

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

) **IN THE COURT OF COMMON
) PLEAS**

**American Civil Liberties Union of
South Carolina Foundation,**

) CASE NO. 2024-CP- _____
)

Plaintiff,

v.

) **SUMMONS**
)

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

Defendants.

TO THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscriber, at the address shown below, within 30 days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

Attorney for Plaintiff

/s Allen Chaney

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**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**IN THE COURT OF COMMON
PLEAS**

**American Civil Liberties Union of
South Carolina Foundation,**

CASE NO. 2024-CP- _____

Plaintiff,

v.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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

Defendants.

Plaintiff American Civil Liberties Union of South Carolina Foundation (ACLU-SC) alleges the following:

INTRODUCTION

1. The South Carolina Department of Motor Vehicles (SCDMV) plays a critical role in voter registration. Under the National Voter Registration Act (NVRA) and a corresponding state law, S.C. Code Ann. § 7-5-320, SCDMV must provide simple, nonburdensome voter registration opportunities to all individuals who utilize its services. See 52 U.S.C. § 20504.

2. Although SCDMV knows that many 17-year-olds are eligible to register to vote in South Carolina, see S.C. Code Ann. § 7-5-180, its “motor-voter” system will not provide, process, or transmit voter registration applications for anyone under the age of 18.

3. The scale of the problem is staggering. In just the last 13 months, SCDMV has unlawfully denied voter registration opportunities to over 17,000 young South Carolinians who were entitled to register to vote under S.C. Code Ann. § 7-5-180.

4. Of those, many indicated “**Yes**, I wish to register to vote” on their SCDMV form, yet were never provided with a voter attestation form or notified that their attempt to register to vote was not processed, transmitted, or effective.

5. Voting is a “fundamental right,” *Sojourner v. Town of St. George*, 383 S.C. 171, 176, 679 S.E.2d 182, 185 (2009), and the “cornerstone of our constitutional republic,” *Bailey v. S.C. State Election Comm’n*, 430 S.C. 268, 271, 844 S.E.2d 390, 391 (2020).

6. To preserve voters’ fundamental rights and avoid disenfranchising thousands of our State’s youngest voters, the Court should grant declaratory and injunctive relief.

PARTIES

7. Plaintiff American Civil Liberties Union of South Carolina Foundation (ACLU-SC), is a nonprofit and nonpartisan membership organization registered in the State of South Carolina. ACLU-SC has members who vote in elections throughout South Carolina. As an organization, ACLU-SC devotes significant resources to fighting for the right to vote in free and fair elections through educating, organizing, advocating, and litigating. ACLU-SC has already devoted organizational resources to alerting individuals of the voter registration error complained of herein and attempting to cure harms to individual voters.

8. Defendant the State Election Commission (SEC) is the government agency responsible for administering elections in South Carolina. See S.C. Code Ann. § 7-3-10.

9. Defendant the South Carolina Department of Motor Vehicles (SCDMV) is the state agency responsible for administering the state’s motor vehicle licensing and titling laws. SCDMV is a mandatory voter registration agency under the NVRA, 52 U.S.C. § 20504.

JURISDICTION

10. This Court has jurisdiction over the parties and causes of action under S.C. Const. art. V, § 11.

STATEMENT OF FACTS

I. South Carolina law permits some 17-year-olds to register to vote.

11. 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 (emphasis added).

12. Individuals who are 17 years of age may 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.

13. Under S.C. Code Ann. § 7-5-180, “[t]hose 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/>.

14. “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.*

15. 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 Ann. § 7-11-20. The books closed for that primary election on January 4, 2024. See *2024 General Election Calendar*, S.C. Code Ann. § 7-5-150.

16. 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 Ann. § 7-5-180 starting 120 days before January 4, 2024, which is September 6, 2023.

II. SCDMV does not process or transmit voter registration materials for voters under the age of 18 as required by state and federal law.

17. Under state and federal law, SCDMV is required to provide individuals with an opportunity to register to vote as part of “each state motor vehicle driver’s license application, including a renewal application.” S.C. Code Ann. § 7-5-320(A). In most cases, all that is required to register to vote is one additional signature on the driver’s license application. S.C. Code Ann. § 7-5-320(C).

18. When a customer at SCDMV indicates that they wish to register to vote, SCDMV is required to collect and transmit the relevant voter registration materials to the county board of elections, in most cases within ten days. See S.C. Code Ann. §§ 7-5-310(H), 320(E); 52 U.S.C. § 20504(e)(1), (2).

19. Those legal obligations flow from the National Voter Registration Act of 1993 (NVRA), a bipartisan federal law designed to encourage voter participation, protect the integrity of the electoral process, and ensure that accurate and current voter registration rolls are maintained. 52 U.S.C. § 20501(b).

20. Despite these obligations, SCDMV has a pattern and practice of screening out registrants based on age and citizenship *before* providing customers with the voter qualifications attestation form or transmitting materials to the county board of elections.

