

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**IN THE COURT OF COMMON
PLEAS**

ACLU of South Carolina,

CASE NO. 2024-CP- _____

Plaintiffs,

v.

**MOTION FOR TEMPORARY
RESTRAINING ORDER OR
PRELIMINARY INJUNCTION**

**State Election Commission,
South Carolina Department of
Motor Vehicles,**

Defendants.

INTRODUCTION

Early voting is open in South Carolina, but as many as 11,000 young, first-time voters are missing from the voter rolls because of an administrative failure by the South Carolina Department of Motor Vehicles (SCDMV) and the State Election Commission’s (SEC) refusal to remedy the error. Justice demands swift relief.

“The right to vote is fundamental, and once that right is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause.” *Raleigh Wake Citizens Assoc. v. Wake Cnty. Bd. of Elections*, 827 F.3d 333, 337 (4th Cir. 2016) (citations omitted); *see also Sojourner v. Town of St. George*, 383 S.C. 171, 176, 679 S.E.2d 182, 185 (2009). Here, by categorically refusing to process voter registration applications from individuals under the age of 18, SCDMV has done exactly that. As discussed below, 17-year-olds are eligible to register to vote in South Carolina so long as they will turn 18 before Election Day. *See* S.C. Code Ann. § 7-5-180. These individuals may register to vote by any available mechanism, including through the motor-voter applications that SCDMV is required to make available under state and federal law. *See* S.C. Code Ann. § 7-5-320; 52 U.S.C. § 20504. Without a compelling interest, SCDMV has failed to process voter registration applications from those individuals and has thereby severely infringed on their fundamental right to vote.

With elections underway, emergency relief is critical. Irreparable harm is ongoing, the merits are clear, and there is no adequate remedy at law. A temporary restraining order and/or preliminary injunction is the only way to protect the fundamental voting rights of thousands of our youngest voters.

BACKGROUND LAW & FACTS

I. Voter Registration Obligations of SCDMV and SEC

Defendant SCDMV is a mandatory voter registration entity. See S.C. Code Ann. § 7-5-320; 52 U.S.C. § 20504; see also *Condon v. Reno*, 913 F. Supp. 946, 967 (D.S.C. 1995) (ordering South Carolina, over the state’s objection, to implement the National Voter Registration Act). When an individual applies for or seeks to renew a driver’s license or state-issued identification document, state and federal law requires that the application for a license or identification document also “serve as an application for voter registration . . . unless the applicant fails to sign the voter registration application.” 52 U.S.C. § 20504(a)(1); see also S.C. Code Ann. § 7-5-320(A)(1) (“Each state motor vehicle driver’s license application . . . serves as an application for voter registration.”). These obligations apply regardless of whether the transaction takes place in person at an SCDMV office or remotely via phone, mail, email, or internet. See, e.g., *Action NC v. Strach*, 216 F. Supp. 3d 597, 623 (M.D.N.C. 2016).

If an SCDMV customer indicates that they wish to register to vote (or update their voter registration), state and federal law additionally require SCDMV to *transmit* that information to the relevant county board of elections, usually within 10 days. See S.C. Code Ann. § 7-5-320(E); 52 U.S.C. § 20504(e)(1), (2). In practice, these materials go first to the SEC, which is the entity responsible for “establish[ing] and maintain[ing] a statewide voter registration database that shall be administered by the commission and made continuously available to each county board of voter registration and elections and to other agencies as authorized by law.” S.C. Code Ann. § 7-3-20(D)(14), (16).

After receiving those voter registration applications from SCDMV, the SEC and county boards of elections must ensure that voters are added to the relevant voter rolls and are provided with notice of their successful registration. See, e.g., S.C. Code Ann. § 7-5-125. Neither state nor federal law authorizes SCDMV to approve or reject a voter registration application.

II. Voter Registration for Individuals Under the Age of 18

The South Carolina Constitution provides that “[e]very citizen of the United States and of this State of the age of eighteen and upwards who is properly registered is entitled to vote as provided by law.” S.C. Const. art. II, § 4. Individuals who are 17 years of age may nonetheless register to vote and vote in primary elections so long as they: (1) will turn 18 on or before the next general election day, and (2) otherwise meet the qualifications for voting. See S.C. Code Ann. § 7-5-180.

