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Under the Constitution’s “Supremacy Clause, any state law that conflicts with federal law is preempted.” *Rine v. Imagitas, Inc.*, 590 F.3d 1215, 1224 (11th Cir. 2009) (citing *Gibbons v. Ogden*, 22 U.S. 1 (1824)). Conflict preemption applies where compliance with both federal and state law is not possible, or “where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Id.* (quoting *Gade v. Nat’l. Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98 (1992) (internal quotation marks and citations omitted)).

Section 1981 provides that, “[a]ll persons within the jurisdiction of the United States shall have the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens” and “shall be subject to like punishment, pains, penalties, . . . and to no other.” 42 U.S.C. § 1981(a). “The protection of this section has been held to extend to aliens as well as to citizens.” *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948). Thus, in *Takahashi*, the Court invalidated a California statute that precluded certain noncitizens from obtaining commercial fishing licenses. *Id.* Later, in *Graham*, the Court held that “state laws that restrict the eligibility of aliens for welfare benefits merely because of their alienage conflict with . . . federal policy that lawfully admitted resident aliens . . . are entitled to the full and equal benefit of all state laws[.]” 403 U.S. at 378.

The Citizenship Requirement conflicts with the guarantees provided by Section 1981. By cutting off noncitizens from the ability to collect and handle voter registration applications on behalf of 3PVROs, the Requirement interferes with 3PVROs' and noncitizens' right to "make and enforce" contracts with one another. This includes Plaintiff Prieto, a legal permanent resident who worked as a canvasser captain for Unidos during the 2022 election cycle and, but for the Citizenship Requirement, would have been reemployed by Unidos for the 2024 election cycle. ECF No. 204-3 at 9:3-10, 15:12-16:25, 18:1-6, 19:2-7, 41:5-8, 44:22-45:10. And Plaintiff Mayer, who intended to return to Florida during the 2024 election cycle to volunteer to assist with voter registration activities on behalf 3PVROs, but as a noncitizen he cannot do so. ECF No. 204-4 at 12:12-20, 78:10-21, 88:3-23, 89:9-24, 93:11-94:4. As a result, the Citizenship Requirement directly conflicts with, and stands as an obstacle to, the purpose of Section 1981 because it denies noncitizens the same rights enjoyed by other Floridians, including the right to enter into contracts with 3PVROs to engage in voter registration. *See Rine*, 590 F.3d at 1224.

**V. This Court should grant Plaintiffs summary judgment on Count VII and permanently enjoin enforcement of the Mail-In Ballot Request Restriction.**

Plaintiffs are also entitled to summary judgment on their claim challenging the Mail-In Ballot Request Restriction, which violates Section 208 of the Voting Rights Act because it prohibits voters with disabilities or limited-English

proficiency—including Plaintiffs’ members—from turning to their friends, organizers, neighbors, or social workers for assistance in requesting vote-by-mail ballots. Before the Restriction, such voters could and did rely on people outside of their family and legal guardians for assistance. ECF No. 204-28, Compilation of Vote-by-Mail Requests.

For some voters, particularly those without local family ties, the Restriction will make it impossible for them to request a vote-by-mail ballot. But the Court need not analyze, as a factual matter, the extent of the burdens imposed by the Restriction, because *on its face* it conflicts with—and is thus preempted by—Section 208, which guarantees that voters who need assistance to vote may seek that assistance from anyone they choose. Because the Mail-In Ballot Request Restriction fails as a matter of law, summary judgment is warranted in favor of Plaintiffs.

