

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

KYLON MIDDLETON; DEON TEDDER;)
AMOS WELLS; CARYLYE DIXON;)
TONYA WINBUSH; ERNESTINE MOORE;)
SOUTH CAROLINA DEMOCRATIC)
PARTY; DNC SERVICES)
CORPORATION/DEMOCRATIC)
NATIONAL COMMITTEE and DCCC)

Plaintiffs,)

v.)

MARCI ANDINO, in her official capacity as)
Executive Director of the South Carolina)
State Election Commission; JOHN WELLS,)
in his official capacity as Chair of South)
Carolina State Election Commission; and)
CLIFFORD J. ELDER and SCOTT)
MOSELEY, in their official capacities as)
members of the South Carolina State Election)
Commission)

Defendants.)

Case No.: 3:20-cv-01730-JMC

INTERVENOR-DEFENDANT SOUTH
CAROLINA REPUBLICAN PARTY'S
RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

Pursuant to Local Civil Rule 7.06, DSC, the intervenor-defendant, South Carolina Republican Party (the Republican Party), submits this response in opposition to the motion for preliminary injunction filed by the plaintiffs, Kylon Middleton, Deon Tedder, Amos Wells, Tonya Winbush, Ernestine Moore, South Carolina Democratic Party, DNC Services Corporation/Democratic National Committee, and DCCC (collectively, “the plaintiffs”). See ECF No. 13. For the reasons that follow, the Court should deny the plaintiffs’ motion for mandatory preliminary injunction because they are not entitled to this drastic relief.¹

¹ For the sake of judicial economy and given the expedited briefing schedule, the Republican Party would respectfully rely upon and direct the Court to the background and standard sections from its response in opposition filed in the companion action with which the Court consolidated the present action for a hearing on May 15, 2020. See Thomas v. Andino, No. 3:20-cv-01552-JMC, ECF No. 50 (D.S.C. 2020). The

ARGUMENT

The Court should deny the plaintiffs’ motion for a mandatory preliminary injunction with respect to the June 9, 2020 primary because they failed to make a clear showing of entitlement to one of the most drastic forms of relief known under the law. For the same reasons set forth in the Republican Party’s prior brief, the plaintiffs failed to demonstrate irreparable harm, the balance of the equities does not tip in their favor, and an injunction is not in the public interest given this late hour before the June primary. More importantly, as explained in greater detail below, the plaintiffs failed to make a clear showing that they are likely to succeed on the merits of their challenges to South Carolina’s witness requirement and the election day cutoff deadline.

I. Some of the plaintiffs’ claims in both actions are now moot.

At the outset, as the Court recognized, several claims raised by the plaintiffs in this case—as well as the companion action with which this case was consolidated for a hearing—are now moot for purposes of an expedited preliminary injunction.

The Supreme Court has long recognized that “mootness can arise at any stage of litigation.” Calderon v. Moore, 518 U.S. 149, 150 (1996). Just this week, the General Assembly passed a bill that gives all South Carolina voters the ability to vote absentee in the June 9, 2020 primary:

A qualified elector must be permitted to vote by absentee ballot in an election if the qualified elector’s place of residence or polling place is located in an area subject to a state of emergency declared by the Governor and there are fewer than forty-six days remaining until the date of the election.

S. 635, 123d Leg., 2d Sess. (S.C. 2020). And the Governor has already signed the bill into law.

See Ex. A, R. 138 (S.C. 2020). The law will also apply to any runoff elections. See Press Release,

Republican Party incorporates the above-mentioned sections, as well as all substantive arguments raised in its previous filing, including but not limited to those on the witness requirement, as fully and effectually as if set forth verbatim herein.

S.C. State Election Comm’n, All Voters Can Now Vote Absentee in June Primaries, Runoff (May 13, 2020), <https://www.scvotes.org/all-voters-can-now-vote-absentee-june-primaries-runoffs>. Although the law sunsets on July 1, 2020, see Ex. A, the plaintiffs’ claimed exigency in both cases purporting to justify emergency intervention by this Court to resolve their challenge to the excuse requirement and the “age restriction” for purposes of the June 9, 2020 primary no longer exists and those claims are moot.

