IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

VOICE of the EXPERIENCED, *on behalf of itself and its members*; PCEJ for EQUITY and JUSTICE, *on behalf of itself and its members*; and LEAGUE of WOMEN VOTERS of LOUISIANA, *on behalf of itself and its members*;

Plaintiffs,

v.

NANCY LANDRY, *in her official capacity as Secretary of State of Louisiana*,

Defendant.

Civil No. 3:23-cv-00331-JWD-SDJ

PLAINTIFFS' OPPOSITION TO DFENDANT'S MOTION TO STRIKE AND MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statutes and Codes

Other Authorities

INTRODUCTION

Plaintiffs Voice of the Experienced ("VOTE"), PCEJ for Equity and Justice ("PCEJ"), and the League of Women Voters of Louisiana ("the League") (together, "Plaintiffs"), respectfully submit this response to Defendant Secretary of State's ("Defendant") Motion to Dismiss and Motions to Strike. Plaintiffs challenge Defendant's policy of requiring documentary proof of eligibility for voters with prior felony convictions ("Paperwork Requirement"), which arbitrarily treats voter registrants with felony convictions differently depending on whether they previously registered to vote prior to their incarceration. The Paperwork Requirement has long been a source of confusion and burden for voters and registrars alike. Defendant's Paperwork Requirement violates the National Voter Registration Act's ("NVRA") requirement that states place eligible registrants on the voter rolls and undertake voter registration programs in a uniform and nondiscriminatory manner. Defendant's Paperwork Requirement also violates the Equal Protection Clause of the Fourteenth Amendment because the requirement arbitrarily imposes differential burdens on eligible "new" voters with prior felony sentences and similarly situated applicants who had previously registered to vote, and results in the differential treatment of voters based on which parish they live.

PROCEDURAL HISTORY

On October 22, 2020, through counsel, VOTE provided the Secretary of State with written notice regarding the NVRA violations created by requiring additional documentation of suspended, eligible voters. *See* ECF 168-1 ("October 22, 2020 Notice Letter"). On August 26, 2022, PCEJ and the League, through their counsel, sent a letter to the Secretary of State, notifying that the documentary proof of eligibility requirement for "reinstatement" of registration for people with felony convictions violates the NVRA. *See* ECF 168-2 ("August 26, 2022 Notice Letter").

Between August 26, 2022 and March 2023, PCEJ and the League engaged in correspondence with the Secretary of State regarding the violations noted in their August 26, 2022 Notice Letter. *See* ECF 168 at ¶¶ 97-100; 168-3; 168-4; 168-5; 168-6; 168-7. On March 31, 2023, VOTE, PCEJ, and the League sent the Secretary of State a final Notice Letter. On May 1, 2023, PCEJ, VOTE, and the League initiated the current action. ECF 168-8; ECF 168 at ¶ 103. On June 14, 2023, Defendant filed a Motion to Dismiss against Plaintiffs' Original Complaint. ECF 32.

On May 13, 2024, this Court granted in part and denied in part Defendant's Motion to Dismiss. ECF 155. Specifically, the Court granted Defendant's Motion to Dismiss in the following respects: "(1) Plaintiff VOTE's NVRA notice; (2) the extent to which the *Complaint* alleges NVRA violations outside of those discussed in the pertinent notice letters; and (3) preemption." ECF 155 at 86 (emphasis in original). Additionally, the Court provided Plaintiffs leave to amend their complaint within 28 days of the date of the order. ECF 155 at 86. Plaintiffs sought leave for additional time to amend their Complaint in order to comply with the 90-day notice requirement of the National Voter Registration Act, which this Court granted. ECF 159; 162.

On May 31, 2024, Plaintiffs sent Defendant a notice letter ("2024 Notice Letter"), alleging that the Paperwork Requirement violated various provisions of the National Voter Registration Act. *See* ECF 168-9. Specifically, Plaintiffs 1) reiterated their position that reinstatement is not an eligibility requirement for restoration of voting rights in Louisiana and therefore precluded by the NVRA; 2) noted that the requirement cannot apply to individuals not under an order of imprisonment because the Louisiana constitution does not permit disenfranchisement of those individuals; 3) raised issues of nonuniform and discriminatory application of the Paperwork Requirement across parishes, including that some parishes still require first-time voters to provide documentary proof of eligibility, and 4) notified Defendant that if reinstatement were an eligibility

criterion, Defendant has failed to identify it as such on the state and federal voter registration form. ECF 168-9. Accordingly, Plaintiffs alleged that Defendant's Paperwork Requirement violated Sections 6, 8, and 9 of the NVRA. ECF 168-9 at 12. On September 6, 2024, Plaintiffs filed their First Amended Complaint, incorporating newly-discovered factual allegations and raising additional violations of the National Voter Registration Act. ECF 168. On October 4, 2024, Defendant filed a Motion to Strike and Dismiss Plaintiff's First Amended Complaint. ECF 176-1. This Opposition follows.

LEGAL STANDARD

Fed. R. Civ. P. 12(f) permits a court only to strike "from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Striking even "a portion of a pleading is a drastic remedy." *Snearl v. City of Port Allen,* No. CV 21-455-JWD-RLB, 2022 WL 2129088, at *15 (M.D. La. June 14, 2022) (internal citations and quotation marks omitted). "Consequently, motions under Rule 12(f) are viewed with disfavor and are infrequently granted." *Id.* "Any doubt about whether the challenged material is redundant, immaterial, impertinent, or scandalous should be resolved in favor of the non-moving party." *Id.*

Under Fed. R. Civ. P. 12(b)(6), a complaint "does not require 'detailed factual allegations,'" but it must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court must view Plaintiffs' well-pleaded facts in the light most favorable to Plaintiffs. *Sonnier v. State Farm Mut. Auto. Ins*., 509 F.3d 673, 675 (5th Cir. 2007). The Court's analysis must remain focused on whether Plaintiffs have stated a claim upon which relief can be granted, not on Plaintiffs' likelihood of success. *Mann v. Adams Realty Co*., 556 F.2d 288, 293 (5th Cir. 1977). When the complaint includes factual content that "allows the court to draw the reasonable inference that the defendant is liable for the

misconduct alleged," the claim has facial plausibility. *Gonzalez v. Kay*, 577 F.3d 600, 603 (5th Cir. 2009) (quoting *Iqbal*, 556 U.S. at 678). Likewise, a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) will be granted only "if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle plaintiff to relief." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

Finally, Fed. R. Civ. P. 12(b)(7) governs whether an action is to be dismissed based on failure to join a necessary party under Fed. R. Civ. P. 19. Under Rule 19, a party is only necessary if their "presence in a lawsuit is required for the fair and complete resolution of the dispute at issue." *HS Res., Inc. v. Wingate*, 327 F.3d 432, 438 (5th Cir. 2003). "In making its joinder analysis, the court accepts all allegations in the complaint as true and draws all inferences in favor of the non-moving party." *Durstcrew, LLC v. Tech21 UK Ltd.*, No. A-17-CV-1055-LY, 2018 WL 4343447, at *2 (W.D. Tex. July 2, 2018), *report and recommendation adopted*, No. A-17-CV-001055-LY, 2018 WL 4343432 (W.D. Tex. July 31, 2018).

LEGAL ARGUMENT

Despite Defendant's arguments to the contrary, it is Defendant who attempts to relitigate legal issues already decided by this Court. First, Defendant's Motion to Strike attempts to convert Plaintiffs' Amended Complaint into a supplemental pleading, with no basis in fact or law. Second, Defendant's Motion to Dismiss offers no argument directed towards Plaintiffs' amended pleadings, instead rehashing the arguments that failed them in their first Motion to Dismiss. For the following reasons, both Defendant's Motions should be denied.

I. OPPOSITION TO MOTION TO STRIKE

A motion to strike may be granted "only when the pleading to be stricken has no possible relation to the controversy." *Nixion v. Bates*, No. CV 23-7034, 2024 WL 2977880, at *3 (E.D. La.

June 13, 2024). "In addition, a motion to strike generally should not be granted absent a showing of prejudice to the moving party." *Id*. Defendant has failed to meet either element and her Motion to Strike should be denied.

A. Plaintiffs' Amended Complaint Bears Direct Relation to the Current Action.

Defendant offers no argument that Plaintiffs' pleadings have "no possible relation to the controversy." *Nixion*, 2024 WL 2977880 at *3; *see also United States v. Coney,* 689 F.3d 365, 379 (5th Cir. 2012). In fact, Defendant does not argue at all that Plaintiffs pleadings are in any way "redundant, immaterial, impertinent, or scandalous." Fed. R. Civ. P. 12(f); *cf.* ECF 155 at 5-15.[1] For this reason alone, Defendant's Motion to Strike should fail.

Defendant's request to strike Plaintiffs' Amended Complaint is an attempt to relitigate her initial objections to this Court's grant of leave for Plaintiffs to amend their Complaint. Defendant opposed Plaintiffs' request for an extension on filing their Amended Complaint to comply with the NVRA's notice requirements, ECF 159, arguing that Plaintiffs "apparently seek to supplement their Complaint." ECF 160 at 3. This Court summarily rejected that argument, granting Plaintiffs' leave to amend their complaint after the end of the NVRA notice period "[i]n light of the Court's order allowing Plaintiffs to cure deficiencies in their NVRA claims." ECF 162. Now Defendant expands on that same recycled argument that this Court already rejected. ECF 176-1-1 at 7. But Defendant's argument still fails.

