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

Defendants.

GOVERNOR MCMASTER'S MOTION TO DISMISS AMENDED COMPLAINT

Governor Henry Dargan McMaster, in his official capacity as Governor of the State of South Carolina, moves to dismiss the amended complaint under Rule 12(b)(6), SCRCP.

INTRODUCTION

When this Court denied Anne Crook's motion for a preliminary injunction, it held that she was "not likely to succeed on the merits" for four reasons. Order 2 (Oct. 1, 2025). As flawed as those claims were, Crook's new claim in her amended complaint is even more deficient. The Court should therefore dismiss it.

Seemingly recognizing that none of her original theories could prevail, Crook has amended her complaint, dropping every single constitutional and statutory basis she originally had. No longer does Title 7 appear. Nor Title 30. Nor article I, section 10's right of privacy. Now, Crook cites only the Uniform Declaratory Judgments Act's provision allowing a court to grant "[f]urther relief . . . whenever necessary or proper" based on a declaratory judgment. S.C. Code Ann. § 25-53-120 (cited in Am. Compl. ¶ 13). But the "Uniform Declaratory Judgments Act is not an independent grant of jurisdiction." *Tourism Expenditure Rev. Comm. v. City of Myrtle Beach*, 403

S.C. 76, 81, 742 S.E.2d 371, 374 (2013) (alteration omitted). Without another source of legal authority giving her the right to relief (and she cites none), Crook cannot come to court under only the Uniform Declaratory Judgments Act.

That's not Crook's only problem. Even if she had cited some legal authority for her claim beyond the Uniform Declaratory Judgments Act, she still lacks standing. She has not shown the concrete and imminent injury required for constitutional standing. *Jowers v. S.C. Dep't of Health & Env't Control*, 423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018). And she can't claim standing under the public importance exception (even if that doctrine were constitutional—and it's not) because there is no "need[] for future guidance" here. *Eidson v. S.C. Dep't of Educ.*, 444 S.C. 166, 177, 906 S.E.2d 345, 350 (2024).

Plus, Crook seeks improper relief. Courts have repeatedly refused to grant "obey-the-law injunctions," *Bone v. Univ. of N.C. Health Care Sys.*, 678 F. Supp. 3d 660, 708 (M.D.N.C. 2023), and that's all Crook demands, *see* Am. Compl. ¶ 13. So even if Crook could overcome her other problems, her amended complaint should still be dismissed, and the Commission should be allowed to exercise its statutory discretion to enter into a memorandum of understanding with the Department of Justice free from unwarranted judicial intrusion.

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).

ARGUMENT

I. Crook lacks standing.

Standing comes in one of three forms: (1) constitutional; (2) statutory; or (3) the public importance exception. *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). Crook meets none of these.

First, she lacks constitutional standing. That requires an injury-in-fact, which must be "(a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Jowers*, 423 S.C. at 353, 815 S.E.2d at 451. Crook alleges that she's a registered voter, Am. Compl. ¶ 1, so she presumably provided information to the Commission like her name, date of birth, address, and Social Security number, S.C. Code Ann. § 7-5-170(2). She does not allege, however, that the Commission has, or is likely to, improperly disclose that information. (After all, this Court has recognized that the Commission has the authority to provide this information to DOJ. *See* Order 5–6 (Oct. 1, 2025).) And even if she had, she still has not alleged how she would likely be harmed by such disclosure. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 438 (2021) ("Without any evidence of harm caused by the format of the mailings, these are bare procedural violations, divorced from any concrete harm." (cleaned up)). So Crook has no concrete and imminent injury to check the first element of constitutional standing.

Second, Crook does not have statutory standing. Indeed, she does not cite a single statute that could even conceivably grant her standing. (The Uniform Declaratory Judgments Act doesn't count. *See infra* Part II.)

