STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ANNE CROOK,

Plaintiff,

v.

SOUTH CAROLINA ELECTION COMMISSION A/K/A STATE ELECTION COMMISSION,

Defendants,

and

HENRY DARGAN MCMASTER, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF SOUTH CAROLINA,

Intervenor-Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2025-CP-09-06539

MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR A TEMPORARY INJUNCTION

The South Carolina State Election Commission[1] (Election Commission or Defendant), by and through the undersigned counsel, respectfully submits this memorandum in opposition to Anne Crook's (Plaintiff) motion for a temporary injunction (Motion) to prevent or limit the Election Commission's dissemination to DOJ of certain information from the South Carolina statewide voter registration list (VRL), containing Plaintiff's personal information. As set forth below, Defendant respectfully requests the Court deny Plaintiff's Motion as she has failed to meet the requisite standard for such drastic relief.

[1] Defendant's correct name is "State Election Commission." S.C. Code Ann. § 7-3-10(A).

FACTUAL BACKGROUND

On August 6 and 14, 2025, the Department of Justice Civil Rights Division (DOJ) sent letters to the Election Commission, requesting, in sum, South Carolina's VRL. Specifically, in the second letter, DOJ requested "an electronic copy of the statewide voter VRL[, which] should contain *all fields*, which means, [the] state's VRL must include the registrant's full name, date of birth, residential address, [and] his or her state driver's license number or the last four digits of the registrant's social security number . . . ." *See* Compl. at 7–11 (Letter from Harmeet K. Dhillon, Assistant Attorney General Civil Rights Division to Howard Knapp, then-Executive Director,[2] State Election Commission).[3]

On August 27, 2025, the Election Commission met to address DOJ's requests. Wooten Aff. ¶ 4. Specifically, the Election Commission directed its staff to confer with DOJ about the prospect of entering into a data sharing agreement as authorized by section 7-5-186(C) of the South Carolina Code of Laws. *Id.*

After additional communications with DOJ, on September 3, 2025, the Election Commission and DOJ held a conference call to discuss a possible data sharing agreement. *Id.* ¶ 5. Based on that conference call, the Election Commission understands that DOJ is currently developing a Memorandum of Understanding (MOU) that identifies the requested information and

[2] Mr. Knapp was removed as Executive Director on September 17, 2025, and Ms. Jennifer Wooten was appointed Interim Executive Director the same day.

[3] The Court should take judicial notice that DOJ is seeking voter registration data—similar to that sought from South Carolina—from at least 26 other states. *See* Eileen O'Connor, *Justice Department Has Demanded Voter Files from at Least 27 States*, Brennan Ctr. for Just. (Sept. 28, 2025), https://www.brennancenter.org/our-work/analysis-opinion/justice-department-has-demanded-voter-files-least-21-states.

addresses the security and privacy concerns raised by the Election Commission. *Id.* ¶ 6. The Election Commission has not yet received the MOU. *Id.*

Contesting dissemination of the VRL to DOJ, Plaintiff filed a complaint with a request for injunctive relief and a declaratory judgment in Calhoun County. Ultimately, the case was transferred to Richland County and assigned to the Honorable Daniel M. Coble. The Election Commission filed its Answer on September 25, 2025.

ARGUMENT

As an initial matter, we note Plaintiff's complaint relies solely on state constitutional and statutory grounds for her claims and arguments against the exchange of voter information to DOJ. The Election Commission answered, contending that state law alone authorizes it to enter into data sharing agreements, including with DOJ. These are pure questions and arguments of state law. That being the case, it is neither necessary nor proper to consider federal law in deciding this motion. *Cf. Roland v. State Farm Ins. Co.*, 289 S.C. 173, 175, 345 S.E.2d 722, 723 (1986) (holding that "a judgment or decree, whether in law or equity, must conform to both the pleadings and the proofs and be in accordance with the theory or action on which the pleadings are framed and the case was tried.").

I. This Court should deny Plaintiff's motion for a temporary injunction because Plaintiff has failed to establish the necessary elements warranting such relief.

"An injunction is a *drastic* remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004) (emphasis added). The plaintiff's complaint must allege facts sufficient to constitute a cause of action for injunction and demonstrate it is reasonably necessary to protect the legal rights of the plaintiff pending in the action. *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct. App. 2005); *Cnty. Richland v.*

Simpkins, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002). Generally, for a preliminary injunction to be granted, the plaintiff must establish that: (1) she would suffer irreparable harm if the injunction is not granted; (2) she will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law.[4] *Scratch Golf Co.*, 361 S.C. at 121, 603 S.E.2d at 908; *Peek*, 367 S.C. at 454–55, 626 S.E.2d at 36.

A. Plaintiff cannot establish she would suffer irreparable harm absent an injunction.

Plaintiff argues the disclosure of her information to DOJ would offend her constitutional right to privacy. She further submits her "concerns" about the "possibility" of identity theft and the security of her information. Crook Aff. ¶ 6, 7. While perhaps reasonable on their face, those concerns are unfounded given that they fail to contemplate the narrow context in which Plaintiff's information would be disclosed to the DOJ.

