

unable to travel; elderly Mississippians who are wheelchair-users and who have difficulty leaving their own homes due to inaccessible structures; and voters with disabilities who reside in nursing homes.

3. Many of those voters with disabilities require assistance with the return of their completed ballot, which must be physically mailed to election officials in order to be counted.

4. This action challenges the newly enacted Mississippi Senate Bill 2358¹ (2023) (“S.B. 2358”), which impermissibly restricts voters with disabilities from having a person of their choice assist them in submitting their completed mail-in absentee ballots.

5. Mississippi voters with disabilities will be barred from receiving assistance from the people they trust—and some are likely to be disenfranchised—in the upcoming August 2023 Primary Election, November 2023 general election, and beyond if S.B. 2358 is permitted to go into effect on July 1, 2023.

6. However, S.B. 2358 is preempted by federal law, and this Court should enjoin the law before it takes effect on July 1, 2023, and declare it unlawful.

7. Recognizing that voters with disabilities and other challenges are disproportionately denied access to voting, Congress has specifically amended the Voting Rights Act of 1965 (“VRA”) to ensure that people who require assistance in voting due to disability, blindness, or inability to read or write can receive assistance from someone they trust. *See* 52 U.S.C. § 10508.

8. In particular, Section 208 of the VRA guarantees voters the right to “be given assistance by a person of the voter’s choice.” *Id.* The only exception to that rule is that the

¹ *Senate Bill 2358*, Mississippi Legislature, Regular Session 2023, <http://billstatus.ls.state.ms.us/documents/2023/pdf/SB/2300-2399/SB2358SG.pdf> (last visited May 30, 2023).

assistance cannot come from “the voter’s employer or agent of that employer or officer or agent of the voter’s union.” *Id.*

9. That right to assistance applies to all aspects of the voting process—from registration, to casting a ballot, to having that vote counted properly—and regardless of the method by which the voter lawfully chooses to vote. *OCA-Greater Houston v. Texas*, 867 F.3d 604, 614-15 (5th Cir. 2017).

10. In contravention of Section 208, S.B. 2358 criminalizes individuals for assisting voters with the delivery of their ballots. S.B. 2358 provides, in relevant part, that “[a] person shall not knowingly collect and transmit a ballot that was mailed to another person, except” for:

- (1) an election official while engaged in official duties as authorized by law;
- (2) an employee of the United States Postal Service while engaged in official duties as authorized by law;
- (3) any other individual who is allowed by federal law to collect and transmit United States mail while engaged in official duties as authorized by law;

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And under federal law, voters cannot be denied their right to entrust a ballot to a person of their choice.

14. If S.B. 2358 is not enjoined, Mississippi voters may no longer rely on social workers, voter services organizations, neighbors, or even trusted friends to assist them in returning their mail-in absentee ballots without exposing them to criminal liability.

15. Moreover, because “family member, household member, and caregiver” are not defined under the statute, the law is likely to chill any assistance provided by non-immediate relatives, volunteers, staff members at nursing homes, long-term care facilities, group homes, or hospitals, or other individuals that could provide critical and necessary assistance to voters.

16. According to the U.S. Census Bureau, over 18 percent of Mississippians have a disability²—more than the national average.³ According to a survey of the 2020 General Election, ten percent of voters with disabilities who cast an absentee ballot by mail reported needing assistance in returning their ballots.⁴

17. S.B. 2358 makes it harder for all of those voters to cast their ballot and it also risks disenfranchising entirely blind, disabled, or low-literacy voters who rely on friends, neighbors,

18. By criminalizing a part of the voting pro

other resources from their charitable purposes to educate their members, who may be assisting voters with disabilities, and Mississippi voters who require assistance navigating the absentee ballot process. LWV-MS also has a member directly affected by S.B. 2358 who risks prosecution if she continues to assist voters by returning absentee ballots.

22. S.B. 2358 directly conflicts with Section 208 of the VRA, by impermissibly narrowing the universe of people who may assist in the voting process, disrupting the balance that Congress has struck. Under the Supremacy Clause of the U.S. Constitution, federal law preempts conflicting state law. Thus, S.B. 2358 must be declared unlawful.