Fed. R. Civ. P. 15(a)(2) instructs that courts "should freely give leave [to amend] when justice so requires." And "[w]hether leave to amend should be granted is entrusted to the sound

[1] To the extent that Defendant argues that "Plaintiffs' initial *Complaint* concerns only the documentation requirement of La. R.S. 18:177 for suspended voters, not the documentation requirement as purportedly applied to first-time registrants or other non-suspended voters," Defendant flatly misrepresents the allegations in Plaintiffs' Original Complaint. *Compare* ECF 176-1 at 8-9 (emphasis added) *with* ECF 1 at *e.g.,* ¶¶ 34, 38, 45, 70. In any event, it does not matter since an amended complaint can expand the relevant facts and claims. *See infra.*

discretion of the district court…and the language of this rule evinces a bias in favor of granting leave to amend." *Lyn-Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282, 286 (5th Cir. 2002) (internal quotation marks omitted); 5B Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1357 (3d ed. 2016) ("[T]he cases make it clear that leave to amend the complaint should be refused only if it appears to a certainty that the plaintiff cannot state a claim."); ECF 155 at 84. "Courts will permit amendment of pleadings for virtually any purpose, including to add claims, alter legal theories or request different or additional relief." *In re Priv. Cap. Partners, Inc.*, 139 B.R. 120, 125 (Bankr. S.D.N.Y. 1992) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Thus, "in accordance with wise judicial practice," this Court *sua sponte* granted Plaintiffs leave to file their Amended Complaint. ECF 155 at 85.

The allegations concerning Plaintiffs' 2024 Notice Letter are not "supplementations to Plaintiffs' initial *Complaint*" because, as Defendant is aware, the underlying alleged state activities have occurred on an ongoing basis since before the initiation of the litigation. *Cf.* ECF 176-1 at 8 (emphasis in original). An amended complaint may include factual allegations that were not originally pled, especially facts that were discovered during the pendency of the litigation. *E.g., Louisiana v. Bank of Am. Corp.*, No. CV 19-638-SDD-SDJ, 2020 WL 3966875, at *4 (M.D. La. July 13, 2020). Specifically, because the "new allegations seek to fill out the story that Plaintiffs attempted to set forth in the original complaint," Plaintiffs have properly amended their Complaint. *Moore v. LaSalle Corr., Inc.*, No. 3:16-CV-1007, 2017 WL 11822922, at *3 (W.D. La. Dec. 5, 2017).

Here, Defendant "ignores Plaintiff's representation that the [] Amended Complaint is based on newly-discovered acts and communications." *Bank of Am. Corp.*, 2020 WL 3966875 at *4 (internal quotation marks omitted); *cf.* ECF 176-1 at 8-9. As Defendant notes, Plaintiffs' amended

factual allegations assert that the Paperwork Requirement is differently applied across parishes, and how the Paperwork Requirement *de facto* disenfranchises eligible, jail-based voters. ECF 176-1 at 8-10. In their 2024 Notice Letter, Plaintiffs made Defendant aware that they learned about these facts via discovery in this litigation. ECF 168-9 at 9-12. Then, after the notice period expired, Plaintiffs amended their Complaint to include the newly-discovered acts and communications. *See generally* ECF 168 at ¶ 178.

Defendant's argument that "Defendant was not notified of the additional alleged violations of the NVRA set forth in Counts 3, 4, and 5 until the May 31, 2024 letter, which was sent well-after Plaintiffs filed suit on May 1, 2023," ECF 176-1 at 9, is irrelevant. An amended complaint may include additional legal claims where the "amended allegations simply provide greater detail with additional facts that came out during the discovery process." *LaSalle Corr., Inc.*, 2017 WL 11822922 at *3. Here, Plaintiffs learned about facts during the discovery period that gave rise to additional legal claims, which Plaintiffs properly included in Counts 3 and 4 of their Amended Complaint. ECF 168-9.

Moreover, Plaintiffs' Amended Complaint addresses this Court's Order on Defendants' earlier Motion to Dismiss. *First,* this Court held that previously VOTE did not comply with the NVRA's notice requirement "since suit was filed less than 90 days after the March 31, 2023 letter." ECF 155 at 55. In response, Plaintiffs sent the 2024 Notice Letter—which includes all Plaintiffs—and when, after 90 days, Defendant failed to cure the identified violations, Plaintiffs filed their Amended Complaint. ECF 168 at ¶¶ 105-07.

Second, this Court held that "Plaintiffs properly put the Secretary on notice of potential violations of 52 U.S.C. §§ 20505(a)(1) and 20507(a)(1)…but to the extent that the *Complaint* alleges violations of statutes other than 52 U.S.C. §§ 20505(a)(1) and 20507(a)(1), or statutes

referenced therein, Defendant's *Motion to Dismiss* is granted." ECF 155 at 56-57 (emphasis in original). Plaintiffs' 2024 Notice Letter therefore explicitly states that the Paperwork Requirement violates 52 U.S.C. §§ 20505(a)(1), (2); 20507(a)(1), (5); 20507(b)(1); 20508(b)(1), (2)(A), and (b)(3). ECF 168-9 at 14. Plaintiffs' Amended Complaint alleges the same violations. ECF 168 at ¶¶ 108-66.

Third, this Court held that on the merits of Plaintiffs' NVRA claims, "[s]ince La. R.S. § 18:177(A)(1) determines the eligibility of those who were registered to vote prior to disenfranchisement, the Court finds that…Plaintiffs have not plead proper claims under the NVRA." ECF 155 at 69-70 (internal quotation marks omitted). As discussed *infra* Part II, Plaintiffs maintain that reinstatement is not a criterion for eligibility to vote in Louisiana, but ultimately Plaintiffs' Amended Complaint alleges that the Paperwork Requirement violates the NVRA *regardless* of this conclusion. Specifically, Counts 1 and 2 allege that notwithstanding the reinstatement requirement, the Louisiana Constitution does not allow disenfranchisement of individuals who are no longer under an order of imprisonment, meaning those individual's rights must be automatically restored upon release under state law. ECF 168 at ¶¶ 108-40. Counts 3 and 4 regard the nonuniform application of the Paperwork Requirement across parishes based on facts learned during the litigation, and do not turn on whether reinstatement is a criterion for eligibility. ECF 168 at ¶¶ 141-59; ECF 168-9 at 9-11. Finally, Count 5 alleges in the alternative that if reinstatement is a condition of voter eligibility, Defendant's failure to state it as such on the state and federal voter registration form violates the NVRA. ECF 168 at ¶¶ 160-66. In other words, all of Plaintiffs' NVRA allegations address this Court's questions about the extent to which Defendant's application of the Paperwork Requirement conflicts with the NVRA.

Likewise, Plaintiffs' amended Equal Protection allegations "arise out of the same facts and occurrences that were originally pled," such that amendment was appropriate. *LaSalle Corr., Inc.*, 2017 WL 11822922 at *2. As with Plaintiffs' NVRA claims, "Plaintiffs do not seek to tell a new story, only a more complete one": namely, that the disparate treatment of jail-based voters and the disparate application of the Paperwork Requirement across parishes compound Plaintiffs' equal protection injuries. *Id.* at *3. *E.g.,* ECF 168 at ¶¶ 19-21, 77, 178.

But even if Plaintiffs' Amended Complaint is a supplement (it is not), this Court may simply treat Plaintiffs' Amended Complaint as such under this Court's broad discretion to accept amended pleadings. *See generally* Fed. R. Civ. P. 15; *E.g., Spencer Cnty. Redevelopment Comm'n v. AK Steel Corp.,* No. 3:09-CV-00066-RLY, 2011 WL 3806947, at *2 (S.D. Ind. Aug. 26, 2011) (denying a motion to strike even where the court found that the amended complaint was a supplemental complaint); Doc. 1, *Petteway v. Galveston County,* 3:22-cv-00057 (S.D.TX Feb. 15, 2022) (denying motion to supplement and treating supplement as amended complaint). Indeed, Rule 15's breadth is designed to deny Defendant the ability to rely on hyper-technical arguments that would make it impossible for Plaintiffs to vindicate their rights. Rule 15 allows courts to permit pleadings to be amended as late as during or even *after* trial. *See* Fed, R. Civ. P. 15(b)(1)-(2). And Rule 15(d) specifically allows for supplemental proceedings even when "the original pleading is defective in stating a claim or defense." Fed. R. Civ. P. 15(d). As such, it doesn't matter if this Court styles the pleading as an amended or supplemental pleading; what matters is whether the substance of the pleading states a claim.

In any event, Defendant's argument acknowledges that Plaintiffs' pleadings, at minimum, have a "possible relation" to the "documentation requirement of La. R.S. 18:177," ECF 176-1 at

4-5, a far cry from meeting the high standard for prevailing on a motion to strike. *Nixion*, 2024 WL 2977880 at *3. Thus, this factor weighs heavily in Plaintiffs' favor.

B. Defendant Suffers No Prejudice from Plaintiffs' Complaint.

Far from alleviating any prejudices to the parties, Defendant's request to strike Plaintiffs' Amended Complaint would create all the issues that Defendant purports to fear. Relevant factors to considering potential prejudice include "delay, whether the challenged statements will unnecessarily prolong or prevent discovery, or increase the parties' expenses." *Hi-Tech Elec., Inc. of Delaware v. T&B Constr. & Elec. Servs., Inc.*, No. CV 15-3034, 2017 WL 660645, at *2 (E.D. La. Feb. 15, 2017). None of those factors are present here.

First, Plaintiffs did not delay. Plaintiffs filed their Amended Complaint one week after Defendant sent her August 30, 2024 response to Plaintiffs' May 31, 2024 notice letter, and one week after the 90-day notice period elapsed. ECF 168 at ¶ 107. *Second*, Defendant's argument that the Amended Complaint "will require additional fact discovery after it was nearly complete, not to mention additional arguments in pre-trial motions and issues for trial" is dubious. Many of Plaintiffs' claims are purely legal, and many factual allegations arose from the discovery already undertaken by the parties, such that any additional discovery will be limited. *Third*, Defendant's Motion to Strike seeks to enlarge the litigation: striking Plaintiffs' Amended Complaint would lead Plaintiffs to either seek leave to file the same pleading in the instant case or file a new lawsuit altogether. Far from creating efficiency, creating parallel proceedings about the same claims arising out of the same events would *cause* a "delay [in] the disposition of the claims," and inevitably increase all parties' expenses. ECF 176-1 at 15; *accord Enniss Fam. Realty I, LLC v. Schneider Nat. Carriers, Inc.*, 916 F. Supp. 2d 702, 717 (S.D. Miss. 2013) ("Both parties will undoubtedly incur additional legal expenses in this suit due to the inclusion of these issues. However, those

expenses would be equaled if not surpassed by the expenses associated with a new, separate action"); *Deliberto v. Wyndham Canal Place, Inc.*, No. Civ. A 03-3271, 2004 WL 1290774, *4 (E.D. L.A., June 10, 2004) ("[C]onsiderations of cost, judicial efficiency and possible inconsistency of results militate in favor of not requiring plaintiff to prosecute two separate claims in two forums when both arise from the same set of facts and circumstances."); *Voilas v. General Motors Corp.*, 173 F.R.D. 389, 398 (D. N.J. 1997) (granting leave to amend because denying leave would result in parallel proceedings about the same transaction or occurrence, "an exercise [which] would be counter-productive for all parties involved, including defendant.").

