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

DISABILITY RIGHTS NORTH CAROLINA, Plaintiff, v. NORTH CAROLINA STATE BOARD OF ELECTIONS, et al., Defendants.	**STATE BOARD DEFENDANTS' OPPOSITION TO SUMMARY JUDGMENT**

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 "State Board Defendants"), through undersigned counsel, to provide this response in opposition to Plaintiff's motion for summary judgment. [*See* D.E. 33, 34].

NATURE OF THE CASE

Plaintiff, Disability Rights North Carolina ("DRNC"), filed this action on September 9, 2021 alleging that N.C.G.S. §§ 163-226.3(a)(4), -226.3(a)(6), -230.1, -230.2(e), -230.3, and -231(b)(1) ("the challenged statutes") place limits on who may assist an individual during the absentee voting process in violation of section 208 of the Voting Rights Act ("VRA"), 52 U.S.C. 10508 ("Section 208"). [D.E. 1, ¶¶ 19-27].

Section 208 reads in full:

> 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.S. § 10508.

Specifically, Plaintiff argues that persons with disabilities who are patients in a hospital, clinic, nursing home, or rest home ("medical facilities" or "congregate settings"[1]) are prohibited by the challenged statutes from obtaining assistance from an owner, manager, director, employee or other person of those medical facilities ("facility staff" or "congregate care staff"), which contravenes the freedom of choice secured to them under Section 208. [D.E. 1, ¶¶ 1].

As a threshold matter, Plaintiff's allegations, considered with its Statement of Material Facts and the evidence it presents in support of its motion for summary judgment, establish its organizational standing based only upon its diversion of resources to address assistance for disabled persons living within medical facilities, and/or its associational standing based only upon purported injuries to those living within medical facilities who require assistance. Notably, it has not alleged or brought forth any facts to show any cognizable injuries to the organization or disabled persons outside of medical facilities. Thus, its claims and any relief available are limited to voters with disabilities who are patients in medical facilities. This particular issue was not before the Court at the motion to dismiss phase. [D.E. 29].

While the Court did deny the State Board's motion to dismiss, a summary judgment motion requires a heightened showing and with the burden of persuasion reversed here, Plaintiff fails to demonstrate it is entitled to summary judgment because the challenged statutes are not preempted by Section 208. Plaintiff's challenge presents an argument of conflict preemption. In this context, "[c]onflict preemption occurs 'where [1] compliance with both federal and state regulations is a physical impossibility, or where [2] state law stands as an obstacle to the accomplishment and

[1] Plaintiff refers to these medical facilities as congregate settings, which does include such facilities, but that term typically covers a broader spectrum of living accommodations or gathering spaces including but not limited to group homes, family care homes, correctional facilities, shelters, etc. See https://covid19.ncdhhs.gov/dashboard/outbreak-dashboard (last visited June 21, 2022).

execution of the full purposes and objectives of Congress.'" *New Ga. Project v. Raffensperger*, 484 F. Supp. 3d 1265, 1301 (N.D. Ga. 2020) (quoting *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992)).

First, the challenged statutes are not preempted because they present no direct conflict to Section 208. Plaintiff's argument to the contrary relies upon an overly broad interpretation of the Section 208 that contravenes its plain language. Moreover, Plaintiff's broad reading of Section 208 prohibits *any* regulation by a state as to who can render assistance. This reading thus leads to absurd results because not allowing for any regulation is contrary to the purpose behind the law.

Second, even if a conflict exists, any burden created by that conflict is minimal, and minimal burdens are permitted because they complement rather than conflict with the purpose and intent of Section 208, which is protecting vulnerable populations from manipulation and undue influence, rather than imposing obstacles frustrating that purpose. *Ray v. Texas* , No. 2-06-CV-385 (TJW), 2008 U.S. Dist. LEXIS 59852, at *18-19 (E.D. Tex. Aug. 7, 2008) (providing that in considering a Section 208 challenge to state limits on who may assist a voter, district court found that "[t]he Supreme Court allows the states to regulate elections, provided that those restrictions are reasonable and non-discriminatory"); *Qualkinbush v. Skubisz*, 826 N.E.2d 1181, 1196-97 (App. Ct. Ill. 2004) ("[S]tates may impose restrictions on those individuals who may return a disabled voter's absentee ballot, and that such restrictions may be above and beyond those set forth in the Voting Rights Act."); *see also Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233-34 (M.D.N.C. 2020) ("The court is also mindful that the legislative history for what would become Section 208 reads, 'State provisions would be preempted only to the extent that they unduly burden the right recognized in this section, with that determination being a practical one dependent upon facts.'" (citation omitted)).

For these reasons, as discussed in detail below, Plaintiff is not entitled to summary judgment.

STATEMENT OF THE FACTS

State Board Defendants incorporate by reference those statements in the accompanying Opposing Statement of Material Facts in Dispute as if set forth fully herein.

A. Challenged Statutes at Issue and Relevant State Board Policies:

Section 163-230.2 of the North Carolina General Statutes governs how a voter may request an absentee ballot. Subsection (a) requires that the State Board make blank request forms available at its offices, online, in each county board office, and that it may be reproduced. N.C.G.S. § 163-230.2(a). Voters may also call the State Board or county board to request the form via telephone and the elections staff can send the form to the voter by mail, e-mail, or fax. *Id.* Subsection (a) further provides that the request for an absentee ballot must be made on the form created by the State Board, signed by the voter, near relative or legal guardian, and the statute outlines the information that must be contained therein. *Id.* Subsections (c) and (e) require that the request form be returned by the voter, the voter's near relative or legal guardian, a member of a multipartisan assistance team appointed by a county board to assist absentee voters in medical facilities, the United States Postal Service, or a designated delivery service as recognized by the Internal Revenue Service. *Id.* Subsection (e) permits a voter to receive assistance from their near relative or legal guardian or a multipartisan assistance team member in completing the absentee request form. *Id.* However, as stated above, subsection (e1) provides a blanket exception mirrored upon section 208 of the VRA, permitting any voter who needs assistance completing the form due to blindness, disability, or inability to read or write, to seek the assistance of any other person if their near relative or legal guardian is not available to assist, with the exception of those prohibited

by section 163-226.3(a)(4). *Id.*

Section 163-230.3 requires that the State Board provide an entirely online electronic version of the form available on the State Board's website, which allows a qualified voter to complete this same absentee ballot request process online. *Id.* § 163-230.3. This section expressly states that all other provisions in section 163-230.2 shall apply, which allows the VRA exception found in subsection (e1) to carry over to this online application. *Id.* § 163-230.2(a).

