STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Civil Action No. 2025-CP-40-06539

ANNE CROOK,

Plaintiff,

v.

SOUTH CAROLINA ELECTION COMMISSION a/k/a STATE ELECTION COMMISSION,

Defendant,

and

HENRY DARGAN MCMASTER, in his official capacity as Governor of the State of South Carolina,

Intervenor–Defendant.

GOVERNOR MCMASTER'S MOTION TO DISMISS AND RESPONSE TO MOTION FOR TEMPORARY INJUNCTION

Governor Henry Dargan McMaster, in his official capacity as Governor of the State of South Carolina, moves to dismiss under Rule 12(b)(6), SCRCP, and responds in opposition to Plaintiff Anne Crook's Motion for Temporary Injunction.

INTRODUCTION

Anne Crook seeks to enjoin the State Election Commission from providing the voter registration list to the Department of Justice, insisting that state law prohibits the Commission from giving her driver's license number or the last four digits of her Social Security number to DOJ. Crook is wrong.

She cites nothing in state law that bars the Commission from providing this list to DOJ. Rather than finding such a provision, Crook points to various parts of state law that talk about privacy and then concludes that "it is apparent that the State of South Carolina places a high value on personal information and privacy." Mot. 7. That *Griswold*-style "penumbra" reasoning cannot

withstand scrutiny. 381 U.S. 479, 484 (1965). Instead of creating rights out of judicial imagination, courts in this State look to the text first as they ascertain legislative intent. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Properly interpreted, nothing in state law stops the Commission from exercising its discretion to provide the voter registration list to DOJ. And even if state law did so, federal law likely requires the Commission to provide this list, so Crook's claim still fails.

Beyond the flaws in her merits argument, Crook cannot obtain a preliminary injunction because she has not proven that she will suffer irreparable harm without that relief. At most she hypothesizes about what might happen if this happens and then that happens. "[S]peculation," however, "does not establish irreparable harm." *Murthy v. Missouri*, 144 S. Ct. 7, 9 (2023) (Alito, J., dissenting from grant of application for stay) (citing *Nken v. Holder*, 556 U.S. 418, 434 (2009)).

The Court should therefore deny Crook's motion for a temporary injunction. In fact, because there's no way she could ever prevail, the Court should dismiss this case. There is no basis for judicially stopping the Commission from engaging with DOJ and, if the Commission is satisfied that the voter registration list will be sufficiently protected, providing that list to DOJ.

LEGAL STANDARD

A motion to dismiss should be granted whenever a complaint "fail[s] to state facts sufficient to constitute a cause of action." Rule 12(b)(6), SCRCP. When "the dispute is not as to the underlying facts but as to the interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss." *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Off.*, 346 S.C. 158, 165, 551 S.E.2d 263, 267 (2001).

An injunction is a "drastic" remedy that "ought to be applied with caution." *Strategic Res.*

Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). A plaintiff "must establish three elements" to obtain a preliminary injunction: (1) irreparable harm, (2) likelihood of success on the merits, and (3) no adequate remedy at law. *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011).

ARGUMENT

I. Crook's claims fail on the merits.

A. State law does not prohibit the Commission from disclosing information to DOJ.

Crook points to four provisions of state law in her motion (at least one of which never appears in her complaint), but no provision prohibits the Commission from providing driver's license numbers or the last four digits of Social Security numbers to DOJ.

1. Section 7-5-170. Putting aside that the first provision Crook cites as a reason to enjoin the Commission isn't even in her complaint (a fatal flaw itself), this section generally describes what must be included in a voter application. It mandates that "the social security number contained in the application must not be open to *public* inspection," S.C. Code Ann. § 7-5-170(A) (emphasis added), and the voter registration form tells the applicant that her Social Security number will "not be released to any *unauthorized* individual," Mot. for Temp. Inj. Ex. 2 (emphasis added). In other words, a Social Security number is open to private inspection by authorized individuals. And this section doesn't even speak about driver's license numbers. So if other provisions of law permit the Commission to share the last four digits of a Social Security number with DOJ, section 7-5-170 does not stop the Commission from doing so.

