

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

VOICE 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

**MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

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INTRODUCTION

Plaintiffs seek to preliminarily enjoin Louisiana’s requirement that voter registrants who temporarily lost the right to vote after a felony conviction, but have since had that right restored pursuant to Louisiana law, provide documentary proof of eligibility (also known as the “paperwork requirement”) to re-register to vote.

Louisianans are temporarily disenfranchised upon incarceration for a felony conviction, but the right to vote is restored automatically on discharge of sentence or once five years have elapsed since actual incarceration. Yet, under Defendant Secretary Ardoin’s (“Secretary”) current policy, a person who was previously registered to vote must present documentary proof of their renewed eligibility to become an active registered voter. If they do not provide, in person, specific paperwork from correction officials, election officials will deem them ineligible and reject their voter registration application. That practice violates the National Voter Registration Act (“NVRA”) which prohibits states from creating additional paperwork barriers to voter registration beyond the form itself. Because Louisiana law operates to automatically restore the right to vote to most people who have been convicted of felonies, denial of a valid voter registration form is not justified by the fact that the registrant at some point previously was ineligible to vote.

This additional paperwork burden is unnecessary to verify eligibility not only because the voter registration form itself requires an affirmation of eligibility but also because elections officials already have in their possession sufficient information to verify restoration of voting rights for registrants with past felony convictions. Because Plaintiffs are likely to succeed on the merits of their NVRA claims, are currently suffering and will continue to suffer irreparable harm because of the burdensome paperwork requirements for people with past convictions, and the balance of equities tips in favor of Plaintiffs, this Court should preliminarily enjoin this

unnecessary practice that only serves to erect stumbling blocks to the right to vote for eligible, historically marginalized voters.

BACKGROUND

I. Legal Background

a. Louisiana’s Felony Disenfranchisement Scheme

Under the Louisiana Constitution, “[e]very person who is both a citizen of the state and of the United States, upon reaching eighteen years of age, shall have the right to register and vote, except that this right may be suspended for a person . . . who is under an order of imprisonment for conviction of a felony.” La. Const. art. I § 10(A). Thus, the Louisiana Constitution gives the legislature the discretionary power to temporarily disenfranchise individuals who are “under an order of imprisonment for a conviction of a felony.” La. Const. Art. I § 10(A). From 1976 to 2019, the legislature temporarily disenfranchised persons with felony convictions through all stages of supervision, including incarceration, probation, and parole. But as described below, in 2019 and 2021, the Louisiana legislature limited disenfranchisement to those currently incarcerated or incarcerated within the last five years.

Consistent with the current law on disenfranchisement, Louisiana law requires parish registrars to send notices to active registered voters who are currently under an order of imprisonment and (1) have been incarcerated pursuant to the order in the last five years, or (2) have been convicted of an election offense, informing the individual that he must appear in person at the registrar’s office within twenty-one days to show cause why his voter registration should not be suspended. La. R.S. § 18:176(A) (citing La. R.S. §§ 18:171, 18:171.1). If the voter fails to do so, the registrar places the individual’s voter registration in “suspended” status. *Id.* That is, if an individual is a registered, active voter and is then convicted of a felony and placed under an order

of imprisonment, that voter's registration is placed in "suspended" status. *See* La. R.S. § 18:176(A). While on suspended status, a person is not registered to vote, for all intents and purposes, and may not cast a ballot.

b. Act 636

In 2019, Louisiana enacted Act 636, which provided 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 if the person submits documentation to the registrar of voters from the appropriate correction official showing that the person has not been incarcerated pursuant to the order within the last five years." 2018 Act 636 § 1 (codified at La. Rev. Stat. § 18:102(A)(1)(b) (2019)).

Under Act 636, individuals on probation or parole who had not been incarcerated pursuant to an order within the last five years could restore their right to vote, unless they were convicted of an election-related crime. 2018 La. Act No. 636 (H.B. 265). However, those who were still serving probation or parole after a sentence of confinement were required to submit paperwork demonstrating that they had not been imprisoned for that conviction within the last five years to restore their right to vote. Similarly, Act 636 allowed for a person who had previously been registered to vote but whose registration had been suspended due to imprisonment for a felony to be reinstated on the voter rolls, "when the person appears in the office of the registrar and provides documentation from the appropriate correction official showing that such person is no longer under an order of imprisonment or, if the person is under such an order, that the person has not been incarcerated pursuant to the order within the last five years" 2018 Act 636 (codified at La. R.S. § 18:177(A)(1) (2019)) (emphasis added).

In the months following passage of Act 636, the Department of Public Safety and Corrections (“DPSC”) created a “Voter Eligibility Certificate” within their internal database, which can only be produced by DPSC.

c. Act 127

In 2021, Louisiana enacted Act 127 to remove the paperwork requirement for voter restoration under La. R.S. § 18:102. Act 127 amended the disenfranchisement statute by striking the condition that an eligible person with a prior felony conviction present proof of eligibility to the registrar:

§ 102. Ineligible persons

A. No person shall be permitted to register or vote who is:

(1) * * *

(b) Except as provided in Subparagraph (c) of this Paragraph, 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 ~~if the person submits documentation to the registrar of voters from the appropriate correction official showing that the person has not been incarcerated pursuant to the order within the last five years.~~

Id. By removing the documentary proof of eligibility requirement in the statute establishing who is ineligible to vote, Act 127 made clear that an individual who has not been under an order of imprisonment or incarcerated pursuant to the order within five years has their right to vote restored *automatically*, regardless of whether they present documentary proof to the registrar. *See* Ex. 7, 2021 La. Act No. 127 (H.B. 378). In other words, a person who is no longer incarcerated, nor on probation or parole for a felony conviction—or has been on probation or parole for at least five years—is immediately restored the right to vote pursuant to Act 127 and the Louisiana Constitution.