Section 163-226.3 delineates what type of assistance is available to voters and establishes that certain acts in violation thereof are felonies. When filling out the absentee ballot, a voter may seek assistance from a near relative or the voter's legal guardian. *Id.* § 163-226.3(a)(1). However, if a near relative or guardian is not available, "the voter may seek the assistance of some other person to give assistance." *Id.* Subsection (a)(4) explains that the "other person" may not assist if they are an "owner, manager, director, [or] employee" of "any hospital, clinic, nursing home or rest home in this State" where the voter is a patient. This subsection provides, however, that members of a multipartisan assistance team authorized by county boards may assist such patients; and if the team does not respond within 7 days, the voter is free to seek the assistance of any other person, with the exception of the aforementioned facility staff, elective candidates or office holders, political party officials, and campaign managers. *Id.* § 163-226.3(a)(4). When combined, subsections (a)(1) and (a)(4) allow any voter requiring assistance to seek the assistance of a near relative, legal guardian, multipartisan assistance teams, or any other person other than those disqualified from assisting. Finally, when a voter does not require assistance as contemplated by subsections (a)(1) and (a)(4), subsection (a)(6) prohibits the voter from allowing another person to mark the voter's absentee ballot. *Id.* § 163-226.3(a)(6).

Section 163-231 sets forth the procedures for marking an absentee ballot and transmitting

it back to the county board of elections. Subsection (b), which Plaintiff challenges, specifies completed absentee ballots "shall 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[.]" *Id.* § 163-231(b)(1).

In 2020, the State Board implemented an entirely online accessible electronic portal, known as "Democracy Live," to allow visually impaired voters to vote absentee, privately, independently, and without assistance. *See Taliaferro v. N.C. State Bd. of Elections*, No. 5:20-cv-411, Dkt. No. 63, 2021 U.S. Dist. LEXIS 112281 (E.D.N.C. June 15, 2021).[2] As a result, any visually impaired voter can now request an absentee ballot online, and they will then be provided access to the online Democracy Live portal. *Id.* at *3. The portal allows a visually impaired voter to use an accessible audible screen reader system to voting and submission of their ballot. *Id.* at *3.

In addition to the Democracy Live system, the State Board provides further instructions for disabled voters to seek assistance in voting on its website. *See* State Board's webpage: "Help for Voters with Disabilities," https://www.ncsbe.gov/voting/help-voters-disabilities (last visited June 22, 2022).[3] Beyond the accommodations and assistance described on that webpage, there is also a link to the Accessibility Policy for Alternative Formats which invites any disabled person to request an accommodation to help them vote, including provisions that permit requesting

[2] *Taliaferro* was a ruling from this Court involving substantially the same parties. As such, this Court may take judicial notice of that ruling and its implementation. *See* Fed. R. Evid. 201(b); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

[3] This Court may take judicial notice of the State Board's policies, records, and communications as they are official government records that are publicly available on the State Board website. *See Fauconier v. Clarke*, 652 F. App'x. 217, 220 (4th Cir. 2016); *Philips v. Pitt Cnty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009); *Hall v. Virginia*, 385 F.3d 421, 424 & n.3 (4th Cir. 2004); *see also* Fed. R. Evid. 201.

alternative formats, such as Braille, large print, audio, and accessible electronic formats that provide effective communication for the absentee voting process. *See* State Board's webpage: "North Carolina State Board of Elections Accessibility Policy for Alternative Formats, https://www.ncsbe.gov/voting/help-voters-disabilities/north-carolina-state-board-elections-accessibility-policy-alternative-formats (last visited June 22, 2022); *see also Taliaferro*, 2021 U.S. Dist. LEXIS 112281, at *6-7, ¶ 6. Thus, if the Democracy Live system is not effective for the voter, they are permitted to request an alternative format to facilitate voting that does meet their needs in compliance with the federal Americans with Disabilities Act. *Id.*

LEGAL ARGUMENT

Standard for Summary Judgment

The movant requesting summary judgment has "the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quoting former Rule 56(c)). "[T]he plaintiff . . . must identify *affirmative evidence* from which a jury could find that the plaintiff has carried his or her burden . . . ." *Crawford-El v. Britton*, 523 U.S. 574, 600 (1998) (emphasis added). Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Matsushita Elec. Industr'l Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 586-587 (1986).

A fact is "material" if its resolution is outcome-determinative under governing law and would prevent the party against whom it is resolved from prevailing. *Celotex*, 477 U.S. at 323. While the court must construe all facts in a light most favorable to the nonmoving party as well as

view all reasonable inferences in that party's favor, a bare contention that an issue of fact exists is insufficient to create a factual dispute. *Scott v. Harris*, 550 U.S. 372, 380 (2007). Courts "need not accept as true unwarranted inferences, unreasonable conclusions, or arguments." *Eastern Shore Mkt.'s Inc. v. J.D. Assoc.'s, LLP*, 213 F. 3d 175, 180 (4th Cir. 2000). If reasonable minds could differ as to the import of the evidence, however, a verdict should not be directed. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986) (citations omitted).

The Court in reviewing the motion is to "view the evidence presented through the prism of the substantive evidentiary burden," or in the present case, preponderance of the evidence. *Id.* at 254.

I. PLAINTIFF'S STANDING IS LIMITED TO INJURY ARISING FROM DISABLED VOTERS IN MEDICAL FACILITIES ONLY.

Article III standing is an "irreducible constitutional minimum" requirement, consisting of three elements. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). The "plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Id.* "To establish injury in fact, a plaintiff must show that they suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Beck v. McDonald*, 848 F.3d 262, 270-71 (4th Cir. 2017) (quoting *Spokeo*, 578 U.S. at 339). Plaintiffs can "can no longer rest on . . . 'mere allegations'" when the issue of standing is raised at the summary judgment stage. *Lujan*, 504 U.S. at 561 (quoting Fed. R. Civ. P. 56(e)). Rather, they "must 'set forth' by affidavit or other evidence 'specific facts,' which for purposes of the summary judgment motion will be taken to be true." *Id.*

The injury in fact requirement applies to both associational standing and organizational standing.

