

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Case No. 5:21-cv-361-BO

DISABILITY RIGHTS NORTH )  
CAROLINA, )  
) )  
Plaintiff, )  
) )  
v. )  
) )  
NORTH CAROLINA STATE BOARD OF )  
ELECTIONS, KAREN BRINSON BELL, in )  
her official capacity as Executive Director of )  
the NCSBOE, DAMON CIRCOSTA, in his )  
official capacity as Chair of the NCSBOE, )  
STELLA ANDERSON, in her official )  
capacity as Secretary of the NCSBOE, JEFF )  
CARMON III, in his official capacity as )  
Member of the NCSBOE, STACY EGGERS )  
IV, in his official capacity as Member of the )  
NCSBOE, and TOMMY TUCKER, in his )  
official capacity as Member of the NCSBOE, )  
) )  
Defendants )

**PLAINTIFF’S MOTION FOR  
SUMMARY JUDGMENT  
(Fed.R.Civ.P. 56; LR 56.1)**

---

Plaintiff Disability Rights North Carolina, through counsel, and pursuant to Rule 56 of the Federal Rules of Civil Procedure, moves the Court for an order granting Plaintiff summary judgment against Defendants. In support here, Plaintiff shows the following:

1. Plaintiff Disability Rights North Carolina (“DRNC”), filed this action on September 9, 2021, alleging that several provisions of North Carolina law regarding absentee voting contravene Section 208 of the federal Voting Rights Act. [D.E. 1.]
2. Defendants filed a Motion to Dismiss on November 1, 2021. [D.E. 17, 18.]
3. The parties jointly requested, and were granted, expedited consideration of Defendants’ Motion to Dismiss. [D.E. 28]

4. Defendants' Motion to Dismiss was denied on May 4, 2022. [D.E. 29.]
5. Discovery concluded on June 1, 2022.
6. Plaintiff now moves for summary judgment because Plaintiff is entitled to judgment as a matter of law and there are no genuine issues of material fact precluding judgment in Plaintiff's favor.
7. Plaintiff has filed contemporaneously herewith a Memorandum in Support of Plaintiff's Motion for Summary Judgment and a Statement of Undisputed Facts, with appendix, pursuant to EDNC Local Rule 56.1.

WHEREFORE, Plaintiff requests that the Court grant its Motion for Summary Judgment against Defendants, declare the challenged provisions of North Carolina law to be preempted by federal law, and enjoin enforcement of those provisions as they relate to voters with disabilities.

This 15th day of June, 2022.

Respectfully submitted,

/s/ Lisa Grafstein  
Lisa Grafstein  
lisa.grafstein@disabilityrightsnc.org  
N.C. State Bar No. 22076

Holly Stiles  
holly.stiles@disabilityrightsnc.org  
N.C. State Bar No. 38930

DISABILITY RIGHTS NC  
3724 National Drive, Suite 100  
Raleigh, NC 27612  
Phone: (919) 856-2195  
Fax: (919) 856-2244

ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Case No. 5:21-cv-361-BO

DISABILITY RIGHTS NORTH )  
CAROLINA, )  
) )  
Plaintiff, )  
) )  
v. )  
) )  
NORTH CAROLINA STATE BOARD OF )  
ELECTIONS, KAREN BRINSON BELL, in )  
her official capacity as Executive Director of )  
the NCSBOE, DAMON CIRCOSTA, in his )  
official capacity as Chair of the NCSBOE, )  
STELLA ANDERSON, in her official )  
capacity as Secretary of the NCSBOE, JEFF )  
CARMON III, in his official capacity as )  
Member of the NCSBOE, STACY EGGERS )  
IV, in his official capacity as Member of the )  
NCSBOE, and TOMMY TUCKER, in his )  
official capacity as Member of the NCSBOE, )  
) )  
Defendants. )

**PLAINTIFF’S STATEMENT OF  
UNDISPUTED FACTS**

- 
1. There are thousands of individuals with disabilities in North Carolina living in a “hospital, clinic, nursing home or rest home” (hereinafter “congregate setting”). (Compl. p. 5, ¶ 22; Ans., p. 3, ¶ 22.)
  2. Many individuals with disabilities living in congregate settings need assistance with voting because of their disabilities. (Compl. p. 5, ¶ 23; Ans. p. 3, ¶ 23.)
  3. Depending on an individual’s disability, they may need assistance with some or all steps of the absentee voting process. (Compl., p. 3, ¶ 17; Ans., p. 2, ¶ 17.)
  4. Section 208 of the Voting Rights Act, which allows voters with disabilities to decide who will assist them in voting, confers rights on all voters with disabilities. (Compl., p. 5, ¶ 28;

- Ans., p. 3, ¶ 28.)
5. State law precludes voters with disabilities living in congregate settings from receiving assistance from anyone affiliated with the congregate setting as an owner, director, or staff member. (Compl., p. 4, ¶ 21; Ans., p. 3, ¶ 21.)
  6. Under no circumstances would Defendants allow a voter with a disability living in a congregate setting to choose to receive assistance from an employee or owner of the facility. (Defs.' Resp. to Pls.' RFA, p. 3, #1.)
  7. Because of the provisions of the challenged state statutes, N.C. Gen. Stat. §§ 163-226.3(a)(4) and (a)(6), 163-230.1, 163-230.2(e), 163-230.3, and 163-231(b)(1), no North Carolina voter with a disability residing in a congregate setting can select congregate setting owners or staff to provide assistance with voting in the upcoming 2022 General Election. (Defs.' Resp. to Pls.' RFA, p. 3, #1.)
  8. Plaintiff Disability Rights North Carolina ("DRNC") is the designated Protection and Advocacy ("P&A") organization for North Carolina. (Marcus Decl., p. 1, ¶ 4.)
  9. As the P&A, DRNC is charged with advocating for the rights of North Carolinians with disabilities, each of whom is considered a constituent of DRNC. (Marcus Decl., p. 2, ¶ 5.)
  10. The voting rights of people with disabilities is germane to DRNC's purpose as the P&A. (Marcus Decl., p. 3, ¶ 11.)
  11. North Carolina voters with disabilities are constituents of DRNC. (Marcus Decl., p. 3, ¶ 9.)
  12. North Carolina voters with disabilities living in congregate settings are constituents of DRNC. (Marcus Decl., p. 3, ¶ 9.)
  13. Plaintiff DRNC engages in a variety of work to promote voting by people with disabilities, including those living in congregate settings. (Myers Decl., pp. 1-3, ¶¶ 4-9 (detailing

multiple voting rights projects, including those addressing access to assistance for those in congregate settings).)

14. In the course of its voting work, DRNC has encountered multiple instances of the application of the challenged statutes to voters with disabilities in congregate settings. (Myers Decl., pp. 2-4, ¶¶ 6-11). Such instances have included situations where individuals were denied the right under Section 208 to select congregate setting staff to provide assistance in voting. (Myers Decl., p. 4, ¶ 11.) DRNC has also been informed of disenfranchisement of voters with disabilities on account of their inability to select congregate setting staff to assist with voting because of the challenged statutes. (Myers Decl., p. 4, ¶ 11.)
15. DRNC has diverted resources because of the continued barriers to voting created by the above provisions of North Carolina law. (Myers Decl., pp. 2-5, ¶¶ 6-14.) Specifically:
  - a. DRNC has spent staff time attempting to address the unavailability of Multi-partisan Assistance Teams (“MATs”) as an alternative source of assistance, including extensive communications with the 100 county boards and the State Board of Elections regarding the need to staff MATs and identified deficiencies during election cycles. (Myers Decl., pp. 2-4, ¶¶ 7-12.)
  - b. DRNC has worked with facilities and long-term care ombudsmen to help identify alternative means to enable facility residents to vote. (Myers Decl., p. 4, ¶ 11.)
  - c. DRNC has pursued legislative and executive advocacy to address the current violation of Section 208 of the Voting Rights Act. (Myers Decl., pp. 4-5, ¶ 14.)
  - d. DRNC has provided direct assistance with voter registration and voting by people in facilities because of the legal barriers to assistance by congregate care staff. (Myers

Decl., p. 4 ¶ 11.)

This 15th day of June, 2022.