Instead of placing the burden of proof on people with past convictions to prove their eligibility with paperwork, Act 127 requires DPSC and the United States Attorneys to share information on felony convictions and service of sentences with the Secretary of State, and the parish registrars. La. R.S. §§ 18:171, 171.1. Pursuant to Act 127, DPSC provides election officials with regularly updated lists of *only* those people with convictions who are currently ineligible to vote. *See id.* § 18:171(C)(1). Therefore, election officials have access to all the information they need to confirm voter eligibility without relying on the individual voter to provide documentation related to their felony convictions. *See id.*

II. The State’s Continued and Needless Imposition of the Paperwork Requirement

Despite Act 127, the Secretary has continued to impose a paperwork requirement on people with felony convictions seeking to register to vote if the relevant individual was previously registered prior to their felony conviction. Specifically, the Secretary has attempted to create a bifurcated process for accepting voter registration forms for people with convictions: (1) what it calls “registration,” for voters who had previously never been registered to vote, and (2) what it calls “reinstatement,” for voters who had previously registered to vote. This policy is entirely dependent on the Secretary’s construction of La. R.S. § 18:177 as the only means for “suspended” voters to once again become active voters.

As dictated by Act 127, new Louisiana eligible voter registrants with past felony convictions (i.e., those who are no longer under an order of imprisonment, or have not been incarcerated pursuant to the order for five years, except if convicted of an election-related crime), may, according to the law, simply “register”—that is, submit a voter registration form to become registered to vote. *See* La. R.S. § 18:101. However, an individual who is registered to vote but becomes ineligible because of a felony conviction is placed in “suspended” status and removed

from the active voter roll. *See* La. R.S. § 18:176. Once such an individual becomes eligible to vote again, they may only become “reinstated” to vote by submitting paperwork demonstrating their eligibility. *See* La. R.S. § 18:177.

Although Act 127 made restoration automatic for individuals who have not been incarcerated for a felony within the last five years, *regardless* of whether they have submitted paperwork confirming that they are not under an order of imprisonment or have not been incarcerated within the last five years, *see* Ex. 7, 2021 La. Act No. 127 (H.B. 378), the Secretary does not allow a person who has been suspended for a felony conviction to avail themselves of the ordinary registration process available to all other eligible voters. Rather, to become an active voter, the Secretary requires that the person present, in person, the documentary proof of eligibility outlined in the reinstatement process. This is true even if the individual submits a new voter registration form—it will be denied unless accompanied, in person, by the additional paperwork.

DPSC is required under Louisiana law to provide to a parish registrar, upon request, “information regarding a person who is under an order of imprisonment for conviction of a felony, including whether the person is under an order of imprisonment for conviction of a felony offense of election fraud or any other election offense . . . and whether the person has been incarcerated pursuant to the order within the last five years.” La. R.S. § 18:171(B)(2). Likewise, sheriffs and district attorneys are required under Louisiana law to provide to a parish registrar, upon request, “information regarding a person convicted of a felony . . . including . . . whether the conviction resulted in an order of imprisonment pursuant to which the person is incarcerated.” La. R.S. § 18:171(B)(1).

In August 2022, the Department of Public Safety and Corrections issued a regulation requiring that it issue the list of ineligible individuals pursuant to La. R.S. § 18:171 to parish

registrars on a monthly basis. *See* Ex. 3 at 8-13, Dep’t of Public Safety and Corrections, Dep’t Reg. No. IS-F-3 at 7(A)(1)(b) (Aug. 1, 2022). Unlike the list of suspended voters (which includes *many* currently eligible Louisianans), this list matches the contours of Louisiana law and only includes people who are currently disenfranchised, except those few individuals who were restored the right to vote since the last monthly batch was processed. Even for such individuals, election officials can access individualized information from correctional officials via a request pursuant to La. R.S. § 18:171(B).

III. Legislature Introduces HB 396 to Eliminate the Paperwork Requirement.

In 2022, HB 396 was introduced in the Louisiana House of Representatives. *See* Ex. 8, HB 396, 2023 Sess. (La.). The current language of the bill would require suspended voters to submit a “reinstatement form” instead of an ordinary voter registration form but would eliminate the additional documentary proof of eligibility requirement for most “suspended” voters. Ex. 8.

IV. The Paperwork Requirement is a Serious Burden on Potential Registrants.

The practice of requiring documentary proof of eligibility places a considerable burden on registrants. The time, resources, and knowledge required to navigate the process, as well as the frustration caused by differing requirements from various registrars are onerous burdens in their own right. These burdens have prevented eligible voters from exercising their right to vote.

Fundamentally, Defendant’s policy shifts the burden to individual voters to track down and request redundant records to prove their eligibility for registration. Declaration of Norris Henderson (“VOTE Decl.”) ¶¶ 8-9; Declaration of Gregory Finney (“Finney Decl.”) ¶¶ 8-17. Once an individual learns that their right to vote has been restored, they are faced with this immediate paperwork barrier. VOTE Decl. ¶ 8. The paperwork must be retrieved in person from the probation and parole office, but many people do not have cars or have to work a job during the hours that the office is open. *Id.*; Declaration of Nziki Wiltz (“Wiltz Decl.”) ¶ 13. An individual may have

to borrow a car, find and pay for public transportation, trade shifts with a coworker, miss work altogether, or may simply be unable to acquire this paperwork at all. *See, e.g.*, Wiltz Decl. ¶ 12.

