UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

DISABILITY RIGHTS LOUISIANA	*	CIVIL ACTION NO.
	*	3:24-cv-554-JWD-SDJ
versus	*	
	*	JUDGE DeGRAVELLES
NANCY LANDRY, in her official capacity as Secretary of State of the State of Louisiana; and ELIZABETH MURRILL, in her official capacity as Attorney General of the State of Louisiana	*	MAG. JUDGE JOHNSON

MOTION FOR PRELIMINARY INJUNCTION

NOW COMES Plaintiff, Disability Rights Louisiana, which files this *Motion for Preliminary Injunction* pursuant to Federal Rule of Civil Procedure 65(a).

Plaintiff requests preliminary injunctive and declaratory relief against Defendants in regard to Louisiana Act No. 302 (formerly SB 155), Act No. 317 (formerly SB 218), Act No. 380 (formerly HB 476), Act No. 712 (formerly HB 581), and R.S. 18:1306(E)(2)(a). Absent relief from this Court, Defendants' enforcement of these statutes will soon deprive Louisiana voters with disabilities of their right to choose any person they want to assist them with voting, in contravention of federal law and Fifth Circuit precedent. Act No. 712 (formerly HB 581) and Act No. 302 (formerly SB 155), and R.S. 18:1306(E)(2)(a) violate the text of the Voting Rights Act by prohibiting anyone from serving as a witness on more than one ballot or assisting more than one individual with their absentee ballot and criminalizes the same. Act No. 380 (formerly HB 476) and Act No. 317 (formerly SB 218) violates the text of the Voting Rights Act by prohibiting anyone from assisting with delivery of more than one absentee ballot and criminalizes the same.

In support of its request for preliminary injunction, Plaintiff has prepared the attached memorandum which details the facts of the case, sets forth the law, and provides legal analysis justifying the entry of preliminary injunctive and declaratory relief. Absent preliminary injunctive

and declaratory relief, the constituents of Plaintiff are likely to suffer irreparable harm. In contrast, if preliminary relief is entered in favor of Plaintiff, Defendant will not be harmed and, instead, the status quo will remain in effect.

In terms of relief, Plaintiff request the entry of the following relief:

(1) That this Court declare that Louisiana Act No. 302, Act No. 317, Act No. 380, Act No. 712, and R.S. 18:1306(E)(2)(a) violate Section 208 of the Voting Rights Act, 52 U.S.C. § 10508, and the Supremacy Clause, and are thereby preempted to the extent of their conflict with federal law;

(2) Preliminarily enjoin Defendants from implementing or enforcing Louisiana Act No. 302, Act No. 317, Act No. 380, Act No. 712, and R.S. 18:1306(E)(2)(a) to the extent they conflict with federal law;

(3) Preliminarily enjoin Defendants from issuing any instructions or guidance directing any state, county, or local officials to implement or enforce Louisiana Act No. 302, Act No. 317, Act No. 380, Act No. 712, and R.S. 18:1306(E)(2)(a) in a manner that conflicts with federal law; and

(4) Order Defendants to rescind any instructions or communications—whether public facing or otherwise—indicating that voters may not seek assistance from any person of their choice with the completion and delivery of absentee ballots by mail, and order Defendants to issue corrective instructions or communications that voters who require assistance due to blindness, disability, or inability to read or write may continue to seek assistance from any person of their choice, except for the exclusions defined under Section 208 of the Voting Rights Act.

Accordingly, for the good cause shown in the attached memorandum, and as will be shown at the preliminary injunction hearing, Plaintiff respectfully requests that preliminary injunctive and declaratory relief be granted in its favor against Defendants.

Respectfully Submitted,

By:/s/ *Melanie Bray*

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been or will be delivered to the Defendants on this July 13, 2024, by (1) ECF filing to defendant Nancy Landry; and (2) as to Elizabet Murrill, mailing a copy of the pleading address where the Defendant was served and emailing a copy to an attorney at the Attorney General's Office via email.

By: /s/ *Melanie Bray*

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as Attorney General of the State of Louisiana	*	

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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Absent relief from this Court, new Louisiana statutes will go into effect that unlawfully prevent voters with disabilities from receiving assistance from persons of their choice in the upcoming November election. The newly enacted laws will disenfranchise some of Louisiana's most vulnerable citizens.

Under Section 208 of the Voting Rights Act, 52 U.S.C. § 10508, and binding Fifth Circuit case law, voters who require assistance with voting due to physical disabilities, blindness, or language barriers have a right to seek assistance from any person they want, with only specific exceptions: that the assistor may not be the voter's "employer or agent of that employer or officer or agent of [their] union." *OCA-Greater Houston v. Texas*, 867 F.3d 604, 614-15 (5th Cir. 2017).

Plaintiff brings this case to challenge portions of these new statutes: Louisiana Act No. 302 (formerly SB 155), Act No. 317 (formerly SB 218), Act No. 380 (formerly HB 476), and Act No. 712 (formerly HB 581) ("Statutes at Issue").[1] The Statutes at Issue will soon deprive voters of their right to choose any person they want to assist them with voting, in contravention of federal law and Fifth Circuit precedent. Act No. 712 (formerly HB 581) and Act No. 302 (formerly SB 155), together with R.S. 18:1306(E)(2)(a), violate the text of the Voting Rights Act by prohibiting anyone from serving as a witness on more than one ballot or assisting more than one individual with their absentee ballot and criminalizing the same. Act No. 380 (formerly HB 476) and Act No. 317 (formerly SB 218) violate the text of the Voting Rights Act by prohibiting anyone from assisting with delivery of more than one absentee ballot and criminalizing the same.

[1] Also challenged in this action is R.S. 18:1306(E)(2)(a), which emanated from 2020 Louisiana Act 210 (formerly SB 75). The challenged language from R.S. 18:1306(E)(2)(a) did not have any teeth until Louisiana Act No. 302 (formerly SB 155) and Louisiana Act No. 712 (formerly HB 581) were recently passed.

The ability to vote absentee by mail is critical to Louisiana voters experiencing a condition that prevents them from voting in person. Many voters with disabilities require assistance with the return of their completed ballot, which must be physically mailed to election officials in order to be counted. Under Section 208, voters who require assistance due to disability, blindness, or inability to read or write are entitled to entrust their ballot to the person of their choice—and the person they trust might not be a family member or anyone else that the State might choose for them. It may be a person who also assists another voter. By criminalizing efforts to assist voters by serving as a witness, or aiding in the return of their absentee ballots, the Statutes at Issue violate the Voting Rights Act as they restrict the right of individuals with disabilities to receive assistance from any person of their choosing.

Moreover, some Louisiana voters who need assistance live alone, or have no willing or able family or caregiver to deliver a ballot. Others live in institutions, where staff are responsible for helping them return their mail, including absentee ballots. These voters will be limited in their choice in direct conflict with Section 208. Therefore, the Statutes at Issue are preempted under the Supremacy Clause of the U.S. Constitution. *Gade v. Nat'l. Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992).

Plaintiff represents its constituents, who include Louisiana voters with disabilities in need of assistance during voting. In this action, at this preliminary stage, Plaintiff has identified two named individuals who will personally be negatively impacted by the Statutes at Issue, Ms. Ashley Volion and Mr. Adrian Bickham. In addition to these individuals, Plaintiff has also identified two institutional facilities where the residents are reasonably anticipated to be harmed by the Statutes at Issue, namely, the residents at the Eastern Louisiana Mental Health System and the residents at the Chateau de Notre Dame Community Care Center in New Orleans, Louisiana. Absent

injunctive relief, it is reasonably foreseeable the exemplar constituents—and numerous individuals in a similar position—will be harmed by the Statutes at Issue.