The plaintiffs in Thomas recognized as much and rightly agreed conditionally to withdraw their challenge to the excuse requirement for purposes of the preliminary injunction hearing because a ruling would have no practical effect on the June primary. See Thomas v. Andino, No. 3:20-cv-01552-JMC, ECF No. 55, at 1 n.1 (D.S.C. 2020). They reserved the right to challenge this requirement on the merits at a later date following the primary. The plaintiffs here—perhaps in recognition that not all issues need to be decided in this “emergency” posture—likewise agreed that certain issues could wait for resolution until after the June primary.² But the age restriction is plainly folded into the excuse requirement challenge in the companion case. Indeed, that was one of the grounds on which the plaintiffs relied to show these two actions were related for purposes of consolidation.

Nevertheless, the enactment of S.635 plainly mooted the age restriction challenges for purposes of an emergency injunction in advance of the June primary, which was the relief sought.³

² The Republican Party reserves the right to brief its opposition to the remaining issues raised in the plaintiffs’ complaint at the appropriate date. The present filing is limited to a discussion of the issues that are before the Court on the motion for preliminary injunction being heard on May 15, 2020.

³ Although the Court found the plaintiffs’ absentee ballot age requirement challenge moot for purposes of the motion for preliminary injunction, ECF No. 30, it is unclear from the plaintiffs’ submission whether they agree with the Court. See ECF No. 31. To the extent they seek to revive this challenge for purposes of the “August special election for State House District 115,” id., the parties can address this matter after the June primary when everyone has a reasonable amount of time to brief the issue, particularly given that they attack the 65-and-older-absentee-provision on separate constitutional grounds and under the Voting

II. The plaintiffs' challenge to the witness requirement is self-defeating.

For the most part, the Republican Party will rely upon the arguments raised in its brief filed in the Thomas case regarding the plaintiffs' challenge to the witness requirement. But the allegations in the plaintiffs' complaint here necessitate further commentary.

As an initial matter, the plaintiffs' challenge to the witness requirement is barred by the doctrine of laches. "An affirmative defense to claims for equitable relief, laches requires a defendant to prove two elements: '(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.'" Perry v. Judd, 471 F. App'x 219, 224 (4th Cir. 2012) (quoting Costello v. United States, 365 U.S. 265, 282 (1961)). Both prongs are met here. Subsection 7-15-320(B)(5) has been on the books for years. Yet the plaintiffs waited until the eve of the 2020 election to raise this issue for the first time.

In addition to the lack of diligence, the plaintiffs' tardy challenge also prejudices the defendants and the Republican Party. See Costello, 365 U.S. at 282. Again, while this no longer matters for the June primary, the plaintiffs want to change the law for the November election to open the floodgates for unregulated absentee voting in a presidential election year with crucial races up and down the ballot at the expense of all safeguards that the General Assembly—as a matter of public policy—has put in place to prevent political mischief and voter fraud. Given that this last-minute, multi-forum legal blitz leaves little time to defend the longstanding laws on the books, the plaintiffs have undoubtedly prejudiced the defendants. Under these circumstances, the Court should reject the plaintiffs' challenge to the witness requirement, as well as all of their claims for that matter, as explained in greater detail in the Republican Party's companion brief in Thomas because the balance of the equities tips in favor of the defendants under the doctrine of laches.

Rights Act of 1965. But the plaintiffs cannot demonstrate any exigency that would justify prolonging the hearing tomorrow to address a presently moot issue that does not require resolution before the June primary.

Even on the merits, the plaintiffs fare no better. Absentee voting is a privilege created by the General Assembly, not a fundamental right protected by the U.S. Constitution. See McDonald v. Bd. Of Elec. Comm’rs, 394 U.S. 802 (1969). “Election laws will invariably impose some burden upon individual voters.” Burdick v. Takushi, 504 U.S. 428, 433 (1992). Indeed, “[e]ach provision of a code, ‘whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—the individual’s right to vote and his right to associate with others for political ends.’” Id. (quoting Anderson v. Celebrezze, 460 U.S. 780, 788 (1983)).