**A. Plaintiffs have standing to challenge the Mail-In Ballot Request Restriction.**

Plaintiffs DRF, FLARA, Alianza, and Unidos have standing to bring this claim because the Mail-In Ballot Request Restriction inflicts an injury on their members that is traceable to Defendants and is likely to be redressed by a favorable ruling.<sup>4</sup>

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<sup>4</sup> As an initial matter, it is beyond dispute that the Voting Rights Act confers a private right of action to enforce its provisions, including Section 208. The plain text of the Voting Rights Act provides that “the Attorney General *or an aggrieved person*” may

*First*, the Mail-In Ballot Request Restriction injures Plaintiffs’ members by depriving them access to necessary assistance in requesting a vote-by-mail ballot, and Plaintiffs DRF, FLARA, Alianza, and Unidos are well-positioned to seek redress on behalf of their members. An organization has associational standing to sue on behalf of its members when “(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.” *Greater Birmingham Ministries v. Sec’y of State of Ala.*, 992 F.3d 1299, 1316 (11th Cir. 2021).

Here, Plaintiffs’ members would have standing to challenge the Mail-In Ballot Request Restriction. DRF and FLARA have members who suffer from disabilities that can impact their abilities to read or write. *See, e.g.*, ECF No. 204-22, FLARA

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institute a proceeding “under any statute to enforce the voting guarantees of” the Fourteenth or Fifteenth Amendments. 52 U.S.C. § 10302 (emphasis added); *see also Morse v. Republican Party of Va.*, 517 U.S. 186, 233-34 (1996) (citation omitted); *Fla. State Conf. of NAACP v. Lee*, 576 F. Supp. 3d 974, 990 (N.D. Fla. 2021) (hereinafter *NAACP I*) (“[T]he VRA’s plain text provides that private parties may enforce section 208.”). As this Court recently noted, each court to consider the issue has held that Section 208 allows for private enforcement. *NAACP I*, 576 F. Supp. 3d at 990-91 (granting in part and denying in part defendants’ motion for summary judgment) (collecting cases).

30(b)(6) Dep. Tr., 24:14-24; ECF No. 204-23, O. Babis 6/9/23 Decl., ¶ 10.<sup>5</sup> Both DRF and FLARA members regularly rely on people other than legal guardians or immediate family members in requesting a vote-by-mail ballot. ECF No. 204-24, O. Babis 1/22/24 Decl., ¶ 6; ECF No. 204-25, FLARA Decl., ¶ 6; ECF No. 204-22 at 20:23-21:5. Indeed, DRF itself has previously assisted people with disabilities in requesting vote-by-mail ballots and would be prohibited from doing so under the Restriction. ECF No. 204-26, DRF 30(b)(6) Dep. Tr., 69:3-12. And Alianza and Unidos have members with limited-English proficiency, who rely on the help of friends, neighbors, or the organizations themselves for help in requesting a vote-by-mail ballot. ECF No. 204-11 ¶ 10; ECF No. 204-12 ¶ 18; *see also Ark. United v. Thurston*, 517 F. Supp. 3d 777, 787 (W.D. Ark. 2021) (citing *Priorities USA v. Nessel*, 462 F. Supp. 3d 792, 816 (E.D. Mich 2020) (noting that Section 208’s protections “extends to voters with limited English proficiency”)); *OCA-Greater*

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<sup>5</sup> This Court has already concluded that DRF’s constituents are the same as members for the purpose of associational standing, relying on a decision in which “Judge Winsor held that DRF had associational claims to pursue its ADA claims on behalf of its deaf constituents.” *NAACP II*, 566 F. Supp. 3d at 1278 n.2 (citing *Yelapi v. DeSantis*, 525 F. Supp. 3d 1371, 1377 n.4 (N.D. Fla. 2021)). Further, DRF is designated as Florida’s protection and advocacy agency “to ensure full participation in the electoral process for individuals with disabilities.” 52 U.S.C. § 21061(a); ECF No. 204-26 at 20:18-21:19. As such, DRF “ha[s] the authority to [] pursue legal, administrative, and other appropriate remedies . . . to ensure the protection of, and advocacy for, the rights of [disabled] individuals within the State.” 42 U.S.C. § 15043(a)(2)(A)(i).