Fatally, *none* of the cases to which Defendant cites suggest that a court should strike a repleading where the party was granted leave to amend. *See* ECF 176-1 at 10-11; *E.g., Yoon v. Garg*, No. 23-20519, 2024 WL 2861855, at *5 (5th Cir. June 6, 2024) (leave to amend was not granted before the party submitted their supplement); *Munoz v. Seton Healthcare, Inc.*, 557 F. App'x 314, 318 (5th Cir. 2014) (same); *Bobby's Country Cookin' LLC v. Waitr Holdings, Inc.,* No. 19-CV-552, 2020 WL 97391, at *2 (W.D. La. Jan. 7, 2020) (same). And, in *Bobby's Country*, the district court only struck the supplemental pleadings "because allowing such a pleading would prejudice [defendant] by depriving it of the opportunity to oppose the filing." *Bobby's Country*, 2020 WL 97391 at *2. Defendant was granted that opportunity by the Court when it considered Plaintiffs' Motion for Extension, and this Court rejected Defendants' argument that Plaintiffs improperly sought to supplement their Complaint. ECF 162. On the merits, Defendant had the opportunity to address Plaintiffs' 2024 Notice Letter by remedying and responding to the violations, so they cannot claim that they were unaware of Plaintiffs' allegations before Plaintiffs filed their Amended Complaint. ECF 168 at ¶¶ 105-07; ECF 168-9; ECF 168-10. As a result, Defendant suffers no prejudice from Plaintiffs' Amended Complaint.

* * *

Ultimately, Defendant makes a request that would unjustifiably protract the litigation. Defendants' Motion to Strike should be denied.

II. OPPOSITION TO MOTION TO DISMISS

As in Defendant's Motion to Strike, Defendant's Motion to Dismiss rests on misrepresentations of fact and a serious misapprehension of the relevant case law. First, this Court already held that Plaintiffs have standing. Nothing in Plaintiffs amended allegations changes that—nor does Defendant assert as much. Second, Defendant's 12(b)(6) arguments completely ignore how Plaintiffs' amended pleadings respond to this Court's Order and presents arguments that are inconsistent with the representations made in their Motion to Strike. Third, Defendant has made no showing that any party but her is necessary to remedy the violations stated in Plaintiffs' Amended Complaint. Defendant's Motion to Dismiss should be denied.

A. Plaintiffs Have Standing.

Plaintiffs plausibly allege several theories of Article III standing in this case: VOTE, the League, and PCEJ all have organizational standing and are injured in their own right, and VOTE additionally has associational standing on behalf of the several categories of members who are affected by the Paperwork Requirement. Additionally, Plaintiffs provided adequate notice under the NVRA. Finally, Defendant does not enjoy sovereign immunity against Plaintiffs' Equal Protection claim.

1. Plaintiffs Have Article III Standing.

Organizational plaintiffs have standing when they allege 1) an "injury in fact," 2) a "causal connection" between the injury and the challenged conduct that is "fairly . . . traceable" to the defendants' actions, and 3) that the injury will likely be "redressed by a favorable decision." *Lujan*

v. Defs. Of Wildlife, 504 U.S. 555, 560 (1992) (internal citation omitted); *OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017); *La. Fair Hous. Action Ctr., Inc. v. Azalea Garden Properties, L.L.C.*, 82 F.4th 345 (5th Cir. 2023). Organizational plaintiffs can establish injury in fact either by asserting that they have organizational standing in their own right, *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982), or by asserting associational standing on behalf of their members, *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000). An injury in fact arising from either organizational or associational injuries is independent sufficient grounds to assert standing. *See Warth v. Seldin*, 422 U.S. 490, 511 (1975).

On a motion to dismiss, the "allegations of injury are liberally construed" and the court "presum[es] that general allegations embrace those specific facts that are necessary to support the [standing] claim." *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009) (quoting *Lujan*, 504 U.S. at 561); *see also* ECF 155 at 44. As this Court previously noted, Plaintiffs need not identify in their complaint "specific projects that they had put on hold or otherwise curtail, as that is but an example of how to satisfy the *Lujan* standard." ECF 155 at 44-45 (citing *OCA-Greater Hous.*, 867 F.3d at 612) (internal quotation marks omitted). Moreover, at the "pleading stage, plaintiff need not *prove* that its efforts led to a drain on its resources" but "need only allege facts demonstrating each element of standing." *Id.* at 45 (quoting *Greater New Orleans Fair Housing Action Center v. Kelly*, 364 F. Supp. 3d 635, 640 (E.D. La. 2019) (emphasis in original).

This Court's Order recognized that Plaintiffs have sufficiently pled their standing because at least one Plaintiff "has clearly alleged a diversion of resources" and, "[s]ince in multi-plaintiff cases one plaintiff having standing establishes standing for all, the Court finds that all Plaintiffs have adequately alleged organizational standing to survive Defendant's *Motion to Dismiss*." ECF 155 at 43, 45 (internal citations omitted) (emphasis in original). While Defendant's arguments

attempt to relitigate Plaintiffs' standing, Plaintiffs assert organizational injuries in fact sufficient to establish standing to sue on their own behalf. Additionally, VOTE has associational standing on behalf of its members.

a. PCEJ, the League, and VOTE Have Organizational Standing.

To demonstrate injury in fact, an organization may show a "drain on the organization's resources" or "concrete and demonstrable injury to [an] organization's activities." *Havens*, 455 U.S. at 379; *see also OCA*, 725 F.3d at 576, 610; ECF 155 at 39. The Fifth Circuit has also held that, specifically in the NVRA context, a nonprofit organization has standing where the organization "devoted resources to counteract [the defendant's] allegedly unlawful practices" in failing to comply with the NVRA's provisions. *Scott v. Schedler*, 771 F.3d 831, 837 (5th Cir. 2014). As this Court noted, the Fifth Circuit has held that the size of the injury is not relevant, as the alleged injury "need not measure more than an identifiable trifle." ECF 155 at 45 (quoting *OCA-Greater Houston*, 867 F.3d at 612). Such diversion of resources constitutes an injury in fact when it impairs the organization's ability to achieve its mission, including but not limited to when the injury reduces the number of individuals the organization can assist in support of its mission. *Azalea*, 82 F.4th at 354 (citing *Havens*, 455 U.S. at 368).

VOTE, PCEJ, and the League are each Louisiana-based nonpartisan community empowerment organizations that devote significant organizational time and resources to direct voter education and engagement efforts. *See* ECF 168 at ¶¶ 18-26. PCEJ alleges that it has had to divert "significant resources from its other activities related to its core mission to assist voters with registering to vote after suspension." *Id.* at ¶ 24. This includes spending "additional time" with potential voters—up to "twice or three times as long" as with a voter without a felony conviction—thereby decreasing the overall number of voters PCEJ can assist. *Id.* Without the Paperwork

Requirement, PCEJ could reach additional voters, and resources spent on educating suspended voters "would otherwise be spent on PCEJ's engagement with more Louisiana voters, registering voters, and encouraging them to vote." *Id.* Similarly, the Paperwork Requirement has resulted in the League "diverting significant volunteer time and money away from its priorities to educate impacted voters and help them navigate the process of complying with it." *Id.* at ¶ 26. This includes diverting resources away from registering and engaging target groups of voters that the organization has specifically identified as important to its mission, such as eligible incarcerated voters, young voters, and inactive voters. *Id.* Finally, VOTE must divert "significant resources to educate voters" about the Paperwork Requirement and "help suspended voters" in getting the paperwork, including additional outreach our even shepherding voters to the proper offices to get the paperwork. *Id.* at ¶ 21. Without the Paperwork Requirement, VOTE "would not have to engage in this additional education and outreach." *Id.* at ¶ 22. As such, all Plaintiffs have standing because their missions are perceptibly impaired by the Paperwork Requirement, as this Court has already determined. ECF 155 at 43; *Azalea*, 82 F.4th at 354 (citing *Havens*, 455 U.S. at 368).

Further, Defendant's assertion that "diversion of resources, alone, does not constitute an injury-in-fact" misunderstands Plaintiffs' allegations. ECF 176-1 at 17. In *Azalea Gardens,* the Fifth Circuit clarified that diversion of resources standing requires "explain[ing] how any curtailment of these projects perceptibly impaired its ability to achieve its mission." *Louisiana Fair Hous. Action Ctr., Inc. v. Azalea Garden Properties, L.L.C.*, 82 F.4th 345, 354 (5th Cir. 2023). Specifically, Plaintiffs need to allege that "its diversion of resources meant it could reach fewer people or otherwise be less successful in achieving its mission." *Id*. Here, Plaintiffs specifically alleged that the Paperwork Requirement has caused PCEJ to, *inter alia,* "reach[] fewer voters per shift and that PCEJ must spend additional resources to hit its outreach goals." ECF 168 at ¶ 24.

Likewise, the Paperwork Requirement has curtailed the League's "volunteer time and money away from its priorities to educate impacted voters and help them navigate the process of complying with it." ECF 168 at ¶ 26. For VOTE, the Paperwork Requirement curtails their "resources from its other activities related to its core mission," requiring them to "hold public education workshops to explain the requirements to register to vote after suspension, do additional outreach on behalf of suspended voters, and even help taxi those individuals to the proper offices to acquire paperwork and register to vote." ECF 168 at ¶ 21. In other words, the Paperwork Requirement "perceptibly impairs" Plaintiffs' work because they "reach fewer people in the same amount of time," *Azalea Garden*, 82 F.4th at 354 (citing *OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017)); *see also Havens Realty Corp. v. Coleman,* 455 U.S. 363, 379 (1982).

