* No. 489, § 1. In 1995, the General Assembly lowered that age to 65, where it is now. *1995 S.C. Acts* No. 80, § 1.

32. Despite having more than three decades to assert their 26th Amendment argument, the Plaintiffs bring it only now, in the shadow of the South Carolina primary elections. They are not entitled to an injunction at this late stage, most assuredly as to the relief requested.

33. The Plaintiffs' claims are barred by the doctrine of laches.

**FOR A FIFTH DEFENSE**

34. The Plaintiffs' Amended Complaint presents nonjusticiable, political questions and therefore this Court lacks subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). The relief sought by the Plaintiffs asks this Court for a "declaratory judgment and permanent injunction granting all voters under age 65 the same right to vote by mail ballot afforded to voters age 65." The only relief available to Plaintiffs, were they to prevail on their claims (and they will not) under the 26th, 14th, and 1st Amendments of the Constitution and 42 U.S.C. § 1983, would be a declaration that § 7-15-320(B)(2) is unconstitutional and therefore injunctive relief prohibiting the Election Defendants from enforcing the statute, not amending it to include additional voters.

35. The determination as to whether all Qualified Electors in South Carolina should be included in the Absentee voting exception to In Person voting is a nonjusticiable, political question left to the General Assembly of South Carolina, not to the federal courts.

**FOR A SIXTH DEFENSE**

36. The Amended Complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1) because the Court lacks subject matter jurisdiction in that the Plaintiffs lack standing to bring this action, not having alleged any personal injury arising from the application of § 7-15-320(B)(2) to each of them.

**FOR A SEVENTH DEFENSE**

37. The Plaintiffs' Complaint alleges no acts by any of the Election Defendants other than ministerial functions they are required by law to perform.

**FOR AN EIGHTH DEFENSE**

38. The Amended Complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) because it fails to state facts sufficient to constitute a cause of action arising from the application of § 7-15-320(B)(2) to each of them.

**RESERVATION AND NON-WAIVER OF DEFENSES**

39. The Election Defendants hereby reserve and do not waive any additional or further defenses that may be revealed through additional information that may be acquired in discovery or otherwise.

**WHEREFORE**, the Election Defendants respectfully request that the Court deny the Plaintiffs' requested relief and award the Commission and Knapp any relief the Court deems just and proper.

[Signature Page Follows]

Respectfully Submitted,

s/ Mary Elizabeth Crum

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