In order for an association to assert standing to bring suit on behalf of its members, it must demonstrate "(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 Advert. Comm'n*, 432 U.S. 333, 343 (1977); *North Carolina State Conference of the NAACP v. Raymond*, 981 F.3d 295, 301 (4th Cir. 2020). The first two of these factors are mandatory constitutional requirements, whereas the third factor is a prudential limitation that may be abrogated by Congress. *United Food & Commercial Workers Union Local 751 v. Brown Grp.,* 517 U.S. 544, 557 (1996). Also, "a plaintiff must demonstrate standing separately for each form of relief sought." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2210 (2021) (citation and internal quotation marks omitted).

Plaintiff argues that it has associational standing to sue on behalf of its members solely because the third *Hunt* factor is abrogated by its status as the Protection and Advocacy system for North Carolina ("P&A"). [D.E. 34, pp. 7-8]. Regardless of any abrogation concerning regarding the third factor, the first *Hunt* factor still requires Plaintiff to demonstrate there is an individual it seeks to assert a claim on behalf of who has suffered an injury in fact. Plaintiff only does this with respect to individual disabled persons living in medical facilities that require assistance because of their disability. Plaintiff fails to assert, much less bring forth evidence establishing, any injury on behalf of disabled persons not living within medical facilities.

In the Complaint, Plaintiff focuses its allegations on individuals with disabilities living in medical facilities that need assistance with voting because of their disabilities. [D.E. 1, ¶¶ 22-26].

The remaining allegations are conclusory and lack particularity. *Id.*, ¶¶ 28-30, 33-34. In addressing associational standing in its memorandum of law supporting its summary judgment motion, the only specific argument made by Plaintiff with respect to disabled persons again focuses on those living within medical facilities. [D.E. 34, p. 8].

In its supporting exhibits, Plaintiff submits two declarations, a letters from the State Board, and one to the North Carolina General Assembly. Each document serves only to reinforce that DRNC has only specifically addressed injuries arising from how the challenged statutes affect individuals with disabilities living within medical facilities. [D.E. 33-2, pp. 26-42]. The first declaration provides no examples of individuals injured as a result of the challenged statutes, nor does it appear to have been submitted for that purpose. *See id.*, Decl. of Knowles, pp. 26-29. The second declaration does provide specific examples of injuries to disabled persons, but again, each concerns only individuals living in medical facilities and DRNC's efforts to arrange assistance for them. *See id.*, Decl. of Myers, pp. 30-34, ¶¶ 6-15.

The two letters provided in Plaintiff's Appendix as Exhibits A and B are similarly focused only on individuals within medical facilities. The October 21, 2020 letter from the State Board attached as Exhibit A directly responds to DRNC's concerns about the availability and willingness of multipartisan assistance teams to enter facilities and provide assistance to disabled patients within those facilities at the height of the pandemic during the 2020 general election. *See id.,* Plt. Ex. A, pp. 36-38. Similarly, the March 8, 2021 letter from DRNC to members of the North Carolina General Assembly attached as Exhibit B relates only to concerns about disabled persons living within nursing and adult-care homes who require assistance to vote. *See id*, Plt. Ex. B, pp. 40-42.

The same focus on disabled persons in medical facilities is found in Plaintiff's support for organizational standing. In order to establish organizational standing, an advocacy group must still meet the injury in fact requirement as it pertains to their organization, which requires an impairment of the organization's ability to advance its purposes, and a "consequent drain on the organization's resources." *S. Walk at Broadlands Homeowners Ass'n v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 183 (4th Cir. 2013); *see also Raymond*, 981 F.3d at 301 ("When an action perceptibly impairs an organization's ability to carry out its mission and consequently drains . . . the organization's resources, there can be no question that the organization has suffered injury in fact." (internal quotations and citation omitted)).

Again, in the Complaint, Plaintiff asserts diversion of resources arising out of its efforts to assist disabled voters in medical facilities who are impacted by the challenged statutes. [D.E. 1, ¶ 38]. Plaintiff claims diversion of staff time to "address the unavailability of [multipartisan assistance teams] as an alternative source of assistance," working "with facilities and long-term care ombudsmen to help identify alternative means to enable facility residents," lobbying to amend the challenged statutes, and "direct assistance with voter registration and voting by people in facilities because of the legal barriers to assistance by congregate care staff." *Id.* This supports a theory of organizational injury focused solely on addressing the needs of patients with disabilities living in medical facilities who need assistance with voting and cannot use medical facility staff. *Id.*

This focus is repeated in the memorandum of law and exhibits supporting Plaintiff's motion for summary judgment. In the memorandum, Plaintiff address organizational standing in a single conclusory statement asserting that it meets the organizational standing criteria with a citation to the Declaration of Myers for support. [D.E. 34, p. 7 citing Decl. of Myers, ¶¶ 7-14]. The specific

paragraphs cited from that declaration, paragraphs 7 through 14, all focus on DRNC's diverted resources to ensure voters living in medical facilities receive the assistance they require and how that diversion has taken away from other organizational efforts. [D.E. 33-2, pp. 32-34, ¶¶ 7-14]. However, none of the paragraphs in the Declaration cited by Plaintiff supports the conclusion that DRNC has sustained an injury for organizational purposes relating to all disabled persons in the State generally. *See id.*

Thus, to the extent Plaintiff has established associational or organizational standing, it has done so only with respect to any injury related to disabled persons living in medical facilities who want the medical facility staff to assist them with voting, and not any generalized injury claimed on behalf of all disabled persons in this State.

II. PLAINTIFF HAS FAILED TO DEMONSTRATE A SUFFICIENT CONFLICT TO JUSTIFY VOIDING THE CHALLENGED STATUTES.

Several of the state statutory sections challenged by DRNC do not present direct conflicts with Section 208, and the remaining sections serve the same purposes intended by Congress when it enacted that law.