Defendant also puzzlingly suggests, without support, that educating voters about the Paperwork Requirement is "not considered a diversion of resources…because it constitutes voter outreach and education." ECF No. 176-1 at 20. Not so. Rather, as noted in *Azalea Gardens*, additional voter education may constitute diversion of resources where that education constitutes "'perceptible impair[ment]' to an organization's ability to carry out its mission." 82 F.4th at 353 (citing *Havens Realty Corp.*, 455 U.S. at 379). Similarly, as this Court noted, diversion of resources "toward education and outreach activities to address the impact of defendants' alleged [unlawful] practices" can indeed constitute injury sufficient to plead diversion of resources standing. *See* ECF 155 at 44 (quoting *Kelly*, 364 F. Supp. 3d at 647); *FDA v. Alliance for Hippocratic Medicine (AHM)*, 602 U.S. 367 (2024). In *AHM,* the Supreme Court recently reaffirmed the holding in *Havens* that "there can be no question" that an organization experiences an injury-in-fact where the defendant's challenged action has "perceptibly impaired" the organization's "ability to provide" direct services to individuals it aids. *AHM*, 602 U.S. at 395; *Havens*, 455 U.S. at 379. As

the Court explained, the organizational plaintiff in *Havens* "not only was an issue-advocacy organization, but also operated a housing counseling service." *AHM*, 602 U.S. at 395. Because the defendant supplied the organizational plaintiff with "false information about apartment availability," *AHM* explained, *id*. at 395, the defendant "perceptibly impaired [the plaintiff's] ability to provide counseling and referral services for low- and moderate-income homeseekers," id. (quoting Havens, 455 U.S. at 379).[2]

Here, Plaintiffs' missions are not only to "educate and empower voters across Louisiana," ECF 176-1 at 20-22, but *to do so in service of amplifying historically marginalized voters' voices though civic engagement*. ECF 168 at ¶¶ 18, 23-24, 25 (emphasis added). Impairment of PCEJ's ability to amplify the voices of historically marginalized people through getting out the vote, especially Black Louisianans, constitutes an injury in fact to their core business activity of direct voter registration assistance. ECF 168 at ¶¶ 23-24. This is true even if PCEJ has diverted resources to combat the Paperwork Requirement through activities that are central to its mission, such as voter education. *Kelly*, 364 F. Supp. 3d at 646. Likewise, Defendant's claim that to educate voters on the Paperwork Requirement is "simply fulfilling [the League's] mission" is an oversimplification of the League's mission and a misrepresentation of its injury. The League's ability to achieve its mission is "perceptively impaired" by the Paperwork Requirement as it requires the League to "divert significant resources providing education and assistance about

[2] Moreover, Defendant appears to propose that *any* time an organization diverts *any* resources to *any* activity that is within an organization's mission, they cannot have standing under *Azalea Gardens*. But Plaintiffs may necessarily divert resources away from their routine activities towards counteracting Defendant's injurious conduct even where they diverted resources are spent on an activity central to Plaintiffs' missions. *Kelly*, 364 F. Supp. 3d at 647. And given that, absent the Paperwork Requirement, Plaintiffs would expend no resources assisting voters in obtaining and submitting this type of documentation, these activities are distinct and apart from their "routine . . . activities." *NAACP v. City of Kyle, Tex.*, 626 F.3d 233, 238 (5th Cir. 2010).

complying with the Paperwork Requirement that it would not otherwise have to do" and which would "otherwise be used towards registering and engaging more Louisiana voters and encouraging them to vote." ECF No. 168 at 10-11; *OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017). And, VOTE is not "simply fulfilling its mission" when spends its limited time, money, and resources on assisting voters with the Paperwork Requirement. *See* ECF No. 176-1 at 25. Rather, such activities are aligned with, but ultimately divert resources away from, its mission of advocating to "restore the full human and civil rights" for currently and formerly incarcerated people. ECF No. 168 at ¶ 18. Thus, Defendant's policy "directly affect[s] and interfere[s] with" its "core business activities" of Plaintiffs' direct voter registration assistance—just as the defendant's actions in *Havens* "directly affected and interfered with" its core business activity of direct housing counseling and referral services. *See AHM*, 602 U.S. at 395.

Finally, Defendant incorrectly asserts that Plaintiffs lack standing because this Court found that La. R.S. 18:177(A)(1) was not preempted by the NVRA. *See* ECF No. 155 at 17; ECF 176-1 at 20. This argument conflates the merits of Plaintiffs' claims with their standing to bring those claims. *Warth v. Seldin*, 422 U.S. 490, 500 (1975) ("[S]tanding in no way depends on the merits of the plaintiff's contention that particular conduct is illegal," although the nature and source of the claim can be relevant); *O'Hair v. White*, 675 F.2d 680, 685-686 (5th Cir. 1982) (same); *Hill v. City of Houston, Tex.*, 764 F.2d 1156, 1159–1160 & n. 4 (5th Cir. 1985) (same). And here, as in their Original Complaint, "Plaintiffs demonstrate that they, like the voting rights organization in *OCA-Greater Houston*, will likely go out of their way to counteract the effect of Louisiana's allegedly unlawful paperwork requirement—not with a view toward litigation, but toward mitigating its real-world impact[.]" ECF 155 at 44 (citing *OCA-Greater Hous.*, 867 F.3d at 612). Even considering the merits, Defendant's argument ignores the nuances of Plaintiffs' amended claims; namely, that

their amended NRVA claims do not turn on whether reinstatement is precluded by reinstatement. *See infra* Part II.B.1. ECF 168. Thus, Plaintiffs have sufficiently alleged facts to show that they have organizational standing to bring their claims.

b. VOTE Has Associational Standing.

Additionally, VOTE has associational standing because VOTE is a membership organization whose members would have standing in their own right. At the pleading stage, an organization may demonstrate associational standing if they plausibly allege that "its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 169 (2000). And, as this Court recognized, "in multi-plaintiff cases one plaintiff having standing establishes standing for all." ECF 155 at 45 (citing *Town of Chester, N.Y. v. Laroe Ests., Inc.*, 581 U.S. 433, 439 (2017); *Horne v. Flores*, 557 U.S. 433, 446-47(2009); *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008)).

Here, VOTE alleges that they have staff and members who had their voter registrations suspended because of a felony conviction, became eligible to vote, and have been required to provide documentary proof of their eligibility before the State allowed them to register to vote. ECF 168 ¶¶ 18, 19. They also allege that they have members who are currently ineligible because of incarceration status and/or prior felony convictions, but will be required to provide documentary proof of eligibility upon becoming eligible. And they've alleged they have members who have been mandated by the registrar to provide the additional documentation even though they are not required to do so by statute. ECF 168 ¶ 18; *see also* ECF 21-03 at ¶¶ 6-7; ECF 85-2, ¶¶ 3, 9. These members would have an Article III injury in their own right, because each have suffered or will

suffer a burden on the right to vote because of the Paperwork Requirement. *See Lujan*, 504 U.S. 555, 563. Additionally, Defendant does not question that the interests at stake are germane to VOTE's purpose. *Cf.* ECF 176-1 at 22-23. Nor could they: VOTE alleges that they "advocate[] to restore the full human and civil rights for people who are incarcerated and people who are formerly incarcerated," such that the interests at stake are manifestly germane to VOTE's work. *See* ECF 168 at ¶ 18. Finally, VOTE member participation is not required to provide relief, because an injunction against the Paperwork Requirement would afford relief to both VOTE and their members. Therefore, VOTE has plausibly alleged that they have associational standing to bring their claims on behalf of their members.

Defendant incorrectly claims that VOTE lacks associational standing because the Amended Complaint does not "identify" an affected member. ECF 176-1 at 23. The Fifth Circuit has long rejected the argument that a membership organization must identify a member at the pleading stage to survive a motion to dismiss. *Hancock Cnty. Bd. of Sup'rs v. Ruhr*, 487 F. App'x 189, 198 (5th Cir. 2012) ("We are aware of no precedent holding that an association must set forth the name of a particular member in its complaint in order to survive a Rule 12(b)(1) motion to dismiss based on a lack of associational standing.") (citing *Church of Scientology v. Cazares,* 638 F.2d 1272, 1279 (5th Cir.1981) ("In determining whether an association has standing to bring suit on behalf of its members, neither unusual circumstances, inability of individual members to assert rights nor an explicit statement of representation are requisites.") (internal quotation marks omitted)).[3]

[3] Defendant has previously acknowledged that VOTE has identified multiple affected members during discovery. *E.g.,* ECF 58 at ¶ 25 ("VOTE has provided Defendant with a list of affected members, attached a declaration from an affected member to its Motion for Preliminary Injunction, and have attached to this response an additional declaration from an affected member."); 133 at ¶¶ 63-66 (identifying multiple VOTE members "that recently were or soon will be subject" to the Paperwork Requirement); 134 at ¶ 27 (Defendant stating that "four VOTE members were found on the list of suspended voters").

Finally, Defendant argues that this Court's Order precludes standing for individuals affected by the Paperwork Requirement. ECF 176-1 at 23. As with organizational standing, this argument conflates the merits of Plaintiffs' claims with their standing to bring those claims, and fails to recognize that Plaintiffs' claims do not turn on whether reinstatement is precluded by the NVRA. *See supra* II.A.1.a; *infra* II.B.1. Therefore, VOTE has associational standing to bring their claims.

2. Plaintiffs Properly Pled Their Claims Under the NVRA.

Plaintiffs' 2024 Notice Letter complies with the NVRA's requirements and Defendant's assertion to the contrary is unserious. The NVRA requires that aggrieved parties "provide written notice of the violation to the chief election official of the State involved." 52 U.S.C.A. § 20510(b)(1). "If the violation is not corrected within 90 days after receipt of a notice…the aggrieved person may bring a civil action in an appropriate district court." 52 U.S.C.A. § 20510(b)(2). Plaintiffs provided the requisite pre-suit notice more than 90 days before filing their Amended Complaint.