A. SCDMV Screening Process

21. When a SCDMV customer fills out a driver’s license or state identification application, Step 5 of the form 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.*

22. For most SCDMV customers, checking the “yes” on Step 5 triggers an additional transaction that is completed on SCDMV’s credit card readers and requires an electronic signature where the customer attests to their qualifications to vote.

23. When that additional transaction is completed, the customer’s information and voter registration application, including the signature attesting to their qualifications to register to vote, is transmitted to the SEC.

24. But for customers that are not yet 18 years old at the time of their driver’s license or identification card transaction with the SCDMV, the SCDMV’s system is programmed to not provide the SCDMV application for voter registration.

25. As a result of this practice, SCDMV excludes *all* voters authorized to register under S.C. Code Ann. § 7-5-180 from the voter registration process afforded by S.C. Code Ann. § 7-5-320 and the NVRA, 52 U.S.C. § 20504.

26. Additionally, because each individual screening occurs without knowledge or participation of the SEC, wrongfully discarded registrants are not provided with “written notification of approval or rejection” as required by law. See S.C. Code § 7-5-180.

III. SCDMV is actively identifying impacted voter registration applicants.

27. For the last week, SCDMV has worked to identify individuals who were (a) involved in qualifying SCDMV transactions between September 6, 2023, and October 14, 2024; (b) were 17 at the date of the transaction but turn 18 before Election Day; and (c) selected “**Yes**, I wish to register to vote” on the 477-NC form.

28. A list of approximately 17,000 individuals who meet (a) and (b) was transmitted to SEC for crosschecking against the active voter rolls.

29. SEC determined that approximately 6,000 of those voters were able to

successfully register to vote by some other means.

30. SCDMV is now working on hand-reviewing the remaining approximately 11,000 477-NC forms to determine which individuals attempted to register to vote during their SCDMV transaction by indicating “Yes, I wish to register to vote.”

IV. SEC refuses to cure these constitutional violations.

31. So far, the SEC has refused to make any allowances for individuals impacted by the wrongful exclusion of 17-year-olds by SCDMV.

32. Although thousands of these individuals were eligible to register to vote, were entitled to easily register through their SCDMV transaction, timely provided state officials with the information necessary to register, and indicated a desire to do so, SEC is unwilling to add them to the voter rolls or otherwise protect their fundamental right to cast a ballot in the 2024 general election.

FIRST CLAIM FOR RELIEF

S.C. Const. art. I, § 3

33. Plaintiff hereby incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

34. 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.

Equal Protection

35. SCDMV has a pattern and practice of categorically rejecting voter registration attempts from anyone under the age of 18, even if they are legally eligible to register to vote.

36. That practice treats similarly eligible voters differently and infringes on the fundamental right to vote.

37. SCDMV’s practice of rejecting voter registration applications from 17-year-

old customers is unlawful under S.C. Code Ann. § 7-5-320 and 52 U.S.C. § 20504, and is not narrowly tailored to meet a compelling state interest.

Due Process

38. SCDMV's unlawful screening of voter registration applications denies individuals the opportunity to cure their registration because it does not always provide notice that the voter's application is not being processed or transmitted to SEC.

39. Further, by refusing to offer impacted and otherwise eligible individuals an opportunity to cure the voter registration deficiency *caused by SCDMV*, the SEC is violating the substantive and procedural due process protections in the South Carolina Constitution.

SECOND CLAIM FOR RELIEF

S.C. Code Ann. § 7-5-320

Declaratory and Injunctive Relief

(Defendant SCDMV)

40. Plaintiff hereby incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

41. SCDMV is violating the plain requirements of S.C. Code Ann. § 7-5-320 by refusing to offer integrated voter registration to any SCDMV customers under the age of 18.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court:

1. Order Defendant SCDMV to, on or by October 24, 2024:
 - a. Identify all individuals who were wrongfully denied an opportunity to register to vote for the 2024 general election due to SCDMV's refusal to accept voter registration applications from 17-year-olds, and transmit a list of those individuals to Defendant SEC.

2. Order Defendant SEC to, on or by October 25, 2024:
 - a. Send notice to all individuals identified by SCDMV explaining that:
 - i. Their attempt to register to vote at the SCDMV was ineffective; and
 - ii. That they are entitled to complete their voter registration application online at scvotes.org or at their local county election office.
3. Order that voter registration materials received by impacted voters as contemplated by part 2.a.ii shall be accepted *nunc pro tunc* as of the date of their qualifying SCDMV transaction; *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.
4. Declare that SCDMV's refusal to process voter registration applications for individuals under the age of 18 violates S.C. Code Ann. § 7-5-320 and permanently enjoin the practice.
5. Order that SCDMV provide all eligible voters, including those entitled to register under S.C. Code Ann. § 7-5-180, the opportunity to register vote through their SCDMV transaction as contemplated by state and federal law.
6. Other such relief as deemed appropriate by the Court.

Date: October 22, 2024

Respectfully Submitted,

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* Motions for Admission *pro hac vice*
forthcoming

‡*Not admitted in the District of
Columbia; practice limited under D.C.
App. R. 49(c)(3).*

Attorneys for Plaintiff