If registrants are able to get to the probation and parole office, they are often faced with further barriers. State law does not specify whom the appropriate corrections official is, so individuals must guess as to how to obtain proof of eligibility. *See generally* La. R.S. § 18:171. This is particularly burdensome when an individual has a federal or out-of-state conviction because those individuals may not appear in the state's internal database for purposes of obtaining the voting rights certification. *See* Ex. 6 at 54:5-20. If the individual is able to acquire the paperwork in the first place, they must still then take it in person to the registrar's office. Wiltz Decl. ¶ 11, 12. Yet again, the transportation and time constraints make this requirement difficult or impossible to meet. VOTE Decl. ¶ 8.

Once in the registrar's office, the paperwork may be rejected, requiring the individual to make another trip to the probation and parole office *plus* another trip back to the registrar's office. *See, e.g.*, Finney Decl. ¶¶ 10-12. This is because some registrars only accept a specific document—called a voting rights certification, issued by the Office of Probation and Parole—that the appropriate corrections official (typically the desk clerk) will print from their internal “CAJUN” database. Finney Decl. ¶¶ 8, 12; Wiltz Decl. ¶ 10. The requirement that a registrant submit this *specific* form is not provided in the statute, *see generally* La. R.S. § 18:171, and so registrants and probation and parole offices have no reason to know exactly the documentation that a particular registrar may require, *see, e.g.*, Finney Decl. ¶¶ 10-12. Likewise, because some registrars only accept the VRC, it can be exceptionally difficult for registrants with out-of-state convictions to prove their eligibility. *See* Ex. 3, March 31 NVRA Letter at 9.

This process is complicated, time-consuming, frustrating, and costly in terms of transportation and lost work time, causing some eligible voters to be unable to vote at all. VOTE Decl. ¶ 6. These burdens are placed on a registrant even if the individual has long since become eligible to vote; the individual will remain “suspended” even if they have not voted for decades, and even if they have not been under an order of imprisonment or incarcerated pursuant to the order for many years.

V. Upcoming Election.

The next election scheduled in Louisiana is the statewide primary on October 14, 2023.¹ The deadline to register in person or by mail is September 13, 2023. *Id.* Plaintiffs plan to invest significant resources in promoting voter registration in advance of the October 2023 elections. *See* Declaration of M. Christian Green (“LWVLA Decl.”) ¶ 7; VOTE Decl. ¶ 5. Absent a preliminary injunction in this action, Plaintiffs will be forced to expend considerable resources educating voters affected by the paperwork requirement and some of Plaintiff VOTE’s members may not be able to participate. *See* LWVLA Decl. ¶ 11; VOTE Decl. ¶¶ 6, 9-11.

VI. Plaintiffs and Defendant.

Plaintiffs Voice of the Experienced (“VOTE”), Power Coalition for Equity and Justice (“PCEJ”), and the League of Women Voters of Louisiana (“LWVLA”) are nonprofit organizations whose missions include the voter registration and education of Louisiana’s most vulnerable residents. *See* VOTE Decl. ¶ 3, LWVLA Decl. ¶¶ 3-4; Decl. of Ashley Shelton (“PCEJ Decl.”) ¶¶ 3-4. Plaintiffs register voters as a part of their missions. VOTE Decl. ¶¶ 4-5; LWVLA Decl. ¶ 7; PCEJ Decl. ¶ 4. For VOTE in particular, the right to vote of their members is directly impacted; some members have had to miss an election because of the paperwork requirement. VOTE Decl.

¹ Louisiana Secretary of State, *2023 Elections*, sos.la.gov/ElectionsAndVoting/PublishedDocuments/ElectionsCalendar2023.pdf (Dec. 2022).

¶ 6. Plaintiffs are siphoning their resources because of Defendant’s policy. *See* VOTE Decl. ¶ 10; LWVLA Decl. ¶¶ 12-16; PCEJ Decl. ¶¶ 11-14.

Plaintiffs regularly assist voters with felony convictions. VOTE Decl. ¶ 5; LWVLA Decl. ¶ 7; PCEJ Decl. ¶¶ 8-12. As a result of their work, Plaintiffs regularly encounter “suspended” voters and assist them with obtaining the necessary documentation to register to vote. VOTE Decl. ¶ 6; LWVLA Decl. ¶ 7-9; PCEJ Decl. ¶¶ 8-12. Additionally, as Plaintiffs prepare for the upcoming election cycle, they face an imminent threat to their resources as they prepare to register an increased number of voters ahead of the 2023 statewide elections. *See* VOTE Decl. ¶ 10; LWVLA Decl. ¶¶ 12-16; PCEJ Decl. ¶ 13. The paperwork requirement is a strain on Plaintiffs’ limited resources because it requires overcoming additional hurdles beyond the standard voter registration requirements. *See* VOTE Decl. ¶ 10; LWVLA Decl. ¶¶ 12-16; PCEJ Decl. ¶¶ 13-14. Plaintiffs provided the statutorily required notice to Defendant of the violations of the National Voter Registration Act (“NVRA”) on October 28, 2022. *See* Ex. 2, October NVRA Notice Letter; Ex. 3, March NVRA Letter.