“[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.” Storer v. Brown, 415 U.S. 724, 730 (1974). “Of course, not every limitation or incidental burden on the exercise of voting rights is subject to a stringent standard of review.” Bullock v. Carter, 405 U.S. 134, 143 (1972). As for the first challenge, under the well-established Anderson-Burdick standard, “the rigorousness of [the] inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights.” Burdick, 504 U.S. at 434. “But when a state election law provision imposes only ‘reasonable, nondiscriminatory restrictions’ upon the First and Fourteenth Amendment rights of voters, ‘the State’s important regulatory interests are generally sufficient to justify’ the restrictions.” Id.

The Court “must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate” and then “identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule.” Anderson, 460 U.S. at 789. In evaluating this claim, “the Court must

not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights." Id. When "weighing all these factors," the plaintiffs' constitutional challenge fails as a matter of law. The plaintiffs are not burdened at all.

For starters, the plaintiffs' arguments are completely inconsistent. On the one hand, they contend that requiring an absentee voter to get a witness to sign their ballot is virtually impossible. Yet on the other hand, Plaintiff Deon Tedder complains that he wants to be able to help voters complete and return absentee ballot applications—presumably for himself—in the upcoming elections. In fact, the complaint says he "would like to assist voters who seek to cast absentee ballots but cannot leave their homes." ECF No. 1, at 6 ¶ 13. Which is it? The plaintiffs cannot have their cake and eat it too. If the conditions are so bad that the plaintiffs are asking the Court to strike down the requirement that people get a witness signature on their absentee ballots, then how are the conditions ripe enough for Mr. Tedder and others to go help voters fill out absentee ballots? Also, if it is so impossible to make contact with people, then how did Reverend Middleton sign his declaration and get a copy to plaintiffs' counsel the day before filing their preliminary injunction? See ECF No. 13-2, at 2–5. And how did Mr. Tedder sign his declaration the same day the motion was filed? See ECF No. 13-1, at 2–4. These wet signatures suggest the witness requirement is not as much a burden as alleged in the complaint.

While the plaintiffs would prefer to present the Court with purely speculative potential issues, the fact remains that obtaining a witness signature is not an impossible or unreasonable burden. Just because they say it does not make it so. Aside from conclusory assertions and speculative theories, the plaintiffs have failed to make a clear showing that it would be impossible even in the age of COVID-19. Although this global pandemic has wreaked havoc on the State, it

has not prevented people from interacting with others to obtain the necessities of life. People have purchased or arranged for the purchase of food and medicines. They have interacted with each other while observing social distancing guidelines. They have acquired and worn masks. They have traveled as necessary. Even in the pandemic, potential voters have and must interact with other individuals at some point. Obtaining a witness signature can be done without violating any of the existing CDC guidelines to control the spread of COVID-19 and without any unreasonable threat or burden to absentee voters.

In sum, the plaintiffs' alleged burden, if any, is minimal. "To deem ordinary and widespread burdens like these severe would subject virtually every electoral regulation to strict scrutiny, hamper the ability of States to run efficient and equitable elections, and compel federal courts to rewrite state electoral codes." Clingman v. Beaver, 544 U.S. 581, 593 (2005). As the Supreme Court has held, "[t]he Constitution does not require that result, for it is beyond question 'that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.'" Id. (quoting Timmons v. Twin Cities Area New Party, 520 U.S. 351, 358 (1997)).

The Court should therefore deny the motion for a mandatory preliminary injunction with respect to the witness requirement because the plaintiffs' arguments amount to nothing more than sheer speculation, conjecture, and apparitions and do not meet the high threshold of clearly stating a constitutional challenge sufficient to enjoin a current South Carolina law.

III. The election day cutoff challenge is a red herring and baseless.

Finally, the plaintiffs' request for the Court to extend the election cutoff is neither tethered to the law in South Carolina nor the record in this case. It is manifestly without merit.

While the plaintiffs believe one line from a Supreme Court order granting a stay based upon extraordinary circumstances without the benefit of a full record carries the day here, that is just not the case. A review of the order in Republican National Committee v. Democratic National Committee reveals the Court did not paint that broad a stroke. 589 U.S. ___, 140 S. Ct. 1205 (2020) (per curiam). In that case, the Supreme Court found the district court’s order was of an “unusual nature.” Id. at 1207. To illustrate how unusual the ruling was, the Supreme Court referenced the subsequent order by the district court “enjoining the public release of any election results for six days after election day.” Id. The Court reasoned that “lower federal courts should ordinarily not alter the election rules on the eve of an election.” Id.