Crook faces an additional hurdle here (as well as on her section 7-5-186 argument) of a private right of action. A statute gives a plaintiff the right to sue only if the General Assembly intended to create that right. *Denson v. Nat'l Cas. Co.*, 439 S.C. 142, 151, 886 S.E.2d 228, 233

(2023). "Generally, when a statute does not expressly create civil liability, a duty will not be implied unless the statute was enacted for the special benefit of a private party." *Id.* at 151–52, 886 S.E.2d at 233. Nothing in section 7-5-170 (or section 7-5-186) is for any special benefit of an individual. Instead, these statutes provide the framework how voters register and how the Commission handles the voter registration database. Bolstering this conclusion are other parts of Title 7, which expressly provide a person the right to challenge certain Commission actions. *See, e.g.*, S.C. Code Ann. §§ 7-5-230(C), 7-5-240.

2. Section 7-5-186. This provision governs the State's voter registration database. Crook derives a four-part test from subsection (C), but her argument isn't consistent with that text. For instance, the Commission is not limited to sharing information with "other states or groups of states." S.C. Code Ann. § 7-5-186(C). It may also share information with "persons or organizations that are engaging in legitimate governmental purposes related to the maintenance of the statewide voter registration database." *Id.*

To conclude that subsection (C)'s "persons or organizations" didn't include the federal government would be "so plainly absurd that it could not have been intended by the General Assembly." *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016). Because subsection (C) cannot be superfluous, Crook's reading would allow the ACLU or Judicial Watch to obtain information that DOJ could not. That makes no sense.

The far more logical reading is that subsection (C) permits the Commission to share information with the federal government. The federal government has similar goals, for instance, under the Help America Vote Act, which requires States to remove ineligible voters from the voter registration list. *See* 52 U.S.C. § 21083(a)(4)(A). And on top of those shared goals, the federal government also enjoys express constitutional authority to regulate federal elections under the

Times, Places and Manner Clause. *See* U.S. Const. art. I, § 4 cl. 1. If the federal government and the State share the same goal (easy to vote and hard to cheat) and the federal government can regulate federal elections, it would be absurd to conclude that the General Assembly prohibited the Commission from working with the federal government on issues related to the voter registration database.

Crook's invocation of subsection (B)'s list of various state agencies with which confidential information may be shared doesn't help here. If subsection (C) allows something, subsection (B) can't be read to implicitly prohibit that thing. After all, "the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). Plus, subsection (C) must add something to this statute to avoid violating the rule against superfluity. *See CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

3. Section 30-2-20. Much of the Family and Personal Identifying Information Privacy Protection Act is irrelevant. For instance, it requires state agencies to have privacy policies and to inform people that collected information might be disclosed, and it prohibits anyone from using personal information obtained from a government agency from using that information for commercial solicitation. *See* S.C. Code Ann. § 30-2-20, -40, -50(A). Specific to the section Crook cites in the heading of her motion, section 30-2-20 permits agencies to share personal information to "fulfill a legitimate public purpose." *Id.* § 30-2-20. Surely protecting the voter rolls fits that description. *See id.* § 7-3-10(G) (Commission must "comply with applicable state and federal election law").

Crook fares no better by quoting the findings from this act. Findings "are not an operative

part of a statute." *Rothe Dev., Inc. v. United States Dep't of Def.*, 836 F.3d 57, 66 (D.C. Cir. 2016). In other words, they have no independent force. At most, they shed light on legislative intent, and in the findings, the General Assembly recognized that a Social Security number is a "unique numeric identifier has been used extensively for identity verification purposes"—exactly how the number is used for voter registration. S.C. Code Ann. § 30-2-300(1).

Where the act speaks to sharing information, it's fatal to Crook's argument. The act allows a state agency to share Social Security numbers and other "identifying information" (which includes driver's license numbers, *id.* § 30-2-30(1)) with "another governmental entity" for that entity "to perform its duties and responsibilities." *Id.* § 30-2-320(1). DOJ is doing just that in seeking to ensure that States are complying with federal voting laws.

4. Article I, section 10. Article I, section 10 prohibits "unreasonable invasions of privacy." S.C. Const. art. I, § 10. That provision was intended "to take care of the invasion of privacy through modern electronic devices." Committee to Make a Study of the Constitution of South Carolina, 1895, *Minutes of Committee Meeting* 6 (Sept. 15, 1967). It sought "to protect the citizen from improper use of electronic devices, computer data banks, etc." Committee to Make a Study of the Constitution of South Carolina, 1895, *Final Report of the Committee to Make a Study of the South Carolina Constitution of 1895*, at 15 (1969). As originally understood then, this provision has nothing to do with the sharing of data between the State and the federal government to secure federal elections.