Defendant R. Kyle Ardoin is the Secretary of State of Louisiana and is sued in his official capacity. As the state’s chief election officer, La. R.S. § 18:18, Defendant is tasked with implementing the requirements of the Louisiana Election Code and the National Voter Registration Act, *id.*; 52 U.S.C. § 20509, which includes implementing the challenged policy.

LEGAL STANDARD

To obtain a preliminary injunction, Plaintiffs must show: (1) a substantial likelihood of success on the merits; (2) irreparable injury absent an injunction; (3) that the threatened injury to the plaintiff outweighs whatever damage the injunction may cause to the defendant; and (4) the injunction is not adverse to the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Planned Parenthood v. Sanchez*, 403 F.3d 324, 329 (5th Cir. 2005).

LEGAL ARGUMENT

I. Plaintiffs Have Standing.

As a threshold matter, to have Article III standing, a plaintiff must have suffered an injury-in-fact, defined as “an invasion of a legally protected interest which is (a) concrete and particularized; and (b) actual or imminent, not conjectural or hypothetical.” *OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (cleaned up). Additionally, the injury must be “fairly traceable to the challenged action of the defendant,” and “likely . . . that the injury will be redressed by a favorable decision.” *Id.*

VOTE has standing because its members are injured by the paperwork requirement. “Associational standing is derivative of the standing of the association’s members, requiring that they have standing and that the interests the association seeks to protect be germane to its purpose.” *OCA-Greater Houston*, 867 F.3d at 610. “Associational standing is a three-part test: (1) the association’s members would independently meet the Article III standing requirements; (2) the interests the association seeks to protect are germane to the purpose of the organization; and (3) neither the claim asserted nor the relief requested requires participation of individual members.” *Texas Democratic Party v. Benkiser*, 459 F.3d 582, 587 (5th Cir. 2006).

First, VOTE’s members would have standing independent of VOTE. VOTE’s membership consists of people impacted by the criminal legal system in Louisiana, including formerly incarcerated residents with prior felony convictions who are eligible to register to vote. *See* VOTE Decl. ¶¶ 3-4. Many of VOTE’s members have sought assistance from VOTE in obtaining documentary proof of eligibility to register to vote. *See, e.g.*, VOTE Decl. ¶¶ 5-6; Finney Decl. ¶¶ 15, 20. Some have been denied the right to vote because they were unable to meet the paperwork requirement in time for an election. VOTE Decl. ¶ 6. As such, VOTE’s members would be able to present an Article III injury-in-fact based on the burden on the right to vote caused by the

paperwork requirement. *See Scott v. Schedler*, No. CIV.A. 11-926, 2013 WL 264603 at *5 (E.D. La. Jan. 23, 2013) (holding that an individual voter had standing when a state agency “failed to meet their obligation” to the plaintiff under the NVRA). Second, the interests at stake—the right to vote for people with prior felony convictions—bears directly on VOTE’s mission to educate and engage formerly-incarcerated Louisianans. VOTE Decl. ¶ 10. Finally, VOTE’s members are fully represented by VOTE’s participation; the relief sought—enjoining the paperwork requirement—will naturally inure to VOTE’s members who are the direct targets of the requirement. As such, VOTE has associational standing.

Plaintiffs also have standing because Defendant’s paperwork requirement requires them to divert substantial resources from their respective organizational missions to educate eligible Louisianans with prior felony convictions on the state’s onerous paperwork requirement and assist them in navigating it.

“The Fifth Circuit has held that nonprofit organizations can suffer an Article III injury when a defendant’s actions frustrate their missions and force them to divert significant resources to counteract the defendant’s conduct.” *Harding v. Edwards*, 484 F. Supp. 3d 299, 314 (M.D. La. 2020) (citing *N.A.A.C.P. v. City of Kyle, Texas*, 626 F.3d 233, 238 (5th Cir. 2010)). 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); *see also OCA-Greater Houston*, 867 F.3d at 612 (holding that an organization had standing when it “went out of its way to counteract the effect of Texas’s allegedly unlawful voter-interpreter restriction”). In *Scott*, the nonprofit plaintiff had standing because their representative organized voter registration drives in response to the defendant’s failure to comply with Section 7 of the

NVRA. *See id.* Here, Plaintiffs are small organizations tasked with engaging hundreds of thousands of voters in Louisiana; the unlawful paperwork requirement has caused Plaintiffs to shift their finite resources to providing specialized support to eligible voters with felony convictions to ensure that they have the proper paperwork to register to vote. *See* VOTE Decl. ¶ 10; LWVLA Decl. ¶¶ 12-16; PCEJ Decl. ¶¶ 11-12. Because of the unlawful paperwork requirement, Plaintiffs have “expended resources registering voters in low registration areas who would have already been registered if the appellees had complied with the requirement[s] under the NVRA.” *Ass’n of Cmty. Organizations for Reform Now v. Fowler*, 178 F.3d 350, 361 (5th Cir. 1999); *see also* VOTE Decl. ¶¶ 9-10; LWVLA Decl. ¶¶ 12-16; PCEJ Decl. ¶¶ 8-12. Plaintiffs face a concrete threat of strained resources from increased voter registration and the according increased confusion brought by the paperwork requirement, as Louisiana voters face a major statewide election cycle this year. *See* VOTE Decl. ¶¶ 9-10; LWVLA Decl. ¶¶ 12-16; PCEJ Decl. ¶ 13.