23. Accordingly, Plaintiffs bring this action against Defendants Gerald A. Mumford, Hinds County Attorney, and Elizabeth Ausbern, Chickasaw County Attorney, who are charged with enforcing S.B. 2358; against Lynn Fitch, Attorney General of Mississippi, who is charged with defending the constitutionality of Mississippi statutes and who is the chief legal officer of the state; and Michael D. Watson, Jr., Secretary of State of Mississippi, who is the chief elections officer in the state and provides guidance to county officials and the public on the absentee voting process.

24. Because S.B. 2358 threatens to undermine the next election in Mississippi by disenfranchising some of its most vulnerable citizens, Plaintiffs respectfully ask this Court for urgent injunctive relief and a declaratory judgment that S.B. 2358 is preempted by Section 208 of the VRA.

Const. art. VI, cl. 2; Section 208 of the Voting Rights Act, 52 U.S.C. § 10508; and 42 U.S.C. § 1983.

26. This Court also has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202; and Rules 57 and 65 of the Federal Rules of Civil Procedure to grant the declaratory and injunctive relief requested. Upon prevailing, Plaintiffs would further be entitled to fees and costs pursuant to 52 U.S.C. § 10310(e) and 42 U.S.C. § 1988.

27. Venue is proper in this District pursu

30. As Mississippi's P&A, DRMS is specifically authorized to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with disabilities. 42 U.S.C. § 15043(a)(2)(A)(i).

31. All Mississippi voters with disabilities are constituents of DRMS. As a P&A, DRMS is accountable to members of the disability community and is authorized under federal law to represent the interests of Mississippians with disabilities. DRMS operates under the direction of a board of directors who oversees its goals and priorities in fulfilling DRMS's mandate.

32. Protecting the voting rights of individuals with disabilities is germane to DRMS's purpose and mission. DRMS effectuates this mission by assisting Mississippi voters in every step of the voting process from voter registration to monitoring polling accessibility.

33. In 2009, DRMS created and continues to operate a voting hotline where those who have trouble voting can call and get assistance statewide. DRMS also employs individuals to go into mental health facilities where they conduct disability rights' presentations. These presentations include providing information for Mississippians with disabilities about their voting rights.

34. Plaintiff League of Women Voters of Mississippi ("LWV-MS") is a non-profit, non-partisan, grassroots organization dedicated to improving governance in Mississippi by engaging all Mississippians in the decisions that impact their lives. LWV-MS was established in the 1920s. LWV-MS seeks to bring citizens into the civic process through community outreach and capacity building, voter registration and education, and community-oriented policy advocacy.

35. LWV-MS is the Mississippi affiliate of the League of Women Voters of the United States (“LWVUS”). LWV-MS is a nonprofit 501(c)(4) membership organization, which relies on non-deductible dues to fund its action and advocacy efforts. LWV-MS conducts voter service and education activities.

36. LWV-MS is a member-based organization and most of the League’s work is made possible by volunteers. LWV-MS has five local Leagues: East-Central Mississippi (serving Meridian and Lauderdale County), Jackson-Area (serving Hinds, Madison, and Rankin Counties), Mississippi Gulf Coast (serving Hancock, Harrison, and Jackson Counties), Oxford-North Mississippi (serving Marshall, Union, Pontotoc, Calhoun, Yalobusha, Panola, Tate, Benton, Lee, and Desoto Counties), and Pine Belt (serving Hattiesburg and the surrounding area, Forrest, and Lamar Counties). LWV-MS has approximately 197 members, living in various communities across the state.

