



September 8, 2023

*Via U.S. mail and email (exhibits supplied via link in email)*

Howard K. Knapp, Executive Director  
South Carolina State Election Commission  
1122 Lady Street, Suite 500  
Columbia, SC 29201

Dear Director Knapp,

We write on behalf of Black Voters Matter, Amplify Action, and Upstate Action Alliance, as well as persons eligible to register to vote that these organizations represent, April Richardson, Allen Chaney, and others similarly situated, to notify you of concerns we have about South Carolina’s compliance with Section 5 of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20504. These concerns arose following the November 2022 election because of issues with the voter registration status of South Carolinians who updated their registration at the South Carolina Department of Motor Vehicles (“SCDMV”). Specifically, we are concerned that in at least some instances where the SCDMV has submitted voter registration updates, there has been a failure to transmit the updates to the voter registration database or voter rolls, causing confusion on Election Day and resulting in qualified voters being improperly denied the opportunity to vote. We write to request more information and hope to work with you to resolve any outstanding issues.

**I. South Carolina’s Obligations Under Section 5 of the NVRA and South Carolina State Law**

Section 5 of the NVRA requires that the SCDMV provide individuals with an opportunity to register to vote in conjunction with an initial or renewal application for a driver’s license or state-issued identification card (“ID card”). 52 U.S.C. § 20504(a)(1), (d).<sup>1</sup> The NVRA mandates that when an individual applies for or renews a driver’s license, that application must 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). A voter registration application “shall” be included as part of every application for a state driver’s license or ID card. 52 U.S.C. § 20504(c)(1). If an individual is already registered, their driver’s license application or renewal shall “updat[e] any previous voter registration.” 52 U.S.C. § 20504(a)(2).

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<sup>1</sup> Throughout this letter, references to driver’s licenses also include state personal identification cards. *See* 52 U.S.C. § 20502(3) (defining “motor vehicle driver’s license” to “include[] any personal identification document issued by a State motor vehicle authority”).

Additionally, Section 5(d) of the NVRA requires that any request the SCDMV receives to change the address associated with a driver's license or state ID card must serve to automatically update the client's voter registration information unless the client affirmatively opts out. 52 U.S.C. § 20504(d) (noting that “[a]ny change of address form submitted in accordance with State law . . . shall serve as a notification of change of address for voter registration . . . unless the registrant states on the form that the change of address is not for voter registration purposes”). The SCDMV must provide these voter registration services regardless of whether a transaction takes place in person at a 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) (concluding that requirements of Section 5 “apply equally to in-person and remote covered transactions”); U.S. Department of Justice, Civil Rights Division, The National Voter Registration Act of 1993 (NVRA): Questions and Answers, Q4, *available at* <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra> (last visited Jun. 28, 2023) (“[T]o the extent that the State provides for remote applications for driver licenses, driver license renewals, or driver license changes of address, via mail, telephone, or internet or other means, then provision must be made to include the required voter registration opportunity as well.”).

As you are aware, South Carolina law implementing the NVRA names the South Carolina State Election Commission (“SEC”) as the State entity to which DMV voter registration information shall be submitted. Specifically, S.C. Code § 7-3-20 requires that the SEC Executive Director “serve as the chief state election official responsible for implementing and coordinating the state’s responsibilities under the [NVRA],” and “establish and maintain 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 § 7-3-20(D)(14), (16).

S.C. Code § 7-5-320 provides that each SCDMV-initiated voter registration be transmitted to the relevant county board of voter registration within a ten-day (or in some cases, five-day) window. S.C. Code § 7-5-320(E); *see also* 52 U.S.C. § 20504(e)(1), (2). And S.C. Code § 7-5-330 requires county boards of registration to make changes to the voter registration file when they obtain information from a SCDMV transaction. S.C. Code § 7-5-330(F)(3).

## **II. Recent Communication with the SCDMV**

In recent years, we have communicated with the South Carolina Department of Motor Vehicles about compliance with the NVRA. In August of 2021, after learning that the SCDMV only transmitted limited types of address updates received from its customers to election officials in South Carolina, we submitted a memo to SCDMV regarding this clear violation of the NVRA. *See* Ex. 1, at 7; Ex. 2; *see also* 52 U.S.C. § 20504(d). As explained, “any” change of address submitted by a SCDMV customer “shall serve as notification of change of address for voter registration” under the NVRA. After reaching out to the SCDMV, which had already begun considering options to better comply with the NVRA, we had several rounds of communications about this violation. The SCDMV agreed to work through potential solutions, and eventually changed this practice in March of 2022. *See* Ex. 1; Ex. 3.