Notably, the Court explained the plaintiffs failed to put forward any probative evidence at the lower court that voters would be in a substantially different position from late-requesting voters in other Wisconsin elections with respect to the timing of their receipt of absentee ballots.” Id. In addition, the Court noted the plaintiffs did not request the remedy granted by the lower court. Id. Instead, the lower court took it upon itself to extend the deadline in which absentee ballots must be received. Id. The Court opined extending the date for a voter to mail their ballot “is extraordinary relief [that] would fundamentally alter the nature of the election by allowing voting for six additional days after the election.” Id. at 1208.

But the Court cautioned that its “decision on the narrow question should not be viewed as expressing an opinion on the broader question of whether to hold the election, or whether other reforms or modifications in election procedures in light of COVID–19 are appropriate.” Id. Yet the plaintiffs cite this ruling as if it stands for the proposition that they are entitled to an extension of the election day cutoff as a matter of law. That is simply not the case.

In the Wisconsin case, the evidence presented to the district court demonstrated voters may be unable to return their ballots by the end of election day due to the record number of absentee ballots requested. Democratic Nat’l Comm. v. Bostelmann, ___ F. Supp. 3d ___, 2020 WL 1638374, at *17 (W.D. Wis. April 2, 2020). The district court noted Wisconsin was at the beginning of its COVID-19 curve and Governor Evers had enacted a “Safer-at-Home” Order that was to remain in place until April 24, 2020—beyond the election day at issue. Id. at *3.

Wisconsin clerks’ offices were struggling to process the overwhelming number of absentee ballot requests. Id. at *5. One clerk’s office argued the existing deadline for receiving absentee ballots was “unworkable” and said it would be impossible for some voters to receive, complete, and return their absentee ballots by the close of election day. Id. As a result, the Wisconsin Election Commission informed the court it no longer objected to receiving absentee ballots by April 13, 2020, as long as they were postmarked by the election date, April 7, 2020. Id. at *16. The commission indicated it would be able to timely canvass all absentee ballots that were received by 4:00 P.M. on April 13, 2020. Id.

Here, the only resemblance between the Wisconsin and South Carolina absentee ballot time requirements is that the ballot must be received by the close of election day. Compare Wis. Stat. § 6.87(6), with S.C. Code Ann. § 7-15-230. Two major factors played into the Court’s decision in Wisconsin that have not arisen in South Carolina. First, the South Carolina Election Commission has not indicated current absentee ballot numbers are overwhelming local election commissions to the point that voters will not be able to receive, complete, and return absentee ballots by 7:00 P.M. on June 9, 2020. There is zero evidence in this record to demonstrate the existing deadline is “unworkable” or insufficient. Nor has the State Election Commission requested or consented to such an extension. And second, Governor McMaster lifted his “Safer-At-Home” Order, and the

plaintiffs have introduced no evidence indicated South Carolina is “somewhat near the beginning of th[e] curve” for COVID-19. To the contrary, Governor McMaster has begun easing restrictions to reopen South Carolina’s economy while heeding the advice of experts.

Thus, the record upon which the Supreme Court made its decision in Wisconsin bears no resemblance to the record in this case. Simply put, that case is inapposite and was decided on its own specific facts. Because the plaintiffs have failed to make any showing that they are entitled to an arbitrary extension of the election day cutoff for mailing absentee ballots, the Court should deny their motion for a mandatory preliminary injunction on this ground.

CONCLUSION

In sum, for the foregoing reasons, as well as those raised in the Republican Party’s brief in Thomas, the Court should deny the plaintiffs’ drastic request for a mandatory preliminary injunction. The plaintiffs failed to make a clear showing that they are likely to succeed on the merits of their witness requirement and election day cutoff challenges. Nor can they demonstrate any irreparable harm stemming from these reasonable regulations on the absentee voting privilege. And given their delay in bringing these claims, coupled with the federalism and separation of powers concerns attendant to the Court wading into this policy debate, a mandatory preliminary injunction would not be in the public interest. To the contrary, it would pave the way for great voter confusion and invite political mischief and voter fraud. Accordingly, the Court should maintain the status quo for the upcoming June primary.

