

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

VOICES of the EXPERIENCED, *on behalf of
itself and its members*; POWER COALITION
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.

R. KYLE ARDOIN, *in his official capacity as
Secretary of State of Louisiana,*

Defendant.

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

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO
DISMISS**

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INTRODUCTION

Plaintiffs Voice of the Experienced (“VOTE”), Power Coalition 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 (the “Motion”), ECF No. 32. This lawsuit challenges Louisiana’s requirement that “suspended” voters provide documentary proof of eligibility to register to vote, while other similarly situated voters are not required to do so. Plaintiffs’ claims arise under the National Voter Registration Act (“NVRA”), 52 U.S.C. § 20501 *et seq.*, and the Equal Protection Clause of the Fourteenth Amendment. In their Motion to Dismiss, Defendant fails to identify any insufficiency in Plaintiffs’ well-pled claims, and thus cannot sustain a Motion to Dismiss under Rules 12(b)(1) or 12(b)(6). For the following reasons, Defendant’s Motion must be denied.

BACKGROUND

Louisiana law grants the right to vote to certain individuals with prior felony convictions. Compl. ¶¶ 22-24. Specifically, Louisiana law temporarily disenfranchises individuals “under an order of imprisonment,” which, until recently, the state defined broadly as not just people who are actually incarcerated for a felony conviction but also individuals who are serving community supervision following a term of imprisonment. *See* La. Acts 1976, No. 697, § 1, (codified at La. R.S. 18:102(1)(b); La. R.S. 18:2(8)); Compl. ¶ 3 (ECF 1). In 2019, the Louisiana legislature enacted Act 636, which provided that individuals with felony convictions who have not been incarcerated for at least five years are eligible to vote, opening the door for tens of thousands of Louisianans on probation or parole to have their rights restored. *See* La. Acts 2018, No. 636 (H.B. 265); Compl. ¶¶ 4-5. Under the Act, these individuals had to submit documentation from the Department of Corrections to a local registrar’s office showing that they had not been incarcerated for a felony within the last five years. *See id.* In 2021, the state legislature passed Act 127 which

removed the documentation for rights restoration, making it clear that an individual who is under an order of imprisonment for conviction of a felony and who has not been incarcerated pursuant to the order within the last five years is eligible to vote, regardless of whether they present proof of eligibility to the registrar. *See* La. Acts 2021, No. 127 (H.B. 378) (deleting “if the person submits documentation to the registrar of voters”); Compl. ¶ 6.

However, Louisiana continues to require documentary proof of eligibility (the “Paperwork Requirement”) from those seeking to re-register to vote—what the state refers to as “reinstatement.” Compl. ¶¶ 37-46. These are prospective voter registrants who were registered before being convicted of a felony, and thus had their registration “suspended” upon conviction. Compl. ¶¶ 39-41. Unlike “new” registration applicants who were not registered before their conviction, “suspended” registrants are required to provide this additional documentary proof, even though both “new” voters and “suspended” voters should have their right to vote automatically restored under law. *See* Compl. ¶ 6; ECF No. 17-2 at 2-3. This Paperwork Requirement is a significant burden not only on prospective voter registrants, but also on Plaintiff organizations whose mission it is to assist these voters.

Plaintiffs VOTE, PCEJ, and the League are each Louisiana-based nonpartisan community empowerment organizations that devote significant organizational time and resources to voter education and engagement efforts. *See* Compl. ¶¶ 13-19. VOTE is a membership-based organization founded and operated by formerly incarcerated people. *Id.* ¶ 13. Due to Louisiana’s unlawful documentary proof of eligibility requirement, Plaintiffs have diverted significant resources from their other programs and activities to educate Louisianans about the requirement and to assist registrants in complying with it. *Id.* ¶¶ 15, 17, 19. Some VOTE members have struggled to meet this Paperwork Requirement themselves, and others will certainly face this

unlawful and onerous burden when they become eligible to vote. *Id.* ¶ 13-14. Still other individuals would be VOTE members but for the Paperwork Requirement. *Id.*; *see also* Members, Voice of the Experienced (last visited June 30, 2023), <https://www.voiceoftheexperienced.org/members> (describing members as those who registered to vote if they are eligible).

Louisiana’s “reinstatement” process and the documentary proof requirement violate several sections of the NVRA and the Equal Protection Clause. Compl. at ¶ 1. The National Voter Registration Act requires that all registrars place on the rolls facially eligible registrants who timely submit a valid registration form, that states must “accept and use” the Federal Form application, and that any state-specific voter registration form require only such information as is “necessary” to determine the applicant’s eligibility. *See* 52 U.S.C. §§ 20507(a)(1), 20505(a)(1), 20508(b)(1); *see also Arizona v. Inter Tribal Council of Arizona, Inc.* [“ITCA”], 570 U.S. 1 (2013). The Equal Protection Clause of the Fourteenth Amendment prohibits disparate treatment of similarly situated individuals by states, and that “a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdictions.” *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). Plaintiffs alerted Defendant, under the NVRA’s notice provisions, of the ongoing violations of the NVRA created by the documentary proof of eligibility requirement. *Id.* ¶¶ 78-83. Defendant did not cure these violations, and Plaintiffs filed suit after the relevant notice period elapsed. *Id.* ¶¶ 84-85.

LEGAL STANDARD

Under Rule 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 accept Plaintiffs’ well-pleaded facts as true and view them in the light most favorable to the plaintiff. *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).

LEGAL ARGUMENT

I. Plaintiffs have subject matter jurisdiction to state their claims.

Contrary to Defendant's arguments, Plaintiffs plausibly allege several theories of standing: first, all Plaintiffs have organizational standing and are injured in their own right, and second, VOTE has associational standing on behalf of the several categories of members who have been affected by the Paperwork Requirement. Likewise, Defendant's argument that it has sovereign immunity is immediately betrayed by his own representations, as alleged in Plaintiffs' pleadings. For these reasons, Plaintiffs easily satisfy the requirements of Article III.

a. Defendant does not have sovereign immunity.