Respectfully submitted,

/s/ Lisa Grafstein  
Lisa Grafstein  
lisa.grafstein@disabilityrightsnc.org  
N.C. State Bar No. 22076

Holly Stiles  
holly.stiles@disabilityrightsnc.org  
N.C. State Bar No. 38930

DISABILITY RIGHTS NC  
3724 National Drive, Suite 100  
Raleigh, NC 27612  
Phone: (919) 856-2195  
Fax: (919) 856-2244

ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Case No. 5:21-cv-361

DISABILITY RIGHTS NORTH CAROLINA, )  
)  
Plaintiff, )  
)  
v. )  
)  
NORTH CAROLINA STATE BOARD OF )  
ELECTIONS, KAREN BRINSON BELL, in )  
her official capacity as Executive Director of the )  
NCSBOE, DAMON CIRCOSTA, in his official )  
capacity as Chair of the NCSBOE, STELLA )  
ANDERSON, in her official capacity as )  
Secretary of the NCSBOE, JEFF CARMON III, )  
in his official capacity as Member of the )  
NCSBOE, STACY EGGERS IV, in his official )  
capacity as Member of the NCSBOE, and )  
TOMMY TUCKER, in his official capacity as )  
Member of the NCSBOE, )  
)  
Defendants. )  
)

---

**PLAINTIFF'S APPENDIX TO LOCAL CIVIL RULE 56.1  
STATEMENT OF MATERIAL FACTS**

The following materials, attached hereto, are submitted in support of Plaintiff's Statement of Undisputed Facts and Plaintiff's Motion for Summary Judgment:

1. Complaint [D.E. 1.]
2. Answer [D.E. 31.]
3. State Board Defendants' Responses to Plaintiff's First Set of Requests for Admissions
4. Declaration of Virginia Knowlton Marcus
5. Declaration of Kenya Myers

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Case No. 5:21-cv-361

DISABILITY RIGHTS NORTH CAROLINA, )  
)  
Plaintiff, )  
)  
v. )  
)  
NORTH CAROLINA STATE BOARD OF )  
ELECTIONS, KAREN BRINSON BELL, in her )  
official capacity as Executive Director of the )  
NCSBOE, DAMON CIRCOSTA, in his official )  
capacity as Chair of the NCSBOE, STELLA )  
ANDERSON, in her official capacity as )  
Secretary of the NCSBOE, JEFF CARMON III, )  
in his official capacity as Member of the )  
NCSBOE, STACY EGGERS IV, in his official )  
capacity as Member of the NCSBOE, and )  
TOMMY TUCKER, in his official capacity as )  
Member of the NCSBOE, )  
)  
Defendants. )  
)

**COMPLAINT**  
**(Jury Trial Demanded)**

**INTRODUCTION**

1. Section 208 of the Voting Rights Act, 52 U.S.C. § 10508, mandates that voters with disabilities who need assistance with voting must be permitted their choice of assistant, so long as the assistant is not their employer or union officer. North Carolina law violates Section 208 of the Voting Rights Act by limiting the assistance available to voters with disabilities who need assistance obtaining an absentee ballot, and by prohibiting voters with disabilities living in facilities from relying on any person associated with the facility for assistance with any of the steps required to vote absentee. Plaintiff brings this action to enforce the federal right of voters with disabilities to rely on the assistant of their choosing when they vote.



## JURISDICTION AND VENUE

2. Plaintiff brings this action pursuant to the Supremacy Clause, U.S. Const. Art. VI, Cl. 2, Section 208 of the Voting Rights Act, 52 U.S.C. § 10508, and 42 U.S.C. § 1983, *et seq.*

3. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202.

5. Venue is appropriate in the United States District Court for the Eastern District of North Carolina pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions that gave rise to Plaintiff's claim occurred within this District and Defendants' principal office and place of business is in this District.

## PARTIES

6. Plaintiff Disability Rights North Carolina ("DRNC") is an independent non-profit corporation organized under the laws of the State of North Carolina. DRNC is a Protection and Advocacy system ("P&A"), as that term is defined under the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 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.*, with offices in the State of North Carolina located at 3724 National Dr., Suite 100, Raleigh, NC 27612.

7. As North Carolina's P&A, DRNC 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).

8. Defendant North Carolina State Board of Elections ("NCSBE") is the State agency responsible for managing and supervising elections in North Carolina.

9. NCSBE is responsible for ensuring that North Carolina operates elections in conformity with state and federal law, including Section 208 of the Voting Rights Act.
10. Defendant Karen Brinson Bell is sued in her official capacity as the Executive Director of the NCSBE.
11. Defendant Damon Circosta is sued in his official capacity as the Chair of the NCSBE.
12. Defendant Stella Anderson is sued in her official capacity as the Secretary of the NCSBE.
13. Defendants Jeff Carmon III, Stacy Eggers IV, and Tommy Tucker are sued in their official capacity as members of the NCSBE.
14. All Defendants are “persons” for purposes of 42 U.S.C. § 1983.
15. Defendants are sued pursuant to the Voting Rights Act and 42 U.S.C. § 1983 for declaratory and injunctive relief for actions taken under color of state law that violate Section 208 of the Voting Rights Act and deprive voters with disabilities of the right to rely on the assistance of their choosing when they vote. Plaintiff does not seek monetary relief.

## FACTS

16. In order to vote absentee in North Carolina, a voter must: (1) obtain an absentee ballot request form; (2) complete and return the absentee ballot request form; (3) receive the absentee ballot form in the mail; and (4) complete and mail the absentee ballot. Each step occurs at a different time during the weeks and months leading up to an election.
17. Depending on an individual’s disability, those who need assistance may need assistance with some or all steps of the absentee voting process.

18. In recognition that voters with disabilities may require assistance with voting, Congress mandated that:

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.

19. North Carolina law restricts who may assist an individual in obtaining an absentee ballot:

A request for absentee ballots is not valid if . . . [t]he completed written request is completed, partially or in whole, or signed by anyone other than the voter, or the voter's near relative or verifiable legal guardian.

N.C. Gen. Stat. § 163-230.2(e). The same limitation applies with regard to requesting a ballot through an online portal. N.C. Gen. Stat. § 163-230.3.

20. N.C. Gen. Stat. §§ 163-230.2(e) and 230.3 proscribe and circumscribe who may assist in requesting an absentee ballot, denying voters with disabilities their choice of assistant in requesting an absentee ballot.

21. It is also illegal under North Carolina law

[f]or any owner, manager, director, employee, or other person, other than the voter's near relative or verifiable legal guardian, to (i) **make a written request** pursuant to G.S. 163-230.1 [for an absentee ballot] or (ii) **sign an application or certificate as a witness**, on behalf of a registered voter, who is a patient in any hospital, clinic, nursing home or rest home in this State or for any owner, manager, director, employee, or other person other than the voter's near relative or verifiable legal guardian, to mark the voter's absentee ballot **or assist such a voter in marking an absentee ballot.**

N.C. Gen. Stat. § 163-226.3(a)(4) (2021) (emphases added).

22. There are thousands of individuals with disabilities in North Carolina living in a “hospital, clinic, nursing home or rest home” (hereinafter “congregate setting”).

23. Many individuals with disabilities living in congregate settings need assistance with voting because of their disabilities.

24. A voter with a disability living in a congregate setting is prohibited by state law to permit another person to assist the voter in marking that voter's absentee ballot, to be in the voter's presence when a voter votes an absentee ballot, or to observe the voter mark that voter's absentee ballot.

N.C. Gen. Stat. § 163-226.3(a)(6).

25. A voter with a disability living in a congregate setting also is barred from requesting help with mailing a ballot from an individual affiliated with the facility in which the voter lives, even if the ballot envelope is sealed. N.C. Gen. Stat. § 163-231(b)(1).

26. Facility staff are often the only reliable assistants available to an individual with a disability living in a facility and are often residents’ most consistent and trusted source of assistance.

27. The ballot request provisions of N.C. Gen. Stat. §§ 163-230.1, 230.2, and 230.3, the ballot completion provisions of N.C. Gen. Stat. § 163-226.3, and the ballot delivery provision of N.C. Gen. Stat. § 163-231(b)(1) directly contravene Section 208 of the Voting Rights Act by limiting the ability of individuals with disabilities to “be given assistance by a person of the voter’s choice.”

28. Section 208 of the Voting Rights Act confers rights on all voters with disabilities.

29. The above provisions of state law create a barrier to absentee voting for voters with disabilities who need assistance with voting.

30. Impairing the right to an assistant of the voter's choosing in the absentee voting process limits the rights of all voters with disabilities who may need assistance with absentee voting in any election in which they may choose to vote absentee.

31. All North Carolina voters with disabilities are constituents of Plaintiff DRNC. As a P&A, Plaintiff DRNC is accountable to members of the disability community and is authorized under federal law to represent the interests of North Carolinians with disabilities.

32. Protecting the voting rights of individuals with disabilities is germane to Plaintiff DRNC's purpose.

33. One or more of Plaintiff DRNC's constituents would have standing to redress the violations complained of herein.

34. On behalf of its constituents with disabilities who are being denied their federally protected right to elect to vote absentee with an assistant of their choosing, each of whom would have standing to challenge the infringement of the rights conferred by Section 208 of the Voting Rights Act, Plaintiff DRNC seeks to end the impairment of constituents' rights under Section 208 of the Voting Rights Act.

35. Plaintiff DRNC has experienced a frustration of its mission to promote voting by people with disabilities by the barriers created by the above-referenced violations of Section 208. The functioning of Plaintiff DRNC's voting work is impaired by these same barriers.

36. Plaintiff DRNC engages in a variety of work to promote voting by people with disabilities, including those living in congregate settings.

37. Over the course of several years preceding the filing of this Complaint, Plaintiff DRNC has:

- a. Engaged in voter registration of people with disabilities;

- b. Compiled and issued non-partisan voter guides, including the distribution of these guides to congregate settings and other locations;
- c. Operated a summer intern program specifically targeted at registration and voter engagement of people with disabilities;
- d. Engaged in get-out-the-vote efforts, and efforts to protect the votes of voters with disabilities in congregate settings during vote canvassing;
- e. Advocated for adequate staffing of Multi-partisan Assistance Teams (“MAT”) by county boards of elections so that such teams could provide assistance to voters with disabilities living in congregate settings;
- f. Engaged in an awareness campaign to ensure that congregate care facilities made early contacts and requests for assistance to their county’s MAT;
- g. Fielded and attempted to address concerns from facilities and individuals where voters’ ability to cast absentee ballots was frustrated by unavailability or inadequacy of MATs and the above prohibitions on who may provide assistance to certain voters with disabilities; and
- h. Litigated access to absentee voting for blind voters.