As the SCDMV explained, in March 2022, it made upgrades to its system to ensure that all address updates for customers are sent to the SEC, unless the customer specifically opted out of that address update being sent to the SEC. *See* Ex. 3; Ex. 4, at 8 (“**Prior to March 2022**, the DMV was erroneously **only** sending address changes to the SEC if the person who completed the address change was a person who registered to vote through the DMV (thus considered a ‘motor voter’). The DMV and SEC agreed that all address changes, regardless of where a person registered to vote, should go to the SEC, and that is the process that has been in place since March 2022.”). This includes updates to the SCDMV’s online, in-person, and mail-in processes, and these updates applied to any customer age 17 or older. Ex. 3. The SCDMV has explained that it sends weekly batch files that include address change information for all SCDMV customers (unless they opt out) in an XML format by SFTP connection to the SEC. Ex. 5, at 1. We have also confirmed this understanding based on records requests sent to your office, the SCDMV, and several county election commissions.<sup>2</sup>

The SCDMV has also explained that the system changes it made in March of 2022 did not change its process for file transfer to the SEC, but rather just expanded the report that it sends to the SEC to include files for all customers with address changes (not just ‘motor voters’). Ex. 5, at 1.

### **III. Voter Registration Problems Affecting the November 2022 Election**

During the November 2022 election, voters across the state reported that their attempts to register to vote or update their registration at the SCDMV were not reflected when they went to vote in person. These voters reported problems at the polls even though they had updated their information at the SCDMV ahead of the voter registration deadline.

For example, April Richardson, an organizer with Black Voters Matter and a Charleston, South Carolina resident, encountered problems on Election Day 2022. After updating her voter registration through the SCDMV in summer 2022, she went to attempt to vote at the polling place for her new address. When she arrived at her polling location, she was told her registration had not been updated. She had to stand in line at the Charleston Board of Elections to update her address and vote, and encountered other voters who faced the same problem. She observed some of these other voters getting out of line after waiting for too long. Allen Chaney, a Greenville resident and Legal Director of the ACLU of South Carolina, encountered similar issues on Election Day 2022. He had moved within Greenville County and updated his voter registration address at a SCDMV office in summer 2022. Though he was ultimately able to vote, when he went to his polling place in November, he was also told that his registration address had not been updated; poll workers told him that the same thing had happened to several other voters that day.

There are many similar reports from voters all over the state. For example, one voter in Colleton County moved to a new home within the county and updated her

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<sup>2</sup> These counties include Charleston, Greenville, Horry, Richland, and Spartanburg.

address online with the SCDMV well in advance of the election. On Election Day, when she arrived at her polling place to vote, she was told her address was not updated and she was only able to vote via provisional ballot. Because of reports that a hurricane was coming, she did not want to have to return later in the week to cure her provisional ballot, so she went to the county election office to update her address and vote that day. At the county election office, she was told that there had been many issues with the proper transmission of registration information. Though this voter was ultimately able to vote, she knows other people who faced similar obstacles and who did not get to vote.

A long-time voter in Richland County who updated his address in person at the SCDMV when he moved was sent from his new polling place to his old polling place, and back to his new polling place where he ultimately had to cast a provisional ballot. After updating his address at the Greer SCDMV office months before Election Day, a Spartanburg County voter was told at his polling location that his address was not updated, and had to stand in line with around 200 other people facing the same issue in order to remedy the problem. A Horry County voter who moved to a new home was able to cast a regular ballot but her husband was forced to cast a provisional ballot despite the fact that both had updated their addresses online with the SCDMV.

The common element in all this confusion, inconsistency, and improper denials of voting is individual voters who timely updated their addresses through the SCDMV in advance of Election Day but were told at the polls that they were not properly registered.

#### **IV. Issues with the VREMS System**

After investigating the reports of problems with voter registration updates throughout South Carolina during the November 2022 election, we are concerned about breakdowns in the process of transmitting SCDMV voter registration updates to county voter registration rolls.

As noted above, the SCDMV's policy is to send weekly updates of voter registration transactions to the SEC. *See* Ex. 6, at 6; Ex. 5, at 1. These updates include the list of first-time registrants and those registrants' addresses, dates of birth, and/or social security numbers. Ex. 6, at 6. The updates also include address changes for other registered voters. These records are automatically transmitted to the Voter Registration and Election Management System ("VREMS"), which is maintained by the SEC. *See* Ex. 7, at 13. And as previously noted, in March 2022, SCDMV upgraded its own system to expand the data that it sends to the SEC to include files for all customers with address changes (not just 'motor voters'). Ex. 5, at 1.

