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INTRODUCTION

Defendants do not dispute that S.B. 2358 denies voters their right to seek assistance from any person of their choice, or that assisters could face criminal prosecution for helping

who will be impacted by S.B. 2358. An injunction that requires Defendants to treat all voters equally is entirely proper; an injunction that would require different rules for different voters (and subject some voters to a rule that is likely contrary to federal law) would be deeply problematic. Courts also regularly require Defendants to inform the public about voting-related changes.

ARGUMENT

Defendants rightfully do not contest the standing of the individual Plaintiffs.¹ And as discussed below, Defendants' arguments as to the organizational Plaintiffs' standing are without merit.

I. ORGANIZATIONAL PLAINTIFFS HAVE ASSOCIATIONAL AND ORGANIZATIONAL STANDING TO SEEK AN INJUNCTION.

a. Associational Standing

Defendants neither dispute the first two elements of associational standing, Opp. (Dkt.17) at 13; nor do they contest the standing of the individual Plaintiffs. Moreover, Defendants acknowledge the valid organizational interests of the constituents and members of Disability Rights Mississippi (“DRMS”) and League of Women Voters Mississippi (“LWV-MS”) as voters and assisters. *See* Opp. at 9-10. Plaintiffs have also satisfied the final prong: the participation of constituents or members is unnecessary because the preemption claim can be resolved “without a fact-intensive-individual inquiry.” *Ass’n of Am. Physicians & Surgeons, Inc. v. Tex. Med. Bd.*, 627 F.3d 547, 552 (5th Cir. 2010). DRMS is Mississippi’s Protection and Advocacy agency (“P&A”) and is authorized by federal law 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); Dkt. 3-2 ¶¶ 4-5. Courts in this circuit and others have held that P&As have associational standing to bring claims on behalf of their constituents. Pls. Br. (Dkt. 3) at 11-12.

A preemption claim is a “question of law,” Opp. at 3, regarding a statute’s “purpose and intended effects,” not the individualized circumstances of Plaintiffs’ members or constituents. *Disability Rts. N.C. v. .*

efficiency, not on elements of a case or controversy within the meaning of the Constitution.” *United Food & Com. Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 557 (1996). Here, “[w]ithout question, it is more administratively convenient and efficient to assert such a challenge in a representative capacity,” than to require constituents with disabilities to present their claims individually. *La Union del Pueblo Entero*, 614 F. Supp. 3d at 527.

b. Organizational Standing

OCA forecloses Defendants’ argument as to organizational standing as well. There, as here, the defendants argued that the plaintiff lacked standing because it was merely communicating new legal developments. *Id.* at 611. The Fifth Circuit rejected that argument, explaining that *OCA*-Greater Houston had standing because the challenged statute caused it to “spend extra time and money educating its members” on avoiding the effects of the state law. *OCA*, 867 F.3d at 610. The organization demonstrated standing by having gone “out of its way to counteract the effect” of the new law and “mitigat[e] its real-world impact on *OCA*’s members and the public.” *Id.* at 612.

Here, too, *DRMS* and *LWV-MS* have created additional materials and devoted time to warn voters and assisters about the ambiguous definition of “caregiver.” Dkt. 3-2 ¶¶ 22-23; Dkt. 3-5 ¶¶ 13-14. *DRMS* (o “4n-7 (s)9 (a (e)4)4 (f)v de

Defendants argue that Section 208 offers “some wiggle room” or “latitude” to restrict voters’ right to choose. Opp. at 19, 23. But even allowing such supposed “wiggle room,” S.B. 2358 still dramatically constricts the universe of possible assisters, conflicting directly with Section 208. Indeed, the restrictions here are more severe than the preempted law in *OCA*. There, the Fifth Circuit found that a Texas provision, which required all interpreters to be registered voters in the county where

1976 to 1980).⁵ *Nessel* overlooked this basic principle, which has been widely recognized, including by the Fifth Circuit.⁶ *United States v. Naranjo*, 259 F.3d 379, 382 (5th Cir. 2001) (“‘Such a violation’ . . . refers to . . . any violation.”).

Second, *Nessel* incorrectly concluded that Congress intended to narrow voters’ choice by referring to “a person of the voter’s choice” instead of “*the* person of the voter’s choice.” In fact, “a” is *more* capacious than “the,” thus giving voters *greater* choice. *Hernandez v. Williams, Zinman & Parham PC*, 829 F.3d 1068, 1074 (9th Cir. 2016) (“Congress’s use of the indefinite article ‘a’ . . . gives that term ‘generalizing force.’”); *Mixon v. One Newco, Inc.*, 863 F.2d 846, 850 (11th Cir. 1989) (holding that use of “‘a period of seven years’ as opposed to ‘*the* period’ indicates that *any* seven-year period . . . would suffice”). Using “the” in this context would have created ambiguity and arguably limited voters to being assisted by one specific person. *See CSX Transportation, Inc. v. Island Rail Terminal, Inc.*, 879 F.3d 462, 471 (2d Cir. 2018) (“The use of the definite article ‘the’ indicates a singular . . . whereas the indefinite article ‘any’ or ‘a’ denotes multiple.”). As Mr. Whitley’s example illustrates, a voter may wish to seek help from different assisters at different times: he relied on Ms. Cunningham to register, but he depended on Ms. Gunn to mail hi6 (e)-5 Tw T*[(a10 M)9 (0.002 (mb.002 Tc 0.-2 (i)-2 (m)-2 (e)4 (s)9 (:)18 (to)2 (ma)6 (il h)2 (a10 M