Defendant first argues that he is entitled to sovereign immunity barring Plaintiffs' claim under the Equal Protection Clause, Count 2.¹ ECF 32-1 at 3-9 (Mot. to Dismiss). However, Plaintiffs are permitted to sue the Secretary of State under the *Ex Parte Young* exception to Eleventh Amendment immunity. 209 U.S. 123 (1908). "In *Ex Parte Young*, the U.S. Supreme

¹ Defendant does not claim sovereign immunity from the Plaintiffs' claim under the National Voter Registration Act, Count 1.

Court held that a lawsuit may be brought in federal court to enjoin a state official enforcing a state statute that violates the U.S. Constitution.” *Ferrand v. Schedler*, 2011 WL 3268700, at *5.

To determine whether the *Ex Parte Young* exception 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.” *Verizon 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)). For the exception to apply to a specific officer, that person must have “some” connection with the enforcement of the challenged statute. *Texas All. for Retired Americans v. Scott*, 28 F.4th 669, 671–72 (5th Cir. 2022). The Fifth Circuit has held that this means that the official must be at least partially tasked with enforcing the law by statute and show “a demonstrated willingness to exercise that duty.” *Texas Democratic Party (TDP) v. Abbott*, 978 F.3d 168, 179 (5th Cir. 2020) (quoting *Morris v. Livingston*, 739 F.3d 740, 746 (5th Cir. 2014)). The connection exists even if there is a division of responsibilities between the sued party and other actors for enforcement. *Id.* at 180. In the end, only a “scintilla of ‘enforcement’ by the relevant state official with respect to the challenged law” is sufficient to invoke the *Ex Parte Young* exception. *City of Austin v. Faxton*, 943 F.3d 993, 1002 (5th Cir. 2019).

Here, Defendant does not contest that Plaintiffs seek to prospectively enjoin a state statute that violates the U.S. Constitution. Thus, the straightforward *Ex Parte Young* inquiry is satisfied. *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 296 (1997). Defendant, however, argues that he does not have the requisite connection with the challenged statute to invoke *Ex Parte Young*. To the contrary, though Defendant’s duties regarding the statute are shared with the parish registrars, he has direct enforcement authority over the registrars with respect to the challenged act and has shown his willingness to exercise that duty well beyond a “scintilla of enforcement.”

First, the Secretary of State is statutorily tasked with enforcing laws related to voter registration specifically, including the challenged section requiring documentary proof of eligibility from individuals seeking to re-register after a felony conviction. La. R.S. 18:18(A) (“The secretary of state *shall administer the laws* relating to custody of voting machines and *voter registration . . .*”) (emphasis added); Compl. ¶ 20. The registrars are compelled to follow the Secretary’s administration, direction, rules, and regulations and to use whatever materials he creates for the process. La. R.S. 18:58(A). In particular, the Secretary must

(2) Direct and assist the registrars of voters of the state with respect to matters pertaining to the registration of voters as provided by law.

(3) Prescribe uniform rules, regulations, forms, and instructions, which shall be approved by the attorney general and thereafter shall be applied uniformly by each registrar of voters in the state. These rules, regulations, forms, and instructions shall include but not necessarily be restricted to forms of applications for registration, records, affidavits and statements, documents, and general procedures to be used by the registrars of voters, none of which shall be inconsistent with the constitution and laws of the United States or of this state.

La. R.S. 18:18(A). As such, the Secretary’s directions are directly tied to the harms alleged in Plaintiffs’ complaint and the Secretary can redress those harms through his direction. Finally, the Secretary of State is specifically tasked with enforcing the provisions of the NVRA, and must order compliance with the NVRA. Compl. ¶ 20; La. R.S. 18:18; 52 U.S.C. § 20509. As the remedy for the NVRA violation would be the same as the remedy for the equal protection violation, Defendant necessarily has the authority to administer the remedy for the constitutional violation.

Second, the Secretary has *specifically* instructed parish registrars that individuals who were previously registered and are eligible to vote after a felony conviction can *only* do so if they go through the “reinstatement process” and present the challenged paperwork while “no documentation is needed” for first time registrants. *See* ECF 17-5 at 7-8 (Compl., Ex. 5). Those instructions are at the heart of Plaintiffs’ Equal Protection claim and therefore the Secretary cannot claim to have no connection to enforcement of his own guidance to parish registrars.

Third, the Secretary is specifically statutorily tasked with *developing* the reinstatement paperwork, known as the voting rights certification. Compl. ¶ 68; *see* La. Acts 2018, No. 636 § 2. (“Prior to the effective date of this Act, the secretary of state shall work with the Department of Public Safety and Corrections to develop a form or forms to allow a person who is or was under an order of imprisonment for conviction of a felony to meet the requirements of R.S. 18:102(A)(1) and 177(A) as amended by this Act.”).

Fourth, the Secretary’s has repeatedly demonstrated his willingness to exercise his duties by compelling denials of voter registrations and constraining registration without the paperwork. As noted above, shortly after the passage of Act 127, the Secretary of State issued instructions directing all parish registrars to continue to require documentary proof of eligibility to “reinstate” previously registered voters. ECF 17-5 at 7-8 (Compl., Ex. 5). But, even further, the Secretary also directs the registrars regarding how to handle specific voter registrations for people subject to the “reinstatement” process. *See, e.g., id.* at 52-54. Furthermore, the Secretary’s executive counsel and outside counsel have even stepped in and *directly* contacted voter registrants instructing them that they cannot register to vote without submitting the documentary proof of eligibility. *See, e.g., id.* at 40-48. Even *one instance* of direct enforcement by the Secretary alone is enough to constitute the requisite scintilla of enforcement. *See Texas Democratic Party v. Abbott*, 978 F.3d at 179.