Disability Rights Louisiana ("DRLA") is Louisiana's Protection and Advocacy agency ("P&A") and is authorized to pursue legal action on behalf of the rights of individuals with disabilities in the State. 42 U.S.C. § 15043(a)(2)(A)(i). This includes all Louisiana voters with disabilities who rely on Section 208's guarantee that it is their choice who provides them assistance.[2] With an election in November, Louisiana voters with disabilities, like other voters, must be able to fully exercise their right to vote. DRLA's constituents will be denied their right to designate someone of their choice to assist them—and are at risk of being disenfranchised.

Meanwhile, Defendants have no legitimate interest in enforcing impermissible law. The Statutes at Issue directly frustrates the purpose and goals of Section 208 of the Voting Rights Act and/or the U.S. Constitution and are therefore preempted by federal law. The public interest also favors allowing Louisiana residents to vote using an option they have relied on for decades, and an injunction maintaining the current status quo would not disrupt election administration. In fact, enjoining the Statutes at Issue would have no impact on election administration; enjoining their enforcement would simply maintain the status quo. All relevant considerations therefore support the issuance of a preliminary injunction, and Plaintiff respectfully requests that its motion be granted.

FACTS

Plaintiff Disability Rights Louisiana ("DRLA") is a non-profit corporation organized under the laws of the State of Louisiana. DRLA is a protection and advocacy agency ("P&A"), as that term is defined under the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C.

[2] *See* Ex. "A," *sworn statement of Thompson*, ¶ 13.

§ 15041 *et seq.*, the Protection and Advocacy for Individuals with Mental Illness Act of 1986, 42 U.S.C. § 10801 *et seq.*, and the Protection and Advocacy of Individual Rights Act, 29 U.S.C. § 794e *et seq.*[3] DRLA maintains offices in New Orleans and Lafayette, but serves clients statewide.[4]

As the P&A for Louisiana, DRLA is specifically authorized to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with disabilities. 42 U.S.C. §15043(a)(2)(A)(i). All Louisiana voters with disabilities are constituents of DRLA.[5] DRLA is accountable to all members of the disability community and is authorized under federal law to represent the interests of all Louisiana citizens with disabilities.[6] DRLA operates under the direction of a board of directors who oversees its goals and priorities in fulfilling its mandate.[7]

Protecting the voting rights of individuals with disabilities is germane to DRLA's purpose and mission.[8] DRLA effectuates this mission by assisting Louisiana voters with the steps of the voting process, from voter registration to monitoring polling accessibility.[9] DRLA has and continues to operate a voting hotline where those who have trouble voting due to a disability may call and obtain assistance.[10]

Defendant Nancy Landry, sued in her official capacity, is the Secretary of State of Louisiana. Secretary Landry is the chief election official for Louisiana. La. Const., art. 4, Sect. 7. Secretary Landry is obligated to "prepare and certify the ballots for all elections, promulgate all

[3] *See* Ex. "A," ¶ 2.
[4] *See* Ex. "A," ¶ 5.
[5] *See* Ex. "A" ¶ 13.
[6] *See* Ex. "A" ¶ 2.
[7] *See* Ex. "A" ¶ 14.
[8] *See* Ex. "A" ¶ 15.
[9] *See* Ex. "A" ¶ 16.
[10] *See* Ex. "A" ¶ 16.

election returns, and administer the election laws, except those relating to voter registration and custody of voting machines." *Id.*

Defendant Elizabeth Murrill, sued in her official capacity, is the Louisiana Attorney General. The responsibilities of the Louisiana Attorney General's Office include investigation of violations of criminal laws, prosecution of criminal cases, providing assistance to district attorneys in criminal cases, and maintaining "integrity in government[.]"[11] Defendant Murrill is reasonably expected to enforce the criminal statutes at issue and prosecute individuals who run afoul of the Statutes at Issue while assisting individuals with disabilities.

In Louisiana—a state of more than 4.5 million citizens—a mere three instances of election fraud have been identified since 2016 (an eight-year period).[12] There is no indication that Louisiana law enforcement has failed to actively guard Louisiana elections or investigate allegations of fraud. Elections in Louisiana are fair and free.

Despite the absence of a problem, in 2023 and 2024, in advance of the upcoming 2024 presidential election, the Louisiana legislature passed, and the governor signed, multiple bills that amount to the criminalization of the provision of assistance or accommodations to voters with disabilities. The Statutes at Issue facially violate the Voting Rights Act and threaten to make criminals of the caretakers, nurses, doctors, or others who assist individuals with disabilities and the elderly.

An estimated one in three adults in Louisiana, over 1,165,577 people, have a disability.[13] In general, people with disabilities disproportionately rely upon absentee voting

[11] https://www.doa.la.gov/media/sj2f3us0/04b_office_of_the_attorney_general.pdf (last accessed 2024/6/26); see also, La. R.S. 36:704.
[12] https://lailluminator.com/2024/03/31/absentee-ballot/ (last accessed 2024/6/27)
[13] https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/louisiana.html (last accessed 2024/7/1)

because of difficulties with mobility, limited access to transportation, risks associated with in-person voting, accessibility barriers at polling places, or residency status in an institution.[14]

Many Louisiana voters with disabilities rely on the ability to vote absentee by mail to participate in elections. In the most recent Louisiana gubernatorial contest in October 2023, over 95,000 Louisiana voters voted absentee by mail.[15] This number includes many Louisiana voters with disabilities. Some Louisiana voters must vote absentee in order to participate in an election at all.[16] These voters include, but are not limited to, voters with disabilities who reside in nursing homes, hospitals, or another congregate setting and who are unable to travel to a polling place on election day or for early voting.[17] Some voters with mobility impairments may also have difficulty physically accessing polling places and may choose to vote absentee by mail.[18]

Louisiana voters with a disability may need assistance from another person to submit an application for an absentee ballot, to complete the absentee ballot, or to return an absentee ballot to the United States Postal Service or parish registrar.[19]

A. The Statutes at Issue Will Negatively Impact Individuals with Disabilities That Reside at Private Residences.

One of the constituents of Disability Rights Louisiana who will be affected by the Statutes at Issue is Ashley Volion. Ms. Volion is an individual with a disability who lives in LaPlace,

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[14] *See* Danielle Root & Mia Ives-Rublee, *Enhancing Accessibility in U.S. Elections*, Ctr. for Am. Progress, (July 2021), https://search.issuelab.org/resource/enhancing-accessibility-in-u-s-elections.html (last visited 2024/7/1).

[15] https://electionstatistics.sos.la.gov/Data/Early_Voting_Statistics/statewide/2023_1014_StatewideStats.pdf (last visited 2024/6/26)

[16] *See* Ex. "A," ¶ 17.

[17] *See* Ex. "A," ¶ 17.

[18] *See* Ex. "A," ¶ 17.

[19] *See* Ex. "A," ¶ 18.