*Hous. v. Texas*, 867 F.3d 604 (5th Cir. 2017) (same). Under the Mail-In Ballot Request Restriction, Plaintiffs’ members who need assistance but lack access to immediate family members must find a way to request a vote-by-mail ballot on their own, vote in person, or, if they cannot do either, forego the right to vote. ECF 204-25 ¶ 7; ECF No. 204-18 at 196:8-197:20.

Plaintiffs satisfy the second and third requirements for associational standing as well. The Mail-In Ballot Request Restriction is germane to Plaintiffs’ missions of civic engagement and participation. ECF No. 204-23 ¶¶ 2-3, 6-7; ECF No. 204-7 ¶¶ 2-7; ECF No. 204-8 ¶ 8; ECF No. 204-25 ¶¶ 3-4; *see NAACP II*, 566 F. Supp. 3d at 1277-78 (holding that lawsuit was germane to organizations “whose core purposes involve registering voters, voter education, encouraging electoral participation, and advocating for accessibility for Florida voters” (quoting *Greater Birmingham Ministries*, 992 F.3d at 1316)). And neither the claim asserted nor the relief requested requires the participation of the individual members in this lawsuit. *Nat’l Parks Conservation Ass’n v. Norton*, 324 F.3d 1229, 1244 (11th Cir. 2003) (holding that individuals did not need to be party to case “to fashion the sort of prospective injunctive relief sought”); *see also Warth v. Seldin*, 422 U.S. 490, 515 (1975) (“If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured.”).



*Second*, Plaintiffs' injury is traceable to Defendants. *See Support Working Animals*, 8 F.4th at 1201. Under the Mail-In Ballot Request Restriction, Florida's Supervisors of Elections may issue a vote-by-mail ballot "only" when they receive a request "from a voter . . . , a member of the voter's immediate family or the voter's legal guardian." Fla. Stat. § 101.62(1)(a). SB 7050 thus tasks Supervisors with discerning whether the person requesting a vote-by-mail ballot is statutorily authorized to do so and rejecting those requests that come from anyone who is not. The same provision provides that "[t]he department [of State] shall prescribe by rule by October 1, 2023, a uniform statewide application to make a written request for a vote-by-mail ballot which includes fields for all information required in this subsection." Fla. Stat. § 101.62(1)(a); *see also id.* § 97.012(1), (2). And if the Secretary "reasonably believes that a person has committed a violation of" any portion of SB 7050, including the Mail-In Ballot Request Restriction, "the secretary may refer the matter to the Attorney General for enforcement." *Id.* § 97.0575(8). The Attorney General may then "institute a civil action for a violation of this section" to seek "a permanent or temporary injunction, a restraining order, or any other appropriate order." *Id.* The Supervisors, Secretary, and Attorney General are thus all "necessary actor[s] in the causal chain that leads from violation to enforcement" of the Mail-In Ballot Request Restriction in a manner that renders Plaintiffs' injury traceable to all of them. ECF No. 199 at 3; *see also Walters*, 60 F.4th at 650 ("[T]he

defendant’s challenged conduct need not be the very last step in the chain of causation for it to be fairly traceable to the plaintiff’s injury.”).

Finally, a favorable decision from this Court would redress Plaintiffs’ injury. Redressability requires that “the practical consequence” of an order against the defendants results in “a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered.” *Utah v. Evans*, 536 U.S. 452, 464 (2002). If this Court enjoined the Mail-In Ballot Request Restriction, disabled Florida voters and Florida voters who are not proficient in English, including Plaintiffs’ members, could use the assisters of their choice in requesting a vote-by-mail ballot.

**B. Section 208 preempts the Mail-In Ballot Request Restriction.**

Because the Mail-In Ballot Request Restriction’s limitation on who can help a voter request a vote-by-mail ballot contravenes Section 208 of the Voting Rights Act, it is preempted by federal law and cannot stand. *See supra* Section IV(c) (discussing preemption standard).