Defendant compares these statutes that specifically task the Secretary with administering, directing, and prescribing rules, regulations, forms, and instructions for the challenged act over parish registrars with the Texas Secretary of State’s “high level” duties regarding enforcement of election laws at issue in *Texas Democratic Party v. Hughs*. 860 Fed. App’x 874 (5th Cir. 2021). In that case, while the Texas Secretary of State created the voter registration form in *TDP v. Hughs*, the plaintiffs failed to allege that the voter registration form included the challenged wet signature

requirement. On the other hand, in *Texas Democratic Party (TDP) v. Abbott*, the Fifth Circuit applied *Ex Parte Young*, because the absentee ballot request form created by the Secretary of State in that case *did contain* the challenged requirement. 978 3.3d at 180. The Fifth Circuit found the requisite “scintilla of enforcement” in the charge to the Secretary to design the absentee ballot application form because that form included the challenged age restriction. *Id.* at 179-80. Like *TDP v. Abbott*, Defendant is, by statute, involved in creating the paperwork at issue.

As in *TDP v. Abbott*, the Secretary’s statutory duties here are much more specific and directly connected with the constitutional violation. In addition to being tasked by the legislative enactment with creating the challenged paperwork itself, *see* La. Acts 2018, No. 636 § 2, the Secretary is also specifically tasked with, *inter alia*, prescribing instructions that shall be applied by the registrars. La. Stat. 18:18(A)(3). In line with that duty, the Secretary has issued instructions to the registrars that they shall not allow suspended individuals to register to vote without the documentary proof of eligibility—the root of the constitutional violation. ECF 17-5 at 7-8 (Compl., Ex. 5). While the duty to enforce the Paperwork Requirement is shared with the parish registrars, who often handle frontline application of the requirement, that is no bar to application of *Ex Parte Young*. In *TDP v. Abbott*, the Fifth Circuit held that requisite *Ex Parte Young* connection exists even where enforcement duties are shared between the Secretary of State and the local registrars. 978 F.3d at 179-80.²

The Secretary has the requisite connection to the challenged statute here because his execution of his duties related to voter registration, such as directing the registrars and prescribing

² The situation here is unlike that in *Texas Alliance for Retired Americans v. Scott*, where the Fifth Circuit found that the statutes imputed no duty on the Secretary of State to ensure the abolition of straight-ticket voting. 28 F.4th 669, 673 (5th Cir. 2022). There, the courts had already held that registrars are solely responsible for printing ballots, *Mi Familia Vota v. Abbott*, 977 F.3d 461, 468 (5th Cir. 2020), and the Secretary’s only duties were to post notice about the new provision, educate voters, and adopt rules to ensure the voters and administrators were not burdened by the new law. Here, on the other hand, the statutes impose specific requirements regarding the direction and prescription of rules and regulations regarding voter registration and specific to the Paperwork Requirement.

instructions, directly causes the constitutional violations here. Moreover, he is specifically tasked by statute with creating the paperwork at the center of the constitutional challenge. He is actively engaged in the enforcement of the Paperwork Requirement against specific registrants, both through the registrars and on his own accord. Compl. at ¶ 20. As a result, the *Ex Parte Young* exception to sovereign immunity applies.

b. Plaintiffs plausibly allege standing to bring their claims.

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) (citation omitted). These same three elements apply to organizational plaintiffs. *OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017). But organizational plaintiffs may establish standing in either of two ways, by alleging either 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). Organizational plaintiffs may sufficiently allege an injury in fact arising from either organizational or associational injuries, either of which are independent sufficient grounds to assert standing. *See Warth v. Seldin*, 422 U.S. 490, 511 (1975).

In cases involving multiple plaintiffs, courts need not consider the standing of co-plaintiffs as long as one plaintiff has sufficiently alleged standing for each claim asserted and form of relief requested. *Biden v. Nebraska*, No. 22-506, 2023 WL 4277210 at *6 (Jun. 30, 2023); *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 53 n. 2 (2006) (“[T]he presence of one party with standing is sufficient to satisfy Article III’s case-or-controversy requirement.”); *see also*,

Brackeen v. Bernhardt, 937 F.3d 406, 422 (5th Cir. 2019), (“Accordingly, because one Plaintiff has standing, the ‘case-or-controversy requirement’ is satisfied as to this claim, and we do not analyze whether any other Individual Plaintiff has standing to raise it.”).

i. All Plaintiffs have organizational standing.

All three Plaintiffs assert organizational injuries in fact sufficient to establish standing to sue on their own behalf. To demonstrate injury in fact, an organization may show a or 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. In the NVRA context, the Fifth Circuit has specifically held that a nonprofit organization had 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). Plaintiff organizations suffer organizational injuries on both accounts.