18. Thus, Congress did have reason to use “a person” instead of “the person,” but it was to broaden, not narrow, voters’ right to choose.

Defendants’ other authorities—two state court cases lacking textual analysis and a Texas district court case pre-dating *OCA*⁷—fare no better. *DiPietrae v. Philadelphia*, 666 A.2d 1132 (Pa. Commw. Ct. 1995), for instance, does not help Defendants. Opp. at 25. Citing no authority, the court summarily invented a “reasonable means” test to balance “the rights of a disabled person . . . with the public need to insure a fair election.” *Id.* at 1135-36. No other court has taken that approach, which has no textual basis.⁸ See *Disability Rts. N.C. v. N.C. State Bd. of Elections*, 602 F. Supp. 3d 872, 879 (E.D.N.C. 2022) (“Federal courts have shown little tolerance for any narrowing of the Secti6 (bour)13 (t)-2d[(C)7 (19 (de)S(60t 20(de)h.20(de(he)4,e(he)4,e4 (c)4 (t)-2 5(i)-0t 20(dC

III. REMAINING INJUNCTION FACTORS FAVOR PLAINTIFFS.

Defendants do not seriously dispute that Plaintiffs will suffer myriad irreparable harms, including denial of critical assistance with voting, impairment of organizational priorities, and loss of opportunity to engage with voters prior to the next election. Pls. Br. at 18-20. While Defendants claim an interest in enforcing a law that purportedly reflects the will of Mississippi voters, they ignore the reality that S.B. 2358 will disenfranchise Mississippians. *See* Opp. at 27. S.B. 2358 also conflicts with federal law, through which Congress already considered issues of voter access and undue influence when it enacted Section 208. Moreover, Defendants baselessly assert that S.B. 2358 is needed to ensure confidence in elections, Opp. at 26-27, while blatantly ignoring already existing state law which guards against illegitimate votes. *See* Miss. Code Ann. § 97-13-37. And indeed, Defendants can enforce the new restrictions in S.B. 2358 in cases involving voters who are not covered under Section 208. Simply put, none of the equitable considerations favors unlawfully disenfranchising voters and punishing organizations and individuals for assisting Mississippians with disabilities and other limitations.

IV. PLAINTIFFS' REQUESTED RELIEF IS NECESSARY AND APPROPRIATE.

Injunctive relief extending to all voters covered under Section 208 is needed to redress Plaintiffs' injuries. As an initial matter, S.B. 2358 is "pre-empted to the extent it conflicts with federal law." *NCNB Texas Nat. Bank v. Cowden*, 895 F.2d 1488, 1494 (5th Cir. 1990). Here, S.B. 2358 frustrates the rights of those covered under Section 208 and must be invalidated on its face to the full extent of its conflict with federal law. 52 U.S.C. § 10508.

Injunctive relief also should extend statewide in order to redress harm to Plaintiffs DRMS and LWV-

as the state’s designated P&A. Dkt. 3-2 ¶¶ 4-5, 7. Dkt. 3-5 ¶¶ 8-9. Defendants do not contest that such voters and members are likely to be irreparably harmed as a result of SB 2358. Pls. Br. at 18-20. And as a P&A, DRMS may prosecute actions on behalf of its constituents, which Defendants also do not dispute. *Supra* Section I(a). As such, statewide relief is both proper and necessary to redress the harms that Plaintiffs face. *Cf. Disability Rts. N.C.*, 2022 WL 2678884, at *7 (enjoining Defendants from enforcing challenged provisions in challenge brought by North Carolina’s P&A on behalf of constituents).

Defendants’ arguments that Plaintiffs must seek class certification under Rule 23 have no merit. Class certification is “unnecessary” in voting cases such as this one, where “the nature of
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Courts routinely require states to publicize changes in election rules. Doing so reduces voter confusion and improves compliance with court orders. For example, in *Thomas*, the court ordered “[d]efendants to immediately and publicly inform” voters about absentee requirements and to publish information regarding the court’s injunction “on all relevant websites and social media.” 613 F. Supp. 3d at 962-63. So too, in *Arlene*, the court required the state to conduct a “media orientation campaign to apprise” voters and to post relevant information online. 486 F.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify on this 12th day of June, 202