Louisiana in St. John the Baptist Parish.[20] Ms. Volion's immediate family members, who are her mother, father, brother and sister, all live in Lafitte, Louisiana, in Jefferson Parish.[21]

Ms. Volion has been a registered voter in the State of Louisiana since she was 18 years old.[22] Through her work with Disability Rights Louisiana, Ms. Volion leads the accessibility division for the voting rights coalition.[23] Ms. Volion works the phone lines from the start of voting day to the end of voting day.[24] Because of this, Ms. Volion is unable to vote on election day.[25]

In addition to work obligations, another reason Ms. Volion needs to vote absentee is the risk that she will not be able to visit her polling location on Election Day.[26] Ms. Volion has a power wheelchair, and if there is inclement weather, she cannot have her wheelchair exposed to the rain.[27] If her attendants are sick and unable to drive her to her polling site, she cannot take herself.[28] Ms. Volion lives in an area that does not have reliable public transportation.[29] Absentee ballots allow Ms. Volion to participate in the voting process in a way that is accessible and works for her circumstances.[30]

Ms. Volion applied to vote via absentee ballot during the Covid-19 pandemic and she estimates that she has voted via absentee ballot six times since she applied.[31] When Ms. Volion has voted via absentee ballot, she would receive a voter link via email approximately three weeks prior

[20] *See* Ex. "B," *sworn statement of Ms. Volion*, ¶¶ 1-2.
[21] *See* Ex. "B," ¶ 3.
[22] *See* Ex. "B," ¶ 4.
[23] *See* Ex. "B," ¶ 12.
[24] *See* Ex. "B," ¶ 12.
[25] *See* Ex. "B," ¶ 12.
[26] *See* Ex. "B," ¶ 13.
[27] *See* Ex. "B," ¶ 13.
[28] *See* Ex. "B," ¶ 13.
[29] *See* Ex. "B," ¶ 13.
[30] *See* Ex. "B," ¶ 13.
[31] *See* Ex. "B," ¶ 5.

to the election by the office of the registrar of voters.[32] The voter link would bring Ms. Volion to the actual ballot. Ms. Volion would make her choices on the ballot electronically.[33]

Ms. Volion would then print out the ballot and have one of her personal care attendants ("PCA") sign as a witness.[34] Ms. Volion's would then put the ballot into an envelope, address and seal it.[35] Ms. Volion's PCA would drive her to the post office.[36] Ms. Volion's PCA would physically place the ballot into the outgoing mailbox inside of the physical post office building.[37]

Ms. Volion relies on her PCA to bring the mail into the post office because of the barriers present to physically access the building and then access the location where mail outgoing mail is deposited.[38] Ms. Volion's immediate family members all live approximately an hour or more away and have full-time jobs and obligations.[39] Ms. Volion's parents are elderly and have disabilities themselves. Ms. Volion has personal care attendants through the New Opportunities Waiver 24 hours a day, 7 days a week that provides her the assistance that enables her to live in the community.[40]

If the Statutes at Issue take effect as written, Ms. Volion fears that she will be restricted in who will be able to assist her with her absentee ballot.[41] Ms. Volion only has two PCAs.[42] One of her two PCAs has more than one client and may be assisting other clients with their absentee

[32] *See* Ex. "B," ¶ 6.
[33] *See* Ex. "B," ¶ 6.
[34] *See* Ex. "B," ¶ 6.
[35] *See* Ex. "B," ¶ 7.
[36] *See* Ex. "B," ¶ 8.
[37] *See* Ex. "B," ¶ 9.
[38] *See* Ex. "B," ¶ 9.
[39] *See* Ex. "B," ¶ 10.
[40] *See* Ex. "B," ¶ 10.
[41] *See* Ex. "B," ¶ 11.
[42] *See* Ex. "B," ¶ 11.

ballots.[43] For the other PCA, Ms. Volion does not know how many other individuals said PCA may serve as a witness for or otherwise provide assistance.[44]

If Ms. Volion asks said PCA to witness the absentee ballot, it could put the PCA at risk of criminal charges.[45] The Statutes at Issue, as written, would not allow Ms. Volion to vote in the way that she needs to or to receive assistance from a person of her choice.[46] Likewise, Ms. Volion does not know if her PCAs will have collected and walked more than one absentee ballot into a post office or other collection location.[47] The Statutes at Issue, as written, could restrict Ms. Volion's ability to vote in the future. If Ms. Volion is unable to receive assistance from a person of her choice, she may not be able to have anyone to assist her with submitting her absentee ballot.[48] Ms. Volion does not wish to put any of her PCAs at risk of criminal charges.[49] If one of her PCAs are unable to assist her, Ms. Volion is concerned whether she may not be able to vote at all.[50]

If one of Ms. Volion's PCAs did face criminal charges due to a violation of the Statutes at Issue with a possibility of jail time, it would put Ms. Volion's health and safety at risk by not having a personal care attendant available for her care.[51] Ms. Volion would then have to decide between her right to vote and her right to receive necessary medical care to keep her safe and live independently in the community.[52]

[43] *See* Ex. "B," ¶ 11.
[44] *See* Ex. "B," ¶ 11.
[45] *See* Ex. "B," ¶ 11.
[46] *See* Ex. "B," ¶ 11.
[47] *See* Ex. "B," ¶ 11.
[48] *See* Ex. "B," ¶ 14.
[49] *See* Ex. "B," ¶ 14.
[50] *See* Ex. "B," ¶ 14.
[51] *See* Ex. "B," ¶ 15.
[52] *See* Ex. "B," ¶15.

Another constituent of DRLA that will be negatively impacted by the Statutes at Issue is Mr. Adrian Bickham, an individual with a disability with limited use of his hands.[53] Mr. Bickham relies entirely on his PCA to assist him with day-to-day activities, including completing his absentee ballot.[54] Mr. Bickham is a registered voter and has voted via absentee ballot in the past and intends to utilize that option again in the future.[55]

Mr. Bickham's immediate family members are not a reliable option to assist him with voting because they are elderly or have their own lives.[56] Mr. Bickham is unable to rely on them to assist him with his voting needs.[57] When Mr. Bickham has voted via absentee ballot, his PCA has assisted him in every step of the process.[58] The PCA will obtain the ballot for Mr. Bickham and he will indicate what selections he wants to make.[59] Mr. Bickham's PCA will finalize the ballot for him.[60]

If Mr. Bickham needs to sign paperwork, he can either make a mark himself or his PCA will write "Verbal Authorization Given" for the signature and will sign as a witness.[61] Mr. Bickham's PCA would then put it into an envelope, address and seal it before taking it to the post office to be mailed.[62] Mr. Bickham's PCA has other clients and Mr. Bickham has no way of knowing if they assist other clients with voting activities.[63] If the voting laws take effect as written, Mr. Bickham could be restricted in who is able to assist him with his absentee ballot.[64] If

[53] *See* Ex. "C," *sworn statement of Bickham*, ¶¶ 1, 4.
[54] *See* Ex. "C," ¶ 4.
[55] *See* Ex. "C," ¶ 2.
[56] *See* Ex. "C," ¶ 3.
[57] *See* Ex. "C," ¶ 3.
[58] *See* Ex. "C," ¶ 5.
[59] *See* Ex. "C," ¶ 5.
[60] *See* Ex. "C," ¶ 5.
[61] *See* Ex. "C," ¶ 6.
[62] *See* Ex. "C," ¶ 7.
[63] *See* Ex. "C," ¶ 8.
[64] *See* Ex. "C," ¶ 9.

Mr. Bickham's PCA assists another client, the PCA may not be able to assist Mr. Bickham.[65] If Mr. Bickham asks his PCA to assist him, it could put his PCA at risk of criminal charges in the future.[66] The new laws, as written, would not allow Mr. Bickham to vote in a way that he needs to or to receive assistance from a person of his choice.[67]

Mr. Bickham does not typically vote in person because of the accessibility barriers to doing so.[68] There are commonly accessibility issues for Mr. Bickham to get into the polling place, for Mr. Bickham to access the voting booth, and to be able to have Mr. Bickham's PCA physically manipulate the voting machine according to how he wants to vote.[69]

By absentee voting, Mr. Bickham can focus his efforts and time on the substance of the questions before him instead of overcoming the challenges of reaching the polling place.[70] By voting absentee, Mr. Bickham is not rushed in the way that he would feel if he was inside the polling place, behind other potential voters, and attempting to overcome his physical limitations.[71]

The Statutes at Issue, as written, could restrict Mr. Bickham's ability to vote in upcoming and imminent elections.[72] If Mr. Bickham is unable to receive assistance from a person of his choice, he may not be able to have anyone to assist him with submitting his absentee ballot.[73] Mr. Bickham could not put his PCA at risk of criminal charges [74] Mr. Bickham is concerned that if his PCA is unable to assist him, he would not be able to vote at all.[75]

[65] *See* Ex. "C," ¶ 9.
[66] *See* Ex. "C," ¶ 9.
[67] *See* Ex. "C," ¶ 9.
[68] *See* Ex. "C," ¶ 10.
[69] *See* Ex. "C," ¶ 10.
[70] *See* Ex. "C," ¶ 11.
[71] *See* Ex. "C," ¶ 11.
[72] *See* Ex. "C," ¶ 12.
[73] *See* Ex. "C," ¶ 12.
[74] *See* Ex. "C," ¶ 12.
[75] *See* Ex. "C," ¶ 12.