From the outset, we acknowledge that privacy interests are, of course, implicated here and the Election Commission takes its statutory obligations to protect voters' personal information very seriously.[5] However, the right to privacy is not absolute. *Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 238, 882 S.E.2d 770, 797 (2023). Rather, our constitution protects against only *unreasonable* invasions of privacy. *See* S.C. Const. art. 1, § 10 (stating, in pertinent part: "The right of the people to be secure in their persons, houses, papers, and effects against . . . *unreasonable* invasions of privacy shall not be violated . . . ." (emphasis added)). As discussed

[4] Plaintiff tells the Court it must also "balance the equities of the opposing parties on the particular facts of the case to determine which side is more entitled to relief." However, in 2010, our supreme court held that balancing the equities is no longer a requirement for a preliminary injunction. *See Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010); *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366 n.4, 709 S.E.2d 639, 642 n.4 (2011) (reiterating the departure from the balancing-of-equities element for a preliminary injunction).

[5] The Election Commission is subject to both state and federal laws, including privacy laws, and will comply with them. S.C. Code Ann. § 7-3-10(G).

below, the limited and secure nature of the Election Commission's potential transmission of the requested information to DOJ would not amount to an unreasonable invasion of Plaintiff's privacy.

Specifically, in recognition of the significant privacy concerns involved, the Election Commission will fulfill its statutory obligations to protect private information and share voter information with DOJ *only* pursuant to an MOU containing necessary security safeguards to ensure the proper and confidential use of that data and its transmission. Indeed, this explains why the Election Commission has not transmitted the requested information since DOJ first inquired in early August. To appease her concerns, Plaintiff need not look any further than to the MOUs into which the Election Commission routinely perfects when exercising its statutory authority to share voter registration data to carry out its obligation "to maintain accurate voter registration records."[6] *See* Wooten Aff. ¶ 4; S.C. Code Ann. §§ 7-3-20(D)(11), 7-5-186(A). As is standard practice, those MOUs outline the limited purpose for which the shared voter information will be used and the steps taken to protect the confidentiality of that data upon disclosure. For example, such documents ordinarily set forth data use limitations and provide secure transmission protocols and storage and destruction procedures. Any perfected MOU with DOJ should be no different.

Plaintiff submits to the Court that she would suffer irreparable harm "if either 1) more of her [personal information] is shared than is permissible under the law or 2) the information is shared without adequate protection." Transmitting her personal information within the defined confines of an MOU protects against either scenario.[7] Therefore, Plaintiff has failed to identify any sufficient harm—let alone an irreparable harm—she would suffer absent an injunction.

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[6] Two MOUs into which the Election Commission has entered (with Virginia and Texas) are attached as exhibits to the Wooten Affidavit filed in support of this Memorandum in Opposition to Plaintiff's Motion.

[7] The Election Commission also notes Plaintiff's driver's license number would ordinarily not be disclosed pursuant to an MOU with DOJ. First, the Election Commission has not customarily

Further, Plaintiff's alleged irreparable harm rests on the premise that the Election Commission will not act in good faith or properly carry out the law. Public officials are, absent evidence to the contrary, presumed to act in good faith and follow the laws. *S.C. Jurisprudence,* Evidence § 29 (1999); *see also Toporek v. S.C. State Election Comm'n*, 362 F. Supp. 613 (D.S.C. 1973) (stating that without an evidentiary basis, courts will not assume that state election officials will act arbitrarily in the future). The only evidence in this case is that the Election Commission has acted in good faith in enacting the MOUs with other states to fulfill its statutory duty to maintain accurate voter lists—that is, to prevent voter fraud. Plaintiff has not alleged, and the Court cannot assume, that the Election Commission will do anything other than adhere to state law in any negotiations with DOJ.

B. Plaintiff cannot establish she is likely to succeed on the merits of the litigation.

Because the Election Commission is statutorily authorized to engage in the conduct she seeks to enjoin, Plaintiff cannot possibly establish she is likely to succeed on the merits. More specifically, South Carolina law vests the Election Commission with the authority to enter data sharing agreements to disclose securely certain voter registration data.

The South Carolina Constitution mandates the General Assembly to enact legislation providing for the regulation of elections (article II, section 1), the registration of voters (article II, section 8), and "the fulfillment and integrity of the election process" (article II, section 10). Pursuant to that authority, the General Assembly enacted Title 7 of the South Carolina Code of Laws, in turn establishing the Election Commission to oversee the administration of elections and to maintain fair and fraud-free elections. *See* S.C. Code Ann. § 7-3-10(F) (charging the Election

shared those numbers pursuant to such agreements. *See* Wooten Aff. ¶ 7. Second, DOJ requested the state's VRL including a voter's "driver's license number *or* the last four digits of the registrant's social security number . . . ." *See* Compl. at 7–11 (emphasis added).

Commission with "promulgat[ing] regulations to establish standardized processes for the administration of elections and voter registration that must be followed by the county boards of voter registration and elections").