38. Plaintiff DRNC has diverted resources because of the continued barriers to voting created by the above provisions of North Carolina law. Plaintiff DRNC has spent staff time attempting to address the unavailability of MATs as an alternative source of assistance, including extensive communications with the 100 county boards and the State Board of Elections regarding the need to staff MATs and identified deficiencies during election cycles. Plaintiff DRNC has worked with facilities and long-term care ombudsmen to help identify alternative means to enable facility residents to vote. Plaintiff DRNC has pursued legislative and executive

advocacy to address the current violation of Section 208 of the Voting Rights Act. Plaintiff DRNC has provided direct assistance with voter registration and voting by people in facilities because of the legal barriers to assistance by congregate care staff.

**CLAIM FOR RELIEF**

(Voting Rights Act, 52 U.S.C. § 10508 and 42 U.S.C. § 1983)

39. Plaintiff incorporates by reference the allegations contained in the foregoing paragraphs as if specifically alleged herein.

40. Plaintiff brings this action pursuant to 52 U.S.C. § 10508 and 42 U.S.C. § 1983 and the Supremacy Clause of the U.S. Constitution to redress the above violation of rights protected by Section 208 of the Voting Rights Act.

41. Provisions of N.C. Gen. Stat. §§ 163-226.3, 230.1, 230.2, 230.3, and 163-231(b)(1), as applied to voters with disabilities who need assistance with voting, directly conflict with Section 208 of the Voting Rights Act.

42. Defendants have acted under color of state law to infringe the rights of voters with disabilities to rely on the assistant of their choice in voting.

43. Plaintiff is entitled to a declaration that the provisions of N.C. Gen. Stat. §§ 163-226.3, 230.1, 230.2, 230.3, and 163-231(b)(1) violate Section 208 of the Voting Rights Act, as applied to voters with disabilities who need assistance with voting. Plaintiff is entitled to an injunction barring enforcement of those sections as to the selection of assistants by voters with disabilities. Plaintiff is entitled to declaratory and injunctive relief to remedy Defendants' infringement on the rights protected by Section 208 of the Voting Rights Act.

44. Plaintiff is also entitled to recover costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and 52 U.S.C. § 10310.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the Court to provide relief as set forth below:

1. A declaration that Defendants have violated and continue to violate Section 208 of the Voting Rights Act by infringing on the rights of voters with disabilities to receive assistance from the person of their choice;
2. An injunction prohibiting Defendants from limiting the choice of assistants available to voters with disabilities, or otherwise infringing the rights of voters with disabilities under Section 208 of the Voting Rights Act;
3. An award of Plaintiff's reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and 52 U.S.C. § 10310; and
4. Such other and further relief as the Court may deem just and proper.

This 9<sup>th</sup> day of September, 2021.

Respectfully submitted,

/s/ Lisa Grafstein

Lisa Grafstein  
lisa.grafstein@disabilityrightsnc.org  
N.C. State Bar No. 22076

Holly Stiles  
holly.stiles@disabilityrightsnc.org  
N.C. State Bar No. 38930

DISABILITY RIGHTS NC  
3724 National Drive, Suite 100  
Raleigh, NC 27612  
Phone: (919) 856-2195  
Fax: (919) 856-2244



IN THE UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
 WESTERN DIVISION  
 Civil Case No. 5:21-cv-361

DISABILITY RIGHTS NORTH )  
 CAROLINA, )

Plaintiff, )

v. )

**ANSWER  
 TO COMPLAINT**

NORTH CAROLINA STATE BOARD OF )  
 ELECTIONS, KAREN BRINSON BELL, )  
 in her official capacity as Executive )  
 Director of the NCSBOE, DAMON )  
 CIRCOSTA, in his official capacity as )  
 Chair of the NCSBOE, STELLA )  
 ANDERSON, in her official capacity as )  
 Secretary of the NCSBOE, JEFF CARMON )  
 III, in his official capacity as Member of the )  
 NCSBOE, STACY EGGERS IV, in his )  
 official capacity as Member of the )  
 NCSBOE, and TOMMY TUCKER, in his )  
 official capacity as Member of the )  
 NCSBOE, )

Defendants. )

NOW COME Defendants, the North Carolina State Board of Elections, Karen Brinson Bell, Damon Circosta, Stella Anderson, Jeff Carmon, III, Stacy Eggers, IV, and Tommy Tucker (collectively, the “State Board Defendants”), and provide the following in response to Plaintiff’s Complaint:

**INTRODUCTION**

1. Denied that North Carolina violates Section 208 of the Voting Rights Act.

**JURISDICTION AND VENUE**

2. Admitted that Plaintiff brought this action under the cited statutes.
3. Denied.

4. Admitted that the Court has the authority to grant injunctive relief.
5. Admitted.

### **PARTIES**

6. Neither admitted nor denied as this allegation is not directed at Defendants. To the extent a response is required, denied.

7. Neither admitted nor denied as this allegation is not directed at Defendants. To the extent a response is required, denied.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted that Plaintiff purports to sue as described.

### **FACTS**

16. Denied. There are multiple methods by which a voter in North Carolina may vote absentee, some of which involve multiple steps occurring at the same time or during the same visit to a county board of elections office or early voting site. Please consult Articles 20 and 21A of Chapter 163 of the North Carolina General Statutes, and Chapter 18 of Title 08 of the North Carolina Administrative Code, in their entirety, for all methods and procedures of voting absentee.

17. Admitted.

18. Admitted that this accurately restates Section 208 of the Voting Rights Act.

19. Denied to the extent that this citation to N.C.G.S. § 163-230.2(e) ignores subsection (e1) of the same statute, which must be read together, and because N.C.G.S. § 163-230.3 expressly incorporates subsections (e) and (e1) of N.C.G.S. § 163-230.2.

20. Denied.

21. Admitted.

22. Admitted.

23. Admitted.

24. Denied. The quoted portion of subsection (a)(6) fails to include the prefatory statement that explains this prohibition does not apply when the voter requests assistance.

Subsection (a)(6) reads in full:

(6) Except as provided in subsections (1), (2), (3) and (4) of this section, G.S. 163-231(a), and G.S. 163-227.2(e), for any voter to permit another person to assist the voter in marking that voter's absentee ballot, to be in the voter's presence when a voter votes an absentee ballot, or to observe the voter mark that voter's absentee ballot.

N.C.G.S § 163-226.3(a)(6) (emphasis added). N.C.G.S. § 163-231(a)(6), cited above, states,

“[t]he persons in whose presence the ballot is marked shall at all times respect the secrecy of the ballot and the privacy of the absentee voter, unless the voter requests assistance and that person is otherwise authorized by law to give assistance.”

25. Admitted.

26. Defendants lack sufficient knowledge to admit or deny this allegation. To the extent a response is required, denied.

27. Denied.

28. Admitted.

29. Denied to the extent that the restrictions on who can assist a voter are minimal burdens serving a state interest and offset by exceptions and programs aimed at reducing or eliminating any barrier to the voter exercising their right to vote.

30. Denied to the extent that the restrictions on who can assist a voter are minimal burdens serving a state interest and offset by exceptions and programs aimed at reducing or eliminating any barrier to the voter exercising their right to vote.

31. Neither admitted nor denied as this allegation is not directed at Defendants. To the extent a response is required, denied.

32. Neither admitted nor denied as this allegation is not directed at Defendants. To the extent a response is required, denied.

33. Denied as Plaintiff has not identified any such person.

34. Denied that any voter's rights are being impaired, burdened, or harmed. Denied that Plaintiff has standing to the extent that Plaintiff has not identified any person injured.

35. Denied that any voter's rights are being impaired, burdened, or harmed, or that Plaintiff has suffered an injury as a result.

36. Neither admitted nor denied as this allegation is not directed at Defendants. To the extent a response is required, denied.

37. Neither admitted nor denied as this allegation is not directed at Defendants. To the extent a response is required, denied.

38. Defendants lack sufficient knowledge with respect to Plaintiff's efforts working with MATs, medical facilities, legislative or executive advocacy, or direct assistance to voters. Denied that any voter's rights are being impaired, burdened, or harmed, or that Plaintiff has suffered an injury as a result.

**CLAIM FOR RELIEF**

(Voting Rights Act, 52 U.S.C. § 10508 and 42 U.S.C. § 1983)

- 39. Defendants repeat each response above as if set forth fully herein.
- 40. Admitted that Plaintiff purports to bring suit under these statutes.
- 41. Denied.
- 42. Denied.
- 43. Denied.
- 44. Denied.

**THE STATE BOARD DEFENDANTS DENY ANY AND ALL ALLEGATIONS IN PLAINTIFFS' COMPLAINT EXCEPT AS ADMITTED ABOVE, INCLUDING THE RELIEF REQUESTED BY PLAINTIFFS.**

**FURTHER ANSWERING THE COMPLAINT AND AS FURTHER DEFENSES THERETO, STATE BOARD DEFENDANTS ASSERT THE FOLLOWING:**

**FIRST DEFENSE**

State Board Defendants are entitled to the immunity provided by the Eleventh Amendment to the United States Constitution and sovereign immunity.

**SECOND DEFENSE**

Plaintiffs fail to state a claim upon which relief can be granted against State Board Defendants and, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, this failure bars Plaintiffs' claims.

**THIRD DEFENSE**

This Court lacks subject matter jurisdiction over this claim pursuant to Rule 12(b)(1) and Defendants reserve the right to raise that defense at any stage in this proceeding.

**FOURTH DEFENSE**

State Board Defendants deny that they deprived Plaintiff, or any other person, of any right

under federal law.

