

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT
Case Type: Civil Other/Misc.

DSCC and DCCC,

Case No.

Plaintiffs,

v.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**Steve Simon, in his official capacity as
Minnesota Secretary of State,,

Defendant.

INTRODUCTION

Plaintiffs DSCC and DCCC file this Complaint for Declaratory and Injunctive Relief against Defendant Steve Simon, in his official capacity as the Minnesota Secretary of State, and hereby state and allege as follows:

1. This lawsuit challenges Minnesota’s unnecessarily burdensome restrictions on assisting voters to complete and submit their ballots—assistance that thousands of Minnesotans could otherwise depend on to exercise their right to vote and participate in the political process.

2. Under Minnesota law, it is possible to help too many people vote. Minnesota limits the number of voters an individual may help (1) to complete their in-person or absentee ballots and (2) to submit their absentee ballots—regardless of language barriers or disabilities that can make it impossible for some Minnesotans to vote without assistance. Specifically, a person may help no more than three voters mark their ballots (the “Simple Voting Assistance Ban”). See Minn. Stat. § 204C.15. Similarly, a person may help no more

than three voters return their absentee ballots (the “Absentee Assistance Ban”) (collectively, the “Voter Assistance Bans”). See Minn. Stat. § 203B.08.

3. The Voter Assistance Bans directly contradict federal law. Section 208 of the Voting Rights Act, 52 U.S.C. § 10508, provides that “[a]ny 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.” But the Voter Assistance Bans unlawfully limit Minnesotans’ rights under Section 208 because voters may not choose someone to assist them who has already assisted three other voters. For this reason, Defendant, Secretary of State Steve Simon, has admitted that if Minnesota was sued over the Simple Voting Assistance Ban, there is a “pretty good chance we’d lose.” Peter Callaghan, *Lawmaker looks to eliminate one of Minnesota’s peculiar, and possibly illegal, election rules*, MinnPost, (Feb. 1, 2019), <https://www.minnpost.com/state-government/2019/02/lawmaker-looks-to-eliminate-one-of-minnesotas-peculiar-and-possibly-illegal-election-rules/>.

4. In addition to undermining Minnesotans’ rights under the Voting Rights Act, the Voter Assistance Bans unduly burden Minnesotans’ right to vote—a right that is fundamental under the Minnesota and federal constitutions. The Voter Assistance Bans especially impact Minnesota’s sizable language-minority communities, including Hmong and Somali Americans, as well as Minnesotans with disabilities.

5. Not only do the Voter Assistance Bans deny voters valuable assistance in completing and submitting their ballots, which facilitates their political participation, but they also infringe on the core political speech and associational activities of organizations and citizens working to increase voter turnout. Such “get-out-the-vote” (or “GOTV”) efforts

could otherwise play an important role in ensuring that eligible citizens are able to exercise their right to vote.

6. The penalty for helping too many Minnesotans vote is steep: anyone who helps a single additional person is exposed to felony charges. *See, e.g.*, Minn. Stat. § 203B.03(a)(7), (b). Unsurprisingly, the threat of criminal prosecution severely chills lawful efforts to increase political participation. By criminalizing Plaintiffs' and other organizations' efforts to assist voters in completing and submitting ballots, the Voter Assistance Bans inhibit constitutionally protected political activity and hinder the ability of Minnesotans to participate in the political process.

7. Absent an injunction, the Voter Assistance Bans will not only obstruct the ability of disabled, elderly, and non-English speaking Minnesotans to vote, but the Bans will also undermine Plaintiffs' efforts to help those Minnesotans vote. For these reasons, and the reasons stated below, Plaintiffs request that the Court declare that the Voter Assistance Bans violate Section 208 of the Voting Rights Act, the Minnesota Constitution, and the United States Constitution, and instruct Secretary of State Steve Simon to inform all Minnesota election officials that no voter should be denied such voting assistance.

PARTIES

8. Plaintiff DSCC is the national senatorial committee of the Democratic Party as defined by 52 U.S.C. § 30101(14). Its mission is to elect candidates of the Democratic Party to the U.S. Senate, including from Minnesota. DSCC works to accomplish its mission by, among other things, assisting state parties throughout the country, including in Minnesota. In 2018, DSCC made contributions and expenditures in the millions of dollars

to persuade and mobilize voters to support Senate candidates who affiliate with the Democratic Party. In 2020, there will be a Senate election in Minnesota, and DSCC will work to elect the Minnesota Democratic-Farmer-Labor Party (“DFL”) candidate. As a result, DSCC intends to make substantial contributions and expenditures to support the DFL candidate for U.S. Senate in Minnesota in 2020. To that end, the Voter Assistance Bans directly harm DSCC by frustrating its mission of, and efforts in, educating, mobilizing, assisting, and turning out voters in Minnesota by prohibiting the acts of individuals and organizations that want to assist voters in completing and submitting their ballot. DSCC is aware of the Voter Assistance Bans and will have to expend and divert additional funds and resources in voter mobilization efforts in Minnesota at the expense of its other efforts in Minnesota and in other states, to combat the effects of the Voter Assistance Bans in the 2020 general election for U.S. Senate in Minnesota. DSCC and its members, volunteers, and constituents will also be prevented from fully exercising their speech and associational rights to engage in these voter assistance efforts as long as the Bans remain in effect.