Put another way, S.C. Code Ann. § 7-5-180 provides that “individuals who are not yet 18-years-old but will turn 18 before the next ensuing General Election, and who otherwise qualify to vote, have the right to register beginning 120 days prior to the closing of the books of a preceding primary.” *Voter Registration Underway for Some 17-year-olds*, S.C. ELECTION COMM’N (Mar. 17, 2010), available at <https://scvotes.gov/voter-registration-underway-for-some-17-year-olds/>. “This early registration allows those 17-year-old voters who are eligible to vote in the General Election to also participate in the political parties’ nominating processes for the General Election.” *Id.*

For the 2024 general election, the first “preceding primary” was the Democratic Presidential Primary on February 3, 2024. See *2024 General Election Calendar*, S.C. ELECTION COMM’N (last accessed Oct. 22, 2024), available at <https://scvotes.gov/wp-content/uploads/2024/07/2024-Election-Calendar-scVOTES-2024-07-23.pdf>; S.C. Code § 7-11-20. The books closed for that primary election on January 4, 2024. See *2024 General Election Calendar*, S.C. Code § 7-5-150. Therefore, individuals who turn 18

between January 4, 2024 (close of books for the first primary), and November 5, 2024 (Election Day), were eligible to register to vote under S.C. Code § 7-5-180 starting 120 days before January 4, 2024, which was September 6, 2023.

III. SCDMV's Failure to Transmit Voter Registration Applications for Qualified Applicants

When an SCDMV customer fills out a driver's license or state identification application, they must list, among other things, their full name, date of birth, social security number, permanent address, citizenship status, and whether they suffer from any physical or mental impairment that would affect their ability to safely operate a vehicle. See Ex. A (Form 447-NC). Step 5 of the 477-NC form also asks: "Do you want to register to vote in South Carolina with the County Registration Board?" See Ex. A (Form 447-NC). It further instructs that, to register to vote, "[y]ou must be a U.S. citizen, SC resident and meet requirements to register to vote." Customers are then given an opportunity to check a box to indicate "**Yes**, I wish to register to vote." *Id.*

STEP 5 - VOTER REGISTRATION (check one)	Do you want to register to vote in South Carolina with the County Registration Board? <i>You must be a US Citizen, SC resident and meet requirements to register to vote.</i>
<input type="checkbox"/> Yes, I wish to register to vote. <input type="checkbox"/> No, I do not wish to register to vote. <input type="checkbox"/> No, I am not eligible to register to vote.	

At the bottom of the form, SCDMV customers must also "certify, under penalty of perjury, that all information and statements made in the application are true." *Id.*

For most SCDMV customers, checking the "yes" on Step 5 triggers an additional electronic signature page, see Ex. B, which then triggers the transmission of the customer's information to the SEC for voter registration. But for customers that are not citizens and/or are not yet 18 years old, the SCDMV does not provide the second form or transmit the customer's information to SEC. If that happens, customers may or may not be notified that their desire to register is not being processed.

IV. The SEC can lawfully register voters who checked "Yes, I wish to register to vote" on their 477-NC form.

Even without the electronic signature page, SCDMV (and by extension, SEC)

gathers enough information from a customer's 477-NC form to determine their eligibility to register to vote. The voter qualifications statute provides that:

(A) Every citizen of this State and the United States who applies for registration must be registered if he meets the following qualifications:

(1) meets the age qualification as provided in Section 4, Article II of the Constitution of this State;

(2) is not laboring under disabilities named in the Constitution of 1895 of this State; and

(3) is a resident in the county and in the polling precinct in which the elector offers to vote.

(B) A person is disqualified from being registered or voting if he:

(1) is mentally incompetent as adjudicated by a court of competent jurisdiction; or

(2) is serving a term of imprisonment resulting from a conviction of a crime; or

(3) is convicted of a felony or offenses against the election laws, unless the disqualification has been removed by service of the sentence, including probation and parole time unless sooner pardoned.

S.C. Code Ann. § 7-5-120.