Any analysis of conflict preemption must start with "the general presumption that Congress did not intend to preempt state law." *Columbia Venture, LLC v. Dewberry & Davis, LLC* , 604 F.3d 824, 830 (4th Cir. 2010); *see also Priorities United States v. Nessel*, 487 F. Supp. 3d 599, 619-20 (E.D. Mich. 2020) ("Section 208 provides that certain specified voters - i.e. those needing assistance due to blindness, disability, or inability to read or write – 'may be given assistance by *a* person of the vote''s choice...' Section 208 does not say that a voter is entitled to assistance from *the* person of his or her choice or *any* person of his or her choice." (emphasis in original)), *rev. on other grounds*, 860 F. App'x 419 (6th Cir. 2021). Preemption may be express or implied,

whether explicitly stated in the statute itself or implied within the structure and purpose of the statute. *Gade*, 505 U.S. at 98.

Where there is no express preemptive language, the Court must look to whether there is implied preemption. The Supreme Court has recognized two forms of implied preemption: field preemption and conflict preemption. *Id.* Field preemption occurs when the scheme of federal regulation is "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it, is not present in the context of election law." *Id.* (quoting *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982)). Conflict preemption exists "[1] where compliance with both federal and state regulations is a physical impossibility, or [2] where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.* (internal citations and quotations omitted).

The latter, also known as obstacle preemption, "requires the court independently to consider national interests and their putative conflict with state interests. . . . [P]reemption under [an obstacle preemption] theory is more an exercise of policy choices by a court than strict statutory construction. *Equal Rights Ctr. v. Niles Bolton Assocs.*, 602 F.3d 597, 601 (4th Cir. 2010) (quoting *Abbot v. Am. Cyanamid Co.*, 844 F.2d 1108, 1113 (4th Cir. 1988)).

Here, Section 208 contains no express preemptive language, nor has Congress legislated in the area of election law so pervasively as to preempt the field. *See New Ga. Project*, 484 F. Supp. 3d at 1301 (finding that a preemption argument involving Section 208 presents a question of conflict preemption), and *Ark. United v. Thurston*, No. 5:20-CV-5193, 2020 U.S. Dist. LEXIS 207145, at *7-8 (W.D. Ark. Nov. 3, 2020) (same).

In fact, Congress anticipated that states would impose restrictions beyond those expressly stated in Section 208, and that such restrictions could coexist with that section:

> The committee recognizes the legitimate right of any state to establish necessary election procedures, subject to the overriding principle that such procedures shall be designed to *protect the rights of voters*. State provisions would be preempted only to the extent that they *unduly burden* the right recognized in this section, with that determination being a practical one dependent upon the facts."

Qualkinbush, 826 N.E.2d at 1197 (emphasis in original) (quoting Senate Committee, S. Rep. 97-417, 97th Cong., 2d Sess, 1982 U.S.C.C.A.N. 177, 241); *see also Democracy N.C.*, 476 F. Supp. 3d at 233-34 ("The court is also mindful that the legislative history for what would become Section 208 reads, 'State provisions would be preempted only to the extent that they unduly burden the right recognized in this section, with that determination being a practical one dependent upon facts.'"). Accordingly, this Court's analysis should not end if it finds a potential conflict. Rather, it is well established that a court's goal "in any pre-emption case is to determine whether state regulation is consistent with the structure and purpose of the statute as a whole. Looking to 'the provisions of the whole law, and to its object and policy.'" *Gade*, 505 U.S. at 98 (quoting *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 51 (1987)).

Several courts have employed the same or a similar analysis in concluding a state law potentially at conflict with Section 208 is nonetheless justified by state interests reflecting the purpose and objective as Section 208 and is therefore not preempted. *See, e.g.*, *Ray*, 2008 U.S. Dist. LEXIS 59852, at *18-19 (finding, in considering a Section 208 challenge, that "[t]he Supreme Court allows the states to regulate elections, provided that those restrictions are reasonable and non-discriminatory."); *Qualkinbush*, 826 N.E.2d at 1196 ("[S]tates may impose restrictions on those individuals who may return a disabled voter's absentee ballot, and that such restrictions may be above and beyond those set forth in the Voting Rights Act."); *cf. Priorities United States*, 487 F. Supp. 3d at 620 ("Given the lack of evidence that any voters have been

affected by the limits on their choice of assistance, there is no basis for the court to conclude that Michigan's law stands as an obstacle to the objects of § 208.").

Thus, in keeping with preemption precedent and the intent of Congress, it is appropriate for any analysis to consider whether a direct conflict exists between the two laws, or if any such conflict exists, whether it shares the same purposes and objectives underlying Section 208 or stands as an obstacle to that purpose. *Gade,* 505 U.S. at 98.

A. Plaintiff Has Failed to Demonstrate a Conflict Between Section 208 and the Challenged Statutes.

As a threshold matter, interpreting Section 208 broadly to require that disabled persons must be permitted to use *the* specific assistant of their choice contradicts the express language of section 208. That language provides that such voters "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 (emphasis added). Thus, section 208 requires that the voter is permitted *a* person of their choosing, not *the* first person of their choosing without limitation, and the section itself contemplates a reasonable limitation to prevent undue influence by persons who have authority over the voter. *Id.*; *Ray,* 2008 U.S. Dist. LEXIS 59852, at *17-21; *see also Priorities United States,* 487 F. Supp. 3d at 619-20.

Moreover, such a broad reading of Section 208 leads to absurd results because not allowing for *any* regulation by the states as to who may render assistance is actually contrary to the purpose behind the law. *See* discussion of legislative history *infra.* That broad reading is also contrary to every state's right to establish time, place, and manner restrictions like those contained in the state statutes Plaintiff challenges here, which is derived from the broad power bestowed upon the states by the U.S. Constitution. *See Washington. State Grange v. Washington State Republican Party*, 552 U.S. 442, 451 (2008). This is especially true here, where that right was in fact recognized in

the Senate Report on what would become Section 208. *See* Senate Committee, S. Rep. 97-417, 1982 U.S.C.C.A.N. at 241, *and* discussion *supra*. Where "[c]ongress legislate[s] . . . in a field which the States have traditionally occupied," as is the case with election regulation, courts start "with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947); *accord Merck Sharp & Dohme Corp. v. Albrecht*, 139 S. Ct. 1668, 1677 (2019) (quoting *Wyeth v. Levine*, 555 U.S. 555, 565 (2009)).