9. Plaintiff DCCC is the national congressional committee of the Democratic Party as defined by 52 U.S.C. § 30101(14). DCCC’s mission is to elect Democratic candidates to the U.S. House of Representatives from across the United States, including from Minnesota’s eight congressional districts. DCCC works to accomplish its mission by, among other things, assisting state parties throughout the country, including in Minnesota. In 2018, DCCC made contributions and expenditures in the millions of dollars to persuade and mobilize voters to support Democratic congressional candidates, including in Minnesota. For 2020, DCCC has identified at least two congressional districts in Minnesota

as targeted races, in which it will expend significant resources to support the DFL candidates. Overall, in 2020, DCCC expects to make contributions and expenditures in the millions of dollars to persuade and mobilize voters to support Democratic candidates in congressional elections around the country, including in Minnesota. To that end, the Voter Assistance Bans directly harm DCCC by frustrating its mission of, and efforts in, educating, mobilizing, assisting, and turning out voters in Minnesota by prohibiting the acts of individuals and organizations that want to assist voters in completing and submitting their ballot. DCCC is aware of the Voter Assistance Bans and will have to expend and divert additional funds and resources in voter mobilization efforts in Minnesota at the expense of its other efforts in Minnesota and in other states, to combat the effects of the Voter Assistance Bans in the 2020 general election for the U.S. House of Representatives in Minnesota. DCCC and its members, volunteers, and constituents will also be prevented from fully exercising their speech and associational rights to engage in these voter assistance efforts as long as the Bans remain in effect.

10. Defendant Steve Simon is the Secretary of State of Minnesota and is named as a Defendant in his official capacity. He is the State's chief elections officer and, as such, is responsible for the administration and implementation of election laws in Minnesota. Among many other duties, the Secretary is specifically responsible for "adopt[ing] rules establishing procedures to be followed by county auditors and municipal clerks to assure accurate and timely return of absentee ballots." Minn. Stat. § 203B.08(4). The Secretary is additionally empowered to "authorize procedures and methods of [ballot] return in addition to those specified in [statute]." *Id.* Finally, the Secretary also has a duty to furnish

instructional materials to each county containing the options available to voters who need assistance in voting and develop general materials to train local election officials and election judges on the state's election administration procedures. *See id.* § 204B.27(1), (4), (11). The Secretary acted under color of state law at all times relevant to this action.

JURISDICTION AND VENUE

11. Plaintiffs bring this action under the Minnesota Constitution, the United States Constitution, and the laws of the United States. As a court of general jurisdiction, this Court has authority to hear these claims. *See* Minn. Const. art. VI, § 3; Minn. Stat. § 484.01.

12. This Court is authorized to grant declaratory relief pursuant to the Declaratory Judgments Act. *See* Minn. Stat. § 555.01; Minn. R. Civ. P. 57. This Court also has the authority to grant injunctive relief under the Minnesota Rules of Civil Procedure. *See* Minn. R. Civ. P. 65.

13. Venue in Ramsey County is proper because the cause of action arose in part in Ramsey County, and Defendant's official residence is in Ramsey County. *See* Minn. Stat. §§ 542.03, 542.09.

FACTUAL ALLEGATIONS

A. The Voter Assistance Bans.

14. The Voter Assistance Bans prohibit a person from helping more than three Minnesota voters complete their ballots or return their absentee ballots. *See* Minn. Stat. §§ 203B.08, 204C.15.

15. Section 204C.15 purports to permit a voter in need of assistance “because of inability to read English or physical inability to mark a ballot” to “obtain the assistance of *any* individual the voter chooses.” Minn. Stat. § 204C.15 (emphasis added). But the statute also severely limits this right: “No person who assists another voter as provided in the proceeding sentence shall mark the ballots of more than three voters at one election.” *Id.* As a result, the Simple Voting Assistance Ban broadly and inexplicably prohibits Minnesotans, including those who need help due to language barriers or disabilities, from receiving assistance from anyone who has already provided assistance to three others.

16. Section 203B.08 similarly purports to permit voters to return their sealed absentee ballot envelopes using an agent of their choice. Minn. Stat. § 203B.08. But Minnesota again limits this right: no agent “may deliver or mail the return envelopes of . . . more than three voters in any election.” *Id.*

17. The penalties for violating the Voter Assistance Bans are serious. Anyone who helps a fourth person complete their ballot faces felony charges. Minn. Stat. § 203B.03(a)(7), (b). Anyone who helps a fourth person return an absentee ballot is guilty of a misdemeanor. *Id.* § 645.241.

B. The Voter Assistance Bans uniquely impact Minnesota’s large populations of language-minority and disabled citizens.

18. Today, thousands of Hmong Americans and Somali Americans, among other ethnic groups, call Minnesota home.

19. The Hmong people originally came to the United States in the 1970s as refugees from Laos after the Vietnam War. During that war, thousands of Hmong served

as soldiers in support of United States. Over time, thousands of Hmong have resettled in the United States and in Minnesota specifically. Today, there are more than 66,000 people of Hmong descent in Minnesota, and the Twin Cities metro is home to the largest concentration of Hmong in the United States. Minnesota Historical Society, *Hmong in Minnesota*, <http://www.mnhs.org/hmong>.