**FIFTH DEFENSE**

State Board Defendants reserve the right to assert further defenses against Plaintiffs that may become apparent during the course of litigation and discovery.

WHEREFORE, State Board Defendants request as follows:

1. That the Complaint be dismissed;
2. That Plaintiff have and recover nothing from State Board Defendant;
3. That costs, including reasonable attorney's fee, be taxed to Plaintiff; and
4. For such other relief as the Court deems just and proper.

Respectfully submitted this the 20<sup>th</sup> day of May, 2022.

JOSHUA H. STEIN  
Attorney General

/s/ Terence Steed  
Terence Steed  
Special Deputy Attorney General  
N.C. State Bar No. 52809  
N.C. Department of Justice  
Post Office Box 629  
Raleigh, NC 27602  
Telephone: (919) 716-6567  
Facsimile: (919) 716-6763  
Email: tsteed@ncdoj.gov

*Counsel for State Board Defendants*



5. State Board Defendants object to every request that calls for information that is neither relevant to the subject matter of the pending Complaint nor reasonably calculated to lead to the discovery of admissible evidence in connection with the pending Complaint.

6. State Board Defendants object to every introductory “definition” or “instruction,” that seeks to impose obligations beyond those required by the Federal Rules of Civil Procedure, as reasonably interpreted and supplemented by local court rules.

7. The inadvertent provision of information containing information protected from discovery by the attorney-client privilege, work product doctrine, any other applicable privilege, or any other statutory provisions protecting the confidentiality of voters or election security, shall not constitute a waiver of such privileges or confidentiality with respect to that information or those or any other documents. In the event that inadvertent production occurs, the Plaintiff shall return all inadvertently produced documents or information to State Board Defendants upon request, and/or shall make no use of the contents of such information or documents nor premise any further discovery on information learned therefrom.

8. A specific response may repeat a general objection for emphasis or some other reason. The failure to include any general objection in any specific response does not waive any general objection to that request. Moreover, State Board Defendants do not waive their right to amend its responses.

9. The following responses reflect the current state of the State Board Defendants knowledge, understanding and belief respecting matters about which inquiry has been made. State Board Defendants expressly reserve their right to supplement or modify these responses with such information as he may hereafter discover and will do so to the extent required by the Federal Rules of Civil Procedure. State Board Defendants acknowledge their continuing duty to supplement these responses. State Board Defendants expressly reserve the right to rely on, at any time, including trial, subsequently discovered documents and/or materials that have been produced promptly upon discovery.



## REQUESTS FOR ADMISSIONS

1. Defendants would not authorize an individual voter to receive assistance prohibited by one or more of the Challenged Statutes<sup>1</sup>, regardless of the specific individual factual circumstance.

RESPONSE: Admitted that State Board Defendants do not have the legal authority to authorize any voter to violate the Challenged Statutes.

2. Defendants would not authorize an owner or employee of a facility covered by the Challenged Statutes to provide assistance that violates one or more of the Challenged Statutes, regardless of the specific factual circumstance.

RESPONSE: Admitted that State Board Defendants do not have the legal authority to authorize an owner or employee of a facility covered by the Challenged Statutes to violate the Challenged Statutes.

3. Defendants do not have the authority to allow a voter to receive assistance that violates one or more of the Challenged Statutes, regardless of whether the voter's Section 208 right to assistance is unduly burdened by one or more Challenged Statutes.

RESPONSE: State Board Defendants object to the premise of this request as it assumes the Challenged Statutes impose an undue burden and ignores the existence of Multipartisan Assistance Teams ("MATs"), which provide assistance to voters, including Section 208 voters, during the absentee voting process. In the event that a MAT was unable to provide assistance to

---

<sup>1</sup> Defined in Plaintiff's discovery requests as the provisions of Chapter 163 at issue in this matter, specifically: N.C. Gen. Stat. §§ 163-226.3(a)(4) and (a)(6), 163-230.1, 163-230.2(e), 163-230.3, and 163-231(b)(1).

a Section 208 voter, and as a result the Challenged Statutes presented a burden to a Section 208 voter's ability to vote, the State Board Defendants are authorized pursuant to the North Carolina Persons with Disabilities Protection Act, N.C.G.S. § 168A-1, et seq. ("NC PDPA"), Title II of the Americans with Disabilities Act, 42 U.S.C. § 126, et seq. ("ADA"), and the State Board Defendants' ADA policy, to provide a reasonable accommodation that reduces or eliminates any such burden.

Without waiving that objection, it is admitted that State Board Defendants do not have the legal authority to authorize any person to violate the Challenged Statutes.

4. Defendants do not have the authority to allow a facility owner or employee to provide assistance that violates one or more of the Challenged Statutes, regardless of whether a voter's Section 208 right to assistance is unduly burdened by one or more Challenged Statutes.

RESPONSE: State Board Defendants object to the premise of this request as it the Challenged Statutes impose an undue burden and ignores the existence of MATs, which provide assistance to voters, including Section 208 voters, during the absentee voting process. As stated in response three above, State Board Defendants are authorized to provide a reasonable accommodation for a Section 208 voter that reduces or eliminates any burden.

Without waiving that objection, it is admitted that State Board Defendants do not have the legal authority to authorize a facility owner or employee to violate the Challenged Statutes.

5. Defendants do not have a standard for determining whether a voter's Section 208 rights are unduly burdened by the Challenged Statutes.

RESPONSE: State Board Defendants object to this request to the extent it is vague, seeks a legal opinion or legal conclusions, and seeks privileged attorney-client communications or work product. State Board Defendants further object to the premise of this request as it assumes the Challenged Statutes impose an undue burden and ignores the existence of MATs, which provide assistance to voters, including Section 208 voters, during the absentee voting process. As stated in response three above, State Board Defendants are authorized to provide a reasonable accommodation for a Section 208 voter that reduces or eliminates any burden.

Without waiving that objection, it is denied based upon the State Board Defendants Elections Accessibility Policy for Alternative Formats, which further eliminates any burden imposed by the Challenged Statutes. <https://www.ncsbe.gov/voting/help-voters-disabilities/north-carolina-state-board-elections-accessibility-policy-alternative-formats>.

6. Defendants do not have a process for determining whether a voter's Section 208 rights are unduly burdened by the Challenged Statutes.

RESPONSE: State Board Defendants object to the premise of this request as it assumes the Challenged Statutes impose an undue burden and ignores the existence of MATs, which are obligated to provide assistance to Section 208 voters during the absentee voting process. As stated in response three above, State Board Defendants are authorized to provide a reasonable accommodation for a Section 208 voter that reduces or eliminates any burden.

Without waiving that objection, it is denied based upon the State Board Defendants Elections Accessibility Policy for Alternative Formats, which further eliminates any burden

imposed by the Challenged Statutes. <https://www.ncsbe.gov/voting/help-voters-disabilities/north-carolina-state-board-elections-accessibility-policy-alternative-formats>

7. Under current policy and practice, Defendants do not make determinations about whether a voter's selection of assistant pursuant to Section 208 is unduly burdened by the Challenged Statutes.

RESPONSE: State Board Defendants object to the premise of this request as it assumes the Challenged Statutes impose an undue burden and ignores the existence of MATs, which are obligated to provide assistance to Section 208 voters during the absentee voting process. As stated in response three above, State Board Defendants are authorized to provide a reasonable accommodation for a Section 208 voter that reduces or eliminates any burden.

Without waiving that objection, it is admitted to the extent that the State Board Defendants generally receive no information from voters on their selection of assistants, and the county boards of elections make MATs available for voters with disabilities.

To the extent that information was provided to State Board Defendants, it is denied based upon the State Board Defendants Elections Accessibility Policy for Alternative Formats.

<https://www.ncsbe.gov/voting/help-voters-disabilities/north-carolina-state-board-elections-accessibility-policy-alternative-formats>.

8. Outside the litigation context, Defendants have not conducted any analysis of whether the Challenged Statutes protect the rights of Section 208 voters.

RESPONSE: State Board Defendants object to this request to the extent it seeks a legal opinion or legal conclusions. Without waiving that objection, admitted to the extent that State

Board Defendants have not conducted policy analysis of this nature, and as an agency of state government, implement laws as written, including the Challenged Statutes.

9. Outside the litigation context, Defendants have not conducted any analysis of whether the Challenged Statutes unduly burden the rights of Section 208 voters.

RESPONSE: State Board Defendants object to this request to the extent it seeks a legal opinion or legal conclusions. Without waiving that objection, admitted to the extent that State Board Defendants have not conducted policy analysis of this nature, and as an agency of state government, implement laws as written, including the Challenged Statutes.

10. Even when a disabled voter living in a facility has no near relatives, no legal guardian, and no one else in the facility available to assist with voting, other than the facility employees or owner(s), Defendants would not authorize the employees or owner(s) to provide assistance that violates one or more of the Challenged Statutes

RESPONSE: Admitted. See responses three and four above.

11. Even when a disabled voter living in a facility has no near relatives, no legal guardian, no other resident of the facility available to assist with voting, and no response from the Multipartisan Assistance Team, Defendants would not authorize the employees or owner(s) to provide assistance that violates one or more of the Challenged Statutes.

RESPONSE: Admitted. See responses three and four above.

This the 1<sup>st</sup> day of June, 2022.