If any of his PCAs did face criminal charges due to a violation of these laws with a possibility of jail time, it would put his health and safety at risk by not having an attendant available for his care.[76] The decision would be between his right to vote and his right to receive necessary care to keep him safe and live independently in the community.[77]

B. The Statutes at Issues Will Negatively Impact Individuals Residing in Congregate Settings.

Likewise, the Statutes at Issue will negatively impact nursing home residents. Ms. Antoinette Lloyd is the Activities Director at the Chateau de Notre Dame Community Care Center in New Orleans, Louisiana.[78] (hereinafter "Chateau") Ms. Lloyd's job responsibilities include assisting residents with voting.[79] The Chateau provides long term care to individuals who are no longer able to live in the community, and it also provides rehabilitation services to individuals who are unable to live at home but are attempting to build strength and ability to return home.[80] Whether at the Chateau due to their need for long term care or because of an impairment that might be overcome through rehabilitation, all of the residents of Chateau are individuals with disabilities under the Americans with Disabilities Act. *See* 28 U.S.C. § 12102(1)-(2) (explaining that disability means a physical or mental impairment that substantially limits one or more major life activities of such individual). The Activities Director of Chateau provides voter registration forms on site for newly arrived residents.[81]

[76] *See* Ex. "C," ¶ 13.
[77] *See* Ex. "C," ¶ 13.
[78] *See* Ex. "D," *sworn statement of Lloyd*, ¶¶ 1-2.
[79] *See* Ex. "D," ¶ 3.
[80] *See* Ex. "G," p.2 (highlighted section on page two from Chateau's website dated July 16, 2024) (highlighting added by counsel).
[81] *See* Ex. "D," ¶ 4.

The Activities Director of Chateau maintains a registry of residents who vote in person and by mail-in ballot.[82] For those residents who vote in person, the Activities Director assists with getting them to their polling place.[83] For those residents who vote by mail-in ballot, the Activities Director will often assist the residents in requesting, completing, and submitting mail in ballots.[84] Often, a representative from the registrar of the voters has arrived at the Chateau to assist with the voting process.[85] When the register from the voter arrives, the Activities Director will collect the absentee ballots and hand them together to the representative from the register of the voters.[86]

When a representative from the registrar of the voters does not come to the Chateau, the Activities Director's practice has been to collect the absentee ballots, in accordance with the registry, and leave them with the receptionist, who will then hand the ballots over to a U.S. postal employee.[87] As such, at each nursing home where mail is collected for delivery, one employee will naturally have to handle multiple absentee ballots. The Activities Director of the Chateau will be significantly restricted as a result of the Statutes at Issue.[88]

Unless the Statutes at Issue are enjoined by this Court, the Activities Director of the Chateau will have to attempt to find one person to handle each ballot of each resident.[89] If the Activities Director is unable to find a sufficient number of individuals, some of the residents of the Chateau may be unable to have anyone assist them with submitting their ballot.[90]

[82] *See* Ex. "D," ¶ 5.
[83] *See* Ex. "D," ¶ 6.
[84] *See* Ex. "D," ¶ 7.
[85] *See* Ex. "D," ¶ 8.
[86] *See* Ex. "D," ¶ 9.
[87] *See* Ex. "D," ¶ 9.
[88] *See* Ex. "D," ¶ 12.
[89] *See* Ex. "D," ¶¶ 12-13.
[90] *See* Ex. "D," ¶ 13.

The Activities Director and their co-workers are unwilling to be put at risk of criminal charges for helping residents vote.[91] Thus, if there are insufficient staff members available to cover the voting needs of residents on the registry, some may end up being unable to vote.[92]

Individual voters who are inpatient in Eastern Louisiana Mental Health System ("ELMHS") are also subject to harm should the Statutes at Issue take effect. ELMHS is one of the state-owned mental health hospitals and houses individuals on a long-term basis.[93] Individuals housed at ELMHS vote via absentee ballot because they are not allowed to physically go to a polling place.[94]

The process for voting for individuals at ELMHS is that the absentee ballots are mailed to ELMHS for each individual who is registered to vote and has completed an absentee ballot application. ELMHS staff distribute the mail as it arrives.[95]

Once the individuals at ELMHS complete their absentee ballots, they give them to staff to be processed with the outgoing mail.[96] They must rely upon staff to send their outgoing mail because they cannot go to the post office themselves due to their inpatient status.[97]

Many of the individuals housed at ELMHS either do not have immediate family members who could help them because they live far away, they do not have a relationship with them, or they no longer have living immediate family members.[98] Regardless of the reason, the end result is that staff must provide assistance in order for these individuals to exercise their right to vote.[99]

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[91] *See* Ex. "D," ¶ 14.
[92] *See* Ex. "D," ¶ 14.
[93] https://ldh.la.gov/index.cfm/directory/detail/219
[94] *See* Ex. "E" *sworn statement of Dupas* ¶6.
[95] *See* Ex. "E" ¶¶ 4-5
[96] *See* Ex. "E" ¶ 5
[97] *See* Ex. "E" ¶ 5
[98] *See* Ex. "E" ¶ 8
[99] *See* Ex. "E" ¶ 9

If the Statutes at Issue take effect, each ELMHS staff member would not be able to assist more than one patient in completing or submitting their absentee ballot.[100] Given the large number of residents at the ELMHS, many residents there may not be able to vote at all.[101]

LAW / ARGUMENT

Plaintiff has standing to pursue this action through its represented constituents. Defendants received adequate notice of this motion for preliminary injunction. Pursuant to binding Fifth Circuit case law, the Statutes at Issue conflict with Section 208 of the Voting Rights Act. Thus, the Statutes at Issue should be enjoined. Plaintiff satisfies each of the elements necessary for a preliminary injunction. The constituents of Plaintiff are likely to suffer irreparable harm if preliminary injunctive relief is not issued, the injunction will serve the public interest, and the balance of equities favors granting Plaintiff's motion. Finally, the Court should not require Plaintiff to post a bond because this is a civil rights case and there are no pecuniary interests or potential profits at stake.

A. Plaintiff Has Standing to Obtain A Preliminary Injunction

To satisfy Article III standing, a plaintiff must have: (1) suffered an injury in fact; (2) that is fairly traceable to the challenged conduct of the defendant; and (3) that is likely to be redressed by a favorable judicial decision. *OCA-Greater Houston*, 867 F.3d at 610 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 55, 56-61 (1992)).

Organizations can establish standing through associational standing. *OCA-Greater Houston*, 867 F.3d at 610. An organization has associational standing when it brings a suit on behalf of its members if "(1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the

[100] *See* Ex. "E" ¶ 7
[101] *See* Ex. "E" ¶ 9

claim asserted nor the relief requested requires the participation in the lawsuit of each of the individual members." *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977) (citation omitted).