Each step in the absentee voting process reveals that three of the challenged sections—163-226.3(a)(6), -230.2(e), and -230.3—create no conflict with Section 208. Two sections, 163-226.3(a)(4) and -231(b)(1), are not in conflict because they act in congruence with the same purposes and objectives that motivated Congress to pass Section 208. The final section, 163-230.1, provides for assistance to be provided by county board staff and cross-references the requirements of sections 163-230.2, which includes an exception for disabled persons, such that it does not conflict with Section 208.

1. Requesting an Absentee Ballot.

DRNC claims section 163-230.1, subsection 163-230.2(e), and section 163-230.3 violate Section 208 because these statutes limit who can help a voter request an absentee ballot to a near relative, or a legal guardian. [D.E. 34, p. 4]. Plaintiff's argument boils down to the premise that Section 208 allows a disabled voter to choose any person to assist them with the only exceptions being those contained within Section 208 itself. Plaintiff further highlights how this is specifically difficult in the context of disabled voters living in a medical facility whose options do not include medical facility staff. *Id.*, p. 5.

With respect to subsection 163-230.2(e), Plaintiff relegates the exceptions in subsection

(e1) for any voter in need of assistance due to blindness, disability, or inability to read or write to a footnote. [D.E. 34, n.2]. It is clear that this exception mirrors Section 208, but also that it supersedes the other provisions in section 163-230.2, including the challenged subsection (e). It does require that the voter first attempt to use their near relative or legal guardian before allowing another person to assist the voter, and does not permit medical facility staff to assist. Any limited restriction that may apply in the application process comes from section 163-226(a)(4)'s restriction on medical facility staff, not section 163-230.2. Moreover, the existence of subsection (e1), applying exclusively to Section 208 voters, means that subsection (e) does not apply to Section 208 voters and therefore cannot be in conflict with Section 208. Section 163-230.2(e) simply places no restriction on who may assist voters who are disabled.

This same logic carries over to requesting an online ballot in section 163-230.3 because that provision expressly cross-references 163-230.2 in its opening section allowing the exceptions in section 163-230.2(e1) to apply in that context as well. Subsection 163-230.3(a) ends, "all other provisions in G.S. 163-230.1 and G.S. 163-230.2 shall apply." N.C.G.S. § 163-230.3(a). Thus, there is no limit in section 163-230.3 that applies to Section 208 voters because those voters are exclusively covered by the exceptions found in subsection 163-230.1(e1). As a result, section 163-230.3 presents no conflict to Section 208 because it does not apply to Section 208 voters.

Finally, section 163-230.1 similarly creates no conflict with Section 208 because subsection 163-230.1(a) states, "[t]he completed written request form shall be in compliance with G.S. 163-230.2." Again, by cross-referencing section 163-230.2, in particular subsection (e1) of that statute, section 163-230.1(a) guarantees Section 208 voters are no longer subject to the restrictions found in section 163-230.3, but are instead granted the exceptions found in subsection (e1). To the extent a conflict exists, it is with that subsection and not section 163-230.1.

Because the two above-discussed challenged sections do not present unduly burdensome restrictions on section 208 voters, Plaintiff has failed to demonstrate it is entitled to summary judgment with respect to these challenged statutes or North Carolina's absentee ballot request process in general.

2. Marking an Absentee Ballot.

DRNC next challenges subsection 163-226.3(a)(4) as violating Section 208 because it prohibits the owner, manager, director, or staff of a medical facility from assisting a voter who is a patient in that medical facility who requires assistance due to their disability and wants their medical facility staff to assist them. [D.E. 34, p. 5].

Originally enacted in 1979[4], subsection (a)(4) outlines the considered policy of the State that prohibits owners and staff of medical facilities to assist voters because they present a risk of undue influence if they are permitted to assist their patients. N.C.G.S. § 163-226.3(a)(4). But subsection (a)(4) also ameliorates this inconvenience by allowing the voter to choose *any other person* if their near relative, legal guardian, or a multipartisan assistance team is not available (seven days after requesting assistance), so long as it is not medical facility personnel or political officials. *Id.* The only injuries asserted by DRNC's claim is it has been forced to assist disabled voters because multipartisan assistance teams are routinely unavailable to assist. However, even then, subsection (a)(4) provides that the voter is then free to select *any other person* to provide assistance when needed, with very limited exceptions. *Id.* Assistants can even include the staff of DRNC. [*See* D.E. 34, p. 5].

[4] *See* S.L. 1979-799, 1979 S.B. 519, https://www.ncleg.gov/enactedlegislation/sessionlaws/pdf/1979-1980/sl1979-799.pdf (last visited June 22, 2022).

Nonetheless, State Board Defendants acknowledge it is undisputed that North Carolina law does specifically prohibit medical facility personnel from assisting patients within the medical facility. *See* N.C.G.S. § 163-226.3(a)(4). State Board Defendants rely on the arguments contained below to explain why this limitation complements rather than conflicts with Section 208 as Congress anticipated.

Next, Plaintiff's claim that subsection 163-226.3(a)(6) violates Section 208 is entirely misplaced. Subsection 163-226.3(a)(6) protects the secrecy of the voter's ballot and does not apply to voters that require assistance. N.C.G.S. § 163-226.3(a)(6). It opens with the qualifying language: "Except as provided in subsections (1), (2), (3) and (4) of this section . . . ." *Id.* The cited subsections (a)(1) and (a)(4) establish that any voter requiring assistance may obtain assistance from a near relative, legal guardian, multipartisan assistance team, or *any other person*, so long as that person is not the medical facility personnel overseeing the patient or a political official. *Id.* § 163-226.6(a)(1) and (a)(4). Thus, there are no limits placed on any voter who requires assistance by subsection 163-226(a)(6), other than those are imposed by subsection 163-226.3(a)(4). It follows that subsection (a)(6) itself presents no conflict to Section 208, and Plaintiff's challenge to that subsection is meritless.