(Signature page to follow)

Respectfully submitted,

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Columbia, South Carolina
May 14, 2020

Middleton, et al v. Andino, et al

Case No.: 3:20-cv-01730-JMC

EXHIBIT A

Intervenor-Defendant South Carolina
Republican Party's Response in Opposition to
Plaintiffs' Motion for Preliminary Injunction

635

No. B138
CLERK OF THE SENATENo. _____
CODE COMMISSIONER

AN ACT

TO AMEND SECTION 7-13-35, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE NOTICE OF GENERAL, MUNICIPAL, SPECIAL, AND PRIMARY ELECTIONS, SO AS TO REQUIRE THE NOTICE TO STATE THAT THE PROCESS OF EXAMINING THE RETURN-ADDRESSED ENVELOPES CONTAINING THE ABSENTEE BALLOTS MAY BEGIN AT 9:00 A.M. ON THE CALENDAR DAY IMMEDIATELY PRECEDING ELECTION DAY; TO AMEND SECTION 7-15-420, RELATING TO THE RECEIPT, TABULATION, AND REPORTING OF ABSENTEE BALLOTS, SO AS TO PROVIDE THAT THE PROCESS OF EXAMINING THE RETURN-ADDRESSED ENVELOPES THAT HAVE BEEN RECEIVED BY THE COUNTY BOARD OF VOTER REGISTRATION AND ELECTIONS MAY BEGIN AT 9:00 A.M. ON THE CALENDAR DAY IMMEDIATELY PRECEDING ELECTION DAY; TO AMEND SECTION 7-15-470, RELATING TO ABSENTEE BALLOTS OTHER THAN PAPER BALLOTS, SO AS TO MODIFY THE REQUIREMENTS NEEDED TO OBTAIN THE STATE ELECTION COMMISSION CERTIFICATION BEFORE USING A NONPAPER-BASED VOTING MACHINE OR VOTING SYSTEM FOR IN-PERSON ABSENTEE VOTING; TO REQUIRE THE STATE ELECTION COMMISSION TO IMPLEMENT A SOFTWARE UPDATE TO ITS ELECTRONIC VOTING MACHINES TO ALLOW FOR CHALLENGES TO ABSENTEE VOTES CAST USING THE MACHINES IN AN EQUIVALENT MANNER TO CHALLENGES TO ABSENTEE VOTES CAST ON ELECTRONIC VOTING MACHINES IN THE 2018 GENERAL ELECTION; TO AMEND SECTION 7-15-330, RELATING TO THE TIME OF APPLICATION FOR ABSENTEE BALLOTS AND APPLICATIONS IN PERSON, SO AS TO REQUIRE THE BOARD OF VOTER REGISTRATION AND ELECTIONS TO KEEP A RECORD OF THE DATE AND METHOD UPON WHICH THE ABSENTEE BALLOT IS RETURNED; TO AMEND SECTION 7-15-440, RELATING TO THE LIST OF PERSONS ISSUED AND WHO MAY CAST ABSENTEE BALLOTS, SO AS TO CLARIFY THAT THE LIST IS IN ADDITION TO THE INFORMATION PROVIDED PURSUANT TO SECTION 7-15-330; BY ADDING SECTION 7-13-825 SO AS TO PROVIDE THAT THE STATE ELECTION COMMISSION AND EACH COUNTY BOARD OF VOTER REGISTRATION AND ELECTIONS MUST POST THE REQUIREMENTS TO

I Certify that the Within Originated in the Senate.

Correctly Enrolled _____

Jeffrey Gorntz
Clerk of the Senate

Ashley Harwell-Beach
Ashley Harwell-Beach, Director
Legislative Council

Delivered to the Governor this MAY 12 2020

FILED 
Delivered to the Secretary of State this _____

day of _____, A.D. 20 _____
Jeffrey Gorntz
Clerk of the Senate

MAY 13 2020
day of _____, A.D. 20 _____
Mark Hammond
SECRETARY OF STATE

CHALLENGE A BALLOT IN A CONSPICUOUS LOCATION IN THEIR RESPECTIVE OFFICES AND WEBSITES; TO REPEAL CERTAIN SUBSECTIONS OF SECTION 1 OF THE ACT ON DECEMBER 31, 2021; AND TO PROVIDE THAT A QUALIFIED ELECTOR MUST BE PERMITTED TO VOTE BY ABSENTEE BALLOT IN AN ELECTION IF THE QUALIFIED ELECTOR'S PLACE OF RESIDENCE OR POLLING PLACE IS LOCATED IN AN AREA SUBJECT TO A STATE OF EMERGENCY DECLARED BY THE GOVERNOR AND THERE ARE FEWER THAN FORTY-SIX DAYS REMAINING UNTIL THE DATE OF THE ELECTION AND PROVIDE THAT THIS PROVISION EXPIRES ON JULY 1, 2020.