Plaintiff Voice of the Experienced (“VOTE”) alleges that it has had to “divert significant resources from its other activities related to its core mission.” Compl. at ¶ 15. Specifically, it must divert resources to educate would-be voters on the Paperwork Requirement and help them navigate the process of complying with it.³ *Id.* These resource expenditures include holding public education workshops, outreach to elections officials on behalf of suspended voters, and taxiing individuals around to government offices so that they can obtain and drop off the paperwork to be

³ Defendant’s only response to this diversion of resources to assist voters in navigating the process is to argue it is insufficient because “navigating the process is not the alleged NVRA or equal protection violation; the documentation requirement is the alleged violation.” ECF 32.1 at 11. This is nonsensical. Absent the documentation requirement, there would be no additional process for these voters to navigate. As to VOTE, Defendant also argues that its diversion of resources fails to establish an injury in fact because “[i]t is not likely that VOTE has been diverting resources since 1997 [when the reinstatement law was enacted].” *Id.* at 13. That is indeed true since VOTE was founded in 2016 (and its predecessor was founded in 2004). But, it is, of course, not the law that a Plaintiff’s harm must be ongoing from the moment a law was enacted. The question is whether the Plaintiff is experiencing any present harm that confers standing. Moreover, as Plaintiff’s complaint alleges, the eligibility of individuals to vote after a felony conviction has changed substantially since 1997 and thus altered the landscape of VOTE’s assistance to voters.

able to register to vote. *Id.* If the state were complying with federal law, these individuals would be able to register to vote like any other Louisiana resident and these activities would be unnecessary, but because of the Paperwork Requirement, VOTE must expend significant additional resources to help constituents and members become registered to vote. *Id.*

Similarly, both Plaintiffs Power Coalition for Equity and Justice (“Power Coalition”) and the League of Women Voters of Louisiana (the “League”) allege that they divert significant resources to educate and assist voter registrants who cannot register to vote unless they obtain and submit the required paperwork. Compl. ¶¶ 17, 19. As with VOTE, helping voters navigate this requirement can be onerous, requiring phone calls to officials and even ferrying the prospective voter from office to office. Compl. ¶¶ 17, 19. All of these activities would be unnecessary but for the Paperwork Requirement; thus the Paperwork Requirement directly creates an injurious drain on the organizations’ limited resources. *Id.* At the motion to dismiss stage, these allegations, which the Court must accept as true, are more than sufficient to establish standing. The injury resulting from these substantial diversions of time and resources amount to “concrete and demonstrable injur[ies] to [the plaintiff organizations’] activities.” *Havens*, 455 U.S. at 379.

Ignoring these allegations, Defendant argues that because each organization has civic engagement and voter registration as part of their core mission, helping people navigate the state’s unlawful Paperwork Requirement does not constitute a significant diversion of resources. Defendant points to the Middle District’s findings in *Clark v. Edwards*, where the court held that the plaintiff organization’s anticipation of higher demand for services and work monitoring the impact of the challenged policies was not an injury. 468 F. Supp. 3d 725, 746 (M.D. La. 2020).

However, in *Clark*, the plaintiffs did not allege that the activities causing the drain on their resources were any different from their regular operations as a result of the challenged policies. *Id.*

Similarly, in *NAACP v. City of Kyle, Texas*, the Fifth Circuit did not find an organization injury because the plaintiff had “not explained how the activities [it undertook in response to the challenged law], . . . differ from the [organization]’s routine . . . activities.” 626 F.3d 233, 238 (5th Cir. 2010). On the other hand, the organizational Plaintiffs here have alleged that Defendant’s violation of the law causes them to undertake activities that they would not otherwise engage in, as the Paperwork Requirement causes them to go out of their way to help individual registrants in efforts to mitigate the Paperwork Requirement’s real-world impact on their members and the public. *See OCA*, 867 F.3d at 611-12. It should go without saying, absent the Paperwork Requirement, Plaintiffs would expend no resources assisting voters in obtaining and submitting this type of documentation. As such, these activities are distinct and apart from their “routine . . . activities.” *NAACP*, 626 F.3d at 238.

Furthermore, the Paperwork Requirement causes members, constituents, and others assisted by Plaintiff organizations to be denied voter registration despite being eligible. This directly harms Plaintiff organizations’ ability to fulfill their purposes, which, as Defendant correctly points out, include increasing electoral participation among people impacted by the criminal legal system. VOTE advocates for the rights of people who are formerly incarcerated by, among other activities, engaging its membership through voter registration drives. Compl. ¶ 13. The League works to ensure that all eligible individuals have the opportunity to vote, with a particular focus on underserved communities, including voters impacted by the criminal legal system. Compl. ¶ 18. The Coalition uses civic engagement to amplify the voices of those have been historically marginalized, including voter impacted by the criminal legal system, who are disproportionately Black Louisianans. *Id.* ¶ 16. Plaintiff groups’ ability to register voters and integrate them into the political process is concretely impeded when many of its target constituents

will have their registration forms rejected even though they are eligible to vote due to an unlawful and unnecessary Paperwork Requirement. These allegations amount to “far more than simply a setback to the [the groups’] abstract social interests.” *Havens*, 455 U.S. at 379.

ii. VOTE has associational standing.

A finding that one of Plaintiff organizations satisfies Article III standing based on organization injury is enough. *Biden*, 2023 WL 4277210 at *6; *Rumsfeld*, 547 U.S. at 53 n. 2; *see also, Warth*, 422 U.S. at 51. Even so, Plaintiff organization VOTE also asserts standing on behalf of its members, including individuals who have been and will be denied voter registration because of the Paperwork Requirement. An association like VOTE has standing “when 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*, 528 U.S. at 181. VOTE has alleged that it has members who have not been allowed to register to vote without providing documentary proof of eligibility. Compl. ¶ 14. It also alleges that some of these members were unable to vote in a federal election because they could not obtain the required paperwork verifying their eligibility in time to register to vote. *Id.* VOTE can also identify at least one member who will imminently become eligible to vote and therefore will soon be subject to the Paperwork Requirement in order to register to vote. Ex. 2. Because VOTE’s membership is “comprised of formerly incarcerated people,” Compl. at ¶ 13, its members are routinely regaining their voting rights and thus are routinely subjected to the Paperwork Requirement when they seek to register to vote. Indeed, VOTE requires all eligible members to register to vote; therefore, all members *must* register to vote upon regaining their voting rights and, for all members that were previously

registered, that means complying with the Paperwork Requirement. *Members*, Voice of the Experienced (last visited June 30, 2023), <https://www.voiceoftheexperienced.org/members>.