II. Plaintiffs Are Substantially Likely to Succeed on the Merits of their Claims Against Defendant.

Defendant’s policy of requiring documentary proof of eligibility violates the National Voter Registration Act for several reasons. The challenged paperwork requirement is subject to the NVRA because it denies access to the typical modes of voter registration for eligible potential voters. The Secretary’s relabeling of the process as “reinstatement” does nothing to change this.

a. The NVRA preempts Louisiana’s documentary proof of eligibility requirement imposed on “suspended” voters with past felony convictions.

Plaintiffs are likely to succeed on the merits of their NVRA claims because Louisiana’s documentary proof of eligibility requirement is preempted by the NVRA, as confirmed by Supreme Court precedent. As described above, Louisiana has a policy and practice of requiring “suspended” voters to provide documentation proving that they are eligible before allowing them to register to vote. *See also* Ex. 1 at 2-3. This paperwork requirement violates the NVRA in at least

three ways: (1) the Secretary’s policy of requiring facially eligible voters to provide additional documentation to prove their eligibility violates Section 6 of the NVRA, which requires states to “accept” and “use” the Federal Voter Registration Form (the “Federal Form”), *see* Ex. 5 (Section 6); (2) Louisiana has a state mail-in voter registration form (the “State Form”), *see* Ex. 6, but the Secretary’s policy requires suspended voters to provide paperwork accompanying that form that is not necessary to assess the eligibility of the applicant (Section 6); and (3) the Secretary’s policy results in a failure of the State to ensure that eligible voters who register by the deadline are added to the rolls (Section 8). Plaintiff provided the statutorily required notice to Defendant of the violations on October 28, 2022. *See* Ex. 2.

i. Louisiana’s policy requiring facially eligible voters using the Federal Form to provide additional documentation to prove their eligibility violates the “accept and use” provision of Section 6.

Plaintiffs are likely to succeed on the merits because Louisiana’s paperwork requirement is preempted by Section 6 of the NVRA, which requires states to “accept and use” the Federal Form for voter registration. *See* 52 U.S.C. § 20505(a)(1).

Pursuant to the NVRA, the Federal Form “is to be accepted as sufficient” for voter registration. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 2, (2013) [*ITCA*]. The Federal Form requires voters to attest under penalty of perjury that they meet their state’s requirements for registration when registering to vote. *See* Ex. 5. The Federal Form does not require additional documentation, *see id.* The state-specific instructions to the Federal Form for Louisiana do not include any additional requirement to provide documentation.² As such, this

² To Plaintiffs’ knowledge, Defendant has not requested that the Election Assistance Commission include this requirement to Louisiana’s state-specific instructions on the Federal Form. *See ITCA*, 570 U.S. at 20 (noting that this option is available to states seeking to add requirements to the Federal Form for their state).

attestation establishes an applicant’s facial eligibility, absent reliable information establishing ineligibility. *See* 52 U.S.C. § 20508(b).

In *ITCA*, Arizona had enacted a law requiring voters using the Federal Form to submit documentary proof of their citizenship. The Court held that the NVRA preempted the Arizona law because “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form” absent evidence that the applicant is ineligible. *Id.* at 15. Accordingly, the NVRA “acts as both a ceiling and a floor” for registering to vote in federal elections. *Id.* at 18.

Louisiana is indisputably requiring “suspended” individuals to provide documentation proving eligibility before they are allowed to become an active voter. Ex. 1; Ex. 3 at 6-17; Wiltz Decl. ¶ 11; Finney Decl. ¶¶ 8-12. Like the Arizona law struck down by the Supreme Court in *ITCA*, Louisiana’s requirement that registrants using the Federal Form provide documentary proof of eligibility to register is preempted by the NVRA. *See, e.g., ITCA*, 570 U.S. at 15; 52 U.S.C. §§ 20505(a)(1), 20508(b).

ii. Louisiana’s policy requiring facially eligible voters to provide additional documentation for the State Form violates Sections 6 and Section 9.

Likewise, for individuals using the State Form, the paperwork requirement exceeds the amount of information that a state can require for voter registration in federal elections under Sections 6 and 9. *See* 52 U.S.C. §§ 20505(a)(2), 20508(b). In addition to the Federal Form, Section 6 allows states to develop and use their own state mail voter registration form for registration in federal elections. 52 U.S.C. § 20505(a)(2). However, those state mail voter registration forms must meet the requirements of Section 9. *Id.* Section 9 imposes certain requirements on state mail voter registration forms—including an attestation of voter eligibility and signature under penalty of perjury—but also sharply restricts the additional information states can require from those seeking

to register to vote in federal elections. A state mail voter registration “may require only such identifying information . . . and other information . . . as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration.” 52 U.S.C. § 20508(b)(1); *Fish v. Kobach*, 840 F.3d 710, 737-38 (10th Cir. 2016) (construing Section 5 of the NVRA but holding that the requirements of Section 5 and Section 9 are “analogous”).