THE STATE OF SOUTH CAROLINA

At A General Assembly Begun to be Holden at
Columbia, on the Second Tuesday in January; in the
Year of Our Lord Two Thousand Twenty, and Thence
Continued by Divers Adjournments to the
_____ of _____

In the Year of Our Lord Two Thousand Twenty

AN ACT

TO AMEND SECTION 7-13-35, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE NOTICE OF GENERAL, MUNICIPAL, SPECIAL, AND PRIMARY ELECTIONS, SO AS TO REQUIRE THE NOTICE TO STATE THAT THE PROCESS OF EXAMINING THE RETURN-ADDRESSED ENVELOPES CONTAINING THE ABSENTEE BALLOTS MAY BEGIN AT 9:00 A.M. ON THE CALENDAR DAY IMMEDIATELY PRECEDING ELECTION DAY; TO AMEND SECTION 7-15-420, RELATING TO THE RECEIPT, TABULATION, AND REPORTING OF ABSENTEE BALLOTS, SO AS TO PROVIDE THAT THE PROCESS OF EXAMINING THE RETURN-ADDRESSED ENVELOPES THAT HAVE BEEN RECEIVED BY THE COUNTY BOARD OF VOTER REGISTRATION AND ELECTIONS MAY BEGIN AT 9:00 A.M. ON THE CALENDAR DAY IMMEDIATELY PRECEDING ELECTION DAY; TO AMEND SECTION 7-15-470, RELATING TO ABSENTEE BALLOTS OTHER THAN PAPER BALLOTS, SO AS TO MODIFY THE REQUIREMENTS NEEDED TO OBTAIN THE STATE ELECTION COMMISSION CERTIFICATION BEFORE USING A NONPAPER-BASED VOTING MACHINE OR VOTING SYSTEM FOR IN-PERSON ABSENTEE VOTING; TO REQUIRE THE STATE ELECTION COMMISSION TO IMPLEMENT A SOFTWARE UPDATE TO ITS ELECTRONIC VOTING MACHINES TO ALLOW FOR CHALLENGES TO ABSENTEE VOTES CAST USING THE

\\ACTS\635A\HB20.DOCX

Engrossed by
SC Legislative Council
MAY 12 2020

MACHINES IN AN EQUIVALENT MANNER TO CHALLENGES TO ABSENTEE VOTES CAST ON ELECTRONIC VOTING MACHINES IN THE 2018 GENERAL ELECTION; TO AMEND SECTION 7-15-330, RELATING TO THE TIME OF APPLICATION FOR ABSENTEE BALLOTS AND APPLICATIONS IN PERSON, SO AS TO REQUIRE THE BOARD OF VOTER REGISTRATION AND ELECTIONS TO KEEP A RECORD OF THE DATE AND METHOD UPON WHICH THE ABSENTEE BALLOT IS RETURNED; TO AMEND SECTION 7-15-440, RELATING TO THE LIST OF PERSONS ISSUED AND WHO MAY CAST ABSENTEE BALLOTS, SO AS TO CLARIFY THAT THE LIST IS IN ADDITION TO THE INFORMATION PROVIDED PURSUANT TO SECTION 7-15-330; BY ADDING SECTION 7-13-825 SO AS TO PROVIDE THAT THE STATE ELECTION COMMISSION AND EACH COUNTY BOARD OF VOTER REGISTRATION AND ELECTIONS MUST POST THE REQUIREMENTS TO CHALLENGE A BALLOT IN A CONSPICUOUS LOCATION IN THEIR RESPECTIVE OFFICES AND WEBSITES; TO REPEAL CERTAIN SUBSECTIONS OF SECTION 1 OF THE ACT ON DECEMBER 31, 2021; AND TO PROVIDE THAT A QUALIFIED ELECTOR MUST BE PERMITTED TO VOTE BY ABSENTEE BALLOT IN AN ELECTION IF THE QUALIFIED ELECTOR'S PLACE OF RESIDENCE OR POLLING PLACE IS LOCATED IN AN AREA SUBJECT TO A STATE OF EMERGENCY DECLARED BY THE GOVERNOR AND THERE ARE FEWER THAN FORTY-SIX DAYS REMAINING UNTIL THE DATE OF THE ELECTION AND PROVIDE THAT THIS PROVISION EXPIRES ON JULY 1, 2020.