Defendant provides no support for her proposition that "the May 31, 2024 letter cannot serve as the requisite NVRA notice letter for the instant litigation, as the notice was afforded long after this suit was filed on May 1, 2023." *See* ECF 176-1 at 27. Nor could she, because the opposite is true.

This Court specifically granted Plaintiffs leave to amend their Original Complaint when the Court granted Defendant's Motion to Dismiss Plaintiffs' NVRA claims. ECF 155 at 85. This Court later granted Plaintiffs an extension on their Amended Complaint, to comply with the NVRA's notice requirements. ECF 162. The appropriate period by which to calculate notice for the Amended Complaint, then, is May 31, 2024, when Plaintiffs sent their notice letter. ECF 168-

9; ECF 168 at ¶¶ 15, 132, 139, 159, 166. Because Defendant does not dispute that Plaintiffs filed their Amended Complaint more than 90 days after May 31, 2024, and that Defendant has not taken steps to comply with the NVRA according to Plaintiffs' May 31, 2024, letter, Plaintiffs have met their notice requirements under the Act.

The Court's leave to amend here was not unusual, as courts regularly permit parties to cure NVRA notice defects by amending their complaint. *See*, *e.g.*, *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1045 (9th Cir. 2015) (holding denial of leave to amend complaint to cure NVRA notice defect was an abuse of discretion); *Diaz v. Sec'y of Fla.*, No. 04-15539, 2005 WL 2402748, at *1 (11th Cir. Sept. 29, 2005) (describing order granting leave to amend NVRA claims in light of statutory changes); Doc. 83, 101, *Tennessee Conf. of Nat'l Ass'n for Advancement of Colored People v. Lee*, No. 3:20-CV-01039, (M.D. Tenn. Oct. 10, 2022) (granting Defendants' Motion to Dismiss as to one count for insufficient notice and later giving leave for Plaintiffs to amend their complaint to cure this deficiency); *League of Women Voters of Fla., Inc. v. Byrd*, No. 4:23-CV-165-AW-MAF, 2023 WL 11763040, at *5 (N.D. Fla. July 10, 2023) (granting leave to amend complaint to cure potential notice sufficiency defect); *Pub. Int. Legal Found., Inc. v. Bellows*, 588 F. Supp. 3d 124, 129 (D. Me. 2022) (describing order granting leave to amend NVRA claims in light of statutory changes); *Judicial Watch, Inc. v. Commonwealth of Pennsylvania*, No. 1:20-cv-00708-CCC (M.D. Pa. Nov. 8, 2021), ECF No. 84 at 18 (amended complaint filed following motion to dismiss and subsequent new NVRA notice letter); *Tex. League of United Latin Am. Citizens v. Whitley*, No. 5:19-cv-00074-FB (W.D. Tex. Feb. 1, 2019), ECF No. 2 at 9 n.3 (amending complaint after NVRA notice letter sent); *Pub. Int. Legal Found., Inc. v. Bennett*, No. 4:18-CV-00981, 2018 WL 2722331, at *5 (S.D. Tex. June 6, 2018) (permitting plaintiff to amend complaint to cure standing defects in NVRA claim); *Delgado v. Galvin*, No. 12-CV-10872, 2014 WL

1004108, at *9 (D. Mass. Mar. 14, 2014) (permitting plaintiffs to amend complaint to "add additional factual allegations to the complaint concerning NVRA violations").

In fact, one circuit court has held that a denial of leave to amend to cure an NVRA notice defect was an abuse of discretion. *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1045 (9th Cir. 2015). This is because the purpose of an NVRA notice letter is not to erect procedural barriers or obstacles to NVRA lawsuits, rather it is to "give[] the Defendant enough information to diagnose the problem. At that point it [is] the Defendant's responsibility to attempt to cure the violation." *Am. C.R. Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 795 (W.D. Tex. 2015); *see also Ferrand v. Schedler*, No. CIV.A. 11-926, 2011 WL 3268700, at *6 (E.D. La. July 21, 2011).[4]

And Defendant's assertions regarding Plaintiffs' prior notice letters are simply irrelevant. As noted *supra* Part I.A and *infra* Part II.B.1, Plaintiffs' 2024 Notice Letter cures the Court's concerns with Plaintiffs' prior notice letters by 1) including VOTE on the notice letter, 2) specifying all allegations of a violation beyond 52 U.S.C. § 20505(a)(1) and § 20507(a)(1), and 3) giving notice of NVRA violations that do not turn on this Court's determination of whether reinstatement is precluded by the NVRA. *See also generally* ECF 168-9. Moreover, Plaintiffs' Amended Complaint attaches and incorporates all notice correspondence by Plaintiffs since October 22, 2020. *Compare* ECF 168 at ¶¶ 95-104 (alleging that every letter since October 22, 2020 constituted notice) *with* ECF 155 at 52 (holding that Plaintiffs' Original Complaint did not allege that the October 22, 2020 letter constituted notice). Defendant's assertion that the "only new information VOTE included in the [Amended Complaint] regarding its pre-suit notice is the May

[4]And, as a matter of common sense, "bring[ing] a civil action" under 52 U.S.C.A. § 20510(b)(2) is not limited to the original complaint. The Fifth Circuit has long held that an amended complaint supersedes an original complaint, rendering the original complaint of no legal effect and the amended complaint as the operative pleading. *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994). By definition, then, an amended complaint has the same legal effect as an initial action.

31, 2024 letter" ignores the nuances of Plaintiffs' amended claims as they are written. *See* 176-1 at 28; *infra* Part II.B.1. Defendant's failure to adequately evaluate Plaintiffs' amended claims does not render Plaintiffs' notice insufficient.

Because the only basis by which Defendant objects to Plaintiffs' notice lacks any reasonable grounding in law, Defendant fails to meet her burden of showing that Plaintiffs notice was insufficient.

3. Defendant Does Not Enjoy Sovereign Immunity.

Under *Ex Parte Young*, Defendant does not enjoy sovereign immunity against Plaintiffs' Equal Protection claim. 209 U.S. 123 (1908). To determine whether the *Ex Parte Young* exception to sovereign immunity applies, "a court need only conduct a 'straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." V*erizon Maryland, Inc. v. Pub. Serv. Comm'n of Maryland*, 535 U.S. 635, 645 (2002) (quoting *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 296 (1997)). As Plaintiffs previously noted[5] and this Court already determined, "Louisiana's Secretary of State has a sufficient connection to La. R.S. § 18:177(A)(1), and thus the *Ex parte Young* exception to the Eleventh Amendment's sovereign immunity applies." ECF 155 at 35.

Defendant's renewed Motion to Dismiss offers no new legal arguments, merely incorporating by reference her argument in her first Motion to Dismiss. ECF 176-1 at 29. Moreover, Defendant has specifically instructed parish registrars regarding the Paperwork Requirement as recently as August 2024. ECF 168-10 at 7 (instructing that previously registered individuals who are eligible to vote after a felony conviction can only do so if they go through the

[5] Plaintiffs likewise incorporate by reference their Response in Opposition to Defendants' first Motion to Dismiss, ECF 58 at 9-14.

"reinstatement process" and present the challenged paperwork, while "no documentation is needed" for first time registrants and noting that "…a reminder of the uniform felony procedures will be sent to all registrars of voters…"). This Court's opinion that "at the very least there is a scintilla of enforcement between Louisiana's Secretary of State and La. R.S. § 18:177(A)(1)" remains true. ECF 155 at 35. Therefore, Defendant does not enjoy sovereign immunity against Plaintiffs' Equal Protection claim.

B. Plaintiffs Have Stated a Claim for Which Relief Can Be Granted.

Despite Defendant's contradictory arguments, Plaintiffs' Amended Complaint plausibly alleges that the Paperwork Requirement violates the National Voter Registration Act and the Equal Protection Clause of the Fourteenth Amendment. First, Plaintiffs plausibly allege that notwithstanding whether reinstatement is precluded by the NVRA, Defendant's application of the reinstatement provision violates Sections 6, 8, and 9 of the Act. Second, Plaintiffs plausibly alleges that the Paperwork Requirement imposes a severe burden on the right to vote in violation of the Equal Protection Clause.

1. Plaintiffs Have Sufficiently Pled Their Claims Under the NVRA (Counts 1-5).

Defendant incorrectly argues that the Amended Complaint fails to state a claim because the arguments are foreclosed by this Court's previous findings about reinstatement. Defendant's assertion that "Plaintiffs make no new or different allegations concerning the reinstatement process" both reveals her fundamental misunderstanding of Plaintiffs' claims and is inconsistent with her position on her Motion to Strike. *Compare* ECF 176-1 at 30, *with* ECF 176-1 at 4-5, 8-9, 15 (alleging that Plaintiffs' factual allegations are new).

Defendant has argued throughout the litigation that reinstatement cannot violate the NVRA because it is distinct from voter registration. ECF 176 at 31. ("The reinstatement process is not the

same as registration or re-registration; therefore, La. R.S. 18:177(A)(1) does not conflict with the NVRA."). Defendant also claims that her surface-level distinction is what led the Court to find that NVRA does not preempt reinstatement. ECF 176-1 at 30-32. Neither is true.

While Plaintiffs acknowledge that the Court has opined that "La. R.S. § 18:177(A)(1) is an illustration of Louisiana acting pursuant its long-recognized power to determine the voting eligibility of those with felony convictions" the Court did *not* hold that Defendant may create arbitrary distinctions between re-registration and "reinstatement" to elide the requirements of the NVRA. *See* ECF 155 at 68-69. Rather, the extent to which the legislature can limit the right to vote of people convicted of felonies is governed by the state's constitution. ECF 155 at 68-69; *accord Richardson v. Ramirez*, 418 U.S. 24, 54, 94 (1974).[6] Once the right to vote is restored, the state's differential treatment must end, and individuals may become lawfully registered like anyone else. *See Bush v. Gore*, 531 U.S. 98, 104-05 (2000). Here, the Court has opined that the reinstatement requirement is part of the voting rights restoration process, i.e., a prerequisite to or criterion for restoration; a person once suspended has not had their right to vote restored until they've reinstated themselves. ECF 155 at 68.