Thus, the NVRA “limits [a state’s] discretion to request information for this purpose to the minimum amount of information necessary” to establish eligibility. *Fish*, 840 F.3d at 737; 52 U.S.C § 20508(b). “[I]n order for a state advocating for a [documentary proof] regime to rebut the presumption that the attestation requirement is the minimum information necessary for it to carry out its eligibility-assessment and registration duties, it must make a factual showing that the attestation requirement is insufficient for these purposes.” *Fish*, 840 F.3d at 738. In *Fish*, the Tenth Circuit held that Kansas failed to provide any evidence that documentary proof of citizenship was required to verify the citizenship of individuals who registered at a department of motor vehicles office. *See id.*

Likewise, Defendant here has only offered the voter’s presence on the “suspended” list as evidence sufficient to require additional information from the voter to register. Ex. 1 at 2-3. However, an individual’s “suspended” status due to a felony conviction is not evidence that they are presently disenfranchised. *See supra* at Background, Part II. Moreover, any information needed for Defendant to verify the eligibility of those in “suspended” status is already available to election officials. *See id.* That Defendant does not require new registrants with past convictions to provide documentary proof of their eligibility, *see* Ex. 1 at 3, establishes that this paperwork is not

“necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration.” 52 U.S.C. § 20508(b)(1).

First, the fact of a voter’s presence on the “suspended” list does not justify additional paperwork because presence on this list is not evidence of current ineligibility. Most Louisianans with past convictions will have their right to vote restored because an individual is automatically eligible to vote when their order of imprisonment expires, or when five years have passed since actual incarceration (so long as they were not convicted of an election crime). La. Const. Art. I § 10(A); La. R.S. § 18:102(A). Because of automatic restoration, there is no reason to believe that a person who is attesting to their eligibility on the voter registration form is ineligible to vote.³ Re-enfranchised individuals are *not* taken off the “suspended” list when their rights are restored. *See* Ex. 1 at 2-5. Thus, the list of “suspended” voters necessarily includes both currently disenfranchised individuals as well as people who have already had their right to vote restored. Therefore, having been “suspended” does *not* establish ineligibility, such that evidence of an individual’s presence on that list is an insufficient basis to require additional information.

Second, election officials have the necessary information available to them, obviating the need for the registrant to provide additional documentation. To facilitate voter-roll maintenance,⁴ DPSC sends to the Louisiana Department of State information regarding “any person currently under the custody or supervision of the Department of Public Safety and Corrections” who is not yet eligible to vote. La. R.S. § 18:171; Ex. 2 at 8-13. Similar requirements apply to U.S. Attorneys

³ For example, an individual who has recently turned eighteen years old or who previously resided out of state does not need to provide extra documentation showing they have come of age or have moved in order to register—they simply attest with their signature on the voter registration application that they are eligible. That attestation is sufficient to establish facial eligibility, and it is sufficient with respect to a prior felony conviction as well.

⁴ The Help America Vote Act (“HAVA”) requires states to maintain a centralized statewide list of every legally registered voter in the state. 52 U.S.C. § 21083(a)(1)(A). HAVA further requires states to “coordinate the[ir] computerized list[s] with State agency records on felony status.” *Id.* § 21083(a)(2)(A)(ii).

for federal convictions. La. R.S. § 18:171.1. In turn, the Secretary of State’s Office is required to report that information to the parish registrars at least quarterly. La. R.S. § 18:171(C)(4). In August 2022, the Department of Public Safety and Corrections issued a regulation requiring that it issue the list of ineligible individuals pursuant to La. R.S. § 18:171 to parish registrars monthly. *See* Ex. 2 at 8-13; Ex. 6 at 52:2-6; 68:19-22 (Defendant’s office confirming that Defendant receives this monthly report of ineligible individuals). Unlike the list of “suspended” voters, *this* list provided by DPSC matches the contours of Louisiana law and only includes people who are currently disenfranchised, except those few individuals whose right to vote was restored since the last monthly batch was processed.

DPSC is also required under Louisiana law to provide to a parish registrar, upon request, “information . . . regarding a person who is under an order of imprisonment for conviction of a felony, including whether the person is under an order of imprisonment for conviction of a felony offense of election fraud or any other election offense . . . and whether the person has been incarcerated pursuant to the order within the last five years.” La. R.S. § 18:171(B)(2). Likewise, sheriffs and district attorneys are required under Louisiana law to provide to a parish registrar, upon request, “information regarding a person convicted of a felony . . . including . . . whether the conviction resulted in an order of imprisonment pursuant to which the person is incarcerated.” La. R.S. § 18:171(B)(1).

This extensive statutory scheme for sharing incarceration and supervision data among agencies means that the very information that the state seeks is *already in its possession*. Yet the state burdens the facially eligible voter with navigating a complex, confusing, time-consuming, and often expensive process to deliver to the state information which they already have, based solely on their presence on an outdated list. *See* VOTE Decl. ¶¶ 6-8; Wiltz Decl. ¶¶ 11-16; Finney

Decl. ¶¶ 8-15. Because the information regarding ineligibility is already available to election officials, the state is requiring information beyond what is “necessary to enable the appropriate State election official to assess the eligibility of the applicant.” 52 U.S.C. § 20508(b).⁵

* * *

Applicants under “suspended” status are facially eligible, their presence on the “suspended” list does not establish otherwise, and the information proving their eligibility is already available to the state. Any additional documentation requirement therefore represents Louisiana’s failure to “accept and use” the Federal Form or a conforming State form. *See* 52 U.S.C. §§ 20505(a)(1), 20508(b); *ITCA*, 570 U.S. at 15. Therefore, Plaintiffs are likely to succeed on their claim that Louisiana’s documentary proof of eligibility requirement, as applied to applicants using both Federal and State Forms, is preempted by Section 6 of the NVRA.

iii. Louisiana’s refusal to register facially eligible applicants based solely on their prior “suspension” violates Section 8 of the NVRA.