Defendant does not question that the interests at stake are germane to VOTE's purpose, nor that the relief requires the participation of VOTE's members, but he complains that VOTE has not alleged that their members attempted to register to vote. Mot. at 12. This is a clear mischaracterization of the complaint. VOTE's associational standing allegations clearly state that some of VOTE's members who are eligible Louisianans have tried and not been allowed to register to vote and, instead, have had to navigate the Secretary's onerous process to prove their eligibility before being able to exercise their right to vote. Compl. ¶ 14. These are real injuries, traceable to the Secretary of State, and redressable by the requested relief—ending the Paperwork Requirement. *See Lujan*, 504 U.S. at 560. VOTE has pleaded sufficient facts to establish associational standing to bring these claims on behalf of its members.

c. Plaintiffs provided adequate notice of their claims under the NVRA.

Despite Defendant's assertions, Plaintiffs sufficiently allege their compliance with the NVRA's notice provision. The National Voter Registration Act's notice provision provides that aggrieved parties "may provide written notice of the violation [of the Act] to the chief election official of the State involved." 52 U.S.C. § 20510(b)(1). If a state does not cure the violation within 90 days, the aggrieved person may file suit in federal court. *Id.* at (b)(2). This notice period shortens to 20 days if the violation occurs within 120 days of a federal election. *Id.* at (b)(3).

Defendant is flatly wrong that Plaintiffs failed to sufficiently allege that they provided adequate notice of all claims in their Complaint. The purpose of an NVRA notice letter 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). “Indeed, courts have found that an NVRA notice is sufficient if it sets forth the reasons for the conclusion that a defendant failed to comply with the NVRA, and, when read as a whole, it makes it clear that the plaintiff is asserting a violation of the NVRA and plans to initiate litigation if its concerns are not addressed in a timely manner.” *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1348 (N.D. Ga. 2016) (quotation marks omitted).

Plaintiffs provided three notice letters to Defendant: one in August 2022, ECF 17-1 (Comp. Ex. 1), another on October 28, 2022, ECF 17-3 (Compl. Ex. 3), and a final letter on March 31, 2023. ECF 17-7 (Compl. Ex. 7).⁴ Defendant does not dispute that the August 2022 and October 2022 letters are notice letters. Mot. at 13. Defendant incorrectly states, however, that the March 31, 2023 letter was not a notice letter because “the letter indicates that the notice period had already elapsed.” *Id.* at 14. Defendant’s assertion is misplaced. As Plaintiffs allege in their Complaint, Plaintiffs’ March 31, 2023 letter “provided Defendants the requested information and noted that the required period for pursuing a private cause of action under the NVRA elapsed on January 26, 2023, and that, absent further action to correct the Paperwork Requirement, Plaintiffs would proceed to explore their legal rights.” Compl. ¶ 83. The letter additionally incorporates by reference the various violations of the NVRA that Plaintiffs first stated in their August 2022, and October 28, 2022 letters. *See* ECF 17-7 at 3 (Compl. Ex. 7). This is plainly information sufficient for Defendant to identify and cure the violation, about which they had actual notice since at least

⁴ Defendant argues that the Plaintiffs did not attach the correct notice letter, and disputes that the first Notice letter was sent on August 26, 2023, instead contending that it was sent on August 30. *See* Mot. at 14 n.56. Plaintiffs aver that this dispute is immaterial, given that neither party disputes that a notice letter was sent in August 2022 and October 2022. In any event, Defendant inappropriately asks this Court to test the correctness of Plaintiffs’ allegations at the motion to dismiss stage; “at the motion to dismiss stage, we don’t consider the correctness of the plaintiff’s versions of the facts. Instead, we accept all well-pleaded facts as true and draw all inferences in favor of the plaintiff.” *Wood v. Bexar Cnty.*, Texas, No. 22-50888, 2023 WL 3563012, at *1 (5th Cir. May 19, 2023) (internal quotation marks and citations omitted).

August 2022. That Defendant continued to violate the NVRA even after the initial notice period had elapsed only further underscores that the March 31, 2022 letter is an additional notice letter.

Likewise, Plaintiffs' allegations in their Complaint mirror those made in their notice letters. Specifically, Plaintiffs allege in their Complaint that Defendant has violated the NVRA by: (1) refusing to accept and use the Federal Form or a conforming state form, and (2) refusing to ensure that every eligible voter is placed on the rolls. *See* Compl. at ¶¶ 86-103; *see also id.* at ¶¶ 78-83 (attaching Notice letters as exhibits). Defendant does not dispute that Plaintiffs alleged violations of Section 6 and Section 8 in their first notice letter. *Compare* Mot. at 13-14 with ECF. 17-1 at 1 (Compl. Ex. 1). In their October 28, 2022 notice letter, Plaintiffs reiterated that "requiring documentary proof of voting rights restoration in addition to a voter registration form violates the NVRA's requirements that states accept and use the federal voter registration form and to ensure that any eligible registrant is placed on the rolls." ECF 17-3 at 1; Compl. ¶ 80. In every letter to Defendant, Plaintiffs notified Defendant of their intent to seek a remedy in federal court if Defendant fails to cure the violations. *See* ECF 17-1 at 3; ECF 17-3 at 6; ECF 17-7 at 4. Therefore, all Plaintiffs sufficiently allege that they complied with the Notice Period.