Plaintiff meets the requirements for Article III standing through associational standing. Regarding DRLA, "[a] non-membership organization has associational standing where it possesses the 'indicia of membership.'" *Disability Rts. N.C. v. N.C. State Bd. of Elections*, No. 5:21-CV-361- BO, 2022 WL 2678884, at *2 (E.D.N.C. July 11, 2022) (quoting *Hunt*, 432 U.S. at 344). Courts in this circuit have held that Plaintiff, as the P&A for Louisiana, has associational standing to pursue claims on behalf of individuals with disabilities. *See, e.g., Tellis v. LeBlanc,* No. 18-CV-0541, 2019 WL 1474777, at *4 (W.D. La. Apr. 3, 2019) (holding that the Advocacy Center (DRLA's previous name) satisfied both constitutional and prudential requirements for associational standing to pursue claims on behalf of inmates with mental illness); *Advoc. Ctr. for Elderly & Disabled v. La. Dep't of Health & Hosps.*, 731 F. Supp. 2d 583, 595 (E.D. La. 2010); *see also Disability Rts. N.C.*, 2022 WL 2678884, at *2; *Dunn v. Dunn*, 219 F. Supp. 3d 1163, 1171 (M.D. Ala. 2016) (collecting cases).

In *Louisiana Department of Health & Hospitals* ("*LDHH*"), the district court conducted an in-depth analysis of whether Plaintiff had associational standing. 731 F. Supp. 2d at 591-96 (Vance, J.). In finding that Plaintiff had standing, the court found it highly relevant that Plaintiff, by statute, is obligated to have a Protection & Advocacy for Individuals with Mental Illness Advisory Council ("PAIMI Council") which must include attorneys, mental health professionals, individuals from the public who are knowledgeable about mental illness, a provider of mental health services, individuals who have received or are receiving mental health services, and family members of such individuals. *Id.* at 596. At least 60 percent of the membership of the PAIMI

Council shall be comprised of individuals who have received or are receiving mental health services or are family members of such individuals. *Id*. Further, the PAIMI Council shall be chaired by an individual who has received or is receiving mental health services or who is a family member of such an individual. *See* 42 U.S.C. § 10805(a)(6).

As was the case during *LDHH*, DRLA still maintains a PAIMI Council in accordance with the above statute, both to ensure its compliance with the law and to foster the participation and leadership of individuals with disabilities.[102]

The district court further found it relevant that PAIMI entities are required to have a "governing authority." 731 F. Supp. 2d at 596. If the governing authority is either a private non-profit organization with a multimember governing board or a public system with a multi-member governing board, the composition of the board must include "members ... who broadly represent or are knowledgeable about the needs of the clients served by the system." *See* 42 U.S.C. § 10805(c)(1)(B)(i). This category "shall be construed to include individuals who have received or are receiving mental health services and family members of such individuals." *Id*. § 10805(c)(1)(B). For PAIMI systems in which the governing authority is a private nonprofit group, the governing authority must consist of "members who broadly represent or are knowledgeable about the needs of the clients served by the system including the chairperson of the advisory council of such system." *Id*. § 10805(c)(1)(B)(ii). In light of all of these facts, Judge Vance found that Plaintiff had associational standing, explaining that there "is very little question that an entity like the Advocacy Center is allied with and representative of its constituents and will advocate on their behalf." 731 F. Supp. 2d at 596.

[102] *See* Ex. "A," ¶¶ 9-10.

Again, just as was the case during *LDHH*, DRLA maintains a governing authority in accordance with the above statute, both to ensure its compliance with the law and to foster the participation and leadership of individuals with disabilities.[103]

Additionally, Plaintiff has standing to bring this claim against both state officials. Elizabeth Murrill, sued in her official capacity is the Attorney General of the State of Louisiana and is responsible for investigation of violations of criminal laws, prosecution of criminal cases, providing assistance to district attorneys in criminal cases, and maintaining "integrity in government[.]"[104] Further, under Louisiana law, the constitutionality of a statute is to be handled by the Attorney General's Office, and the Attorney General is an "an indispensable party." *Lemire v. New Orleans Pub. Serv., Inc.*, 458 So. 2d 1308, 1311 (La. 1984).

Defendant Nancy Landry, sued in her official capacity, is the Secretary of State of Louisiana. Secretary Landry is the chief election official for Louisiana. La. Const., art. 4, Sect. 7. Secretary Landry is responsible to "prepare and certify the ballots for all elections, promulgate all election returns, and administer the election laws, except those relating to voter registration and custody of voting machines." *Id.* Part of the relief Plaintiff is requesting is for her to clarify that voters may still seek assistance from a person of their choice, and to rescind any instructions that prevent it. Thus, Plaintiff has standing to bring this injunction against both Defendants.

B. Defendants Have Received Notice of Plaintiff's Motion for Preliminary Injunction and A Hearing Should be Held So Defendants Have "Notice and an Opportunity to be Heard."

Rule 65(a)(1) of the Federal Rules of Civil Procedure provides: "The court may issue a preliminary injunction *only* on notice to the adverse party." Fed. R. Civ. P. 65(a)(1) (emphasis

[103] *See* Ex. "A," ¶¶ 11-12.
[104] https://www.doa.la.gov/media/sj2f3us0/04b_office_of_the_attorney_general.pdf (last accessed 2024/6/26); see also, La. R.S. 36:704.

added). The rule requires notice; service of process is not required. *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 302 (5th Cir. 1978). The notice requirement "necessarily requires that the party opposing the preliminary injunction has the opportunity to be heard and to present evidence." *Harris County, Texas v. Carmax Auto Superstores Inc.*, 177 F.3d 306, 325 (5th Cir. 1999) (citing *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, Local No. 70, 415 U.S. 423, 434 n.7 (1974)). The requirement is mandatory: "The courts consistently have treated [R]ule 65(a)(1) as mandatory and have not hesitated to dissolve preliminary injunctions issued without notice or the opportunity for a hearing on disputed questions of fact and law." *Phillips v. Chas. Schreiner Bank*, 894 F.2d 127, 130 (5th Cir. 1990) (citations omitted).

Here, on July 10, 2024, Plaintiff filed the instant action. On that same day, counsel for Plaintiff sent counsel at the Attorney General's Office, Mr. James "Gary" Evans, a copy of the Complaint and advised that Plaintiff intended on filing a motion for preliminary injunction.[105] Counsel for Plaintiff, Mr. DeReus, believes that Mr. Evans currently holds a supervisory role at the Attorney General's Office.[106] On July 16, 2024, Mr. Evans responded, acknowledging receipt of Mr. DeReus' email and requesting that undersigned send him a copy of the motion for preliminary injunction once it was filed.[107]

The next day, July 11, 2024, a copy of the Complaint and summons were served on the Defendants.[108] On July 17, 2024, the same day as the filing of this motion, counsel for Plaintiff is both (1) mailing a copy of the motion for preliminary injunction and attachments to the Attorney General's Office; and (2) emailing a copy of the same to Mr. Evans.[109]

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[105] Ex. "F," ¶ 2.
[106] Ex. "F," ¶ 3.
[107] Ex. "F," ¶ 4.
[108] *See* R. Doc. 4 and 5 (summons return).
[109] Ex. "F," ¶ 5.

To ensure that there is no issue with notice, Plaintiff respectfully requests that the Court set a formal preliminary injunction hearing for the first week of August so that Defendants receive notice and an opportunity to present evidence.

C. The Statutes at Issue Conflict with Section 208 of the Voting Rights Act and Should be Enjoined.

First, the text of the Statutes at Issue conflict with Section 208 of the Voting Rights Act. *Second*, were that not enough, Fifth Circuit and other federal case law compels the conclusion that Section 208 preempts the Statutes at Issue. *Third*, the legislative history of Section 208 confirms that the Statutes at Issue are preempted.

i. Plaintiff is likely to succeed on the merits of the claim that the Statutes at Issue are preempted by Section 208 of the Voting Rights Act.