But Defendant calling re-registration after a felony conviction "reinstatement" does not change the fundamental nature of what it does: it is the mechanism which makes the applicant active on the voter rolls such that they can actually cast a ballot. *See* ECF 168 at ¶¶ 71-73.

[6] The Supreme Court has held that the Constitution provides states with the ability to set the conditions under which a person loses the right to vote for a criminal conviction and when it is restored. *Richardson v. Ramirez*, 418 U.S. 24, 54, 94 (1974). As such, almost every state disenfranchises its citizens when they are convicted of a felony. *But see* Me. Const. art. II, § 1; Vt. Const. Ch. II, § 42. Then, each of those states require that people convicted of felonies achieve certain benchmarks before their right to vote will be restored. For example, completion of prison, probation, or parole, or payment of fines, fees, or restitution are conditions of restoration. *See e.g.*, Fla. Stat. Ann. § 98.0751; Ga. Code Ann. § 21-2-216; Kan. Stat. Ann. § 21-6613; Mich. Comp. Laws Ann. § 168.758b; Mo. Ann. Stat. § 115.133. Some states also require that individuals obtain a certificate or provide specific documentation to restore their right to vote. *See e.g.*, Ala. Code § 15-22-36.1; Ark. Const. amend. LI, § 11; Tenn. Code Ann. § 40-29-202.

Registration, under the NVRA, refers to the "procedural method which an otherwise qualified voter must follow to exercise his or her right to vote." *Georgia State Conf. NAACP v. Georgia,* No. 1:17-CV-1397-TCB, 2017 WL 9435558, at *3 (N.D. Ga. May 4, 2017); *Ass'n of Cmty. Organizations for Reform Now (ACORN) v. Ridge*, Nos. CIV. A. 94-7671, CIV. A. 95-382, 1995 WL 136913, at *8 (E.D. Pa. Mar. 30, 1995); *see also Arizona v. Inter Tribal Council of Arizona, Inc.,* 570 U.S. 1, 7 (2013); *Ass'n of Cmty. Organizations for Reform Now (ACORN) v. Edgar*, 56 F.3d 791, 793 (7th Cir. 1995). Whatever action the state requires to become actively registered, such that a vote can actually be cast, *is registration*. It does not matter that under state law a person who is "suspended" still has a "registration" on file: "[i]f someone showed up at the voting place who was not qualified to vote"—such as an individual whose registration was suspended by reason of a felony conviction—"he would be turned away and so in effect denied registration, viewed functionally as the procedure for determining who is eligible to vote." *Ass'n of Cmty. Organizations for Reform Now (ACORN) v. Edgar*, 56 F.3d 791, 793 (7th Cir. 1995). In other words, because a person who is suspended cannot actually vote, then they are not registered for purposes of the NVRA. *Accord Am. C.R. Union v. Philadelphia City Commissioners*, 872 F.3d 175, 183 (3d Cir. 2017) (acknowledging that states are permitted to remove individuals with felony convictions from the rolls under the NVRA, even if those registrations are suspended by reason of felony conviction). In short, Defendant cannot skirt the requirements of the NVRA by calling registration something else. ECF 168 ¶¶ 135-40.

Thus, despite Defendants arguments to the contrary, Plaintiffs recognize this Court's Order and their claims in the Amended Complaint address, respond to, and work within the Court's previous findings. These amended allegations directly address this Court's Order and, taken as

true, would state several violations of the National Voter Registration Act. As such, Plaintiffs' sufficiently plead violations of the NVRA.

Count 1 challenges the reinstatement policy as applied to people who are no longer under an order of imprisonment. Neither Louisiana law nor the Louisiana Constitution authorize disenfranchisement of individuals who are no longer "under an order of imprisonment," meaning individuals who are no longer in prison, on probation, or on parole. ECF 168 ¶¶ 111-14. To the contrary, individuals who are no longer under an order of imprisonment expressly "have the right to register and vote." *Id.* ¶¶ 111-13. The Louisiana Legislature has defined "under an order of imprisonment" to mean "a sentence of confinement, whether or not suspended, whether or not the subject of the order has been placed on probation, with or without supervision, and whether or not the subject of the order has been paroled." Acts 1976, No. 697, § 1 (codified at La. R.S. § 18:102(B); La. R.S. § 18:2(8)); ECF 168 ¶ 112. "Thus, [Louisiana] law does not completely disenfranchise" people with felony convictions, "it merely suspends the franchise for a defined period": individuals who are in prison for a felony as well as those serving community supervision, including parole or probation, after a sentence of confinement. *Am. C.R. Union*, 872 F.3d at 180 (internal quotations omitted) (cleaned up); ECF 168 ¶ 112.

Even if the Court maintains that the Paperwork Requirement is a prerequisite to voting rights restoration generally, rather than simply a barrier to registration for already eligible people, it cannot be a prerequisite to restoration for people who cannot constitutionally be denied the right to vote. As a result, Defendant's reinstatement requirement as applied to individuals who are no longer under an order of imprisonment, who by definition have the constitutional right to vote, violates the NVRA, because it places additional requirements on fully eligible voter registration applicants beyond what state and federal law allow. ECF 168 ¶¶ 116-21; *see Arizona v. Inter Tribal*

Council of Arizona, 570 U.S. 1, 9 (2013). **Count 2** challenges the reinstatement requirement writ large for similar reasons.

Rather than engage with the nuanced allegations in Plaintiffs' Amended Complaint, Defendant simply restates the Court's findings in its Order on Defendant's Motion to Dismiss and their own arguments in their first Motion to Dismiss, both of which concerned a now superseded complaint. ECF 176-1 at 30-32. Defendant's failure to offer an argument against Plaintiffs' amended pleadings alone serves as a basis to deny Defendants' Motion.

And taking Plaintiffs' well-pled allegations as true, Counts 1 and 2 of Plaintiffs' Complaint plausibly allege a violation of Sections 6 and 8 of the NVRA. As this Court acknowledged, the NVRA requires that all registrars accept valid registration forms submitted by eligible individuals. ECF 155 at 67-68; *see also* ECF 168 ¶ 117; 52 U.S.C. § 20507(a)(1). Additionally, the NVRA requires that states "accept and use" the federal voter registration form, prohibiting them from creating additional documentation requirements to register to vote beyond the form itself. ECF 155 at 67-68; ECF 168 ¶ 117; 52 U.S.C.A. § 20505(a)(1); *see Inter Tribal Council of Arizona*, 570 U.S. at 9. In short, absent information establishing that an applicant who attests to their eligibility is actually ineligible, the registrant—including individuals no longer under an order of imprisonment—must be placed on the active voter rolls and cannot be required to provide additional documentary proof of eligibility. ECF 168 ¶ 117. And as this Court has recognized, Plaintiffs have alleged that the information that Defendant needs to verify eligibility of individuals with prior felony convictions is "readily available." ECF 155 at 83-84. As such, Defendant's policy, especially as pertains to individuals who are no longer under an order of imprisonment, "add[s] burdensome and unnecessary requirements" beyond what is necessary to determine the

minimum eligibility requirements in violation Sections 6 and 8 of the NVRA. *Fish v. Kobach*, 840 F.3d 710, 743 (10th Cir. 2016).

Count 3 of Plaintiffs' Amended Complaint alleges that Defendant's confusing and unlawful policy has resulted in parish registrars requiring documentary proof of eligibility from first-time voters. ECF 168 ¶ 142. It is undisputed that after Act 127, first-time voters who have prior felony convictions are no longer subject to the Paperwork Requirement. ECF 168 ¶ 143. As such, Defendant has violated Section 6 and 8 of the NVRA by requiring the documentary proof of eligibility of people for whom state law does not require that information. ECF 168 ¶¶ 144-48; 52 U.S.C. § 20507(a)(1); 52 U.S.C. § 20508(b)(1); 52 U.S.C.A. §§ 20505(a)(1), (2). Likewise, **Count 4** of Plaintiffs' Complaint alleges that because Defendant's policy imposes a confusing and unnecessary Paperwork Requirement on certain individuals, the resulting implementation by the parish registrars is nonuniform and discriminatory. ECF 168 ¶¶ 154-56. Section 8 of the NVRA requires that "[a]ny State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office . . . shall be uniform [and] nondiscriminatory." 52 U.S.C. § 20507(b)(1); *Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 862406, at *41 (D. Ariz. Feb. 29, 2024) (finding a Section 8(b) violation where a process subject "citizens" to one process and "noncitizens" to another process); *United States v. Fla.*, 870 F. Supp. 2d 1346, 1350 (N.D. Fla. 2012) ("A state cannot properly impose burdensome demands in a discriminatory manner" under Section 8(b)).

In response, Defendant disclaims responsibility for the consequences of her actions. ECF 176-1 at 33-34. But as this Court already held, "[a]dministrating voter registration laws and directing local registrars with respect to matters relating to Louisiana's voter registration weigh heavily in favor of the Secretary of State having statutory authority to enforce voter registration

laws such as La. R.S. § 18:177(A)(1).” ECF 155 at 32 (internal quotation marks omitted). And the NVRA requires that the Secretary of State, as the chief elections official, be responsible for ensuring the uniform application of the policies she promulgates. *See* ECF 168 ¶ 157; ECF 168-9 at 10; 52 U.S.C. § 20509 (holding the chief elections official “responsible for coordination of State responsibilities” under the NVRA); *Rosebud Sioux Tribe v. Barnett*, 604 F. Supp. 3d 827, 842 (D.S.D. 2022) (finding a violation of the NVRA where the Secretary of State failed to provide adequate training to state agencies); *accord Scott v. Schedler*, 771 F.3d 831, 841 (5th Cir. 2014) (affirming an injunction against a Secretary of State which requires the Secretary of State to “require state agencies to comply with other miscellaneous provisions of the Act which they had previously violated.”).

