

October 31, 2024

Mr. Howard M. Knapp
Executive Director
South Carolina State Election Commission
P.O. Box 5987
Columbia, SC 29250-5987
elections@elections.sc.gov

RE: First Amendment Protections for LDF Volunteers During Elections

Dear Mr. Knapp,

The NAACP Legal Defense and Educational Fund, Inc. (“LDF¹”) writes to urge you to ensure that our poll observer’s First Amendment rights are not infringed upon as they engage in non-partisan election protection efforts across South Carolina. During recent elections, LDF, alongside our local, state, and national partners in our South Carolina Voting Rights Coalition have coordinated nonpartisan civic engagement and Election Protection programming across South Carolina. Through our network of volunteers and reports to the 866-OUR-VOTE nonpartisan Election Protection hotline, we monitor polling locations and field inquiries regarding voting rights and reports of issues at polling sites. Our election volunteers wear non-partisan LDF apparel pictured below for ease of identification to election officials and voters.



¹ Since its founding in 1940, LDF as a 501(c)3 non-partisan organization has worked to enforce and promote laws and policies that prohibit voter discrimination, intimidation, and suppression and increase access to the electoral process.

During early voting, we have received a concerning report that poll workers in Jasper County, authorized by the Election Director, have told our volunteers that they cannot enter polling locations because the phrase “Black Voters on the Rise,” which is on the sleeve, is partisan and violates the electioneering statute because, according to the Election Director, the inclusion of the words “Black” and “Voter” together constituted encouraging individuals as to how to vote. The Election Director also expressed concerns that the shirts may be offensive to other voters inside the polling location. The Election Director advised our volunteers that they could stand right outside of the polling location but could not enter the building.

This non-partisan expression does not violate South Carolina’s electioneering statute and is clearly protected speech under the First Amendment. We request that you immediately instruct poll workers and local election officials that non-partisan messages, and LDF volunteers’ apparel in particular, do not constitute campaign materials or involve electioneering and therefore provide no basis for excluding individuals from polling locations. South Carolina’s electioneering statute prohibits “distribut[ion of] any type of campaign literature”; “place[ment of] any political posters”; or exhibition of “political literature and displays” within five hundred feet of the entrance to a polling place.² Similarly, South Carolina’s Poll Manager Handbook provides that “it is unlawful for any person to distribute or display *campaign material* within 500 feet of any entrance used by the voters to enter a polling place.”³ Campaign material is defined as “any written or visual material that has the intention or effect of supporting or opposing any candidate, party, or question in the current election.”⁴ The Supreme Court has provided further guidance on this issue, stating that “in light of the special purpose of the polling place itself, [states] may choose to prohibit certain apparel there because of the message it conveys, so that voters may focus on the important decisions immediately at hand.”⁵ However, the First Amendment requires that “the state must draw a reasonable line” and “articulate some sensible basis for distinguishing what may come in from what must stay out.”⁶

The phrase “Black Voters on the Rise” does not violate South Carolina’s electioneering statute. The phrase “Black Voters on the Rise” is about voters and not candidates. Any assumption that all Black voters support a certain candidate or

² S.C. Code Ann. § 7-25-18(A).

³ South Carolina Election Commission, *Poll Managers Handbook September 2024 Edition*, p. 23, available at https://scvotes.gov/wp-content/uploads/2024/10/sccec_11854_24_2024-Poll-Managers-Handbook_Web_06.pdf (emphasis added).

⁴ *Id.*

⁵ *Minn. Voters Alliance v. Mansky*, 138 S. Ct. 1876, 1888 (2018).

⁶ *Id.*

that the mention of race demonstrates an attempt to advocate for a certain candidate relies on unfounded racial stereotypes. In addition, the fact that the Election Director allowed our volunteers to stand right outside of the polling site versus outside of the 500-foot zone belies the fact that there was a good faith belief that our volunteers were violating the South Carolina electioneering statute.

Please issue guidance to all county election officials and in particular, Jasper County, that our volunteers cannot be excluded on the basis of wearing “Black Voters on the Rise” apparel as soon as possible.

Should you have any questions or would like clarification of my request, please contact me at the number or email address below. Thank you for your assistance on this matter.

Sincerely,

/s/ Antonio L. Ingram II

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