Nonetheless, even if the Court determines subsection (a)(6) was intended to restrict how assistance is provided, the obvious purpose of such a restriction would be to protect the secrecy of the voter's ballot, and such restrictions are permitted under Section 208. *See Nelson v. Miller*, 950 F. Supp. 201, 1996 U.S. Dist. LEXIS 19061 (W.D. Mich. 1996) (providing that blind voters have no viable cause of action against a state, where that state is allowing blind voters to designate person to assist them in casting ballot, even though the state's applicable statute also provides that "no rule shall be made which provides for reducing secrecy of ballot," because it does not appear

that Congress intended that Section 208 be read so broadly as to require states with statutory provisions regarding secret ballot to provide blind voters with voting privacy free from third-party assistance), *aff'd*, 170 F.3d 641 (6th Cir. 1999).

By considering the entirety of subsection 163-226.3(a), which this Court is required to do, it is clear that this subsection does not prohibit a voter from gaining assistance, except from those individuals North Carolina policy makers have determined could exert undue influence over them. Subsection (a) is accordingly not an obstacle to Section 208, particularly in light of the federal law's purpose here. Even assuming there is a conflict between subsection 163-226.3(a) and Section 208, as discussed above, the cross-referencing statutes whittle down that conflict to only what is provided in subsections 163-226.3(a)(4) and 163-230.2(e1), and the content of those subsections actually complement Section 208 rather conflict with it.

3. Returning an Absentee Ballot to the County Board.

Finally, subsection 163-231(b)(1) governs transmittal of absentee ballots back to the county board and requires delivery by mail or commercial courier service, or hand delivery by the voter or voter's near relative or legal guardian. N.C.G.S. § 163-231(b)(1). DRNC claims that by limiting who may transmit an absentee ballot, subsection (b)(1) conflicts with Section 208 by "depriving voters with disabilities of the assistance of their choosing." [D.E. 34, p. 6].

Subsection 163-231(b)(1) sets forth the State's policy barring the collection and transmission of completed absentee ballots by anyone other than the voter, a near relative, or legal guardian, or transmission by any other means than by mail or by commercial courier service. *Id.* § 163-231(b)(1); *see also* 08 N.C. Admin. Code 18. 0101 (allowing another person selected by the disabled voter to return the voter's absentee ballot, if the disabled voter is unable to do so because of the voter's disability, and provided the person selected is not disqualified from assisting the

voter). The only other court that appears to have considered the propriety of such a limitation concluded it do not conflict with Section 208. *See Qualkinbush,* 357 Ill. App. 3d at 610-12 (concluding that "states may impose restrictions on those individuals who may return a disabled voter's absentee ballot, and that such restrictions may be above and beyond those set forth in the Voting Rights Act," and collecting cases in which other courts have recognized such restrictions preventing practices like ballot collection prevent elections fraud). This Court should do the same.

Again, it is undisputed that North Carolina law specifically prohibits medical facility personnel from assisting patients within the same medical facility in voting. *See* N.C.G.S. § 163-226.3(a)(4). State Board Defendants rely on the arguments contained immediately below to explain why this limitation does not present a conflict with section 208.

B. Congress Anticipated Reasonable Limits by States That Support the Same Purpose and Objective of Section 208.

North Carolina has important regulatory interests in eliminating the potential for manipulation and undue influence of voters, especially certain voters who may require further assistance, like voters who are disabled. This is the same concern that motivated Congress when it passed Section 208.

Section 208 was added to the VRA based upon concerns raised by the National Federation of the Blind that it was necessary to balance a blind voter's privacy with their need for assistance. *See* Thomas M. Boyd and Stephen J. Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History*, 40 Wash. & Lee L. Rev. 1347, 1419 n.357 (1983); *see also* Senate Committee, S. Rep. 97-417, 1982 U.S.C.C.A.N. at 62 n.207. Assistance had traditionally been provided by election officials, who would accompany the voter into the voting booth, thus sacrificing the voter's privacy. *Voting Rights Act: Hearings before the Subcommittee on the Constitution of the Committee on the Judiciary*, United States Senate, 97th Cong., 2d Sess. Vol. 2,

Appx., at 64-66 (1982). According to the Senate Report for what would become Section 208, and which accompanied a bill with substantially similar language, Congress passed Section 208 upon finding that blind, disabled, and illiterate citizens "are more susceptible than the ordinary voter to having their vote unduly influenced or manipulated." Senate Committee, S. Rep. 97-417, 1982 U.S.C.C.A.N. at 240, 254. The Senate Committee was "concerned that some people in this situation do in fact elect to forfeit their right to vote" and that "[o]thers may have their actual preference overborne by the influence of those assisting them or be misled into voting for someone other than the candidate of their choice." *Id.* at 240-41.

Citing a letter from the National Federation of the Blind, the Senate Report provided that "having assistance provided by election officials discriminates against those voters who need such aid because it infringes upon their right to a secret ballot and can discourage many from voting for fear of intimidation or lack of privacy." *Id.* at 62 n.207. The Senate Committee concluded that "the only way 'to avoid possible intimidation or manipulation of the voter' was to allow the voter to choose whom they desire to assist them." *Id.* at 241.

However, the Senate Report "recognize[d] the legitimate right of any state to establish necessary election procedures, subject to the overriding principle that such procedures shall be designed to protect the rights of voters." *Id.* at 63. According to the Report, "State provisions would be preempted only to the extent that they unduly burden the right recognized in [Section 208], with that determination being a practical one dependent upon the facts." *Id.*

As noted by the district court in *Ray v. Texas*, the above "legislative history evidences an intent to allow the voter to choose a person whom the voter trusts to provide assistance. It does not preclude all efforts by the State to regulate elections by limiting the available choices to certain individuals." *Ray*, 2008 U.S. Dist. LEXIS 59852, at *19.