Plaintiffs allege that the Paperwork Requirement results in discriminatory and nonuniform requirements among eligible voters with prior felony convictions, based solely on their prior registration status. ECF 168 ¶ 154. As such, Defendant is directly responsible for discriminatory requirements resulting from the policy. *Id.* Moreover, Plaintiffs allege that “[e]ven though additional paperwork is not required of eligible first-time registrants with felony convictions nor eligible registrants who were never incarcerated for their felony convictions, some parish registrars still require it.” *Id.* ¶ 155. This is because Defendant’s Paperwork Requirement imposes confusing obligations on the parish registrars which results in the nonuniform application of the policy. *Id.* ¶ 156. Taking Plaintiffs’ well-pleaded allegations as true, because Defendant’s policy is the cause of this nonuniform application, she is responsible for the resulting violation of Section 8(b) under Count 4 of Plaintiffs’ Amended Complaint.

Count 5 of Plaintiffs’ Amended Complaint argues in the alternative that if reinstatement *is* an eligibility criterion, then Defendant has failed to properly specify as such on the state and federal

voter registration forms. *Id.* ¶ 161. Section 8 of the NVRA requires each state to "inform applicants . . . of voter eligibility requirements" no matter whether applicants seek to register with a state or federal voter registration form or through the department of motor vehicles or any other voter registration agency. 52 U.S.C. § 20507(a)(5); ECF 168 ¶ 162. Sections 6 and 9 of the NVRA also require that both the federal voter registration form and any state-issued mail-in voter registration form used to register voters for federal elections must "specif[y] each eligibility requirement" for applicants. 52 U.S.C § 20508(b)(2)(A); *see also* § 20505(a)(2) (stating that a state mail-in form should meet "all of the criteria stated in section 20508(b)"). ECF 168 ¶ 163; *e.g.*, *Tennessee Conf. of Nat'l Ass'n for Advancement of Colored People v. Lee*, No. 3:20-CV-01039, 2024 WL 1685554, at *22 (M.D. Tenn. Apr. 18, 2024) (holding that the Tennessee voter registration form and federal instructions failed to inform individuals with prior felony convictions about their eligibility to vote). Defendant's assertion that Louisiana has the power to determine the voting eligibility of individuals with felony convictions, ECF 176-1 at 34, misses the point. Plaintiffs do not dispute that states set their own eligibility requirements. *See supra*, n. 6. But, if reinstatement is one of those requirements, then Louisiana's failure to state as much on its voter registration form violates the NVRA. *Tennessee Conf. of Nat'l Ass'n for Advancement of Colored People*, 2024 WL 1685554, at *22.

In sum, Defendant largely fails to engage with Plaintiffs' amended factual and legal allegations. On each NVRA count, Defendant does not actually dispute the legal sufficiency of Plaintiffs' amended allegations. Plaintiffs have plausibly alleged facts that would sufficiently state several violations of the NVRA.

2. Plaintiffs Have Sufficiently Pled Their Equal Protection Claim (Count 6).

Plaintiffs alleged in their Original Complaint that the Paperwork Requirement creates an

impermissible classification between previously registered and newly registered voters, in violation of the Equal Protection Clause. Plaintiffs' amended allegations include the discovery of new information which compounds the severe burden on voters with prior felony convictions and underscores the Equal Protection Clause violation that Plaintiffs originally alleged. ECF 168 ¶¶ 178-80. Plaintiffs' amended allegations strengthen what this Court already found: that "subjecting thousands to a cat-and-mouse document chase is a severe burden on one's right to vote," especially where that chase is unnecessary and burdens an individual's ability to register to vote based solely on their suspension status. ECF 155 at 83.

Defendant offers little in response. First, Defendant's arguments that Plaintiffs no longer have prudential standing misrepresents Plaintiffs' amended pleadings. Second, Defendant's merits argument ignores the compounding factual allegations demonstrating a severe burden on the right to vote. As such, Defendant has failed to meet her burden against Plaintiffs' well-pleaded allegations in Count 6 of their Amended Complaint.

a. Plaintiffs Have Prudential Standing to Bring Their Claims.

"Third-party standing requires the named plaintiff to have suffered an injury in fact and to share a 'close' relationship with third-parties who face an obstacle inhibiting them from bringing the claim on their own behalf." ECF 155 at 79-80 (citing *Planned Parenthood of Greater Texas Surgical Health Servs. v. Abbott*, 748 F.3d 583, 589 (5th Cir. 2014)) As this Court correctly noted, Plaintiffs have third-party standing to bring their Equal Protection claim because at least one Plaintiff has demonstrated an Article III injury; at least one Plaintiff has demonstrated a close relationship to affected voters by their work assisting voter registrants in understanding the eligibility requirements; and "[a] lawsuit involving one's re-enfranchisement after a prior felony conviction is certainly an area of personal privacy that would deter individuals from bringing suit

on their own behalf, especially when such individuals have historically been marginalized by way of disenfranchisement." ECF 155 at 82.[7]

Plaintiffs' amended pleadings demonstrate that Plaintiffs continue to have third-party standing to bring their Equal Protection claim in **Count 6**. VOTE, for example, is a membership organization, whose affected members would have Article III standing on their own. ECF 168 ¶¶ 18-19; *see also Memphis A. Philip Randolph Inst. v. Hargett*, 2 F.4th 548, 557 (6th Cir. 2021) ("There is no prudential standing bar when member-based organizations advocate for the rights of their members.").[8] VOTE, along with PCEJ and the League, as discussed *supra* Part II.A.1, all have organizational standing because the Paperwork Requirement perceptibly impairs their organizational missions. Additionally, all Plaintiffs have a close relationship with affected voters: each organization directly assists voters with prior felony convictions in determining whether they are eligible to vote and taking steps to register to vote if eligible. *E.g.*, ECF 168 ¶¶ 18, 19, 24, 26.[9] And, Defendant does not—and cannot—dispute that an individual with a prior felony conviction is significantly hindered in furthering their rights through public litigation. *Cf.* ECF 155 at 82 (recognizing that "suits that involve a 'sensitive area of personal privacy' often deter third parties from bringing suit on their own behalf, as one's desire to protect their privacy would be compromised through the publicity of a lawsuit") (citing *Carey v. Population Servs., Int'l*, 431 U.S.

[7] Defendant's assertion that "the Court considered and found that only Power Coalition satisfied the third party standing requirements," ECF 176-1 at 35, mischaracterizes this Court's analysis finding that PCEJ had satisfied all three requisite elements, and "[g]iven such, Plaintiffs VOTE and the League do as well." *See* ECF 155 at 82.

[8] And Defendant's suggestion that VOTE does not "claim that these individuals are members," is untrue. *C.f., e.g.*, ECF 168 ¶ 19 ("VOTE is aware of staff and members who had their voter registrations suspended because of a felony conviction, became eligible to vote, and have been required to provide documentary proof of their eligibility before the State allowed them to register to vote.").

[9] As with Article III standing, Defendant's suggestion that VOTE was required to name their affected members in their complaint is meritless and foreclosed by Fifth Circuit precedent. *Supra* Part II.A.1.b; *Hancock Cnty. Bd. of Supervisors v. Ruhr*, 487 F. App'x 189, 198 (5th Cir. 2012).

678, 684 n.4 (1977)). Therefore, Plaintiffs have sufficiently pled that they have prudential standing to bring their Equal Protection claim.

b. Plaintiffs Have Alleged a Severe Burden on the Right to Vote.

Defendant's Motion appears to misunderstand the Equal Protection framework and Plaintiffs' amended pleadings. Plaintiffs allege—both in their Amended Complaint and their Original Complaint—that "prior-registered voters with past convictions seeking to become active registered voters are treated differently than new registrants with past convictions in violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution." ECF 168 ¶ 169. Plaintiffs' Amended Complaint demonstrates the compounding effects of that arbitrary treatment where Defendant's confusing policy results in parish registrars often misapplying the Paperwork Requirement to new registrants or individuals who were never incarcerated for their conviction. *E.g.*, *id.* ¶ 179. As a result, whether the Paperwork Requirement applies to an individual with a felony conviction arbitrarily boils down to their parish of registration. *Id.* Moreover, Plaintiffs allege that because the Paperwork Requirement may only be complied with in person, eligible, jail-based voters are unable to comply with the requirement. *Id.* ¶ 178. Defendant provides no exception for voter registrants, resulting in their *de facto* disenfranchisement. *Id.*

"[T]he Equal Protection Clause confers the substantive right to participate on an equal basis with other qualified voters whenever the State has adopted an electoral process for determining who will represent any segment of the State's population." *Young v. Hosemann*, 598 F.3d 184, 189 (5th Cir. 2010) (internal citations omitted); *see also Bush*, 531 U.S. at 104-05 ("Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."). Accordingly, states must ensure "the minimum requirement for nonarbitrary treatment of voters necessary to secure the fundamental

right" to vote. *Bush*, 531 U.S. at 105 (per curium); *see also Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) ("[B]efore th[e] right (to vote) can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny.") (internal citation omitted).

In *Bush v. Gore*, the Supreme Court noted that where a state policy "accord[s] arbitrary and disparate treatment to voters in its different [parishes]," that policy is subject to heightened scrutiny. 531 U.S. at 107, 121. Here, Plaintiffs allege that Defendant's policy results in the differential treatment of eligible individuals based on the parish of registration. ECF 168 ¶ 179. As a result, this uneven treatment wrought by confusing state policy is subject to heightened scrutiny under *Bush v. Gore*. 531 U.S. at 109.

Heightened scrutiny is also triggered if the *Anderson/Burdick* framework is applied, since Plaintiffs have alleged a severe burden on the right to vote. As this Court noted, under that framework, the level of scrutiny that applies depends on the severity of the burden. ECF 155 at 80-81 (citing *Harding v. Edwards*, 487 F. Supp. 3d 498, 506 (M.D. La. 2020)). Specifically, "[t]he *Anderson/Burdick* rubric requires us to examine . . . (1) whether the process poses a 'severe' or instead a 'reasonable, nondiscriminatory' restriction on the right to vote and (2) whether the state's interest justifies the restriction." *Richardson v. Texas Sec'y of State*, 978 F.3d 220, 235 (5th Cir. 2020); ECF 155 at 80-81. If the burden on the right to vote is "subjected to severe restrictions, the regulation must be narrowly drawn to advance a state interest of compelling importance." *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (internal quotation marks omitted). Because Plaintiffs have alleged a severe burden on the right to vote, *e.g.*, ECF 168 ¶¶ 177-178, heightened scrutiny applies to the Paperwork Requirement, as this Court already determined.