Of those criteria, the 477-NC form—which is sworn under penalty of perjury—establishes the voter's age, citizenship status, and permanent address. The form's mental and physical competence questions establishes that the voter is not "mentally incompetent" within the meaning of S.C. Code Ann. § 7-5-120(b)(1). See Ex. A, Step 6, Question 12. And by filling out and submitting the form in person at an SCDMV office, the voter establishes, by implication, that they are not "serving a term of imprisonment." See IMPRISONMENT, Black's Law Dictionary (12th ed. 2024) ("The act of confining a person, esp. in a prison."); see also, e.g., *United States v. Reed*, 620 F.2d 709, 711 (9th

Cir. 1980) (interpreting “term of imprisonment” to exclude an individual awaiting revocation of his parole).

Although S.C. Code Ann. § 7-5-320(c) requires SCDMV to provide a motor-voter application that “includes a statement that: (i) states each eligibility requirement, including citizenship; (ii) contains an attestation that the applicant meets each requirement; and (iii) requires the signature of the applicant under penalty of perjury,” a voter’s attestation is not a constitutional or statutory prerequisite to being registered to vote. See S.C. Code Ann. § 7-5-120; S.C. Const. art. II, §§ 4, 7. To the contrary, the law commands a voter *must* be registered so long as they *meet* the qualifications for voting. S.C. Code Ann. § 7-5-120(A). Because the 477-NC form indicates a voter’s desire to register and provides the information necessary for SEC to establish a voter’s eligibility to register, it should be treated in this instance as a valid voter registration application. See *also* 52 U.S.C. § 10101(a)(2)(B) (“No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission . . . if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.”).

V. Unlawfully excluding 17-year-olds from voter registration at SCDMV serves only to reduce administrative burdens.

SCDMV’s exclusion of applicants under the age of 18 appears, by all accounts, to be a neutral sorting mechanism designed to lessen the administrative burden on SEC and SCDMV. Nonetheless, the practice unquestionably violates state and federal law and has prevented a huge number of young people from being properly registered to vote or from being notified about the status of their application for voter registration. See *supra*. The 17-year-old voters who are eligible to register under S.C. Code Ann. § 7-5-180 are not statutorily excluded from the protections of the NVRA or its state analogue. Likewise, the mere fact that a voter registration application originates at the SCDMV does not give SCDMV the right to approve or reject an application. Under South

Carolina law, that authority (and expertise) rests exclusively with the SEC and county election boards.

VI. Voluntary Remedial Efforts

SCDMV has queried its database to ascertain the group of potentially impacted voters. Its search revealed that over 17,000 individuals meet the following criteria:

1. Participated in SCDMV transaction between September 6, 2023, and October 18, 2024, that qualifies for voter registration under S.C. Code § 7-5-320 and 52 U.S.C. § 20504;
2. Was under the age of 18 at the time of the SCDMV transaction;
3. Has turned 18 or will turn 18 before November 5, 2024;

That list of more than 17,000 individuals was transmitted to SEC, where it was crosschecked against the active voter rolls. SEC determined that approximately 6,000 of those individuals are already actively registered for the 2024 general election.

SCDMV is working to remove already-registered individuals from their list of impacted customers. Once completed, SCDMV will then start identifying the subset of individuals who selected “**Yes**, I wish to register to vote” in response to Step 5 of the 477-NC. Responses to Step 5 are not collected electronically and thus must be reviewed one-at-a-time by SCDMV staff.

Despite SCDMV’s efforts to ascertain the class of affected voters and despite the duly sworn declarations that those voters want to register and are legally eligible to do so, SEC will not consent to facilitating the registration of those voters for the 2024 election.

LEGAL STANDARD

“For a preliminary injunction to be granted, the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law.” *Scratch Golf*

Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

ARGUMENT

Plaintiff is likely to prevail because Defendants cannot assert a compelling interest in refusing to process voter registration applications from individuals who are eligible to register under S.C. Code Ann. § 7-5-180 and timely submitted their qualifications and intent to register to state officials. Further, to the extent enforcement of South Carolina’s voter registration deadlines would violate the fundamental rights of impacted individuals and thus “strike at the heart of representative government,” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964), equitable relief should be crafted such that SEC can immediately add all eligible, impacted voters to their respective county voter rolls.

I. Plaintiff is likely to succeed on the merits.

At present, a large class of eligible voters are being left out of the democratic process. They did their job; but the government—as of yet—has not.

A. Defendants’ refusal to process voter registration applications or register eligible voters violates equal protection and due process.