To that end, relevant here, section 7-5-186(A)[8] requires the Election Commission to establish and maintain a statewide voter registration database and to "conduct an annual general registration list maintenance program to maintain accurate voter registration records in the statewide voter registration system." Included in that list is the information the Election Commission collects pursuant to its statutory mandate for contents of voter registration applications. In particular, the application (and therefore the VRL) must contain a registrant's name, sex, race, social security number,[9] date of birth, residential address and may also include driver's license numbers, state-issued identification numbers, telephone numbers, email addresses, mailing addresses, location of prior voter registrations, voter registration agencies, and other data incident to voter registrations.[10] S.C. Code Ann. § 7-5-170(2); *see also* S.C. Code Ann. § 7-5-185(B)(5) (requiring the same information for electronic applications for voter registration).

Furthermore, section 7-5-186(C) expressly provides,

> The State Election Commission *may enter into agreements to share information or data* with other states or groups of states, *as the commission considers necessary,* in order to maintain the statewide voter registration database established pursuant to this section. Except as otherwise provided in this subsection, the commission shall ensure that any information or data provided to the commission that is confidential in the possession of the state providing the data remains confidential while in the possession of the commission. *The commission may provide such otherwise confidential information or data to persons* ***or organizations*** *that are*

[8] *See also* S.C. Code Ann. §§ 7-3-20(D)(4), (5), (10), (11), (14), (15), (16).

[9] After *South Carolina Democratic Party v. Andino,* 3:19-cv-03308-JMC (2020), a prospective voter may register using only the last four digits of his or her social security number.

[10] The VRL is not available for purchase.

engaging in legitimate governmental purposes related to the maintenance of the statewide voter registration database.

(Emphasis added). The plain language of the statute permits the Election Commission to share the requested information with "organizations" such as DOJ. Before perfecting the agreement, the Election Commission determines whether the DOJ MOU meets the state's statutory requirements for disclosure of voter personal information. If it does not, the Election Commission will not enter the agreement or share the VRL.

Put simply, the statute's plain text authorizes the Election Commission to engage in the conduct Plaintiff hopes to enjoin. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Under the plain meaning rule, it is not the province of the court to change the meaning of a clear and unambiguous statute."). That being the case, she cannot demonstrate any likelihood of succeeding on the merits.

C. Adequate remedies at law are available to Plaintiff.

Actions for injunctive relief are equitable in nature. *Grosshuesch v. Cramer*, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005) (citation omitted). Generally, equitable relief is available only where there is no adequate remedy at law. *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). Specifically, "An 'adequate' remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." *Id.*

In the unlikely event that Plaintiff's private information somehow falls in the hands of a "bad actor" as a result of the Election Commission's fulfillment of its statutory obligations under S.C. Code Ann. § 7-5-186(C) as she hypothesizes, she could avail herself to the state and federal torts claims acts. Such claims are more than adequate vehicles for relief such that an injunction is improper.

To summarize, Plaintiff has failed to satisfy the dictates of the temporary injunction standard. As such, the Court should deny her request.

II. The Court should deny Plaintiff's requested relief.

Plaintiff asks the Court to issue a temporary injunction enjoining the Election Commission from releasing the VRL to DOJ. As explained above, DOJ is an organization to which section 7-5-186(C) authorizes the Election Commission to disclose certain voter information.[11] Should the Court agree, we similarly respectfully request the denial of Plaintiff's alternative request for relief.

Specifically, Plaintiff seeks an injunction preventing the Election Commission from sharing any such information absent an "adequate" MOU, subject to review by this Court. Respectfully, the Court cannot supersede the Election Commission's discretion to enter such agreements specifically conferred by statute.[12] In a similar vein, in the first instance, the Election Commission alone is charged with ensuring that an MOU "adequately protects" the rights of the South Carolina electorate, including Plaintiff. Requesting the Court to mandate an MOU and to assess its adequacy would improperly entangle the judiciary in the routine operations of the Election Commission. Such involvement would offend foundational separation of powers principles (article 1, section 8 of the South Carolina Constitution) and undermine the independence of this executive agency by inserting judicial oversight into the Election Commission's discharge of its statutory duties and responsibilities.

[11] *See also* S.C. Code Ann. §§ 7-3-20(D)(4), (5), (10), (11), (14), (15), (16).

[12] *See* S.C. Code Ann. § 7-5-186(C) ("The State Election Commission ***may*** enter into agreements to share information or data with other states or groups of states, as the commission considers necessary, in order to maintain the statewide voter registration database established pursuant to this section. . . . . The commission ***may*** provide such otherwise confidential information or data to persons or organizations that are engaging in legitimate governmental purposes related to the maintenance of the statewide voter registration database." (emphasis added)).

In any event, appreciating the implicated privacy interests, the Election Commission will comply with applicable state and federal privacy laws and intends to share voter information to DOJ only pursuant to an agreement that ensure the continued confidentiality of that data and that otherwise complies with section 7-5-186(C).

CONCLUSION

For the reasons stated above, we respectfully request the Court deny Plaintiff's motion for a temporary injunction and other requested relief.

Respectfully Submitted,

/s/ M. Elizabeth Crum

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