II. Plaintiffs have sufficiently alleged claims under the NVRA and Fourteenth Amendment.

Plaintiffs plead two counts in their Complaint. Count I alleges that Defendant has violated the National Voter Registration Act for failing to accept or use the Federal Form or a state-conforming voter registration form, and for failing to ensure that all eligible voters are on the active voter rolls. Compl. ¶¶ 86-103. Count II alleges that Defendant has violated the Equal Protection Clause of the Fourteenth Amendment by treating similarly situated voters with prior felony convictions differently based on their new or previous registration status. Compl. ¶¶ 104-119. For

the following reasons, Plaintiffs have pleaded sufficient allegations to plausibly allege violations under the NVRA and the Constitution.

a. Plaintiffs plausibly allege that the Paperwork Requirement violates the NVRA.

The NVRA applies to the Secretary's policy regardless of his attempt to invoke the State's authority to disenfranchise people with convictions or relabel the voter registration of affected voters as "reinstatement." The NVRA applies to all individuals seeking to register to vote, regardless of their prior felony conviction status or whether they have ever registered to vote in the past. *See generally*, 52 U.S.C. § 20503(a) (requiring states to establish procedures for voter registration).

Defendant's attempt to invoke Section 2 of the Fourteenth Amendment misses the point. Nothing about Plaintiffs' claim attempts to interfere with Louisiana's eligibility requirements for people with convictions. Rather, Plaintiffs' claim solely relies on Louisiana's obligation to comply with the NVRA for the registration of individuals whose voting rights have been restored. As Defendant points out, Louisiana law returns the right to vote to certain individuals with prior felony convictions. Mot. at 16; Compl. ¶¶ 28-29. Additionally, because of Act 127, Louisiana law *automatically* restores the right to vote to those individuals. Compl. ¶¶ 33-34. As the right to vote has been granted, and restoration is automatic, federal law determines the method of registration. Compl. at ¶¶ 105, 107; *Bush v. Gore*, 531 U.S. 98, 104-5 (2000); *infra*, Part II.b. Therefore, the discretion afforded the state by the Constitution is immaterial; the state used that discretion to create an affirmative right to vote, which is now subject to the protections provided by federal law. *See Bush v. Gore*, 531 U.S. at 104. Any attempt to relabel the voter registration process as "reinstatement" is thus preempted by federal law. *See ITCA*, 570 U.S. at 15 (holding that state law that conflicts with the National Voter Registration Act must "give way" to the federal law).

Defendant argues that nothing in Louisiana law provides that individuals with past convictions are automatically restored to eligibility to vote. Mot. at 17. To the contrary, Act 127 states that “a person who is under an order of imprisonment for conviction of a felony and who has not been incarcerated pursuant to the order within the last five years *shall not be ineligible* to register or vote based on the order.” Such mandatory language provides for restoration of the right to vote without any additional action by the voter. Moreover, Defendant’s argument that “[j]ust as an 18-year-old is only eligible to vote once he makes application for registration,” people with past convictions “must take the required to action to have [their] eligibility recognized” proves Plaintiffs’ point. *See* Mot. at 17. Just as the NVRA governs a newly 18-year-old’s application to register to vote, so too does it govern the application to register of an eligible person with a past conviction.

As such, the NVRA applies to reinstatement as well as new registration. And nothing in the NVRA indicates that its requirements regarding voter registration only apply to how a state treats new registrants. *See generally* 52 U.S.C. § 20507; Compl. ¶ 101. Rather, the NVRA covers the entire process involved in enabling individuals to be active on the voter rolls. *See, e.g., Ass’n of Cmty. Organizations for Reform Now v. Fowler*, 178 F.3d 350, 354 (5th Cir. 1999) (“[T]he NVRA sets forth requirements with respect to the states’ administration of the voter registration process.”); Compl. ¶¶ 100-101. Whether previously registered or not, these individuals all seek the same outcome: to become active registered voters. Compl. ¶ 109. Regardless of whether the state adds a voter to the rolls by “registration” or “reinstatement,” all voters must follow the same process and regulations for casting their ballot. *See* La. R.S. 18:561-65; Compl. ¶ 110.

Finally, Plaintiffs note that Defendant’s NVRA defense rests entirely on the false premise that the NVRA does not apply to Louisiana’s “reinstatement” requirement imposed on people with

past convictions. Because Defendant fails to raise any defense against the merits of Plaintiffs' NVRA claims, he has waived them. *See* Fed. R. Civ. P. 12(b)(6).⁵

b. Plaintiffs sufficiently allege that the Paperwork Requirement violates the Equal Protection Clause.

At bottom, Defendant's arguments betray a misunderstanding of notice pleading. First, Defendant asks this Court to assess prudential standing against membership organizations, despite the weight of case law against him. Next, as Defendant notes, Plaintiffs do not assert a burden on the right to vote under the *Anderson/Burdick* framework. Rather, Defendant asks this Court to look outside of the pleadings and evaluate Plaintiffs' claims under a theory it did not allege. Mot. at 20. In any event, Defendant's attempts to invert the standard under Rule 12(b)(6) is fatal to their arguments; the Court must look to what Plaintiffs actually pleaded and assess the sufficiency of the allegations therefrom. *E.g., Lochner Techs., LLC v. AT Labs Inc.*, No. 2:11-CV-242-JRG, 2012 WL 2595288, at *2 (E.D. Tex. July 5, 2012) ("When reviewing a motion to dismiss, courts look only to the allegations in the complaint to determine whether they are sufficient to survive dismissal."). As analyzed below, prudential considerations do not bar Plaintiffs' Equal Protection claim, and Plaintiffs have plausibly alleged that the Paperwork Requirement imposes an impermissible classification in violation of the Equal Protection Clause.

i. Third-party standing does not bar Plaintiffs' Equal Protection claim.