The South Carolina Constitution commands that no person shall be “deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” S.C. Const. art. I, § 3. Violations of due process or equal protection trigger strict scrutiny “where the State action at issue creates a ‘suspect class’ or implicates a ‘fundamental right.’” *Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 287 (2023), reh’g denied (Feb. 8, 2023) (Few, J., concurring) (citing *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 140, 568 S.E.2d 338, 347 (2002)). “To survive strict scrutiny the [state action] must meet a compelling state interest and be narrowly tailored to effectuate that interest.” *Luckabaugh*, 351 S.C. at 140–41, 568

S.E.2d at 347. Because the right to vote is “fundamental,” *Sojourner*, 383 S.C. at 176, 679 S.E.2d at 185, strict scrutiny applies to Defendants’ conduct. *See also Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) (“[A] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.”).

Here, as many as 11,000 young South Carolinians did everything required of them to register to vote in the 2024 general election. They meet the qualifications for registration under South Carolina law, *see* S.C. Code Ann. § 7-5-120, indicated a desire to register to vote by selecting “**Yes**, I wish to register to vote” on their SCDMV form, and timely submitted the necessary information to state officials. Yet because they were under the age of 18, their attempt to register was categorically denied—and often denied without notice. As a result, these eligible voters were not only denied the right to vote, but they were also denied an opportunity to cure their voter registration application before the registration deadline elapsed.

Equal Protection

Excluding 17-year-old voters from the benefits of registering to vote at SCDMV (as required by state and federal law) violates the Equal Protection Clause of the South Carolina Constitution. *See* S.C. Const. art. I, § 3. *Mullins v. Cole*, 218 F. Supp. 3d 488 (S.D.W.Va. 2016), a case brought under the federal analogue, is squarely on point.

In *Mullins*, plaintiffs challenged a West Virginia voter registration scheme that authorized online voter registration for voters in every county except one—Cabell County. *Id.* at 489–91. Like the motor-voter laws at issue here, West Virginia’s online voter registration system was designed to “encourage voting” by making voter registration easy and nonburdensome. *Id.* at 493. Like 17-year-old voters in South Carolina, residents of Cabell County were categorically denied the convenience of a certain type of voter registration—there, online registration. *Id.* at 493–94. And like thousands of 17-year-old voters in South Carolina who checked “**Yes**, I wish to register to vote” on their 477-NC form, over 2,200 Cabell County residents attempted to register

online and had not yet—at the time of litigation—submitted alternative voter registration applications. *Id.* at 491.

On those facts, the court “ha[d] no difficulty finding the policy results in an unconstitutional burden on the right of Cabell County voters to vote.” *Id.* at 495. In granting sweeping relief for plaintiffs, the court explained that “Defendant Cole’s decision to not register over 2,200 voters *strikes at the very heart of our democratic process*, and [that] the additional steps a would-be Cabell County voter has to take in order to register *places a “severe” burden on them.*” *Id.* at 493 (emphasis added). To cure the harm, the court ordered the defendant to “immediately process [the] online registrations and send those individuals letters stating that their voter registrations are complete . . . [unless] an individual is not qualified to vote for any reason independent of the fact they registered through the online system.” Ex. C (Order Oct. 25, 2016, *Mullins v. Cole*, Case No. 3:16-cv-9918 (S.D.W. Va.)).

So too here. Thousands of young, first-time voters would be on the voter rolls but for SCDMV’s unfair and unlawful refusal to process their applications. In the absence of evidence that any such voter lacks qualification to vote under S.C. Code Ann. § 7-5-120, impacted voters should be added to the voter rolls and issued voter cards forthwith.

Due Process

At minimum, “[d]ue process requires notice, an opportunity to be heard, and an opportunity for judicial review.” *Richardson v. \$20,771*, 437 S.C. 290, 306, 878 S.E.2d 868, 876 (2022). Here, SCDMV does not always notify 17-year-old customers that their application to register to vote—reasonably thought to flow from indicating “**Yes**” on the 477-NC form—will not be processed and will not result in effective voter registration. As a result, individuals are not only unlawfully excluded from the benefits of motor-voter registration, but they are also not advised that they must use some *other* mechanism for registering to vote. This lack of pre-deprivation notice violates due process. *See Martin*

v. Kemp, 341 F. Supp. 3d 1326, 1341 (N.D. Ga. 2018) (ordering elections official to “provide pre-rejection notice and an opportunity to resolve the alleged signature discrepancy to the absentee voter”). It also explains why of the more than 17,000 affected SCDMV customers, only around 6,000 have successfully registered to vote.