Preemption is derived from the Supremacy Clause of the Constitution. *Brackeen v. Haaland*, 994 F.3d 249, 298 (5th Cir. 2021). In ratifying the Constitution or joining the Union, every then existent state and every subsequent one not only gave "Congress plenary authority over federal elections but also explicitly ensured that all conflicts with similar state laws would be resolved wholly in favor of the national government" in accordance with the Supremacy Clause.[110] *Harkless v. Brunner*, 545 F.3d 445, 454–55 (6th Cir.2008); see also Jocelyn Friedrichs Benson, *Democracy and the Secretary: The Crucial Role of State Election Administrators in Promoting Democracy and Access to Democracy*, 27 St. Louis U. Pub. L. Rev. 343, 347 (2008). "Therefore, when 'Congress enacts a law that imposes restrictions or confers rights on private actors' and a 'state law confers rights or imposes restrictions that conflict with the federal law,' under the

[110] "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing [sic] in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2.

Supremacy Clause, 'the federal law takes precedence and the state law is preempted.' " *Brackeen*, 994 F.3d at 298 (quoting *Murphy v. NCAA*, —— U.S. ——, 138 S. Ct. 1461, 1480, 200 L.Ed.2d 854 (2018)). Said simply, the Supremacy Clause of the United States Constitution "invalidates state laws that 'interfere with or are contrary to' federal law." *Hillsborough Cnty., v. Automated Med. Lab'ys, Inc.*, 471 U.S. 707, 712 (1985) (quoting *Gibbons v. Ogden*, 22 U.S. 1, 82 (1824)).

Here, Act No. 380 and Act No. 317 sharply limit who can collect or deliver a completed ballot, and thereby criminalize a form of assistance that Congress determined should be available to voters. Louisiana authorizes the return of a ballot through various means, including hand delivery, US Mail, commercial courier, and even fax. *See* La. R.S. 18:1308. Act No. 380 and Act No. 317 do not define what it means to "submit" or "send" a ballot. Using the normal definitions, the word send means "to cause to go: such as: to dispatch by a means of communication[.]" See "Send." *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/send. Accessed 3 Jul. 2024. Under this normal definition, an individual cannot assist or otherwise aid in the transmittal of more than one ballot to the voter register. A personal care attendant, nursing staffer, or home health aide that handles two or more ballots on behalf of individuals with disabilities would be committing a criminal act.

Likewise, Act No. 712 (formerly HB 581) and Act No. 302 (formerly 155), and R.S. 18:1306(E)(2)(a) violate the text of the Voting Rights Act by prohibiting anyone from serving as a witness on more than one ballot or assisting more than one individual with their absentee ballot and criminalizes the same. While the type of prohibited conduct is different—serving as a witness as opposed to handling the ballot—the result is largely the same: Under the Statutes at Issue, individuals with disabilities cannot obtain assistance from "any person." Instead, they are restricted to the narrow universe of individuals who have not already served as a witness for someone else.

Through Section 208 of the Voting Rights Act, Congress has determined that voters must have broad discretion to ask someone of their choice for help—unless that person is their employer or labor union. *See* 52 U.S.C. § 10508. Louisiana Act No. 302, 317, 380, and 712, along with R.S. 18:1306(E)(2)(a), now dramatically limit voters' options, in contravention of the careful balance that Congress has struck. The statutes therefore "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" and are conflict preempted. *Arizona v. United States*, 567 U.S. 387, 406 (2012) (citation omitted); *La Union del Pueblo Entero v. Abbott*, 604 F. Supp. 3d 512, 534 (W.D. Tex. 2022) (citing *United States v. Zadeh*, 820 F.3d 746, 751 (5th Cir. 2016)).

ii. Fifth Circuit precedent compels the conclusion that Section 208 of the Voting Rights Act Preempts the Statutes at Issue.

The text of Section 208 of the Voting Rights Act is clear: "Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 52 U.S.C. § 10508. In *OCA-Greater Houston*, the Fifth Circuit held that voters may receive "assistance to vote" during all of the stages "necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration . . . or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast. . . ." 867 F.3d at 614-15 (quoting 52 U.S.C. 10310(c)(1)).

Numerous federal courts have concluded that assistance under Section 208 extends to the delivery of ballots. *See Carey v. Wis. Elections Comm'n*, No. 22-CV-402-JDP, 2022 WL 3910457, at *9 (W.D. Wis. Aug. 31, 2022) (concluding that the "VRA requires that plaintiffs be allowed to choose a person to assist them with mailing or delivering their absentee ballot."); *Disability Rts.*

N.C. v. N.C. State Bd. of Elections (Disability Rts. II), 602 F. Supp. 3d 872, 879 (E.D.N.C. 2022) (holding that the VRA's definition of "voting" includes the delivery of an absentee ballot); and *Democracy N.C.*, 590 F. Supp. 3d at 871 (same).

The Fifth Circuit's preemption analysis in *OCA-Greater Houston* controls here. 867 F.3d 604. In that case, Texas restricted voters' ability to have someone of their choice provide language assistance, requiring all interpreters to be a registered voter of the county in which the voter resides. *Id.* at 608. As a result, a voter was denied her preferred assistance (her son, who was not a registered voter). *Id.* at 608-09. The Fifth Circuit accordingly held that the state's restriction on who may provide language assistance "impermissibly narrow[ed] the right guaranteed by Section 208 of the VRA" and is preempted. *Id.* at 615. In reaching that decision, the Fifth Circuit adopted the plaintiffs' textual interpretation: that "Section 208 guarantees to voters [the] right to choose *any person they want*, subject only to employment-related limitations, to assist them throughout the voting process." *Id.* at 614 (emphasis added); *see La Union del Pueblo Entero*, 604 F. Supp. 3d at 533-34 (applying *OCA-Greater Houston*).

If the Statutes at Issue go into effect, they will "impermissibly narrow" the right guaranteed by Section 208 in a similar way—but to an even greater degree than the Texas law struck down in *OCA-Greater Houston*. Just as the voter in *OCA-Greater Houston* preferred to receive assistance from her son, the constituents of Plaintiff want to rely on people they trust to serve as a witness or deliver their ballots. The Statutes at Issue risk criminalizing said assistance. Because the Statutes at Issue are an "obstacle to the accomplishment and execution of the full purposes and objectives of Congress," as set forth in Section 208 of the VRA, they are preempted. See *Arizona*, 567 U.S. at 406 (citations omitted).

Traditional principles of statutory interpretation confirm the Fifth Circuit's interpretation of Section 208. The text of Section 208 is not only clear but highly specific: eligible voters "may

be given assistance by a person of the voter's choice," except for "the voter's employer or agent of that employer or officer or agent of the voter's union." 52 U.S.C. § 10508. When Congress "'explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.'" *Hillman v. Maretta*, 569 U.S. 483, 496 (2013) (quoting *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-17 (1980)).

Similarly, under the canon *expressio unius est exclusio alterius*, "expressing one item of [an] associated group or series excludes another left unmentioned." *Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 80 (2002). Here, Congress used broad language to describe the voters' right to choose and then specified narrow exclusions for assistance provided by the voter's employer or union—and no one else. Louisiana's sweeping restrictions on ballot delivery and witness assistance therefore conflict directly with the broad discretion that Congress conferred on voters in Section 208.[111]

In a case similar to this one, the Southern District of Mississippi granted a motion for preliminary injunction for the equivalent P&A organization of that state, Disability Rights Mississippi. In that 2023 case, Mississippi passed a law under which zero ballots could be collected by a third party, except "family members", "household members", or a "caregiver." *Disability Rts. Mississippi v. Fitch*, 684 F. Supp. 3d 517, 519, *appeal filed* (S.D. Miss. 2023). The statute—just like the one here—made it a criminal act to handle more than one ballot on behalf of another person. *Id.* at 519-20. On the motion for preliminary injunction, the plaintiffs provided "examples of how S.B. 2358, which subjects violators to criminal penalties, would deter eligible absentee voters in the upcoming 2023 state and local elections." *Id.* at 522.