JOSHUA H. STEIN  
Attorney General

/s/ Terence Steed  
Terence Steed  
Special Deputy Attorney General  
N.C. State Bar No. 52809  
N.C. Department of Justice  
Post Office Box 629  
Raleigh, NC 27602  
Telephone: (919) 716-6567  
Facsimile: (919) 716-6763  
Email: [tsteed@ncdoj.gov](mailto:tsteed@ncdoj.gov)  
Counsel for State Board Defendants

RETRIEVED FROM DEMOCRACYDOCKET.COM

**CERTIFICATE OF SERVICE**

I hereby certify that the undersigned has on this date served the foregoing document in the above titled action upon all counsel of record via email addressed as follows:

Lisa Grafstein  
Holly Stiles  
Disability Rights NC  
3724 National Drive, Suite 100  
Raleigh, NC 27612  
lisa.grafstein@disabilityrightsnc.org  
holly.stiles@disabilityrightsnc.org

This the 1<sup>st</sup> day of June, 2022.

/s/ Terence Steed  
Terence Steed  
Special Deputy Attorney General

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
 WESTERN DIVISION  
 Civil Case No. 5:21-cv-361-BO

DISABILITY RIGHTS NORTH CAROLINA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 NORTH CAROLINA STATE BOARD OF )  
 ELECTIONS, *et al.*, )  
 )  
 Defendants. )

**DECLARATION OF  
 VIRGINIA KNOWLTON MARCUS**

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I, Virginia Knowlton Marcus, am over 18 years of age and competent to testify.
2. I have been the Chief Executive Officer of Disability Rights North Carolina (“Disability Rights NC”) since September 2018. In this role, I am responsible for ensuring Disability Rights NC carries out activities in conformity with applicable laws, regulations, grants and contractual requirements, and for ensuring that the organization is responsive to the advocacy needs of people with disabilities in North Carolina. I am an attorney, although I am not licensed to practice in North Carolina.
3. Disability Rights NC is incorporated as a non-profit organization in the State of North Carolina.
4. Disability Rights NC is the designated Protection and Advocacy (P&A) system for North Carolina. Each State and United States Territory has a designated P&A pursuant to federal law. See 42 U.S.C. §§ 300d-53, 405, 10801 *et seq.*, 1320b-21, 15041-15045; 29 U.S.C. §§ 794e, 3004; 52 U.S.C. §§ 21061 - 21062.



5. As the P&A, Disability Rights NC is authorized to pursue administrative, legal, and other appropriate remedies to protect and advocate for the legal rights of individuals with disabilities and to redress incidents of discrimination in the state. Disability Rights NC has the authority to prosecute actions in its own name and on behalf of its constituents. 42 U.S.C. § 15043(a)(2)(A)(i).
6. As specified in Disability Rights NC's bylaws, Disability Rights NC constituents are residents of North Carolina with disabilities, as that population is defined by federal and/or state law.
7. Disability Rights NC represents the interests of, and is accountable to, members of the North Carolina disability community, and its funding is dependent on compliance with a governance structure that ensures oversight and control by the disability community.
  - a. Disability Rights NC is required by federal law to maintain a governance structure that ensures that the P&A is reflective of and responsive to the disability community. More than half of Disability Rights NC's board of directors and advisory council members are individuals with disabilities or family members, guardians, or advocates for such individuals.
  - b. Disability Rights NC regularly seeks public comment on the direction of its work. For instance, Disability Rights NC conducts listening sessions for the North Carolina disability community to identify concerns, and it conducts annual surveys of the disability community to determine the specific areas of advocacy on which the organization will focus.

- c. Members of the disability community have the right to file grievances if they disagree with actions taken by Disability Rights NC or believe they were wrongly denied services by Disability Rights NC.
8. Disability Rights NC is the designated agency to receive a grant, called Protection and Advocacy for Voting Access pursuant to the Help America Vote Act, requiring Disability Rights NC to promote access and engagement in the electoral process for voters with disabilities.
9. Disability Rights NC's constituents include all voters with disabilities throughout North Carolina who need assistance with the voting process, including the absentee voting process.
10. Disability Rights NC participates in this action on behalf of its constituents who need, and have a right to assistance with voting, pursuant to Section 208 of the Voting Rights Act.
11. Ensuring and promoting access to voting by people with disabilities is germane to Disability Rights NC's purpose, and is directly in keeping with Disability Rights NC's overarching purpose: the protection of, and advocacy for, the rights of North Carolinians with disabilities.
12. Disability Rights NC's funding for its voting work comes, in large part, from the federal Protection and Advocacy for Voting Access grant. Under this formula grant, Disability Rights NC receives a set amount of funding each year to conduct voting advocacy. This grant is relatively small but enables us to employ a Voting Rights Advocate, which is a non-exempt position. We do not generate income under this grant. Time spent by our Voting Rights Advocate and other staff on one voting issue, such as assisting and

advocating on behalf of voters who reside in congregate facilities to vote with the assistant of their choice, directly diminishes the time that can be spent on other voting work.

13. The time and resources Disability Rights NC expended ensuring that voters are not denied their access to the franchise because of the statutes at issue in this case directly reduced our other voting advocacy and will continue to do so unless there is a change in the status quo.

I declare under penalty of perjury that the statements above are true.

This the 15th day of June, 2022.



---

Virginia Knowlton Marcus

IN THE UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
 WESTERN DIVISION  
 Civil Case No. 5:21-cv-361-BO

DISABILITY RIGHTS NORTH CAROLINA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 NORTH CAROLINA STATE BOARD OF )  
 ELECTIONS, *et al.*, )  
 )  
 Defendants. )

**DECLARATION OF  
 KENYA MYERS**

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I, Kenya Myers, am over 18 years of age and competent to testify.
2. I am employed by Disability Rights North Carolina (“Disability Rights NC”) as the Voting Rights Advocate. I have worked for Disability Rights NC since January 2019. My job is to promote voting and engagement in the electoral process for people with disabilities and to address barriers to voting faced by people with disabilities.
3. While I am the designated Voting Rights Advocate, Disability Rights NC policy staff who advocate in legislative and executive contexts regarding the rights of people with disabilities are also periodically engaged in voting work. Other Disability Rights NC staff intermittently assist with our voting work, typically during busy parts of election season.
4. During the past several years, Disability Rights NC has:
  - a. Promoted voter registration of people with disabilities;
  - b. Compiled and distributed non-partisan voter guides regarding statewide candidates’ positions on disability issues, including to individuals living in congregate care settings;

- c. Operated a summer intern program specifically targeted at voter engagement of people with disabilities;
- d. Engaged in get-out-the-vote efforts, and efforts to protect the voting rights of voters with disabilities during vote canvassing; and
- e. Advocated for adequate staffing and availability of Multi-partisan Assistance Teams (“MAT”).

This list is just a sampling, and is not an exhaustive list, of our voting-related work.

- 5. One of the items noted above – addressing the inadequacy of MATs – has been an ongoing effort by Disability Rights NC over the course of years, with which my colleagues have assisted periodically.
- 6. I am aware of specific statutes that prohibit people living in facilities from getting help with voting from staff or owners of those facilities. These statutes and the criminal penalties attached are the reason that facility staff cannot help residents with disabilities with voting. If it were not for these statutes, and if facility staff were permitted to help with voting, we would not have to devote the time and attention that we currently do to making sure voters in facilities have alternative options (including MATs) to get the assistance they need. However, as it stands now, MATs are frequently the only option available to provide assistance to facility residents with voting.
- 7. Each county board of elections is required to designate individuals to serve on MATs and for MATs to be available to provide voting assistance to voters living in facilities. However, there is inconsistent compliance with these obligations at the county level. This was an especially acute issue during the 2020 election due to COVID restrictions, but has been a problem in every election cycle during my tenure at Disability Rights NC. As a

result, I and my colleagues have spent considerable time addressing the availability of MATs.

8. For example, in order to be proactive, in 2020, I wrote to the 100 county boards of elections and the State Board of Elections regarding the need to staff MATs. I, along with interns and other staff, also collected public records in order to assess the availability of MATs and identify counties where there are staffing needs. We then followed up on areas where there were concerns, including communicating with the State Board of Elections and attempting to resolve concerns. (**Exhibit A:** Letter from Katelyn Love, NC State Board of Elections General Counsel, to Holly Stiles and Lisa Grafstein, counsel for Disability Rights North Carolina, October 21, 2020.)
9. I have also written to facilities to inform them about the availability of MATs, and to encourage the facilities to reach out to their County Board of Election to request MATs assist voters at their facility early in the election cycle. In addition, I have delivered presentations and engaged in other outreach efforts in order to help facilities ensure that residents are able to vote.
10. During each election cycle, I have identified deficiencies in the availability of MATs. On some occasions, counties have been unable to staff MATs for a variety of reasons, including because these are generally unfunded position. On other occasions, facilities have been unable to get a MAT scheduled to visit because of time constraints on the part of the MAT, or simple failure to respond. During the 2020 cycle, there were circumstances where facilities declined to allow MATs to enter because of COVID restrictions, and circumstances where MATs declined to go to facilities because of the presence of COVID at the facility. Although there were specific health issues in 2020, the

staffing and availability of MATs is not a problem that has been limited to the 2020 election cycle.