Third, Crook cannot fall back on the public importance exception. In the first place, that doctrine is unconstitutional. The "judicial power" in South Carolina is "vested" in certain courts, S.C. Const. art. V, § 1, which have the power to decide "cases," *id.* art. V, § 5 (Supreme Court);

id. art. V, § 11 (circuit court). Thus, "[i]n our constitutional system of government with its separation of powers, courts exercise the limited constitutional function of the 'judicial power.' Accordingly, courts are limited to resolving *cases* and the powers inherent in that function." *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 81, 753 S.E.2d 846, 853 (2014) (emphasis added) (internal citation omitted). The word "case" does not permit "courts to pass upon them as abstract, intellectual problems" but demands "a concrete, living contest between adversaries called for the arbitrament of law." *Coleman v. Miller*, 307 U.S. 433, 460 (1939) (opinion of Frankfurter, J.). Given the constitutional constraint of the judicial power to cases, "[c]ourts are not bodies for the resolution of public policy." *Carnival Corp.*, 407 S.C. at 81, 753 S.E.2d at 853. Yet the public-importance exception has been invoked to permit courts to opine on questions without an injured plaintiff simply because "an issue is of such public importance as to require its resolution for future guidance." *Vicary v. Town of Awendaw*, 425 S.C. 350, 359, 822 S.E.2d 600, 604 (2018). Opining on such an issue without a concrete injury to a plaintiff sounds a lot like passing upon an "abstract, intellectual problem." *Coleman*, 307 U.S. at 460.

In any event, there is no "need[] for future guidance." *Eidson*, 444 S.C. at 177, 906 S.E.2d at 350. Crook acknowledges in her amended complaint that the Commission "has previously entered into memorandums of understanding when exercising its statutory authority to share voting records." Am. Compl. ¶ 11. But noticeably missing from the amended complaint is any follow-up allegation that the Commission has failed to protect voters' information when sharing data under any memorandum of understanding. In other words, the Commission knows what it's doing and doesn't need any guidance about what the law means or how to carry out its statutory authority.

II. The Uniform Declaratory Judgments Act does not permit Crook to bring this claim.

Crook's amended complaint also fails because she cannot bring a standalone claim based

solely on the Uniform Declaratory Judgments Act. As our Supreme Court has explained, the "Uniform Declaratory Judgments Act is not an independent grant of jurisdiction." *Tourism Expenditure Rev. Comm.*, 403 S.C. at 81, 742 S.E.2d at 374. Or as the federal district court put it, "a declaratory judgment is a remedy, not a right or independent claim." *Poly-Med, Inc. v. Novus Sci. Pte. Ltd.*, No. 8:15-CV-01964-JMC, 2018 WL 4223443, at *3 (D.S.C. Aug. 27, 2018) (collecting cases).

But a section of the Uniform Declaratory Judgments Act is the only source of law that Crook cites in her amended complaint. Though she claims "significant privacy laws [are] involved" with the Commission sharing the voter registration list with DOJ, Am. Compl. ¶ 9, she does not point to any statute to that effect. And, of course, she can't rely on any statute that she cited in her original complaint—this Court has said she's likely to fail on those claims. *See* Order 5–10 (Oct. 1, 2025). Without any statute or constitutional provision to be the basis of her claim, Crook's amended complaint fails as a matter of law. The Uniform Declaratory Judgments Act does not save her.

III. Crook seeks relief that the Court cannot grant.

Crook's request for relief is a transparent demand that the Commission be ordered to follow the law in its dealings with the DOJ. *See* Am. Compl. ¶ 13 ("the Court should . . . issue an injunction enjoining Defendant SCEC from any further actions . . . unless and until a perfected memorandum of understanding is negotiated with USDOJ setting forth . . . data use restrictions of voter information being provided to ensure that the data is only used in a manner allowed by South Carolina law"). Her request suffers from at least three flaws.