Defendant incorrectly asserts that Plaintiffs lack third-party standing to assert their Equal Protection Claims.⁶ "The rule for 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

⁵ To the extent that Defendant proffers any argument with respect to the merits of Plaintiffs' NVRA claims, Plaintiffs incorporate by reference the arguments made in its Motion for Preliminary Injunction. *See* ECF 21-1 at 13-21.

⁶ Plaintiffs also note that, despite asserting that Plaintiffs allege a violation of the right to vote, implicating the third-party standing doctrine, Defendant later states that "the classification does not involve a fundamental right." Mot. at 24. Defendant cannot have it both ways; this inconsistency undermines his entire argument regarding the application of third-party standing here.

them from bringing the claim on their own behalf.” *Planned Parenthood of Greater Texas Surgical Health Servs. v. Abbott*, 748 F.3d 583, 589 (5th Cir. 2014) (citing *Kowalski v. Tesmer*, 543 U.S. 125, 129–30 (2004)).

As to VOTE, it is axiomatic that an organization asserting associational standing may assert the rights of its members. “There is no prudential standing bar when member-based organizations advocate for the rights of their members.” *Memphis A. Philip Randolph Inst. v. Hargett*, 2 F.4th 548, 557 (6th Cir. 2021). Nonetheless, citing no law in support, Defendant asserts that “membership alone is not sufficient to allege a close relationship.” Mot. at 18. But as the Fifth Circuit has held, associational standing suffices to demonstrate a close relationship to establish third party standing. *See Texas Dems v. Hughs*, 860 Fed. App’x 874 (association bringing constitutional claim on behalf of members); *see also Vote.Org v. Callanen*, 39 F.4th 297, 304 (5th Cir. 2022) (noting that “voters and associations representing those voters bring [voting rights] lawsuits all the time”). There is no question that VOTE’s associational standing confers third-party standing as well. This ends the inquiry.

As to Power Coalition and the League, each also share a close relationship with the individuals who are currently affected by the Paperwork Requirement or will be once they become eligible to re-register to vote.⁷ Plaintiffs regularly assist and engage individuals with prior felony convictions who seek to re-register to vote after becoming eligible again. Compl. ¶¶ 16-19. This includes direct contact with individuals in assisting those individuals in registering to vote, educating individuals about the Paperwork Requirement, and advocating on behalf of those

⁷ Even if this Court determined that Power Coalition and the League could not assert third-party standing on behalf of individual voters, that determination would not dismiss their claims. As stated *supra*, it is well established that when one plaintiff has standing as against all defendants, the remaining plaintiffs may also have standing. *See* Part I.b. Because there is no question that VOTE’s associational standing allows them to assert the rights of their members, third-party standing is no bar to Plaintiffs’ claims.

individuals in support of better legislation affecting individuals with prior felony convictions who seek to vote. *Id.*; compare with *Vote.Org*, 39 F.4th at 304 (holding that an organization that did not assist in registering voters was less likely to have third-party standing to challenge a voter registration requirement).

Likewise, Defendant's assertion that the affected individuals are "as yet unascertained" strains credulity. *Cf.* Mot. at 19 (citing *Kowalski v. Tesmer*, 543 U.S. 125 (2004)). Plaintiff 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. *See* Ex. 1-2. The crux of Plaintiffs' Complaint is that the individuals affected by the Paperwork Requirement are specifically ascertainable. Compl. ¶¶ 48-51, 71-75. Defendant has in his possession a list of ineligible voters and a list of suspended voters, from which the parties can readily ascertain the voters who are on the suspended list who would be subject to the Paperwork Requirement, lists that are mandated by state law. *Id.* These lists are public record, and thus ascertainable to Plaintiffs as well. *See* La. R.S. 18:154; La. R.S. 176(a)(4); 52 U.S.C. § 20507. The voters on these lists comprise Plaintiffs' target communities—namely, traditionally marginalized individual whom Plaintiffs seek to engage in the political process. Compl. ¶¶ 13, 16, 18.

Finally, Defendant is incorrect that "none of the Plaintiffs have alleged a hindrance to any individual's ability to protect his own interests." Mot. at 18. The "hindrance" or "genuine obstacle" criteria for prudential standing is not a particularly high hurdle to clear. *Singleton v. Wulff*, 428 U.S. 106, 116 (1976). The Supreme Court has found a sufficient hindrance where the third-party might be "chilled from . . . assertion (of their own rights)" by a desire to protect their privacy "from the publicity of a court suit." *Carey v. Population Servs. Int'l*, 431 U.S. 678, 684 n.4 (1977)

(quoting *Singleton*, 428 U.S. at 117). For the reasons discussed in Plaintiffs' Motion for Protective Order, that is certainly the case here. ECF. 30-1 at 5-6. Likewise, the Court has found the mere lack of sufficient incentive for the third party to sue to meet this criteria. *Campbell v. Louisiana*, 523 U.S. 392, 397-98 (1998) (“[G]iven the economic burdens of litigation and the small financial reward available, ‘a juror dismissed because of race probably will leave the courtroom possessing little incentive to set in motion the arduous process needed to vindicate his own rights.’” (quoting *Powers v. Ohio*, 499 U.S. 400, 415 (1991))). Any individual voter impacted by this system is unlikely to have the resources or sufficient incentive to mount a lawsuit. Moreover, many voters who will be affected are currently incarcerated and are thus practically unable to challenge the Paperwork Requirement on their own behalf. *See, e.g.*, Compl. ¶¶ 33-34 (describing requirements for automatic restoration of rights for those who are no longer incarcerated). This is exactly the type of hindrance from “advancing their own constitutional rights against the [state] scheme” that third-party standing is intended to circumvent. *Cf. Kowalski v. Tesmer*, 543 U.S. 125, 126 (2004). Plaintiffs, then, are the most appropriate parties to assert the Equal Protection Claims on behalf of affected individuals.

ii. Plaintiffs plausibly allege that the Paperwork Requirement imposes an impermissible classification.