We understand that the SEC has updated VREMS in recent years, including in approximately March 2021, April 2021, May 2021, May 2022, September 2022, and January 2023, to streamline the process for updating voter registration information. *See* Ex. 8. The SEC also issued other instructions to county election officials through its ElectionNet postings throughout this time period. *See* Ex. 8.

Public records indicate a breakdown in the VREMS process and confusion among counties, which appear to have lacked sufficient guidance on how to process the updated addresses included in the VREMS, particularly before September 2022. *See, e.g.*, Ex. 9, at 77 (showing that, as of September 13, 2022, the SEC still “ha[d] not given direction on what the counties should do with these [SCDMV address change] records”), 81-82 (as of September 15, 2022, county officials were still asking SEC whether to “process the DMV address change queue without having signatures,” and SEC acknowledging the “delay” in providing “information for the new DMV queue”); 87-93 (discussing posting instructions to SEC ElectionNet around September 19, 2022 and noting that “many counties are confused”); *see also* Ex. 8, at 13 (posting instructions to SEC ElectionNet on September 19, 2022 regarding how to process a “second file [from SCDMV] with address changes only”).

There were extensive reports about the confusion resulting from these failures throughout South Carolina. *See, e.g.*, Ex. 4, at 7-9 (showing a complaint sent by State Senator Michael Johnson on behalf of a York County poll watcher about “so many voters that had issues signing in to vote on election day due to address differences”). In Horry County, voters expressed concern that their addresses had not been updated after requesting an address change or voter registration at the SCDMV. *See* Ex. 10 (voter given additional change of address form to complete after address update through SCDMV failed to work). In Charleston County, election officials expressed confusion about SCDMV records that appeared to be potential duplicates of records from other agencies (which may have been due to “a bug in VREMS” that “causes one window’s filters to affect another’s if you have Motor Voters open in both, making it look like duplicates”), as well as earlier issues with “a lot of the signatures not coming over as expected” and “a sporadic issue with retrieving the signatures.” *See* Ex. 11, at 16; Ex. 4 at 16. Additionally, an inquiry was sent from Charleston County to the SEC about “erroneous DMV address update” letters that could not be sent to voters until their addresses were “reverted in VREMS,” an action that the vendor had yet to complete. *See* Ex. 11, at 5. It also appears that there were issues with VREMS’s ability to process updated address information which does not specify a county. Ex. 4, at 57-62.

These are a small sample of some of the issues or potential issues that have surfaced from initial reports and records requests. We do not know which of these issues—or combination of these issues—may have caused the problems voters experienced on Election Day in November 2022. We hope this letter can open the conversation to better understand how these problems occurred and what can be done to resolve them.

## **V. Follow-Up Questions**

Pursuant to Section 8 of the National Voter Registration Act, 52 U.S.C. § 20507(i), and in the interest of facilitating resolution of any outstanding issues and potential future issues with SCDMV voter registration updates, we have included follow-up questions below:

1. What is the standard process for receiving and processing voter registration information from the SCDMV and inputting that information into VREMS?
2. What changes, if any, were made in 2022 to the content or the transmission process of the data that the SCDMV sent to the SEC? What changes, if any, were made since 2022?
3. What changes or updates, if any, were made to VREMS in 2022? What changes or updates, if any, were made since 2022?
4. When and how did the SEC become aware that there were issues with processing voter registration information from SCDMV transactions?
5. Was the SEC aware that some counties were not processing all voter registration information from the SCDMV in VREMS? And if so, when did the SEC learn about this delay or lack of action?
6. What efforts did the SEC take to rectify these issues with processing voter registration information from SCDMV in the time between becoming aware of the issues and the November 2022 election?
7. What steps has the SEC taken to ensure that any voter registration updates that were not processed in time for the November 2022 election are or will be retroactively addressed?
8. What steps has the SEC taken to ensure that these issues with processing voter registration information will not occur again in this or future election cycles?

We respectfully request that your office respond to our questions by October 20, 2023.

## **VI. Conclusion**

We hope to work with your office to quickly resolve this issue with sufficient time before the November 2023 elections. We note that this letter serves as a notice of violation under the NVRA, pursuant to 52 U.S.C. § 20510(b). The NVRA provides a 90-day deadline by which you must correct the issue or provide a clear plan to do so—in this case, by December 7, 2023. We look forward to working with you to ensure these voter registration issues are successfully addressed.

Sincerely,

/s/ Sarah Brannon

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