Be it enacted by the General Assembly of the State of South Carolina:

Elections, absentee ballots, examination of absentee ballots

SECTION 1.A. Section 7-13-35 of the 1976 Code is amended to read:

"Section 7-13-35. The authority charged by law with conducting an election must publish two notices of general, municipal, special, and primary elections held in the county in a newspaper of general circulation in the county or municipality, as appropriate. Included in each notice must be a reminder of the last day persons may register to be eligible to vote in the election for which notice is given, notification of the date, time, and location of the hearing on ballots challenged in the

election, a list of the precincts involved in the election, the location of the polling places in each of the precincts, and notification that the process of examining the return-addressed envelopes containing absentee ballots may begin at 9:00 a.m. on the calendar day immediately preceding election day at a place designated in the notice by the authority charged with conducting the election. The first notice must appear not later than sixty days before the election and the second notice must appear not later than two weeks after the first notice.”

B. Section 7-15-420 of the 1976 Code is amended to read:

“Section 7-15-420. (A) The county board of voter registration and elections, municipal election commission, or executive committee of each municipal party in the case of municipal primary elections is responsible for the tabulation and reporting of absentee ballots.

(B) At 9:00 a.m. on the calendar day immediately preceding election day, the managers appointed pursuant to Section 7-5-10, and in the presence of any watchers who have been appointed pursuant to Section 7-13-860, may begin the process of examining the return-addressed envelopes that have been received by the county board of voter registration and elections making certain that each oath has been properly signed and witnessed and includes the address of the witness. All return-addressed envelopes received by the county board of voter registration and elections before the time for closing the polls must be examined in this manner. A ballot may not be counted unless the oath is properly signed and witnessed nor may any ballot be counted which is received by the county board of voter registration and elections after time for closing of the polls. The printed instructions required by Section 7-15-370(2) to be sent each absentee ballot applicant must notify him that his vote will not be counted in either of these events. If a ballot is not challenged, the sealed return-addressed envelope must be opened by the managers, and the enclosed envelope marked ‘Ballot Herein’ removed and placed in a locked box or boxes.

(C) After all return-addressed envelopes have been emptied, but no earlier than 9:00 a.m. on election day, the managers shall remove the ballots contained in the envelopes marked ‘Ballot Herein’, placing each one in the ballot box provided for the applicable contest.

(D) Beginning at 9:00 a.m. on election day, the absentee ballots may be tabulated, including any absentee ballots received on election day before the polls are closed. If any ballot is challenged, the return-addressed envelope must not be opened, but must be put aside and the procedure set forth in Section 7-13-830 must be utilized; but the absentee voter must be given reasonable notice of the challenged ballot.

Results of the tabulation must not be publicly reported until after the polls are closed.”

C. Section 7-15-470 of the 1976 Code is amended to read:

“Section 7-15-470. (A) Notwithstanding the provisions of this chapter, a county board of voter registration and elections may use other methods of voting by absentee ballot instead of by paper ballot. No voting machine or voting system, other than a paper-based system, may be used for in-person absentee voting that has not received written certification from the State Election Commission that:

(1) the voting machine or voting system meets all statutory requirements for use in the State;

(2) the voting machine or voting system can be secured against voting at times other than business hours of the county board of voter registration and elections; and

(3) the results of elections can be held secure from release until the time for counting ballots at any polling place.

(B) The State Election Commission must develop standards and guidelines for these purposes.”

D. The State Election Commission is directed to implement a software update to its electronic voting machines to allow for challenges to absentee votes cast using the machines in an equivalent manner to challenges to absentee votes cast on electronic voting machines in the 2018 General Election.