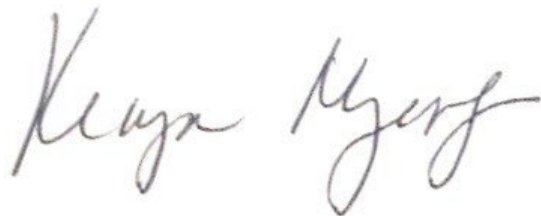
11. When we have not been able to secure a MAT, we have worked with facilities and long-term care ombudsmen to help identify alternative means to enable facility residents to vote. This has included identifying other sources of assistance (including other community groups), escalating the issue at the county or state board levels, or Disability Rights NC staff diverting their time toward providing direct assistance to voters. Sometimes, we have not been able to come up with a solution in time to enable facility residents with disabilities to vote.
12. Because our focus is on ensuring access to voting, Disability Rights NC has been forced to divert resources to attempting to increase MAT availability or identifying alternatives to provide facility residents some measure of access to voting assistance under current state law, though it may not be their chosen assistant. The time spent on these efforts is time, attention, and resources I and my colleagues could have and would have spent on other voting efforts for people with disabilities.
13. In addition to taking resources from other work, the restrictions on who can assist voters in facilities undermine our efforts to promote engagement and voter participation. Again, our purpose – and my job – is to increase access to voting and the electoral process for people with disabilities. That purpose is frustrated when voters we are trying to engage in the electoral process face barriers to voting because of limits on who can help them, or when people are discouraged from voting by the barriers to getting help.
14. My colleagues at Disability Rights NC have tried to address this problem at the legislature and through communications with the NC Board of Elections but have been

unable to get this barrier to voting removed. (**Exhibit A:** Letter from Katelyn Love, NC State Board of Elections General Counsel, to Holly Stiles and Lisa Grafstein, counsel for Disability Rights North Carolina, October 21, 2020; **Exhibit B:** Letter to Members of the NC General Assembly from Disability Rights NC, *et al.*, March 8, 2021.)

15. Along with other Disability Rights NC staff and interns, I am currently preparing for the 2022 General Election. In planning our work, I am concerned that Disability Rights NC may once again have to address voting issues caused by statutes that prevent congregate facility residents from relying on facility staff for assistance with voting. I anticipate that Disability Rights NC will once again have to address gaps in the availability of alternatives, which has been an issue in each recent election cycle. The investment of time on this issue will necessarily detract from other voting access work the organization would otherwise undertake.

I declare under penalty of perjury that the statements above are true.

This the 15th day of June, 2022.



---

Kenya Myers



# EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM



# NORTH CAROLINA STATE BOARD OF ELECTIONS

*Mailing Address:*  
P.O. Box 27255  
Raleigh, NC 27611

(919) 814-0700 or  
(866) 522-4723

*Fax:* (919) 715-0135

October 21, 2020

Holly Stiles  
Litigation Counsel, Disability Rights NC

Lisa Grafstein  
Litigation Counsel, Disability Rights NC

Dear Ms. Stiles and Ms. Grafstein,

Thank you for your October 19, 2020 letter regarding your organization's concerns about the availability of bipartisan assistance teams (MATs). [Numbered Memo 2020-24](#) advises county boards that they are required to have a MAT, which must be available to assist voters who are patients and residents in a covered facility in the county. We have also indicated that they may use CARES Act funds to recruit and promote the use of MATs. Through its Democracy Heroes portal, the State Board has aided county boards across the state in recruiting MAT members.

In your letter, you identify two county boards that you indicate do not have a MAT: Davidson and Rutherford counties. Last week State Board staff conducted training for MAT members in Davidson County, and additional trainings occurred this week. A MAT will be visiting any facilities in Davidson County that have requested assistance.

The Rutherford County Board has worked diligently to identify any volunteers who are willing to serve; however, this has proven difficult because of a large spike in COVID-19 cases in the county. If your organization has any members or volunteers who are registered voters in the county and would be interested in serving on a MAT, I know the county board would appreciate their help so that they can assist voters in facilities. They continue to work to assemble a MAT.

Your letter also notes MAT members in Wake County have refused to assist voters in facilities with documented COVID-19 cases. As noted in [Numbered Memo 2020-24](#), a county board cannot force MAT members to visit a facility with an outbreak if the members do not feel safe doing so. These voters may be assisted by a near relative or legal guardian if a MAT cannot visit.

---

<sup>1</sup> Numbered Memo 2020-24, issued on September 22, 2020:

[https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%20Memo%202020-24\\_MAT%20FAQ.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%20Memo%202020-24_MAT%20FAQ.pdf)

Additionally, if neither the voter's near relative nor a verifiable legal guardian is available to assist the voter, and a MAT is not available to assist the voter within seven calendar days of a telephonic request to the county board of elections, another person may assist the voter provided they are not an employee, owner, director, or manager of the covered facility, a candidate, a party office holder or campaign manager or treasurer for a candidate or political party.<sup>2</sup>

I understand your frustration about voters in facilities who need assistance. The State Board has been diligent in its commitment to assist the county boards of elections with MAT guidance and to propose solutions to this issue. The agency has coordinated with the North Carolina Department of Health and Human Services to issue guidance on how MATs can safely assist voters in facilities and to answer frequently asked questions counties receive from current and prospective MATs in an attempt to assuage their concerns about recruiting MATs during a global pandemic.<sup>3</sup> In March and again in April, the Executive Director of the State Board urged the General Assembly to temporarily modify restrictions on who can provide assistance to voters in care facilities.<sup>4</sup> Those recommendations were not acted upon. Additionally, in August, the State Board asked the federal district court to modify its injunction to allow nursing home staff to serve as witness and assist voters in facilities with the absentee voting process. The court declined to do so, noting that the State Board had raised an issue of “substantial concern” but that the injury was “speculative” and “undemonstrated”. It is regrettable that the court declined to take action. However, with less than two weeks until the election, we are proceeding with the current rules in place.

Sincerely,



Katelyn Love

<sup>2</sup> G.S. § 163-226.3(a)(4).

<sup>3</sup> *Id.*

<sup>4</sup> Recommendations to Address Election-Related Issues Affected by COVID-19, issued on March 26, 2020:

[https://s3.amazonaws.com/dl.ncsbe.gov/sboe/SBE%20Legislative%20Recommendations\\_COVID-19.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/sboe/SBE%20Legislative%20Recommendations_COVID-19.pdf).

CARES Act Request and Clarification to Recommendations to Address Election-Related Issues Affected by COVID-19, issued on April 22, 2020:

<https://s3.amazonaws.com/dl.ncsbe.gov/Outreach/Coronavirus/State%20Board%20CARES%20Act%20request%20and%20legislative%20recommendations%20update.pdf>.

General Counsel

RETRIEVED FROM DEMOCRACYDOCKET.COM

# **EXHIBIT B**

RETRIEVED FROM DEMOCRACYDOCKET.COM

March 8, 2021

The Honorable Grey Mills  
Chair, House Election Law and Campaign Finance Reform Committee  
NC General Assembly  
16 W. Jones Street  
Raleigh, NC 27601

The Honorable Warren Daniel  
Chair, Senate Redistricting and Elections Committee  
NC General Assembly  
16 W. Jones Street  
Raleigh, NC 27601

The Honorable Ralph Hise  
Chair, Senate Redistricting and Elections Committee  
NC General Assembly  
16 W. Jones Street  
Raleigh, NC 27601

The Honorable Paul Newton  
Chair, Senate Redistricting and Elections Committee  
NC General Assembly  
16 W. Jones Street  
Raleigh, NC 27601

Dear Rep. Mills and Senators Daniel, Hise, and Newton:

As advocates for older adults and persons with disabilities in North Carolina, we are writing to express concern about a law currently on the books in our State that is hindering the ability of some residents in nursing homes and adult care homes to receive the assistance they need to vote.

G.S. 163-226.3 makes it a Class I felony for anyone except the voter's near relative or the voter's verifiable legal guardian to assist a voter to vote with an absentee ballot except in certain limited situations. In addition, Subsection (4) of this Statute makes it a felony for an owner, manager, director, employee or other

person of a facility where residents live to assist a resident in need with absentee voting.

Based on our research, it appears that **North Carolina** is only one of two states that bars staff from assisting residents with voting and is **the only state in the country that makes it a felony for staff to help**. Other states in the country allow assistance to residents desiring to vote.

**The background on this issue is as follows:**

Voting can be a challenge for some residents in long-term care facilities in the best of times, and for those residents who do not have near relatives or a verifiable legal guardian who can assist them, it can be even more of a challenge, even an absolute bar to their right to vote. This year due to COVID-19, this challenge became a major problem for many more people residing in facilities, not just those without near relatives or legal guardians, as public visitation to facilities was halted due to the pandemic and individuals could not enter a facility to assist with voting.

In addition, County Board of Election's designated Multipartisan Assistance Teams (MAT's) which are the authorized backup to help residents vote if needed, were not available in many counties and were understaffed for the number of facilities in numerous counties where they did exist. On top of this, if a facility had a COVID-19 outbreak, this further presented challenges for Teams going into facilities to assist residents. How were these LTC residents expected to vote if they needed assistance? Their families were not allowed in, the chance of a MAT being available was not a given, and the only adults in contact with the residents would be committing a felony offense if they were to help the residents vote.

Absent the presence of anyone from outside the facility to assist them with voting tasks such as requesting an absentee ballot and witnessing the ballot, residents in facilities, during both COVID and non-COVID times, are likely to seek the assistance of staff in the facilities to help them vote. As noted above, we are one of only two states in the entire country that restricts assistance to voters in this way. Ultimately, without action by the General Assembly to protect the constitutional rights of these individuals, these voters may lose their vote.