[111] Likewise, Plaintiff's reading of Section 208 accords with the legislative canon that remedial statutes (such as the VRA) are to be construed broadly. *Peyton v. Rowe*, 391 U.S. 54, 65 (1968).

The court found that the plaintiffs had a "substantial likelihood of success on the merits," and the court enjoined the statute. *Id*.

The Statutes at Issue are nearly equivalent to the challenged law in *Fitch*. In *Fitch* there was a complete ban on ballot collection, but exceptions for "caregivers." Here, anyone can deliver one absentee ballot to the mail, but there is no exception for "caregivers." Ultimately, the result is the same: If the Statutes at Issue go into effect, individuals with disabilities will not be able to select *any person they want*.

Courts outside of the Fifth Circuit have also interpreted Section 208 to allow voters to have "unfettered choice over who may assist them with the voting process." *Disability Rts. II*, 602 F. Supp. 3d at 877; *see also Arkansas United v. Thurston*, No. 5:20-CV-5193, 2022 WL 4097988, at *16 (W.D. Ark. Sept. 7, 2022); *Democracy N.C. v. N.C. State Bd. of Elections (Democracy II)*, 476 F. Supp. 3d 158, 234-36 (M.D.N.C. 2020); *Carey*, 2022 WL 3910457, at *2; *United States v. Berks Cnty.*, 277 F. Supp. 2d 570, 584 (E.D. Pa. 2003); *Am. Ass'n of People With Disabilities v. Hood*, 278 F. Supp. 2d 1345, 1356 (M.D. Fla. 2003).

For example, in *Disability Rights North Carolina*, the court granted summary judgment and enjoined several restrictions on absentee ballot assistance, including (1) a requirement that only parents, legal guardians, and near relatives of a voter may submit absentee ballot requests on their behalf, (2) a prohibition on nursing home or hospital employees requesting or marking an absentee ballot for a voter, and (3) a requirement that only near relatives, parents, or legal guardians of the voter may mail their absentee ballot. 2022 WL 2678884, at *6. In general, "[f]ederal courts have shown little tolerance for any narrowing of the Section 208 right to assistance with the voting process." *Disability Rts. II,* 602 F. Supp. 3d at 878 ("Congress only included two categories of excluded assistants in the statutory text, and if Congress intended to

exclude more categories, or to allow states to exclude more categories, it could have said so."). That reluctance to narrowly construe a remedial, civil rights statute applies equally here. *See also Democracy II,* 476 F. Supp. 3d at 234-36 (enjoining similar absentee ballot provision as preempted by Section 208).

iii. Section 208's legislative history confirms that Congress intended to grant voters the right to seek assistance from any person of their choice.

To the extent that there is any doubt, the legislative history behind Section 208 confirms the textual interpretation above. *See Wooden v. United States*, 142 S. Ct. 1063, 1072 (2022). As courts have recognized, in enacting Section 208, the Senate Judiciary Committee found that "[c]ertain discrete groups of citizens are unable to exercise their rights to vote without obtaining assistance in voting" and that "many such voters may feel apprehensive about casting a ballot in the presence of, or may be misled by, someone other than a person of their own choice." *E.g.*, *Thurston*, 2022 WL 4097988, at *7, 16 (quoting S. Rep. No. 97-417, at 62 (1982)); *see also Berks Cnty.*, 277 F. Supp. 2d at 580.

The Committee concluded that to avoid denial or infringement of the right to vote, voters with disabilities or limited language abilities "must be permitted to have the assistance of a person of their own choice." S. Rep. No. 97-417, at 62 (1982). Respecting the voter's choice is the "only way to assure meaningful voting assistance and to avoid possible intimidation or manipulation of the voter." *Id*. "To do otherwise would deny these voters the same opportunity to vote enjoyed by all citizens." *Id.* The report also contemplated using preemption to protect the rights guaranteed by Section 208. *Id*. at 63. The Committee also gave an example of what would be preempted: "a procedure could not deny the assistance at some stages of the voting process during which assistance was needed." *Id*.

In short, the text and history of Section 208, along with binding Fifth Circuit precedent and the weight of persuasive authority, lead to the inescapable conclusion that the Statutes at Issue run afoul of Section 208 and are preempted.

D. The Constituents of Plaintiff Are Likely to Suffer Irreparable Harm.

The constituents of Plaintiff are "likely to suffer irreparable harm" absent an injunction. *See Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.,* 710 F.3d 579, 585 (5th Cir. 2013). Irreparable harm refers to harm for which there is no adequate remedy at law. *Id*. "The right to vote and have one's vote counted is undeniably a fundamental constitutional right, the violation of which cannot be adequately remedied at law or after the violation occurred." *Mi Familia Vota v. Abbott*, 497 F. Supp. 3d 195, 219 (W.D. Tex. 2020) (citing *Reynolds v. Sims*, 377 U.S. 533, 554 (1964)); *see League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). "[O]nce the election occurs, there can be no do-over and no redress. The injury to these voters is real and completely irreparable if nothing is done to enjoin th[ese] law[s]." *Id* at 247. Where "an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Opulent Life Church v. City of Holly Springs,* 697 F.3d 279, 295 (5th Cir. 2012) (quoting 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2948.1 (2d ed. 1995)); *see also De Leon v. Perry*, 975 F. Supp. 2d 632, 663 (W.D. Tex. 2014), *aff'd sub nom. De Leon v. Abbott*, 791 F.3d 619 (5th Cir. 2015); *Democracy II,* 476 F. Supp. 3d at 236 (Section 208 injunction).

Beyond the risk of complete disenfranchisement, the constituents of Plaintiff who are voters with disabilities face irreparable harm even if they ultimately find a way to vote but experience additional burdens to doing so. *Cf. Westchester Disabled on the Move, Inc. v. Cnty. of Westchester*, 346 F. Supp. 2d 473, 477-78 (S.D.N.Y. 2004) (denying disabled voters access

to in-person voting "den[ies] them as much time as other voters to consider their choice" of candidate and requires them to undergo extra steps to vote absentee that create "hassle"). Irreparable harm exists where, as here, voting becomes so burdensome for citizens with disabilities that they may be "dissuaded from attempting to vote at all." *Id*.

Moreover, it is entirely plausible that individuals with disabilities will have to rely upon third parties they do not trust instead of the individuals they trust. In her sworn statement, Ms. Lloyd of Chateau explained that, unless the Statutes at Issue are enjoined by this Court, she will have to attempt to find one person to handle each ballot for Chateau resident.[112] First, there is the very real risk that Ms. Lloyd will not be able to find enough individuals to collect ballot from the nursing home residents. Second, even if she does locate these individuals, there is no reason to believe that the nursing home residents will be more at ease with an individual randomly solicited to collect their ballot over the medical professional they interact with on a regular basis.

The potential fear of prosecution potential assisters face also constitutes irreparable harm. *See Ga. Latino All. for Hum. Rts. v. Governor of Ga.*, 691 F.3d 1250, 1269 (11th Cir. 2012); *ABC Charters, Inc. v. Bronson*, 591 F. Supp. 2d 1272, 1309 (S.D. Fla. 2008). Here, the Statutes at Issue would infringe on the rights of voters to select someone of their choice. The law also irreparably harms DRLA, because many of its constituents—Louisiana voters with disabilities—will be disenfranchised. Likewise, as is evidenced by the allegations in the Complaint and the attached sworn statements, the constituents of Plaintiff fear that the individuals assisting them could face prosecution and imprisonment. Thus, Plaintiff faces irreparable harm if the Statutes at Issue take effect.

[112] *See* Ex. "D," ¶¶ 12-13.