II. Eligible voters will suffer irreparable harm in the absence of an injunction.

Denial of the right to vote—including the predicate right to *register to vote*—is an irreparable harm. See *S.C. Dem. Party v. Knapp*, Richland Cnty. Case No. 2024-CP-40-05967 (Order, Oct. 4, 2024). “Courts [also] routinely recognize that organizations suffer irreparable harm when a defendant’s conduct causes them to lose opportunities to conduct election-related activities, such as voter registration and education.” *League of Women Voters of Missouri v. Ashcroft*, 336 F. Supp. 3d 998, 1005 (W.D. Mo. 2018) (collecting cases). For both reasons, irreparable harm is present here.

III. There is no adequate remedy at law, and a strong equitable remedy is warranted.

With early voting underway and only two weeks before Election Day, there is no adequate remedy available at law. Furthermore, the grave, unquantifiable harm of unlawfully denying the franchise to thousands of young, qualified voters warrants a strong equitable remedy.

“Once [state action] is found to violate the Constitution, the question of the appropriate remedy for that constitutional violation is necessarily before the Court.” *S.C. Pub. Int. Found. v. Lucas*, 416 S.C. 269, 271 n.3 (2016). Given the importance of free and fair elections, remedies for voting-related irregularities are sometimes far-reaching. See, e.g., *George v. Mun. Election Comm’n of Cnty. of Charleston*, 335 S.C. 182, 186–87, 516 S.E.2d 206, 208 (1999) (explaining that courts may “nullify the results [of an election]” when irregularities “substantially affect the free and intelligent casting of a vote, the determination of the results, an essential element of the election, or the

fundamental integrity of the election.”). Indeed, the South Carolina Supreme Court has overturned a mayoral election based on the disenfranchisement of only 4 voters.

Armstrong v. Atl. Beach. Mun. Election Comm’n, 380 S.C. 47, 48–49, 668 S.E.2d 400, 401 (2008).

There is ample support for ordering state election officials to register voters that were unlawfully denied opportunities to register. *See, e.g., Fish v. Kobach*, 189 F. Supp. 3d 1107, 1152 (D. Kan. 2016) (“The Secretary of State is directed to register for federal elections all otherwise eligible motor voter registration applicants that have been cancelled or are in suspense due solely to their failure to provide DPOC.”). And when election-related deadlines risk the fundamental rights of voters, courts routinely set them aside. *See, e.g., S.C. Dem. Party*, No. 2024-CP-40-05967 (Order, Oct. 4, 2024) (extending voter registration deadline due to Hurricane Helene). When these two impediments to voting combine, relief must address each barrier. *See, e.g., Mullins*, 218 F. Supp. 3d 488 (ordering state election officials to register voters wrongly denied online registration opportunities, even after voter registration deadline expired).

If 4 votes can require a new election, this Court should order state officials to take measures necessary to protect the rights of *thousands* of young, eligible, South Carolina voters whose registration applications have been waylaid through no fault of their own. Their exclusion from the democratic process not only violates their fundamental right to vote, but it also implicates the integrity of our 2024 elections.

RELIEF REQUESTED

In addition to enjoining SCDMV’s unlawful screening process, the Court should grant the following:

- (1) Order SCDMV to identify all 17-year-old customers who, at the time of their SCDMV transaction between September 6, 2023, and October 14, 2024, were eligible to register to vote under S.C. Code Ann. § 7-5-180 and who

- checked “**Yes**, I wish to register to vote” on Step 5 of the 477-NC form; and
- (2) Order SEC to immediately add all individuals identified by SCDMV, above, to the relevant county voter rolls and notify each voter of their successful registration, except for any individual that SEC determines is, for another reason, ineligible to register to vote under S.C. Code Ann. § 7-5-120.
- (3) Order that the registration of voters under (2), above, shall be backdated to the relevant customer’s SCDMV transaction date; *or, in the alternative*, temporarily enjoin South Carolina’s voter registration deadlines, S.C. Code Ann. §§ 7-5-150, 7-5-155, 7-5-185, as applied to the class of impacted voters, until Friday, November 1, 2024.

Date: October 22, 2024

Respectfully Submitted,

/s Allen Chaney

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App. R. 49(c)(3).

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