We bring these obstacles to voting faced by residents in nursing homes and adult care homes across our State to your attention in the hopes that your Committees will address this issue. Should you have questions or wish to discuss this issue further, Heather Burkhardt, Executive Director with the NC Coalition on Aging, is a point of contact. She can be reached at (984) 275-5682 or

[executivedirector@nccoalitiononaging.org](mailto:executivedirector@nccoalitiononaging.org). We stand ready to assist you in any way we can to ensure that every resident in nursing homes and adult care homes in North Carolina who wishes to vote is able to do so.

Sincerely,

Organizations Signing on to This Letter Are Listed Below

cc: Karen Brinson Bell, Executive Director – NC State Board of Elections  
Damon Circosta, Chair – NC State Board of Elections

**Organizations in Support of Legislative Action to Ensure Residents of Nursing Homes and Adult Care Homes Can Receive Assistance in Voting:**

Disability Rights NC

Friends of Residents in Long Term Care

National Association of Social Workers North Carolina Chapter

NC Association of Area Agencies on Aging

NC Association on Aging

NC Coalition on Aging

NC Regional Long-Term Care Ombudsman Association



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Case No. 5:21-cv-361-BO

DISABILITY RIGHTS NORTH )  
CAROLINA, )  
) )  
Plaintiff, )  
) )  
v. )  
) )  
NORTH CAROLINA STATE BOARD OF )  
ELECTIONS, KAREN BRINSON BELL, in )  
her official capacity as Executive Director of )  
the NCSBOE, DAMON CIRCOSTA, in his )  
official capacity as Chair of the NCSBOE, )  
STELLA ANDERSON, in her official )  
capacity as Secretary of the NCSBOE, JEFF )  
CARMON III, in his official capacity as )  
Member of the NCSBOE, STACY EGGERS )  
IV, in his official capacity as Member of the )  
NCSBOE, and TOMMY TUCKER, in his )  
official capacity as Member of the NCSBOE, )  
) )  
Defendants. )

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF’S MOTION FOR  
SUMMARY JUDGMENT**

---

Plaintiff Disability Rights North Carolina, by and through counsel and pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1, hereby submits this Memorandum in Support of Plaintiff’s Motion for Summary Judgment, [D.E. 33].

**STATEMENT OF THE CASE**

Plaintiff Disability Rights North Carolina (“DRNC”), filed this action on September 9, 2021, alleging that several provisions of North Carolina law regarding absentee voting contravene Section 208 of the federal Voting Rights Act. [D.E. 1.] Defendants filed a Motion to Dismiss on November 1, 2021. [D.E. 17, 18.] Defendants’ Motion to Dismiss was denied on May 4, 2022. [D.E. 29.] Defendants filed their Answer to the Complaint on May 20, 2022. [D.E.

31.] The parties, by mutual agreement, are engaged in an expedited briefing schedule related to dispositive motions.

### STATEMENT OF FACTS

Pursuant to Local Rule 56.1(c), in lieu of repetition, Plaintiff refers to its Statement of Undisputed Facts, filed contemporaneously herewith.

### ARGUMENT

Section 208 of the Voting Rights Act (“VRA”) ensures that voters with disabilities can select an assistant of their choice. 52 U.S.C. § 10508 (“Section 208”). North Carolina impermissibly restricts the individuals who may provide voting assistance. *See* N.C. Gen. Stat. §§ 163-226.3(a)(4) and (a)(6), 163-230.1, 163-230.2(e), 163-230.3, and 163-231(b)(1). The challenged state statutes conflict with federal law and are preempted by the VRA. In the absence of an injunction, DRNC and its constituents will continue to be harmed by the challenged state statutes. Plaintiff respectfully seeks a declaration from the Court that the challenged provisions of state law restricting a disabled voter’s choice of assistant is preempted by the VRA and is unenforceable, and further seeks an injunction prohibiting enforcement of these preempted provisions.

#### **I. Section 208 of the VRA Confers Rights on Voters with Disabilities that Preempt Contrary State Law.**

State law impermissibly narrows federal law providing voters with disabilities their choice of assistant. Section 208 of the Voting Rights Act provides voters with disabilities the right to an assistant of their choice, other than their employer or union. 52 U.S.C. § 10508. As the Court noted in denying Defendants’ Motion to Dismiss:

Section 208 guarantees certain categories of people vulnerable to disenfranchisement the right to assistance with the voting process by a person of the voter's choice. Congress included only two groups of people who could not

provide such assistance - the voter's employer or an agent or officer of the voter's union. On its face, this appears to reflect Congress's intent to insulate the voter from receiving assistance from those who have a pecuniary influence over the voter and who could potentially prevent the voter from working. **Other than these two excluded groups, the plain language of Section 208 gives voters unfettered choice over who may assist them with the voting process.** See *Arkansas United v. Thurston*, No. 5:20-CV-5193, 2020 WL 6472651, at \*4 (W.D. Ark. Nov. 3, 2020) ("[T]here is nothing in the statutory language to suggest that a state may burden, unduly or otherwise, the right [to choice] articulated in § 208.").

[D.E. 29, pp. 5-6 (emphasis added).]

The scope of “voting” encompassed by Section 208 includes all relevant aspects of absentee voting, such as registration, any other prerequisites to voting, casting a ballot, and having such ballot counted properly. 52 U.S.C. § 10310. See also, *Democracy N.C. v. N.C. State Bd. Of Elections*, 476 F. Supp. 3d 158, 234-35 (M.D.N.C. 2020) (holding that provisions of North Carolina election law relating to various aspects of the absentee voting process are subject to Voting Rights Act). Accord, *La Unión Del. Pueblo Entero v. Abbott*, 2022 U.S. Dist. LEXIS 92710, at \*56 (W.D. Tex. May 24, 2022) (holding that limitations on the type of assistance provided would violate voters’ Section 208 right to assistance based on the VRA’s broad definition of “voting.”) The Court interpreted the term “voting” consistent with these cases in denying Defendants’ Motion to Dismiss. [D.E. 29, p. 5.]

As detailed below, conflicts are present with regard to the challenged provisions of state law. Conflict preemption applies where compliance with both federal and state law is not possible, or “where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Gade v. Nat’l. Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98, 112 S. Ct. 2374, 2383 (1992) (internal quotation marks and citations omitted). Section 208 provides an unambiguous rule, the infringement of which is not permitted under the plain language of the statute. The challenged provisions of North Carolina law directly contravene

Section 208 and impermissibly restrict the right of a disabled voter to decide who provides them with assistance during all aspects of the absentee voting process. Conflict preemption requires that the challenged provisions of state law be held unenforceable.

**A. The Ballot Request Provisions Contravene Section 208.**

N.C. Gen. Stat. §§ 163-230.1<sup>1</sup>, 163-230.2(e)<sup>2</sup> and 163-230.3<sup>3</sup> restrict who can help a voter to request an absentee ballot to a near relative or verifiable legal guardian. This narrowing of choices conflicts with Section 208. Requesting an absentee ballot is encompassed in the definition of “voting” and is therefore subject to the choice of assistant provisions contained in Section 208. 52 U.S.C. § 10310. *See also, Democracy N.C.*, 476 F. Supp. 3d at 234-35 (holding that provisions of North Carolina election law that relate to various aspects of the absentee voting process are subject to the VRA); *OCA-Greater Houston v. Texas*, 867 F.3d 604, 614-15 (5th Cir. 2017) (holding that “voting” is broadly defined in the “unambiguous language” of VRA). The Court previously came to the same conclusion. [D.E. 29, p 6.]

The absentee ballot request provisions contained in N.C. Gen. Stat. §§ 163-230.1, 163-230.2(e) and 163-230.3 contradict Section 208 by constraining who can help a Section 208 voter

---

<sup>1</sup> “A qualified voter who is eligible to vote by absentee ballot under G.S. 163-226, or that voter’s near relative or verifiable legal guardian, shall complete a request form for an absentee application and absentee ballots.” N.C. Gen. Stat. § 163-230.1.

<sup>2</sup> “A request for absentee ballots is not valid if . . . [t]he completed written request is completed, partially or in whole, or signed by anyone other than the voter, or the voter’s near relative or verifiable legal guardian.” N.C. Gen. Stat. § 163-230.2(e). While a further provision permits other assistance if “there is not a near relative or legal guardian available to assist that voter,” the exception requires the voter to first choose specified individuals. *See* N.C. Gen. Stat. § 163-230.2(e1).

<sup>3</sup> “...a qualified voter who is eligible to vote by absentee ballot . . . or that voter’s near relative or verifiable legal guardian, may submit a request for absentee ballots online using the procedures set forth in this section in lieu of the completed written request on a form established by the State Board.” N.C. Gen. Stat. § 163-230.3.

request an absentee ballot. *Democracy N.C.*, 476 F. Supp. 3d at 235. Specifically, Section 208 voters are required to rely on a guardian or close family member if one is available. In the context of Section 208 voters living in a hospital, clinic, nursing home or rest home (hereinafter “congregate setting”), the options are narrowed even further, as detailed below. Compliance with both federal and state law is impossible, and the absentee ballot request provisions stand as an obstacle to Congress’ intent and purposes. Consequently, the absentee ballot request provisions are preempted by federal law. *Gade*, 505 U.S. at 98, 112 S. Ct. at 2383.