Here, the Mail-In Ballot Request Restriction plainly conflicts with Section 208 of the Voting Rights Act. While the Restriction deprives *all* voters from using the assisters of their choice in requesting a vote-by-mail ballot, Fla. Stat. § 101.62(1)(a), Section 208 provides that *any* voter “who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given

assistance by a person of the voter's choice," 52 U.S.C. § 10508. Because simultaneous compliance with the state law and federal law is not possible, the latter takes precedence, and the former must be enjoined.

The Secretary's proposed rulemaking—which purports to allow Supervisors of Elections to accept requests for vote-by-mail ballots from any anyone of a voter's choosing for certain voters—does not resolve this conflict. For one, the rule is only proposed, not final. *Cf. Tedor v. United States*, 211 F.3d 488, 492 n.13 (9th Cir. 2000) (“[P]roposed regulations are entitled to no deference until final.” (citing *LeCroy Rsch. Sys. Corp. v. Comm’r*, 751 F.2d 123, 127 (2d Cir. 1984))). And even if the rule were final, Florida law prohibits courts from “deferr[ing] to an administrative agency’s interpretation of [a] statute”; they “must instead interpret such statute or rule de novo.” Fla. Const. art. V, § 21. Further, this Court has already rejected the proposition that the Secretary can cure an otherwise unlawful statute through rulemaking because “[r]ewriting the laws it enforces is not within the purview of the executive branch.” ECF No. 101 at 41.

Federal courts have granted summary judgment relief on laws nearly identical to the Mail-In Ballot Request Restriction on Section 208 preemption grounds. In *Disability Rights North Carolina v. North Carolina State Board of Elections*, for instance, the plaintiff challenged a law that prohibited voters from relying on anyone but a legal guardian or “near relative” for assistance with the steps required to vote

absentee, including requesting a ballot. No. 5:21-CV-361-BO, 2022 WL 2678884, at \*1 (E.D.N.C. July 11, 2022). The district court held that the law’s limitation “impermissibly narrows a Section 208 voter’s choice of assistant” in requesting a ballot “from the federally authorized right to ‘a person of the voter’s choice’ to ‘the voter’s near relative or verifiable legal guardian.’” *Id.* at \*5. Because the provision conflicted with Section 208 of the Voting Rights Act, the court granted the plaintiff’s motion for summary judgment on preemption grounds and enjoined the provision. *Id.* at \*6.

Similarly, in *OCA-Greater Houston v. Texas*, a nonprofit organization challenged a law that prevented English-limited voters from using an interpreter to cast their vote if the interpreter was not a registered voter of the same county. 867 F.3d at 608. After finding that the organization had standing to challenge the law, the Fifth Circuit concluded “that the limitation on voter choice . . . impermissibly narrows the right guaranteed by Section 208 of the VRA.” *Id.* at 615. More recently, in *Arkansas United v. Thurston*, a district court struck down a law restricting the number of voters any one person can assist in casting a ballot, holding that the provision is “more restrictive than § 208 and makes ‘compliance with both . . . impossible.’” 626 F. Supp. 3d 1064, 1085 (W.D. Ark. 2022) (quoting *Pet Quarters, Inc. v. Depository Tr. & Clearing Corp.*, 559 F.3d 772, 780 (8th Cir. 2009)).

The Mail-In Ballot Request Restriction likewise “impermissibly narrows” Section 208 by preventing disabled and English-limited voters from receiving assistance from the person of their choosing. *Disability Rts. N.C.*, 2022 WL 2678884, at \*5. And like the laws at issue in *Disability Rights North Carolina*, *OCA-Greater Houston*, and *Arkansas United*, the Restriction facially conflicts with Section 208 as a matter of law, warranting summary judgment in favor of Plaintiffs.