E. A Preliminary Injunction Will Serve the Public Interest.

An injunction would ensure that Louisiana voters with a disability can exercise their fundamental right to vote and would prevent voter confusion before the Statutes at Issue goes into effect. *Obama for Am. v. Husted,* 697 F.3d 423, 437 (6th Cir. 2012) (holding that public interest favors "permitting as many qualified voters to vote as possible"); *League of Women Voters of Fla., Inc., v. Detzner*, 314 F. Supp. 3d 1205, 1224 (N.D. Fla. 2018) ("Quite simply, allowing for easier and more accessible voting for all segments of society serves the public interest."). "The fundamental right to vote is one of the cornerstones of our democratic society. . . [t]he threatened deprivation of this fundamental right can never be tolerated." *Murphree v. Winter*, 589 F. Supp. 374, 382 (S.D. Miss. 1984) (finding that granting a preliminary injunction requiring access to absentee ballot would "clearly . . . not disserve the public interest."); *see also Ingebretsen on behalf of Ingebretsen v. Jackson Public Sch. Dist.,* 88 F.3d 274, 280 (5th Cir. 1996) (holding that where an enactment is unconstitutional, "the public interest [is] not disserved by an injunction preventing its implementation"). Moreover, the State has no interest in defending provisions that violate federal law. *See United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) ("Frustration of federal statutes and prerogatives are not in the public interest.").

F. The Balance of Equities Favors Granting a Preliminary Injunction.

The balance of equities weighs heavily in favor of an injunction. Plaintiff's injunctive relief seeks to maintain the status quo, under which voters who suffer from a disability may continue to select the assister of their choice in the upcoming elections. Defendants will not face any harm in being enjoined from altering the status quo to enforce an unlawful statute. *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (holding that the "state is 'in no way harmed by the issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional.'" (citation omitted)). Rather, the balance of the equities "favors

Plaintiffs where, as here, the injunction is intended to foreclose application of restrictions likely to be found contrary to preeminent federal statutory law designed to help the neediest of this state's citizens." *Planned Parenthood Gulf Coast, Inc. v. Kliebert*, 141 F. Supp. 3d 604, 651 (M.D. La. 2015), *aff'd sub nom. Planned Parenthood of Gulf Coast, Inc. v. Gee*, 837 F.3d 477 (5th Cir. 2016), *opinion withdrawn and superseded*, 862 F.3d 445 (5th Cir. 2017), and *aff'd sub nom. Planned Parenthood of Gulf Coast, Inc. v. Gee*, 862 F.3d 445 (5th Cir. 2017).

Moreover, Plaintiff's motion does not raise any *Purcell* concerns. If anything, the relevant considerations favor a preliminary injunction. As the Supreme Court and the Fifth Circuit have explained, *Purcell* aims to prevent voter confusion by "preserving the status quo on the eve of an election." *Veasey v. Perry*, 769 F.3d 890, 892 (5th Cir. 2014). That principle does not bar relief three reasons: (i) a preliminary injunction here would preserve the longstanding status quo that a voter may receive assistance from an individual of their choice, (ii) voting in Louisiana does not commence until October, and (iii) an injunction against the Statutes at Issues would not pose a logistical challenge to implement.

First, Statutes at Issue do not take effect until August 1, 2024 (Act 317 and 380) and July 1, 2025 (Act 302 and 712), and therefore are *not* the status quo deserving of protection.[113] The actual status quo is the current state of affairs that allows voters to seek assistance from persons of their choice. *See Common Cause R.I. v. Gorbea*, 970 F.3d 11, 16-17 (1st Cir. 2020) (declining to reinstate witness requirement for mail ballots under *Purcell* because "the status quo (indeed the only experience) for most recent voters is that no witnesses are required"); *Feldman v. Arizona Sec'y of State's Off.*, 843 F.3d 366, 368-69 (9th Cir. 2016) ("Every other election cycle in Arizona has permitted the collection of legitimate ballots by third parties to

[113] While R.S. 18:1306(E)(2)(a) preexisted Act 302, 317, 380, and 712, it did not have any enforcement mechanism. As such, it was a dead letter and did not constitute the "status quo."

election officials. So, the injunction in this case . . . restores the *status quo ante* to the disruption created by the Arizona legislature that is affecting this election cycle for the first time."). Indeed, by bringing suit to challenge a new law prior to its effective date, Plaintiffs seek a classic "prohibitory injunction," which "seek[s] to maintain the status quo." *League of Women Voters of N.C.* 769 F.3d at 236.

Second, Plaintiff diligently commenced this action, weeks before the August 1, 2024, effective date for Act 317 and 380, which leaves ample time for judicial relief prior to the upcoming election. *See Feldman*, 843 F.3d at 368 ("[U]nlike the circumstances in Purcell and other cases, plaintiffs did not delay in bringing this action."). This is far from the typical *Purcell* case, which involves late-breaking judicial intervention "where an impending election is imminent and a State's election machinery is already in progress." *See Veasey*, 769 F.3d at 893 (explaining logistical challenges with complying with district court order dated October 11, 2014, when early voting was commencing on October 20).

Third, the Statutes at Issue are not complex statutes, and neither their implementation nor an injunction presents logistical challenges to election administration. Instead, by their plain text, the Statutes at Issue criminalize individuals who knowingly collect or transmit more than one ballot, or serve as a witness on more than one ballot. If the Statutes at Issue are enjoined as Plaintiff has requested, Defendants need not substantively change how they administer upcoming elections. And meanwhile, enjoining the Statutes at Issue would save the Defendants resources they might otherwise devote to the enforcement of an unlawful statute.

In short, *Purcell* is inapplicable, and the equities favor Plaintiff. Defendants' attempt to alter the State's own longstanding practices by enacting a change months before a presidential election is more likely to cause voter confusion than an injunction before the law

takes effect. Even if some individuals are confused because they expected the Statutes at Issue to be in effect for this election cycle, one "cannot imagine that it will pose any difficulty not to have to comply with it." *Gorbea*, 970 F.3d at 17.

Federal law, including binding Fifth Circuit precedent, unequivocally protects Louisiana voters who are in critical need of assistance due to disability, blindness, or inability to read or write. Defendants' unlawful attempt to deprive voters of that assistance should be enjoined before it disenfranchises voters in the upcoming November election.

G. The Court Should Not Require Plaintiff to Post a Bond.

Pursuant to Federal Rule of Civil Procedure 65(c), "[t]he court may issue a preliminary injunction ... only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). However, the Fifth Circuit has recognized that the amount of security required pursuant to Rule 65(c) is a matter of discretion of the trial court, and a court "may elect to require no security at all." *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996) (*quoting Corrigan Dispatch Co. v. Casa Guzman*, 569 F.2d 300, 303 (5th Cir. 1978)). Further, indigence can justify the waiver of a Rule 65(c) bond. *Wayne Chemical, Inc. v. Columbus Agency Service Corp.*, 567 F.2d 692, 701 (7th Cir. 1977) (holding that the plaintiff's indigence justifies waiver of Rule 65(c) bond).

Here, Plaintiff is a disability rights organization that brings this action not to protect a business or pecuniary interests, but to ensure that its constituents receive an equal opportunity to vote in upcoming elections. The non-pecuniary, civil rights nature of this action justifies waiver of Rule 65(c) bond. Further, the injunction requested in this action would not require any cost by Defendants to implement. So if the injunction is reversed by the Fifth Circuit, Defendants will not have lost any money or profit opportunity.

CONCLUSION

For the reasons stated herein, the Court should grant Plaintiff's Motion for Preliminary Injunction.

By:/s/ *Melanie Bray*

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been or will be delivered to the Defendants on this July 13, 2024, by (1) ECF filing to defendant Nancy Landry; and (2) as to Elizabet Murrill, mailing a copy of the pleading address where the Defendant was served and emailing a copy to an attorney at the Attorney General's Office via email.

By: /s/ *Melanie Bray*