Plaintiffs plausibly allege that the Paperwork Requirement creates an impermissible classification between previously registered and newly registered voters, in violation of the Equal Protection Clause. As Plaintiffs allege, it is well established that “a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.” *Blumstein*, 405 U.S. at 336; Compl. ¶ 105. Thus, “the State may not by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. at 104-5. When a state arbitrarily imposes different requirements to register to vote among voters, it creates an

impermissible classification in violation of the Fourteenth Amendment. *Id.* When the right to vote is implicated, the classification is subject to strict scrutiny. *Blumstein*, 405 U.S. at 336.

First, Defendant’s assertion that “the classification does not involve a fundamental right” is patently false. As Plaintiffs allege, Louisiana law specifically grants certain individuals with felony convictions the right to vote who have complete the term of their sentence after a specified time. Compl. ¶¶ 21, 28-29. Because state law grants those individuals the right to vote, the Constitution requires that any regulation creating a classification on the franchise be narrowly tailored to meet a compelling governmental interest. Compl. ¶ 117; *Bush v. Gore*, 531 U.S. at 104-05. In other words, just because Louisiana *could* disenfranchise people with convictions, that does not mean it can forever treat those individuals—after their rights are restored—as second-class voters. *Bush v. Gore* is instructive. The Court was careful to explain that the right to vote in a presidential election is not guaranteed, but nonetheless, once that right is doled out, it must be allocated and implemented in accordance with Equal Protection. *Bush*, 531 U.S. at 104 (“The individual citizen has no federal constitutional right to vote for electors for the President of the United States . . . [but w]hen the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental . . .”). Thus, “whenever the State has adopted an electoral process for determining who will represent any segment of the State’s population, the Equal Protection Clause confers the substantive right to participate on an equal basis with other qualified voters.” *League of United Latin Am. Citizens v. Abbott*, 951 F.3d 311, 313 (5th Cir. 2020) (quotation marks omitted); *see also Stein v. Thomas*, 672 Fed. App’x 565, 569-70 (6th Cir. 2016) (“[O]nce a state legislature vests its citizens with election rights, those rights are fundamental and are protectable by the First and Fourteenth Amendments.”).

Applying strict scrutiny, the Paperwork Requirement is not narrowly tailored to any potential state interest, as there are much more efficient and indisputably less restrictive means for parish registrar offices to receive the information necessary to ascertain eligibility for affected individuals. Compl. ¶ 118. Because Louisiana maintains records of an individual's order of imprisonment, and because the channels of communications and policies already exist to share information regarding when an individual becomes ineligible, the State could readily communicate information to its agencies regarding when a voter with a felony conviction is eligible. Compl. ¶ 114. Thus, the Paperwork Requirement is not narrowly tailored because there is a less restrictive means to obtain the necessary information, a means which Defendant already implements for newly registered voters. Compl. ¶ 118.

Even if strict scrutiny did not apply, Plaintiffs plausibly allege that there is no rational basis for the Paperwork Requirement. It is irrational for registrars to not use the lists in their possession of ineligible voters to verify both the eligibility of new and suspended registrants. Compl. ¶ 116. The failure to use this information creates unnecessary risks for good-faith new registrants who may simply be mistaken about their eligibility to vote. *Id.* There is no rational basis for placing the burden on voters to submit documentation which the State already possesses. Compl. ¶ 119.

Next, Defendant insists that this Court analyze the burden on the right to vote by applying the *Anderson/Burdick* framework. This Court should decline Defendant's proposal to ignore Plaintiffs' pleadings. Even still, Plaintiffs would plausibly allege a burden on the right to vote even if this Court applied the *Anderson/Buridck* standard, for the same reasons that Plaintiffs plausibly allege that the Paperwork Requirement is an impermissible classification. Under the *Anderson/Burdick* test, a court "must weigh the character and magnitude of the asserted injury" to voting rights "against the precise interests put forward by the State as justifications for the burden

imposed by its rule.” *Texas League of United Latin Am. Citizens v. Hughs*, 978 F.3d 136, 143 (5th Cir. 2020) (internal quotation marks omitted). When the burden is not severe, a court should only uphold “reasonable, nondiscriminatory restrictions.” *Id.*

As stated above, Plaintiffs plausibly allege that the burden is severe. Voters must navigate an unwieldy documentation requirement about which even parish registrars are confused. Compl. ¶¶ 66-70; ECF 17-5 at 7-12. The requirement has resulted in the denial of the right to vote. Compl. ¶¶ 14, 77, 104-119. Even if the burden were not severe, it is unreasonable and discriminatory, treating similarly situated voters differently based solely on their status as a new or previous registrant, even though the State has the means to treat them the same. Defendant nakedly posits that the Paperwork Requirement “ensures voter eligibility, prevents voter fraud, and helps ensure election integrity.” Mot. at 23. Mere recitations of generally valid state interests do not undermine the sufficiency of Plaintiffs’ well-pleaded allegations. Moreover, as Plaintiffs allege, the Paperwork Requirement does nothing of the sort. Rather, Plaintiffs allege that the policy *increases* the likelihood for error and *decreases* the likelihood that eligible voters will register. Compl. ¶ 77. By placing the burden on the voter to submit documentation, rather than using the information he already has, Defendant’s policy does the opposite of what he purports it to do. Compl. ¶¶ 66-70, 76-77, 115. As such, there is no reason, much less a compelling reason, to implement the Paperwork Requirement. Compl. ¶ 119. Therefore, Plaintiffs plausibly allege an Equal Protection claim.

CONCLUSION

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

Respectfully submitted this 5th day of July, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, July 5, 2023, 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

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