39. Plaintiff Mamie Cunningham is an 83-year-old, Black woman, and a lifelong resident of Okolona, (Chickasaw County), Mississippi. She is a retired public-school teacher. For the last 64 years, Ms. Cunningham has been registering voters and advocating for civil rights in Mississippi. Since approximately 2000, Ms. Cunningham has assisted members of her community who experience blindness, immobility, illiteracy, and old age, with absentee voting in Mississippi. Part of this assistance has included mailing the ballot back after it is completed. Ms. Cunningham has become a trusted member of her community regarding voting, which is why many rely on her to return their ballot. Ms. Cunningham wishes to continue providing assistance to members of her

rely on other people to assist him on these days, including asking his neighbor to get his mail. Mr. Whitley has relied on both Ms. Cunningham and Ms. Gunn in the past to assist him in voting, including the mailing of his completed absentee ballot. Mr. Whitley wishes to continue to have them assist him but he does not want to put them at risk of facing criminal penalties.

42. Defendant Lynn Fitch is the Attorney General of the State of Mississippi and is sued in her official capacity as the State's chief legal officer. Miss. Code Ann. § 7-5-1. Attorney General Fitch is responsible for "interven[ing] [and arguing] the constitutionality of any statute

provides guidance to the public about voting and elections, including instructions for completing and returning absentee ballots.⁶

44. Defendant Gerald A. Mumford is the County Attorney for Hinds County and is sued in his official capacity. County Attorney Mumford is charged with “full responsibility” for prosecuting misdemeanors. Miss. Code Ann. § 19-23-11.

45. Defendant Elizabeth Ausbern is the County Attorney for Chickasaw County and is sued in her official capacity. County Attorney Ausbern is charged with “full responsibility” for prosecuting misdemeanors. Miss. Code Ann. § 19-23-11.

FACTUAL ALLEGATIONS

I. Federal law guarantees voters with disabilities and lower literacy skills the right to assistance from a person of their choice.

46. Section 208 of the VRA provides: “Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508.

47. According to the Fifth Circuit, the “unambiguous language” of the VRA “guarantees to voters [the] right to choose any person they want . . . to assist them throughout the voting process,” including the steps necessary to “having [the] ballot counted properly.” *OCA-Greater Houston*, 867 F.3d at 615.

48. Congress’s intent in enacting Section 208 is clear from both the text and the

to vote without obtaining assistance in voting, including aid within the voting booth” and “many such voters may feel apprehensive about casting a ballot in the presence of, or may be misled by, someone other than a person of their own choice.” S. Rep. No. 97-417, at 62 (1982). Accordingly, the purpose of Section 208 is “to limit the risks of discrimination against voters in these specified groups and avoid denial or infringement of their right to vote.” *Id.*

49. Section 208 empowered covered voters to receive assistance from almost anyone of their choice because it was “the most effective method of providing assistance,” *id.* at 64, and “the only way to assure meaningful voting assistance and to avoid possible intimidation or manipulation of the voter.” *Id.* at 62. “To do otherwise would deny these voters the same opportunity to vote enjoyed by all citizens.” *Id.*

50. The Committee explicitly wrote that Section 208 is intended to preempt state law when state law “[denies] the assistance at some stages of the voting process during which assistance was needed.”

be entitled to receive assistance in the marking of [their] ballot and in completing the affidavit on the absentee ballot envelope.” [dg.0006

60. Over 100,000 Mississippians have voted absentee by mail in recent elections.⁹

III. S.B. 2358's impact on Plaintiffs.

61. As a P&A, Plaintiff DRMS is accountable to members of the disability community and is authorized under federal law to represent the interest of Mississippians with disabilities. All Mississippi voters with disabilities are constituents of Plaintiff DRMS.

62. Protecting the voting rights of individuals with disabilities is central to DRMS's mission and purpose. One or more of DRMS's constituents would have standing to seek redress for the violations complained of herein.

63. On behalf of its constituents with disabilities who are being denied their federally protected right to vote absentee with an assistant of their choosing, each of whom would have standing to challenge the infringement of rights conferred by Section 208 of the VRA, DRMS seeks to prevent this violation of their constituents' rights.

64. DRMS also has standing to bring this claim due to a frustration of its mission and a diversion of resources. Because of S.B. 2358, DRMS has had to divert funds from other services it offers to warn voters who relied on individuals who are now not authorized to assist them. This includes creating new presentation materials; having to train the presenters; giving at least 40 presentations in facilities, with more to be scheduled; creating new flyers to warn voters; and other costs to prevent the disenfranchisement of Mississippi voters with disabilities.