**VI. Permanent injunctive relief is appropriate as to both the Mail-In Ballot Request Restriction and the Citizenship Requirement.**

To obtain a permanent injunction, Plaintiffs must show (1) that they have suffered an irreparable injury; (2) that their remedies at law are inadequate; (3) that the balance of hardships weighs in their favor, and (4) that a permanent injunction would not disserve the public interest. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006); *see also Barnett v. MacArthur*, No. 21-13201, 2023 WL 4635893, at \*2 (11th Cir. July 20, 2023) (“An injunction should issue . . . only after the court determines that the traditional four-factor test is satisfied.”). All of these elements are satisfied here.

Plaintiffs are irreparably harmed for the same reasons they have suffered injury-in-fact, discussed *supra*. *See* Sections VI.A. & V.A. The violation of Plaintiffs’ right to equal protection under the law constitutes irreparable harm in this context. *See Chang v. Glynn Cnty. Sch. Dist.*, 457 F. Supp. 2d 1378, 1382 (S.D. Ga. 2006) (finding that the plaintiffs—lawful residents who “will not be able to continue

to work in their chosen professions, for a reason that is at odds with their federally-protected constitutional rights”—demonstrated irreparable harm from a law prohibiting noncitizens from being teachers); *see also Int’l Ass’n of Firefighters, Loc. 2069 v. City of Sylacauga*, 436 F. Supp. 482, 492 (N.D. Ala. 1977) (“Deprivations of constitutional rights are usually held to constitute irreparable injury as a matter of law.”). And as the Court correctly observed, Plaintiffs’ “voter registration operations will be substantially interrupted once the challenged provisions take effect,” “thus extinguishing their opportunities to directly register new voters.” ECF No. 101 at 51. And without injunctive relief, Plaintiffs’ members who require assistance will be unable to use the assisters of their choice to request vote-by-mail ballots, despite their right to do so under federal law, resulting in irreparable harm. *See Disability Rts. N.C.*, 2022 WL 2678884, at \*7 (“For [organizational] plaintiff’s constituents, the irreparable harm is the continued deprivation of their rights under Section 208.” (citing *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014))). Because Plaintiffs will suffer irreparable harm, any remedies at law are inadequate. *See Barrett v. Walker Cty. Sch. Dist.*, 872 F.3d 1209, 1229 (11th Cir. 2017).

The balance of hardships weighs decidedly in favor of granting injunctive relief. The Citizenship Requirement has been enjoined since it went into effect; extending the preliminary injunction into a permanent injunction would require no

additional expenditure of resources or change in procedures on behalf of Defendants. Similarly, the Mail-In Ballot Request Restriction will be in effect for the first time in the 2024 elections; enjoining its enforcement before the time period for issuing vote-by-mail ballots would mean that Supervisors and Defendants can issue such ballots the same way and under the same rules they have for decades. *See Fla. Stat. § 101.62(3)*. Indeed, the lack of hardship to Defendants from enjoining enforcement of the Citizenship Requirement and Mail-In Ballot Request Restriction only underscores how these provisions served no legitimate purpose to begin with. Where the State has enacted a solution in search of a problem, it is not harmed by an injunction returning to the status quo.

Finally, an injunction against both provisions is squarely within the public interest. As a doctrinal matter, “the public interest is served when constitutional rights are protected,” *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1327 (11th Cir. 2019); *see also League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012) (The “vindication of constitutional rights . . . serve[s] the public interest almost by definition.”) As a practical matter, facially discriminatory laws and blatant restrictions on federal voting rights only undermine the public interest and confidence in our elections system. A permanent injunction against the Citizenship Requirement and Mail-In Ballot Request Restriction would serve and preserve the public interest in fair and lawful election laws.

## CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Partial Summary Judgment should be granted, and the Court should enter summary judgment for Plaintiffs on Counts III, IV, and VII of the Third Amended Complaint.

## LOCAL RULES CERTIFICATION

Undersigned counsel certifies that this response contains 7,998 words, excluding the case style and certifications.

Dated: January 23, 2024

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 23, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

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