Applying heightened scrutiny, Defendant has not demonstrated that the Paperwork Requirement is narrowly tailored to meet a compelling governmental interest. Indeed, Plaintiffs allege that the Paperwork Requirement is confusing and unnecessary, because the information necessary to evaluate an individual's status is already available to Defendant. ECF 168 ¶ 176. Moreover, Defendant has shown no governmental interest in placing the onus on voters to provide information that she already has. ECF 168 ¶¶ 180-81.

Defendant's assertion that "[e]ven arbitrary administration of a statute, without purposeful discrimination, does not violate the equal protection clause," ECF 176-1 at 37 (citing *Lindquist v. City of Pasadena, Tex.*, 656 F. Supp. 2d 662, 703-04 (S.D. Tex. 2009)), is dead wrong. *See Burdick*, 504 U.S. at 434. A showing of "purposeful discrimination" is not required to state a claim of burden on the right to vote under the Equal Protection Clause. *See Burdick*, 504 U.S. at 434 (subjecting even "reasonable, nondiscriminatory" burdens on the right to vote to some level of scrutiny). Unsurprisingly, then, none of the cases upon which Defendant relies in support of this assertion concern the differential treatment of voters. *Cf. Snowden v. Hughes*, 321 U.S. 1, 8 (1944) (concerning the denial of a job opportunity); *Lindquist v. City of Pasadena, Tex.*, 656 F. Supp. 2d 662, 703-04 (S.D. Tex. 2009) (concerning denial of used-car dealership license). Defendant's citation to irrelevant case law does not suffice to defeat Plaintiffs' well-pled allegations stating an Equal Protection claim.

C. Plaintiffs Joined All Necessary Parties.

Plaintiffs have joined the only necessary party to this action: Defendant Landry. A party must be joined only if (1) the party is required under Rule 19(a), and (2) if joinder is required, if the party is "indispensable" under Rule 19(b). *See PHH Mortg. Corp. v. Old Republic Nat'l Title Ins. Co.*, 80 F.4th 555 (5th Cir. 2023). "The burden on a Rule 12(b)(7) motion is on the party raising

the defense to show that the person who was not joined is needed for a just adjudication." *JMCB, LLC v. Bd. of Com. & Indus.*, No. CV 17-77-JWD-JCW, 2017 WL 6033407, at *6 (M.D. La. Dec. 5, 2017) (internal citations and quotation marks omitted). Defendant has not met that burden here.

First, Defendant Landry is the only necessary party to the proceedings. Rule 19(a) specifies that a party must be joined if in that person's absence, the court cannot accord complete relief among existing parties.[10] Fed. R. Civ. P. 19(a)(1); *see also Louisiana State Conf. of Nat'l Ass'n for Advancement of Colored People v. Louisiana*, 490 F. Supp. 3d 982 (M.D. La. 2020), *aff'd sub nom.*, *Allen v. Louisiana*, 14 F.4th 366 (5th Cir. 2021); *Cleveland-Cliffs Iron Co. v. Chicago & N. W. Transp. Co.*, 581 F. Supp. 1144, 1155 (W.D. Mich. 1984) ("Complete relief refers to relief as between the persons already parties, not as between a party and the absent person whose joinder is sought.") (internal quotation and citation omitted). Here, Defendant does not dispute that she is the only party necessary to provide complete relief on Counts 1, 2, 5, and 6. ECF 176-1 at 38-39. And Defendant's assertion that "the court cannot accord complete relief among existing parties" as to Counts 3 and 4 is incorrect. ECF 176-1 at 38-39. To remedy the violations alleged in Counts 3 and 4, Plaintiffs request that this Court, *inter alia*, (1) "[e]njoin Defendant from requiring documentary proof of eligibility from voter registrants who were previously suspended for a felony but who present valid voter registration forms and do not appear on the DPSC's list of currently disqualified voters," (2) "[o]rder Defendant to issue statewide guidance" to all parish registrars, and (3) "provide sufficient training and supervision to ensure that the guidance is followed." ECF 168 at 46-47. By its own terms, Plaintiffs' requested relief would only require Defendant to complete it.

[10] Defendant does not allege that the registrars have "claim[ed] an interest relating to the subject of the action" such that this factor is not at issue. *See* ECF 176-1 at 38; Fed. R. Civ. P. 19(a)(2).

Defendant argues that because registrars are violating her guidance, there is nothing more that she can do to remedy the problem, and that Plaintiffs must sue the registrars themselves. ECF 176-1 at 38-39. This argument proves too much. Defendant is specifically tasked with enforcing the provisions of the NVRA, and she must ensure compliance with the NVRA. *See* La. R.S. 18:18; 52 U.S.C. § 20509; *see also* ECF 155 at 30, 35; ECF 168 ¶ 27.[11] Plaintiffs allege that Defendant's policy is confusing and unnecessary, resulting in the registrars' nonuniform application of the policy which give rise to the NVRA violations alleged in Counts 3 and 4. *See, e.g.*, ECF 168 ¶¶ 147-51, 157-58. In other words, Defendant's actions gave rise to Plaintiffs' claims. Enjoining Defendant's policy altogether, or at least increasing and improving Defendant's training and guidance on the policy, would remedy the violations. That registrars across the state misunderstand or have not been properly trained on Defendant's guidance makes clear that Defendant fails to properly "[d]irect and assist" the registrars in administering her guidance, *c.f.* La. R.S. 18:18(A), and she fails to ensure compliance with the NVRA, as is her duty. *C.f.* La. R.S. 18:18; 52 U.S.C. § 20509; ECF 168 ¶ 27.

Second, even if the registrars were necessary parties, they are not indispensable to the litigation under Rule 19(b). Several factors determine whether a party is indispensable under Rule 19(b), including "(1) prejudice to an absent party or others in the lawsuit from a judgment; (2) whether the shaping of relief can lessen prejudice to absent parties; (3) whether adequate relief can be given without participation of the party; and (4) whether the plaintiff has another effective forum

[11] To the extent that Defendant argues that the registrars would be *useful*, that is not the name as *necessary.* "The fact that obtaining the information might be easier if the [witnesses] are defendants does not require their joinder under Rule 19(a)." *Powers v. City of Seattle*, 242 F.R.D. 566, 568 (W.D. Wash. 2007); *see also, e.g.*, *Villarroel v. Staples, Inc.*, 697 F. Supp. 3d 901, 905 (N.D. Cal. 2023) ("[T]here is no reason she cannot compel his testimony as a third-party witness."); *Windmill Wellness Ranch, L.L.C. v. Blue Cross & Blue Shield of Texas*, No. SA-19-CV-01211-OLG, 2020 WL 7017953, at *7 (W.D. Tex. Nov. 23, 2020) (same). The registrars have been, and will remain, third-party witnesses to the litigation, from whom the parties may obtain the information necessary to complete relief.

if the suit is dismissed." *HS Res., Inc. v. Wingate*, 327 F.3d 432, 439 (5th Cir. 2003); Fed. R. Civ. P. 19(b). Defendant does not address these factors, but none of them are present here.

Neither Defendant nor the registrars are prejudiced by the registrars' absence from this case. As this Court noted:

> "[I]f this Court were to declare La. R.S. § 18:177(A)(1) unconstitutional and/or in violation of the NVRA and enjoin the Secretary of State from enforcing such, the Secretary of State could do so. The Secretary of State would direct registrars that La. R.S. § 18:177(A)(1) is invalid and that they must stop enforcing it. Under Louisiana's Election Code, the registrars would be bound to carry out this directive, as their role is ministerial in nature, and thus they have no discretion to make any judgment call to the contrary."

ECF 155 at 35. In fact, the registrars have no authority to stop complying with the Paperwork Requirement absent direction from Defendant. *See, e.g.,* La. R.S. 18:18(A)(2). For the same reasons, the registrars' presence would not help "shap[e] the relief" and "a judgment rendered in the [registrars'] absence would be adequate" because an injunction against Defendant would apply uniformly across the state. Fed. R. Civ. P. 19(b). Likewise, Plaintiffs would not "have an adequate remedy if the action were dismissed for nonjoinder," *id.*, as Defendant is the necessary party from whom Plaintiffs can obtain their sought relief. Therefore, the registrars are not indispensable to the litigation under Rule 19(b).

Because Defendant is the only necessary party to remedy Plaintiffs' claims, joinder of the registrars is not necessary. As such, Plaintiffs have joined all necessary parties under Rule 19.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court deny Defendant's Motion to Strike and Motion to Dismiss.

Dated this 28th day of October, 2024.

/s/Valencia Richardson
Valencia Richardson (LSBA #39312) William P. Quigley (LSBA #07769)

Danielle Lang*
Blair Bowie*
Kate Uyeda*
Ellen Boettcher*
Reginald Thedford, Jr.*
Campaign Legal Center
1101 14th St. NW Suite 400
Washington, DC 20005
(202) 736-2200
dlang@campaignlegal.org
bbowie@campaignlegal.org
vrichardson@campaignlegal.org
kuyeda@campaignlegal.org
eboettcher@campaignlegal.org
rthedford@campaignlegalcenter.org

Loyola University Law New Orleans
College of Law
7214 St. Charles Ave. Campus Box 902
New Orleans, LA 70118
Quigley77@gmail.com

**Admitted pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on this date, October 28, 2024, I electronically filed the foregoing Motion with the Clerk of the Court using the Court's CM/ECF system, which will send a notice of electronic filing to counsel of record who are registered with the Court's CM/ECF system.

/s/ *Valencia Richardson*
Valencia Richardson
Counsel for Plaintiffs