Additionally, Plaintiffs are likely to succeed on the merits because Louisiana’s documentary proof of eligibility requirement impedes registrars from placing facially eligible registrants on the voter rolls in violation of Section 8 of the NVRA. *See* 52 U.S.C. § 20507(a)(1). Section 8 requires that each State “ensure that any eligible applicant is registered to vote” if their valid registration form is received “not later than the lesser of 30 days, or the period provided by State law, before the date of the election.” 52 U.S.C. § 20507(a)(1). Yet, Louisiana refuses to add facially eligible individuals to the voter rolls until they provide documents proving their eligibility, an unlawful requirement. *See supra* Legal Argument, Part II.a.i.; *see also ITCA*, 570 U.S. at 11-12.

⁵ *See also* Ex. 6 at 62:11-16 (acknowledging that it is unnecessary to require registrants to physically go to a registrar’s office to present documentation); *id.* at 51:22-52:7 (acknowledging that documentation for in-state convictions is unnecessary because monthly reports from DPSC informs the Secretary as to who is ineligible to register).

As established above, “suspended” voters who fill out a registration form attesting that they are eligible to vote are facially eligible, as all other voters are. *See supra* Legal Argument, Part II.a.ii. Their presence on the suspended list does not establish otherwise. *See id.* No additional documentation is needed to prove eligibility. And even if it were, the necessary information is available to the state. *See id.* Louisiana’s additional paperwork requirement prohibits parish election officials from registering otherwise eligible voters to vote in federal elections unless they provide documentary proof of their eligibility to vote. Because the NVRA requires that each State “ensure that any eligible applicant is registered to vote,” Louisiana’s refusal to register eligible applicants on the “suspended” list absent documentary proof of eligibility is in direct violation of the statute. 52 U.S.C. § 20507(a)(1). Plaintiffs are therefore likely to succeed on their claim that Louisiana’s law is preempted by Section 8 of the NVRA.

b. The NVRA applies equally to all individuals seeking to register to vote regardless of Louisiana’s arbitrary “suspension” status.

The NVRA applies to the Secretary’s policy regardless of his attempt to 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. Defendant’s policy divides the pool of individuals with prior felony convictions into two groups: (1) those who were not registered to vote in Louisiana before their conviction, and (2) those who were previously registered to vote in Louisiana before their conviction, calling this second group “suspended” voters. *See Ex. 1* at 2-3. The state then calls the process of registering to vote “registration” for the former group, and “reinstatement” for the latter. *Id.* Defendant justifies requiring additional documentation from the second group on the grounds that they are purportedly engaging in a different process. *Id.*

But relabeling the process does not transform it into something new; it is still voter registration under federal law. Whether previously registered or not, these individuals all seek the same outcome: to become active registered voters in Louisiana. 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. Calling the process by another name is a distinction without a difference and the Secretary’s “relabeling” of registration for suspended voters is a “sure sign that [his] . . . distinction is made-to-order.” *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 399 (2010).

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. 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.”). Simply put, Louisiana cannot duck the NVRA’s requirements by calling voter registration something else.⁶ The NVRA applies equally to all individuals seeking to register to vote. Therefore, Plaintiffs are likely to succeed on the merits that the NVRA applies to the paperwork requirement regardless of the Secretary’s arbitrary labels.

III. Plaintiffs Will Suffer Irreparable Harm from the Documentary Proof of Eligibility Requirements.

“To satisfy the second prong of the preliminary-injunction test, Plaintiffs must show that in the absence of an injunction they are ‘likely to suffer irreparable harm.’” *Mi Familia Vota v. Abbott*, 497 F. Supp. 3d 195, 217 (W.D. Tex. 2020) (quoting *Daniels Health Scis., L.L.C. v.*

⁶ For example, Louisiana does not, and could not under the NVRA, treat voter registrations from prior residents of Louisiana who left the state, were removed from the rolls, and have now returned to Louisiana and seek to register to vote differently than new residents of Louisiana. All voter registrants are entitled to the protections of the NVRA regardless of their prior voter registration history.

Vascular Health Scis., L.L.C., 710 F.3d 579, 585 (5th Cir. 2013)). Without a preliminary injunction, Plaintiffs will suffer irreparable harm in the lead up to the October 2023 gubernatorial election in the form of infringements on or even denials of their members’ or constituents’⁷ registration applications and irreversible expenditure of Plaintiffs’ limited resources.

The right to vote is fundamental and denial or abridgement of the right to vote is an irreparable injury. *See, e.g., Harris v. Graddick*, 593 F. Supp. 128, 135 (M.D. Ala. 1984) (“[A]ny illegal impediment to the right to vote, as guaranteed by the U.S. Constitution or statute, would by its nature be an irreparable injury.” (citing *Reynolds v. Sims*, 377 U.S. 533, 585 (1964))); *see also Mich. State A. Philip Randolph Inst. v. Johnson*, 833 F.3d 656, 669 (6th Cir. 2016) (“When constitutional rights are threatened or impaired, irreparable injury is presumed. A restriction on the fundamental right to vote therefore constitutes irreparable injury.”) (citing *Obama for Am. v. Husted*, 697 F.3d 423 (6th Cir. 2012)). The in-person and mail registration deadline for the 2023 gubernatorial primary is September 13, 2023. As the registration deadline approaches, tens of thousands of eligible potential Louisiana voters—including VOTE members and individuals assisted by Plaintiff groups—will face the considerable burden of the paperwork requirement when they seek to register to vote. *See supra* Background, Part III (describing the burden on individual registrants). This burden of retrieving in person, during business hours, from an individual unspecified in the statute, the correct paperwork, which is also unspecified in the statute, and then taking that paperwork in person during business hours to the registrar’s office, facing rejection of the paperwork and having to start the process all over again, is sufficient to deter many eligible voters from registering at all. *See* Finney Decl. ¶ 19; Wiltz Decl. ¶ 16. As such, if the Court does

⁷ Plaintiff VOTE faces the irreparable harm of the obstacles placed on the registration of their own members. The remaining Plaintiffs face the irreparable harm of the obstacles placed on the registrations of individuals they assist in the process.

not grant preliminary relief, those voters may lose the right to vote before the Court can grant an effective remedy in the normal course.