E. Section 7-15-330 of the 1976 Code is amended to read:

“Section 7-15-330. To vote by absentee ballot, a qualified elector or a member of his immediate family must request an application to vote by absentee ballot in person, by telephone, or by mail from the county board of voter registration and elections, or at an extension office of the board of voter registration and elections as established by the county governing body, for the county of the voter’s residence. A person requesting an application for a qualified elector as the qualified elector’s authorized representative must request an application to vote by absentee ballot in person or by mail only and must himself be a registered voter and must sign an oath to the effect that he fits the statutory definition of a representative. This signed oath must be kept on file with the board of voter registration and elections until the end of the calendar year or until all contests concerning a particular election have been finally determined, whichever is later. A candidate or a

member of a candidate's paid campaign staff, including volunteers reimbursed for time expended on campaign activity, is not allowed to request applications for absentee voting for any person designated in this section unless the person is a member of the immediate family. A request for an application to vote by absentee ballot may be made anytime during the calendar year in which the election in which the qualified elector desires to be permitted to vote by absentee ballot is being held. However, completed applications must be returned to the county board of voter registration and elections in person or by mail before 5:00 p.m. on the fourth day before the day of the election. Applications must be accepted by the county board of voter registration and elections until 5:00 p.m. on the day immediately preceding the election for those who appear in person and are qualified to vote absentee pursuant to Section 7-15-320. A member of the immediate family of a person who is admitted to a hospital as an emergency patient on the day of an election or within a four-day period before the election may obtain an application from the board on the day of an election, complete it, receive the ballot, deliver it personally to the patient who shall vote, and personally carry the ballot back to the board of voter registration and elections. The board of voter registration and elections shall serially number each absentee ballot application form and keep a record book in which must be recorded the number of the form, the name, home address, and absentee mailing address of the person for whom the absentee ballot application form is requested; the name, address, voter registration number, and relationship of the person requesting the form, if other than the applicant; the date upon which the form is requested; the date upon which the form is issued; and the date and method upon which the absentee ballot is returned. This information becomes a public record at 9:00 a.m. on the day immediately preceding the election, except that forms issued for emergency hospital patients must be made public by 9:00 a.m. on the day following an election. A person who violates the provisions of this section is subject to the penalties provided in Section 7-25-170."

F. Section 7-15-440 of the 1976 Code is amended to read:

"Section 7-15-440. The county board of voter registration and elections shall, after each election, prepare a list of all persons to whom absentee ballots were issued and all persons who cast absentee ballots. The list so compiled shall be made available for public inspection upon request. This list is in addition to the information provided pursuant to Section 7-15-330."

G. Article 7, Chapter 13, Title 7 of the 1976 Code is amended by adding:

“Section 7-13-825. The State Election Commission and each county board of voter registration and elections must post the requirements to challenge a ballot pursuant to the provisions of Section 7-13-810 in a conspicuous location in their respective offices and on their respective websites.”

H. The amendments contained in subsections A., B., and C. of this SECTION are repealed on December 31, 2021, and the text of these code sections therefore shall revert back to the language as contained in the South Carolina Code of Laws as of January 23, 2020.

Elections, absentee ballots during the state of emergency, expiring on July 1, 2020

SECTION 2. A. A qualified elector must be permitted to vote by absentee ballot in an election if the qualified elector's place of residence or polling place is located in an area subject to a state of emergency declared by the Governor and there are fewer than forty-six days remaining until the date of the election.

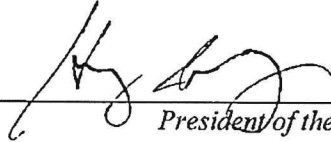
B. This SECTION takes effect upon approval by the Governor and expires on July 1, 2020.

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

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In the Senate House MAY 12 2020

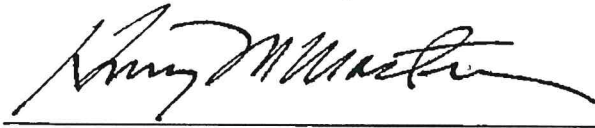


President of the Senate



Speaker of the House of Representatives

Approved the 13th day of May 2020.



Governor

LEGISLATIVE COUNCIL
of the
GENERAL ASSEMBLY OF SOUTH CAROLINA

Ashley Harwell-Beach, Director

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Proofread by *M. Huth* *some*

Engrossed by
SC Legislative Council

MAY 12 2020