But even as expanded in *Singleton v. State*, 313 S.C. 75, 89, 437 S.E.2d 53, 61 (1993), article I, section 10 still doesn't reach the sharing of the voter registration list. That case holds no more than that this provision might extend to "bodily autonomy and integrity." *Planned Parenthood S. Atl. v. State*, 440 S.C. 465, 481, 892 S.E.2d 121, 130 (2023). This Court would thus

break new ground by applying article I, section 10 to the voter registration list—and with no way to reconcile that conclusion with the "intent of [article I, section 10's] framers and the people who adopted it." *State v. Long*, 406 S.C. 511, 514, 753 S.E.2d 425, 426 (2014).

And of course, article I, section 10 "draws the line at *un*reasonable invasions of privacy." *Planned Parenthood S. Atl.*, 440 S.C. at 482, 892 S.E.2d at 131 (emphasis added). So even if this provision were implicated by the sharing of voter registration lists, this provision would be violated only if the Commission would act unreasonably to provide information to the federal government. Nothing is unreasonable about giving the federal government information it already has (Social Security numbers) or information that Congress has allowed federal agencies to obtain (driver's license numbers, 18 U.S.C. § 2721(b)(1)). Crook cannot reasonably expect the State not to share information with DOJ that the federal government is entitled to have. *Cf. Carpenter v. United States*, 585 U.S. 296, 308 (2018) ("a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties").

"Unreasonable" isn't Crook's only textual problem. Expand beyond the "unreasonable invasions of privacy" phrase to see what is protected from such invasions. Under article I, section 10, "[t]he right of the people to be secure in *their persons, houses, papers, and effects* against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated." S.C. Const. art. I, § 10 (emphasis added). The voter registration list does not fit in any of those buckets. The only thing it might be is a "paper," but even if it is, it isn't Crook's paper. It's the State's. *Cf. State v. Robinson*, 410 S.C. 519, 527, 765 S.E.2d 564, 569 (2014) (a person lacks standing to challenge the search of a third party's property). Article I, section 10 therefore does not apply here.

B. Federal law likely requires the Commission to disclose information to DOJ.

The simplest way to deny Crook's motion is to conclude that state law doesn't prohibit the Commission from providing the information that DOJ seeks. But if the Court concludes that state law does prohibit that, then the Court must turn to federal law.

Of course, "state law is naturally preempted to the extent of any conflict with a federal statute." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000). And if state law does prohibit the Commission from sharing the voter registration list (including driver's license numbers or the last four of Social Security numbers), it likely conflicts with federal law. Federal law likely requires the Commission to provide the requested information to DOJ, and while DOJ has also pointed to the National Voter Registration Act and the Help America Vote Act, Title III alone is sufficient to reach that conclusion.

Title III requires that, for 22 months after a federal election, a state election official "retain and preserve" "all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election." 52 U.S.C. § 20701. Title III has long been understood to "encompass[], among other things, voting registration records," *McIntyre v. Morgan*, 624 F. Supp. 658, 664 (S.D. Ind. 1985), which isn't surprising given the scope of the statutory text. And since HAVA's enactment two decades ago, registration records must include either "the applicant's driver's license number" or "the last four digits of the applicant's social security number." 52 U.S.C. § 21083(a)(5)(A).

The Attorney General (or his representative) may demand in writing "[a]ny record or paper" that a state election official must keep under § 20701. *Id.* § 20703. That demand must simply "contain a statement of the basis and the purpose therefor." *Id.*

DOJ's request for South Carolina's voter registration list fits comfortably within this legal

framework. For starters, the voter registration list from the 2024 election is a "record" in a state election official's possession "relating to" the "registration" of voters for the 2024 election. *Id.* § 20701. And that registration now includes either a driver's license number or the last four digits of a Social Security number. *Id.* § 21083(a)(5)(A). DOJ made this request "in writing" and explained its "basis" and "purpose" of ensuring that the State was complying with HAVA and the NVRA. *Id.* § 20703; *see* Compl. Exs. 1 & 2 (DOJ letters).

C. Crook seeks relief she cannot obtain.

Crook seeks to enjoin the Commission from "releasing the protected PII of South Carolina voter*s* to DOJ." Mot. 13 (emphasis added). But Crook hasn't pleaded a class action. Nor has she moved to certify any class. She therefore cannot obtain relief that is tantamount to class relief. Universal equitable relief has no historical basis, *see Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2550–60 (2025), and this Court should not countenance such a sweeping exercise of judicial power without historical or statutory justification. At most, Crook can obtain an injunction about *her* information.