The paperwork requirement also causes Plaintiffs, all of whom are non-profit organizations, to spend additional time and money to register voters and assist them with tracking down the relevant paperwork. *See supra* Background, Part IV. Without a preliminary injunction, Plaintiffs will expend their limited resources navigating Louisiana’s complex bureaucratic records system, and will continue to suffer the ongoing, irreparable harm inflicted by the documentary proof of eligibility requirements. The paperwork requirement will hamstring Plaintiffs’ limited resources to engage in voter registration and engagement in the run up to the 2023 gubernatorial election. The time and resources spent tackling the paperwork requirement through education and voter assistance will necessarily detract from Plaintiffs’ ability to engage in additional voter engagement. *See id.* Once Plaintiffs lose the opportunity to engage voters during the 2023 election cycle—and once their members lose the right to vote in the election—“there can be no do-over and no redress.” *League of Women Voters of North Carolina v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014).

IV. The Balance of the Equities Weighs in Plaintiffs’ Favor and A Preliminary Injunction Would Serve the Public Interest.

The “balance of the equities” and the “public interest,” the third and fourth elements of the test for a preliminary injunction, “merge when the Government is the opposing party.” *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 852 (M.D. La. 2022). The balance of equities and the public interest both weigh in favor of a preliminary injunction.

a. The Balance of the Equities Plainly Weighs in the Plaintiffs’ Favor.

First, the ongoing injury to Plaintiffs and to prospective voters outweighs any interest that Defendant has in the paperwork requirement. As discussed above, voters across Louisiana,

including many current and potential members of Plaintiffs-organizations or the individuals they serve, will be forced to track down, request, and even pay for redundant records to prove they are eligible to register. *See supra* Background, Part III. Many will be unable to register because they cannot access the records, identify the appropriate corrections official to obtain proof or overcome other stumbling blocks. *E.g.*, VOTE Decl. ¶¶ 4-6. Such voters may miss the voter registration deadline and be denied the opportunity to vote in the November election.⁸ Additionally, Plaintiffs will be forced to expend significant resources—including time, volunteer power, money—to assisting and educating voters on the hurdles of registering after a felony conviction. VOTE Decl. ¶ 10; LWVLA Decl. ¶¶ 12-16; PCEJ Decl. ¶¶ 8-14. This expenditure of Plaintiffs’ limited resources cannot be remedied at a later date.

The Secretary has *no* legitimate interest in the paperwork requirement and will not be harmed by the requested preliminary relief. First, the requirement is unnecessary, given that Defendant already maintains and have access to the information they burden the prospective voter with supplying. *See supra* Legal Argument, Part II(a)(ii); *see also* Ex. 6 at 6:11-16 (acknowledging that it is unnecessary to require registrants to physically go to a registrar’s office to present documentation); *id.* at 51:22-52:7 (acknowledging that documentation for in-state convictions is unnecessary because monthly reports from DPSC informs the Secretary as to who is ineligible to register). Second, the injunction Plaintiffs seek does not change any of Louisiana laws regarding eligibility, but merely ensures that those who are already eligible may submit a voter registration form. Third, election officials already have a mechanism for registering voters on the suspended list: they may simply register the voters the same way they would register a new applicant with a prior felony conviction. Any minor administrative changes that result in removing an additional

⁸ The state, through its attorney, has acknowledged that removing the paperwork requirement would “mak[e] it easier” on individuals to register. Ex. 6 at 62:7-18 (concerning HB 396, which would eliminate the paperwork requirement).

requirement for voter registration are far outweighed by the infringement of Plaintiffs’ and voters’ fundamental rights.

b. A Preliminary Injunction Serves the Public Interest.

An injunction also serves the public interest. The Supreme Court has held that “voting is of the most fundamental significance under our constitutional structure.” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (citations omitted). As such, Congress passed the National Voter Registration Act to ensure that every eligible voter can vote, and there is an inherent public interest in fulfilling its purpose. *See* 52 U.S.C. § 20501. “Voter enfranchisement cannot be sacrificed when a citizen provides the state the necessary information to register to vote but the state turns its own procedures into a vehicle to burden that right.” *Action NC v. Strach*, 216 F. Supp. 3d 597, 648 (M.D.N.C. 2016) (holding that there is a public interest in enjoining conduct that violated the NVRA to fulfill the Act’s purpose). Thus, it is clear that the public has a strong interest in all eligible voters being able to vote, because “favoring enfranchisement and ensuring that qualified voters exercise their right to vote is always in the public interest.” *Id.* at 648 (cleaned up). This is especially true here, where the burden on the right to vote can be simply remedied by enjoining unnecessary and redundant conduct.

CONCLUSION

For the foregoing reasons, this Court should grant Plaintiffs’ Motion for Preliminary Injunction.

Respectfully submitted this 22nd day of May, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, May 22, 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

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