**B. The Ballot Completion Provision Contravenes Section 208.**

N.C. Gen. Stat. § 163-226.3(a)(4) prohibits those affiliated with a congregate setting from helping a voter living in that facility in any way with the voting process, and N.C. Gen. Stat. § 163-226.3(a)(6) prohibits voters residing in a congregate setting from accepting assistance from this category of people. These prohibitions cover a range of activities that would constitute “voting” pursuant to the VRA, including casting a ballot and having that ballot counted. *See* 52 U.S.C. § 10310. Many individuals with disabilities living in congregate settings need assistance with voting because of their disabilities. (Pls.’ Statement of Undisputed Facts, p. 1, ¶ 2.) These provisions operate to deny Section 208 voters residing in facilities their right to the assistance of their choosing. Compliance with both federal and state law is impossible, and the congregate setting-related provisions cited above stand as an obstacle to Congress’ intent and purposes. Consequently, the congregate setting-related provisions are preempted by the VRA. *Gade*, 505 U.S. at 98, 112 S. Ct. at 2383.

**C. The Ballot Delivery Provision Contravenes Section 208.**

Under North Carolina law, an absentee ballot must be:

transmitted by mail or by commercial courier service, at the voter’s expense, or delivered in person, or by the voter’s near relative or verifiable legal guardian.

N.C. Gen. Stat. § 163-231. Since mailing an absentee ballot is an “action required by law prerequisite to voting, casting a ballot, and having such ballot counted,” it is encompassed by Section 208. *See* 52 U.S.C. §§ 10508, 10310; [D.E. 29, p. 8]. *See also, Democracy N.C.*, 476 F. Supp. 3d at 234 (applying definition of “voting” to absentee ballot delivery provision). Because the ballot delivery provision limits who can assist in returning an absentee ballot, it contravenes Section 208 by depriving voters with disabilities of the assistant of their choosing.

In summary, there is an irreconcilable conflict between Section 208 and all of the challenged statutes. Simultaneous compliance with these state and federal laws is not possible, and the challenged provisions of state law “stand[] as an obstacle to the accomplishment and execution of their full purposes and objectives of Congress” evidenced in Section 208. *Gade*, 505 U.S. at 98, 112 S. Ct. at 2383. As a result, the challenged statutes are preempted by Section 208.

## **II. The Court Should Enjoin Enforcement of the Challenged State Law Provisions As They Relate to Voters with Disabilities.**

The Court should enjoin enforcement of the challenged statutes because they are preempted by Section 208, and because they create ongoing harms for DRNC and its constituents. Injunctive relief is appropriate when a plaintiff shows: (1) irreparable injury, that (2) cannot be adequately compensated for with monetary damages; (3) the balance of hardships tilts in favor of plaintiff; and (4) equitable relief is in the public interest. *SAS Inst., Inc. v. World Programming Ltd.*, 874 F.3d 370, 385 (4th Cir. 2017). All four prongs are met here, with regard to both DRNC and its constituents.

“Courts routinely deem restrictions on fundamental voting rights irreparable injury. . . . And once 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.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (citing *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012);

*Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986); *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876 (3d Cir. 1997)). Section 208 guarantees voters with disabilities their choice of assistant and prohibits precisely what the challenged absentee ballot request and transmission provisions do: limiting a voter to receiving assistance from a near relative, a legal guardian, or a team designated by the local board of elections. *See* N.C. Gen. Stat. §§ 163-230.1, 163-231(b)(1) and 163-230.2. The same is also true for the prohibition on assistance from staff or others affiliated with the voter’s residential facility, which the Middle District determined “impermissibly restricts” these voters. *See* N.C. Gen. Stat. §§ 163-226.3(4) and (6) (prohibiting facility-affiliated individuals from providing, and residents from receiving, assistance with any aspect of voting); *Democracy N.C.*, 476 F. Supp. 3d at 235.

DRNC brought this action as both an organizational and associational plaintiff. Where an organization experiences a “perceptible” diversion of resources and frustration of purpose, it may seek redress in its own right through *organizational* standing. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982); *People for the Ethical Treatment of Animals, Inc. v. Tri-State Zoological Park of W. Md., Inc.*, 843 F. App’x 493, 497 (4th Cir. 2021). DRNC meets those criteria here. *See* Decl. of Kenya Myers, ¶¶ 7-14 (describing resource diversion and frustration of mission related to the challenged statutes).

An organization has *associational* standing where:

- (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

*Hunt v. Wash. State Apple Adver. Comm’n.*, 432 U.S. 333, 343 (1977). It is well-established that P&As like DRNC satisfy the *Hunt* test for associational standing. *See, e.g., Wilson v. Thomas*, 43 F. Supp. 3d 628, 632 (E.D.N.C. 2014) (holding that DRNC represents the interests of North

Carolynians with disabilities and has standing to pursue claims on their behalf); *Dunn v. Dunn*, 219 F. Supp. 3d 1163, 1171 (M.D. Ala. 2016) (surveying courts that have “squarely held[] that Congress, by granting P&As the authority to pursue legal remedies to ensure the protection of those with disabilities, abrogated” the third prong of the *Hunt* test). DRNC meets the *Hunt* test for associational standing based on the record in this case. *See* Decl. of Virginia Knowlton-Marcus, ¶¶ 5-11 (detailing facts meeting the *Hunt* criteria).

Both DRNC and its constituents will be irreparably harmed by the continued violation of Section 208. For DRNC, the harm includes continued diversion of resources and frustration of mission, and an inability to address other voting rights needs of constituents. For DRNC’s constituents, the irreparable harm is the continued deprivation of their rights under Section 208, particularly those living in congregate settings whose Section 208 rights are constrained with regard to every aspect of absentee voting. The harm to DRNC and its constituents cannot be remedied with monetary damages, as the harms relate to the impairment of the fundamental right to vote.

The balance of hardships likewise favor Plaintiff and its constituents. The proposed injunctive relief must pose more than mere fiscal and administrative problems to defendants to tip the balance away from plaintiffs who will suffer harm in the absence of relief. *Todd ex. rel Todd v. Sorrell*, 841 F.2d 87, 88 (4th Cir. 1988). Requiring a defendant to comply with the law is not a cognizable hardship. *See White v. Martin*, No. 02-4154-CV-C-NKL, 2002 U.S. Dist. LEXIS 27281, 22-23 (W.D. Mo. 2002); *citing Haskins v. Stanton*, 794 F.2d 1273, 1277 (7th Cir. 1986) (finding that an injunction requiring defendants to comply with existing law imposes no burden but “merely seeks to prevent the defendants from shirking their responsibilities”). Absent an order enjoining the challenged statutes to the extent that they conflict with Section 208, the



challenged statutes will continue to impair the federal rights of thousands of voters with disabilities living in facilities, and Plaintiff would be obliged to continue to invest limited resources in mitigating the harms associated with the challenged statutes. By contrast, Defendants would suffer no appreciable hardship, and would in fact experience reduced demand for MATs and other efforts associated with the constraints posed by the challenged statutes.

“[T]he public has a strong interest in exercising the ‘fundamental political right’ to vote,” *Husted*, 697 F.3d at 436-37 (internal quotations omitted), and “[t]he public interest ... favors permitting as many qualified voters to vote as possible,” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d at 247. Equitable relief is in the public interest because of the high value associated with voting rights. The public interest is also served by federal preemption of state laws infringing on federally-guaranteed voting rights. The public interest would be harmed if the Court failed to ensure a mechanism for enforcement of federal rights.

### CONCLUSION

Section 208 of the Voting Rights Act is clear and unambiguous in granting voters with disabilities the right to choose who will assist them in voting. The challenged provisions of state law are therefore subject to preemption.

For the foregoing reasons, Plaintiff’s Motion for Summary Judgment should be granted, and the Court should enjoin the enforcement of the challenged statutes with regard to voters with disabilities who need assistance with voting.

This 15th day of June, 2022.

Respectfully submitted,

/s/ Lisa Grafstein  
Lisa Grafstein

[lisa.grafstein@disabilityrightsnc.org](mailto:lisa.grafstein@disabilityrightsnc.org)  
N.C. State Bar No. 22076

Holly Stiles  
[holly.stiles@disabilityrightsnc.org](mailto:holly.stiles@disabilityrightsnc.org)  
N.C. State Bar No. 38930

DISABILITY RIGHTS NC  
3724 National Drive, Suite 100  
Raleigh, NC 27612  
Phone: (919) 856-2195  
Fax: (919) 856-2244

ATTORNEYS FOR PLAINTIFF

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Case No. 5:21-cv-361-BO

DISABILITY RIGHTS NORTH )  
CAROLINA, )  
) )  
Plaintiff, )  
) )  
v. )  
) )  
NORTH CAROLINA STATE BOARD OF )  
ELECTIONS, KAREN BRINSON BELL, in )  
her official capacity as Executive Director of )  
the NCSBOE, DAMON CIRCOSTA, in his )  
official capacity as Chair of the NCSBOE, )  
STELLA ANDERSON, in her official )  
capacity as Secretary of the NCSBOE, JEFF )  
CARMON III, in his official capacity as )  
Member of the NCSBOE, STACY EGGERS )  
IV, in his official capacity as Member of the )  
NCSBOE, and TOMMY TUCKER, in his )  
official capacity as Member of the NCSBOE, )  
) )  
Defendants. )

**WORD COUNT CERTIFICATION**  
**L.R. 7.2(f)(3)**

---

Pursuant to Local Rule 7.2(f)(3), the undersigned certifies that the word count for Plaintiffs’ Memorandum in Support of Plaintiff’s Motion for Summary Judgment is 2,704 words. In making this certification, the undersigned has relied upon Microsoft Word and its word count feature.

This the 15th day of June, 2022.

/s/ Lisa Grafstein  
Lisa Grafstein