As a second problem on this front, Crook's request for relief almost sounds as if she wants the Commission to be ordered to follow the law in its dealings with DOJ. But "injunctions that simply require their subjects to follow the law are generally overbroad." *Davison v. Loudoun Cnty. Bd. of Supervisors*, 267 F. Supp. 3d 702, 722 (E.D. Va. 2017). Any such relief is therefore a nonstarter.

II. Crook has not shown she would suffer an irreparable harm without an injunction.

On top of being unlikely to succeed on the merits, Crook hasn't shown that she will suffer any irreparable harm without an injunction.

But she offers nothing to show that her private information will be (or will even be likely

to be) disclosed. In her motion, she points to other allegations of data security issues with the federal government, *see* Mot. 11, but those examples don't speak to whether DOJ can secure the voter registration list. For instance, allegations that DOGE tried to access information from the NLRB has nothing to do with whether DOJ can secure information.

Her argument also ignores that the law requires DOJ to protect this information. Title III limits how DOJ may disclose state voting records. Absent a federal court order, DOJ may not disclose any record except to Congress, government agencies, or in presenting a case in court or to a grand jury. 52 U.S.C. § 20704. So it's not as if DOJ can simply post the voter registration list with the driver's license numbers or partial Social Security numbers on the internet for everyone to see. In fact, Assistant Attorney General Dhillon made that point about how federal law mandates that DOJ protect this information. *See* Comp. Ex. 2, at 2–3 (Aug. 14, 2025 letter). Relatedly, Crook never alleges that DOJ cannot protect the data it receives. Without any allegations on that front (much less any evidence), this Court should not assume that DOJ won't adequately guard the voter registration list.

Nothing in Crook's affidavit helps either. She says that she "did not and do[es] not consent" to the Commission sharing her "personal information" with DOJ. Crook Aff. ¶ 5. Her consent is irrelevant. If state law allows the Commission to provide the information to DOJ, that's all the authority that's needed. Crook may not have been aware of this statutory authority when she registered, but that does not matter. It is a "well-established rule that citizens are presumed to know the law." *Ahrens v. State*, 392 S.C. 340, 355, 709 S.E.2d 54, 62 (2011).

Same with her "concerns" about the "possibility of identity theft." Crook Aff. ¶ 6. "[S]peculation does not establish irreparable harm." *Murthy*, 144 S. Ct. at 9 (Alito, J., dissenting from grant of application for stay) (citing *Nken*, 556 U.S. at 434); *see also May for A.R.M. v.*

Dorchester Sch. Dist. Two, 442 S.C. 686, 694, 901 S.E.2d 36, 40 (Ct. App. 2024) (explaining that nothing "more than a hypothetical possibility" is "insufficient to support [a] claim for injunctive relief" because it "fail[s] to show the required irreparable harm"). And speculation is particularly troublesome when "it is based solely on the[] assertion that [the government] will violate the law at some undetermined time in the future." *Utah v. Babbitt*, 137 F.3d 1193, 1212 (10th Cir. 1998). It's even more untenable here given that the Commission already exchanges Social Security numbers with some States, yet there's been no report of any issues. *See* Answer Ex. 2, at 5 (SSN Addendum).

And Crook's "concerns" about her information being "less secure if transferred" likewise fall flat. Crook Aff. ¶ 7. Beyond the same speculation problem, Crook overlooks the state-law requirement that the Commission must already "consider security standards and best practices issued by federal security and intelligence services including" in how it protects data. S.C. Code Ann. § 7-5-190. She has offered no evidence that data will be any less secure with DOJ than it is with the Commission.

III. The public interest and equities cut against an injunction.

A little over a decade ago, our Supreme Court held that "balancing the equities" "is neither necessary nor appropriate in a preliminary injunction case." *Poynter Investments, Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 587, 694 S.E.2d 15, 17 (2010). Although that decision binds this Court, *Poynter* should be overruled. *Cf. McLeod v. Starnes*, 396 S.C. 647, 654, 723 S.E.2d 198, 202 (2012) ("[S]tare decisis is not an inexorable command."). *Poynter* is historically, structurally, practically, and logically incorrect: It ignores traditional equitable principles, disregards constitutional structure, discounts the weighty government interests in cases like this, and prohibits any consideration of how an injunction would harm the government.

If the Court could consider the public interest and the equities, they strongly favor denying Crook's motion. "[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008). Ensuring that citizens who are not otherwise disqualified are the only people registered to vote bolsters that confidence. Meanwhile, Crook seeks merely to stop the Commission from giving DOJ information it already has or can lawfully obtain.

CONCLUSION

The Court should grant the Motion to Dismiss and deny the Motion for Temporary Injunction.

Respectfully submitted,

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