Here, North Carolina chose to place minimal limits on absentee voting in order to avoid undue influence on voters. As reflected in the above-noted legislative history, this interest is accepted and in keeping with the purpose of Section 208. Also, in 2005, the Commission on Federal Elections Reform, a bipartisan commission chaired by former President Jimmy Carter and former Secretary of State James Baker, cautioned that "Absentee balloting is vulnerable to abuse in several ways: . . . Citizens who vote at home, at nursing homes, at the workplace, or in church are more susceptible to pressure, overt and subtle, or to intimidation." Comm'n on Fed. Elections Reform, *Building Confidence in U.S. Elections* 46 (2005). The Commission went on to explain that states should "reduce the risks of fraud and abuse in absentee voting by prohibiting 'third-party' organizations, candidates, and political party activists from handling absentee ballots," while making no claim that federal law would need to be amended first for these reforms to be enacted by the states. *Id.* As part of its formal recommendation, the Commission stated the following: "States and local jurisdictions should prohibit a person from handling absentee ballots other than the voter, an acknowledged family member, the U.S. Postal Service or other legitimate shipper, or elections officials." *Id.* at 47.

Section 208's limits, and North Carolina's limits, on assistance are in line with the Commission's recommendations. Section 208 is concerned with undue influence through workplace relationships. North Carolina's challenged statutes are concerned with undue influence through patient-provider relationships and by political officials. These moderate limits work in concert with other election integrity and public confidence provisions in the state's absentee voting laws, including those requiring voters to verify personal information and prove their identity through the witness/notary requirement, requiring certifications under penalty of perjury, and prohibiting falsifications of information on the ballots. *See, e.g.*, N.C.G.S. §§ 163-231, -274, -275.

The reasons for these restrictions, and the ban on ballot collection found in section 163-230.1(b)(1), are not theoretical. In the 2018 general election for North Carolina's Ninth Congressional District, for example, a political activist hired by a candidate engaged in a coordinated absentee ballot fraud scheme in which he paid employees to pre-fill absentee request forms (sometimes through forgery) and collect absentee ballots from voters, and organized employees to fill in incomplete, unsealed ballots in favor of particular candidates. This scheme caused the results of the election for that contest to be invalidated, requiring a new election the following year.[5] It would be an absurd result to read Section 208 so broadly to allow such a practice.

More importantly, when determining, per the theory of obstacle preemption, if a certain state statute is preempted by a federal statute, the ultimate question is whether the purpose underlying the federal statute—in this case, the national interest in avoiding undue influence—conflicts with the state's interest in passing the state statute. *Equal Rights Ctr.*, 602 F.3d at 601. This is a question of policy choices rather than statutory construction. *Id.* Here, there is no conflict under obstacle preemption because the intended purpose of Congress in enacting section 208 and of the North Carolina legislature in enacting the challenged statutes is the same: protecting vulnerable voters from manipulation and undue influence during the voting process. Section 208 accomplishes this by prohibiting assistance by officers and agents of employers and unions. North Carolina does this by prohibiting assistance by medical facility personnel and political officials. Thus, the statutes are complementary, not in conflict.

[5] For the full Order issued by the State Board regarding this incident, see https://dl.ncsbe.gov/State_Board_Meeting_Docs/Congressional_District_9_Portal/Order_03132019.pdf (last visited June 22, 2022).

State Board Defendants acknowledge that courts have differed on the issue of preemption and Section 208, but the conclusion that there is no conflict and thus no preemption is not without precedent, as other courts have reached that conclusion. *See, e.g.*, *Priorities United States*, 487 F. Supp. 3d at 620; *Ray*, 2008 U.S. Dist. LEXIS 59852, at *18-19; *Qualkinbush*, 826 N.E.2d at 1196.

III. THE INJURIES ASSERTED AND RELIEF SOUGHT SUPPORT A NARROW RULING.

This Court should conclude the challenged statutes are not preempted by Section 208. However, should this Court ultimately find in favor of Plaintiff, the relief granted should narrowly address only the factual and legal arguments that Plaintiff has made and is entitled to make based upon the scope of its standing.

Relief, and in particular injunctive relief, "should be carefully addressed to the circumstances of the case." *Va. Soc'y for Human Life, Inc. v. Fed. Election Comm'n*, 263 F.3d 379, 393 (4th Cir. 2001), *overruled on other grounds as recognized in Real Truth About Abortion, Inc. v. Fed. Election Comm'n*, 681 F.3d 544, 550 n.2 (4th Cir. 2012); *Hayes v. N. State Law Enforcement Officers Ass'n*, 10 F.3d 207, 217 (4th Cir. 1993) ("Although injunctive relief should be designed to grant the full relief needed to remedy the injury to the prevailing party, it should not go beyond the extent of the established violation."). It follows that "[an] injunction may not encompass more conduct than was requested or exceed the legal basis of the lawsuit." *Scott v. Schedler*, 826 F.3d 207, 214 (5th Cir. 2016).

The relief granted in the present case should be limited to the issues placed before this Court by Plaintiff—namely, the limitations placed on individual patients in medical facilities who require assistance to vote because of their disability and want to select medical staff at those facilities to assist them and which arise under N.C.G.S. §§ 163-226(a)(4) and -231(b)(1).

DRNC, by its own admission, is only statutorily authorized to advocate on behalf of individuals with disabilities. [D.E. 1, ¶ 7]. Accordingly, Plaintiff's claims, arguments, and requested relief focus on disabled voters and not all Section 208 voters generally. *Id.*, ¶¶ 7, 15, 17-18, 22-38, 41-43. Plaintiff has not alleged any statutory authority or standing to advocate on behalf of voters who need assistance as a result of being unable to read or write. *Id.* Plaintiff's requested relief expressly seeks a declaration that state law violates Section 208 "by infringing on the rights of voters with disabilities" and seeks injunctive relief "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." *Id.*, p. 9. This is also repeated in Plaintiff's moving papers. [D.E. 33, p. 2; D.E. 34, pp. 9 (requesting the Court "enjoin enforcement of those provisions as they related to voters with disabilities who need assistance with voting.")]. Thus, the relief requested is limited to disabled voters, not all Section 208 voters.

Not only should the relief granted in a case address only the particular circumstances presented, that relief should also be limited by "the legal basis of the lawsuit." *Scott*, 826 F.3d at 214. Plaintiffs establish the legal basis for this Court's jurisdiction over a lawsuit by demonstrating standing, and plaintiffs "must demonstrate standing separately for each form of relief sought." *TransUnion LLC*, 141 S. Ct. at 2210 (citation and internal quotation marks omitted).