65. Similarly, encouraging civic participation through voting and assisting voters is

voters in returning absentee ballots. One or more of the members now fear prosecution if they assist voters in upcoming elections. On behalf of its members, LWV-MS seeks to protect their rights.

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registration to returning the ballot. They want to assist voters in the upcoming election but now fear prosecution because of S.B. 2358.

70. Mae Francis Collins is one of the registered voters with physical disabilities whom Ms. Cunningham assists who may be disenfranchised as a result of S.B. 2358. Ms. Collins is 86 years old, and a resident of Okolona, Mississippi, where she is registered to vote. Ms. Collins is homebound. Although she uses a walker and wheelchair in the home, she cannot leave her home without assistance, in part because her home has no accessible path. Because she cannot access her mailbox across the street from her home without assistance, she relies on others to bring her the mail. Ms. Collins trusts Ms. Cunningham to assist her with voting and previously asked her to help her vote by mail. Ms. Cunningham has helped her return her ballot, most recently in 2022. Because of S.B. 2358, Ms. Collins cannot leave her home without assistance.

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52 U.S.C. § 10508. Under the VRA, the terms “vote” and “voting” mean

all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this chapter, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

Id. § 10310(c)(1); *see OCA-Greater Houston*, 867 F.3d at 614-15.

74. Under Section 208, a voter may exercise their right to seek assistance from anyone unrelated to their employer or union. 52 U.S.C. § 10508. In other words, voters may ask virtually any person of their choice to help deliver their ballot, with only narrow exceptions. *See OCA-Greater Houston*, 867 F.3d at 614-15.

75. However, S.B. 2358 reverses the rule created by Section 208: prohibiting almost all assistance with only specific exceptions. S.B. 2358 restricts the universe of people who can help deliver ballots to: (i) election officials, (ii) postal workers, (iii) other individuals whose official duties include the delivery of the mail, (iv) family members, household members, or caregivers, and (v) a common carrier.¹⁰

76. By sharply limiting who can collect or deliver a completed ballot, S.B. 2358 criminalizes a form of assistance that Congress determined voters should be able to access. Under

¹⁰ S.B. 2358 permits collection and transmission of ballots by only:

- (1) an election official while engaged in official duties as authorized by law;
- (2) an employee of the United States Postal Service while engaged in official duties as authorized by law;
- (3) any other individual who is allowed by federal law to collect and transmit United States mail while engaged in official duties as authorized by law;
- (4) a family member, household member, or caregiver of the person to whom the ballot was mailed; and
- (5) a common carrier that transports goods from one place to another for a fee.

S.B. 2358, most of the individuals who could assist with ballot delivery under Section 208 would be committing a crime, punishable by up to 1 year in county jail and/or \$3,000 in fines.

77. As in the case of multiple voters that Plaintiffs have assisted in the past, such as Ms. Mae Francis Collins, and constituents of DRMS who reside in institutions where staff handle all of their mail, S.B. 2358 deprives certain voters of their only options for assistance. As a result, those voters will be disenfranchised in future elections.

78. Even if a voter has someone else from whom they *could* conceivably seek assistance, Section 208 guarantees voters the right to rely on a person of their choice, and the denial of that choice alone undermines the purposes and objectives of Section 208.

79. Furthermore, individuals and organizations, like Plaintiffs, who have provided voter assistance in the past now fear prosecution if they assist in the future. The potential criminal liability will have a chilling effect on those who would otherwise assist.

80. Through Section 208, Congress expressed that voters must have broad discretion to ask someone of their choice for help—unless that person is associated with their employer or labor union. S.B. 2358 directly contravenes the careful balance that Congress has struck by imposing additional restrictions on assistance.

81. S.B. 2358 therefore “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” and should be preempted. *Arizona v. United States*, 567 U.S. 387, 406 (2012); *OCA-Greater Houston*, 867 F.3d at 615 (hiu(hiuo r2ectly9dating statute that

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Respectfully submitted,

/s/ Leslie Faith Jones