First, "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). But all the amended complaint seeks is the type of obey-the-law demand that courts consistently reject and that runs counter to Rule 65(d)'s requirement that injunctions "be specific in terms" and "describe in reasonable detail" the acts to be restrained. Rule 65(d), SCRCP; *see, e.g.*, *Lineback v. Spurlino Materials, LLC*, 546 F.3d 491, 504 (7th Cir. 2008) ("[i]njunctions that merely instruct the enjoined party not to violate a statute generally are overbroad"); *Louis W. Epstein Fam. P'ship v. Kmart Corp.*, 13 F.3d 762, 771 (3d Cir. 1994) ("non-specific language that merely enjoins a party to obey the law . . . does not give the restrained party fair notice of what conduct will risk contempt"); *Bone*, 678 F. Supp. 3d at 708 (vague and overbroad "obey-the-law injunctions run afoul of the traditional equitable principle—codified in [the civil rules]—that an injunction 'state its terms specifically[] and . . . describe in reasonable detail . . . the act or acts restrained or required"); *LoanDepot.com, LLC v. Schneider*, 647 F. Supp. 3d 620, 633–34 (N.D. Ill. 2022) (there are "major problems" with a proposed injunction that "is vague, overbroad, and constitutes an improperly generalized 'obey-the-law' command"); *Worsham v. TSS Consulting Grp., LLC*, No. 618CV1692, 2019 WL 7482221, at *3 (M.D. Fla. Sept. 18, 2019) (discussing disfavored "[o]bey-the-law" injunctions); *cf. NLRB v. Express Publ'g Co.*, 312 U.S. 426, 435–36 (1941) (even when "a court has found that a defendant has committed an act in violation of a statute," that still "does not justify an injunction broadly to obey the statute").

Second, public officials, absent evidence to the contrary, "are presumed to have properly discharged the duties of their offices and to have faithfully performed the duties with which they are charged." *S.C. Nat'l Bank v. Florence Sporting Goods, Inc.*, 241 S.C. 110, 115–16, 127 S.E.2d 199, 202 (1962); *see also Toporek v. S.C. State Election Comm'n*, 362 F. Supp. 613, 620 (D.S.C. 1973) ("We will not assume in this case, without some evidentiary basis, that in the future the state election officials will act either arbitrarily or capriciously."). That rule is a problem for Crook. As

the Court observed in denying the preliminary injunction motion, "[t]he 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." Order 4, (Oct. 1, 2025). And in fact, Crook recognizes that the SEC's "previous memorandums of understanding ordinarily set forth data use limitations, provide security transmission protocols, and provide storage and destruction procedures," Am. Compl. ¶ 11, and that the SEC has already "committed to . . . protect private information and shared voter information," *id.* ¶ 9. So not only is there no evidence of bad faith, even the allegations here show that the Commission follows the law. *Cf.* Order 5–6 (Oct. 1, 2025) (discussing the Commission's authority to enter into memoranda of understanding).

And *third*, Crook's requested injunction runs headlong into separation-of-powers principles. As the Court explained in denying the preliminary injunction motion, the "Court cannot supersede the Election Commission's discretion to enter such agreements specifically conferred by statute," nor may the Court, "in the first instance," "assess [a memorandum of understanding's] adequacy" because that would "entangle the judiciary in the routine operations of the Election Commission." *Id.* at 10. Or as Chief Justice Marshall explained more than two centuries ago, such "executive discretion may be used" free from judicial restraint because "there exists, and can exist, no power to control that discretion." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 166 (1803). That's why separation of powers forbids "judicial oversight into the Election Commission's discharge of its statutory duties and responsibilities." Order 10 (Oct. 1, 2025) (citing *State ex rel. McLeod v. McInnis*, 278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982)); *see also* S.C. Const. art. I, § 8.

Put another way, Crook asks for this Court to substitute its judgment for the Commission's in determining whether a memorandum of understanding is sufficient. The Court, as it made clear in denying the preliminary injunction motion, cannot do that. Without some state law mandating what "safeguards against the release or sharing" of voter information must be included, dictating what "secure transmission protocols" are necessary, or detailing what "storage and destruction procedures" are required and some credible allegation that the Commission won't follow that law, Am. Compl. ¶ 13, the Court cannot stand in the Commission's shoes and decide whether the memorandum of understanding is good enough for the Commission to exercise its authority under section 7-5-186(C).

CONCLUSION

The Court should grant the Motion to Dismiss.

Respectfully submitted,

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