As discussed in Part I above addressing the scope of Plaintiff's standing to bring this action, Plaintiff relies on associational and organizational injuries related only to voters with disabilities living within medical facilities. No specific injury has been alleged or supported by evidence to establish a generalized injury on behalf of all disabled persons in the State. Nor has DRNC put

forth any argument that it diverted resources to address the needs of any persons outside of a medical facility.

Thus, the issues properly before this Court are limited to individual patients in medical facilities who require assistance to vote because of their disability and want to select medical staff at those facilities to assist them. It follows that, if the Court rules in Plaintiff's favor (which it should not), the limits of those issues should be reflected in the relief it grants.

CONCLUSION

For the foregoing reasons, this Court should deny Plaintiff's motion for summary judgment. Alternatively, if the Court grants the motion, State Board Defendants respectfully request that the limits of the issues properly before the Court be reflected in the relief granted.

Respectfully submitted this the 24th day of June, 2022.

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

DISABILITY RIGHTS NORTH CAROLINA, Plaintiff, v. NORTH CAROLINA STATE BOARD OF ELECTIONS, et al., Defendants.	**DEFENDANTS' OPPOSING STATEMENT OF MATERIAL FACTS IN DISPUTE** **L. Civ. R. 56.1**

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 "State Board Defendants"), through undersigned counsel, pursuant to Local Civil Rule 56.1 to provide Defendants' Opposing Statement of Material Facts in Dispute responding to Plaintiff's Statement of Material Facts Not in Dispute. [D.E. 33-1].

1. Undisputed.

2. Undisputed.

3. Undisputed.

4. Undisputed that Section 208 of the Voting Rights Act confers rights on voters with disabilities subject to certain qualifications and exceptions. 52 U.S.C. § 10508. Disputed to the extent that Section 208 confers rights on all voter with disability without qualifications or exceptions. Section 208 applies only when a voter requires assistance to vote by reason of their disability. *Id.* For any voter who requires assistance, the voter "may be given assistance by a person of the voter's choice," but it also excludes persons who may exert an undue influence over

the voter in the form of "the voter's employer or agent of that employer or officer of agent of the voter's union." *Id.*

5. Undisputed.

6. Undisputed. State Board Defendants do not have the legal authority to authorize any voter to violate the challenged state statutes.

7. Undisputed that N.C.G.S. § 163-226.3(a)(4) prohibits persons with disabilities who are patients in a hospital, clinic, nursing home, or rest home ("medical facilities" or "congregate settings") from obtaining assistance from an owner, manager, director, employee or other person of those medical facilities ("facility staff" or "congregate care staff"). Disputed that the other challenged statutes prohibit assistance in this same manner, except to the extent the statutes cross-reference N.C.G.S. § 163-226.3(a)(4). *See* Part II-A of Defendants' Response in Opposition; *See also* N.C.G.S. §§ 163-226.3(a)(6), -230.1, 230.2(e), -230.2(e1), -230.3, and -231(b)(1).

8. Undisputed.

9. Undisputed that Plaintiff is charged, pursuant to 52 U.S.C. § 21061, with advocating for the voting rights of North Carolinians with disabilities and assisting them to ensure full participation in the electoral process, including registering to vote, casting a vote, and accessing polling places. 52 U.S.C. §§ 21061, 21062. Disputed to the extent that each disabled person is a constituent of DRNC as Plaintiff does not support this statement with a citation to admissible evidence as required Local Rule 56.1(a)(4). Nor is the term "constituents" explained nor defined and it is not clear whether Plaintiff intends it to confer legal or factual significance. [D.E. 33-2, ¶¶ 5, 9]; see also 42 U.S.C. §§ 300d-53, 405, 10801 *et seq.*, 1320b-21, 15041 through 15045; 29 U.S.C. §§ 794e, 3004; 52 U.S.C. §§ 21061, 21062.

10. Undisputed.

11. Disputed to the extent that Plaintiff's use of the term "constituents" is neither explained nor defined and it is not clear whether it is intended to confer some legal significance. [D.E. 33-2, ¶¶ 5, 9]; see also 42 U.S.C. §§ 300d-53, 405, 10801 *et seq.*, 1320b-21, 15041 through 15045; 29 U.S.C. §§ 794e, 3004; 52 U.S.C. §§ 21061, 21062.

12. Disputed to the extent that Plaintiff's use of the term "constituents" is neither explained nor defined and it is not clear whether it is intended to confer some legal significance. [D.E. 33-2, ¶¶ 5, 9]; see also 42 U.S.C. §§ 300d-53, 405, 10801 *et seq.*, 1320b-21, 15041 through 15045; 29 U.S.C. §§ 794e, 3004; 52 U.S.C. §§ 21061, 21062.

13. Undisputed.

14. Undisputed that N.C.G.S. § 163-226.3(a)(4) applies to voters with disabilities in medical facilities to the extent that staff members of the facility at which they reside are prohibited by law from providing assistance with voting. Disputed that the other challenged statutes prohibit assistance in this same manner, except to the extent the statutes cross-reference N.C.G.S. § 163-226.3(a)(4). *See* Part II-A of Defendants' Response in Opposition; *See also* N.C.G.S. §§ 163-226.3(a)(6), -230.1, 230.2(e), -230.2(e1), -230.3, and -231(b)(1). Disputed to the extent that Plaintiff fails to properly support the statement "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." This is inadmissible hearsay evidence that fails to meet the requirements of Local Rule 56.1(a)(4). Disputed to the extent that any voter with disabilities in a congregate setting may contact their local county board of election to request a Multipartisan Assistance Team ("MAT") and the MAT will assist them with voting. N.C.G.S. §§ 163-226.3(a)(4), (c), -230.2, -230.1. In the event a MAT, family member, or legal guardian is not available, any person may assist a disabled voter except medical facility staff. *Id.*,

§§ -226.3(a)(4), -230.2(c), (e1).

15. Undisputed that Plaintiff engaged in efforts to assist disabled voters at medical facilities by coordinating with the State Board, county boards of elections, MATs (15(a)), medical facilities (15(b)), lobbying to amend the challenged statutes (15(c)), and providing direct assistance to disabled voters in medical facilities (15(d)).

Respectfully submitted this the 24th day of June, 2022

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