20. In 2000, the United States Congress passed the Hmong Veterans' Naturalization Act, which helped thousands of Hmong veterans who supported the United States in the Vietnam War become naturalized citizens. See Pub. L. No 106-207, 114 Stat. 316. In signing that Act, President Clinton recognized that the Hmong people had become "part of the social fabric of the American society." President Bill Clinton, *Statement on Signing the Hmong Veterans Naturalization Act of 2000* (May 26, 2000).

21. Because Hmong speakers face unique challenges when learning English, Congress created a special carveout in the Hmong Veterans' Naturalization Act so that Hmong veterans and their families would not be required to complete the English language portion of the citizenship test. See Pub. L. No 106-207, 114 Stat. 316.

22. Indeed, the Hmong language is recognized as one of the most complex languages in the world. Unlike English, Hmong is a tonal language and uses up to eight distinct tones to communicate, which means that a word has a different meaning depending on the tone with which it is spoken. And the Hmong language only recently acquired written characters. Unsurprisingly, native English speakers have difficulty learning Hmong, and native Hmong speakers have difficulty learning English, which relies significantly more on written characters to communicate. In fact, only 56 percent of

Hmong adults in the United States are proficient in English. See Pew Research Center, *English Proficiency of Hmong Population in the U.S.*, <https://www.pewsocialtrends.org/fact-sheet/asian-americans-hmong-in-the-u-s/>. As a result, many Hmong people must rely on family and friends who do speak English to communicate.

23. Similar to the Hmong, Somalis largely came to the United States in the 1980s and 1990s as refugees. Today, there are an estimated 70,000 people of Somali heritage living in Minnesota, making the state home to the largest Somali population in the country. In fact, Somali is the most common language spoken at home in Minnesota outside of English and Spanish. See Stephanie Dickrell, *Nearly 74,000 Speak Somali in Minnesota*, St. Cloud Times, (Oct. 22, 2017, 4:29 PM), <https://www.sctimes.com/story/news/local/2017/10/22/nearly-74-000-speak-least-some-somali-minnesota/783691001/> (citing data from the U.S. Census Bureau).

24. Importantly, only about half of the Somali speakers in Minnesota are proficient in English. *Id.* Like many of Minnesota's Hmong residents, many of its Somali residents must rely on friends and family who speak English to communicate with non-Somali speakers.

25. As a result of such language barriers, Minnesota's Hmong- and Somali-American citizens, along with other language minorities, have a significant and unique need for assistance in completing and submitting their ballots and exercising their right to vote.

26. Minnesota has previously used the Voter Assistance Bans against these language minorities. In 2018, for example, St. Paul City Council member Dai Thao, a member of the Hmong community, was prosecuted for helping an older Hmong-American woman, who does not speak or read English, cast her ballot. See Findings of Fact, Conclusions of Law, and Order, *State v. Thao*, 62-CR-18-827, at 5 (Minn. Dist. Ct. Oct. 23, 2018) (attached as Exhibit 1). Like the three-person limit, Minnesota also forbids “a candidate for election” from helping voters cast their ballots in that election. See Minn. Stat. § 204C.15. Even though the court ultimately found that without Thao’s assistance, “the voter would have been unable to vote because she only spoke Hmong,” *State v. Thao*, 62-CR-18-827, at 6, Thao was charged with unlawfully assisting a voter in violation of Section 204C.15.

27. The Voter Assistance Bans also significantly burden disabled voters. Having a disability increases the likelihood that someone will not vote by 78 percent. Peter Miller & Sierra Powell, *Overcoming Voting Obstacles: The Use of Convenience Voting by Voters with Disabilities*, 44 Am. Pol. Res. 1, 46 (2016). Absentee voting can ensure more disabled voters exercise their right to vote, but many voters with disabilities still require assistance when voting absentee. For example, in 2012, “close to one-tenth of people with disabilities who voted by mail reported having difficulties in doing so, saying they needed assistance filling out or sending the ballot.” Lisa Schur et al., *Accessible Democracy: Reducing Voting Obstacles for People with Disabilities*, 14 Election Law J. 60, 63 (2015). Thirteen percent of the voting age population in Minnesota or 543,900 Minnesotans are disabled. See Minnesota State Demographic Center, OSD-17-153, *Minnesotans with Disabilities:*

Demographic and Economic Characteristics (2017). The Voter Assistance Bans thus make it harder for more than half a million Minnesotans with disabilities to vote. *Id.* In fact, one study found that in 2018, only 45.7 percent of Minnesotans with disabilities voted, while 65.2 percent of non-disabled Minnesotans cast ballots—the largest gap between disabled and non-disabled voters in the country. See Minnesota Council on Disability, *Voting Information*, <https://www.disability.state.mn.us/information-and-assistance/voting-information/>; Lisa Schur et al., *Fact sheet: Disability and Voter Turnout in the 2018 Elections*, Rutgers University School of Management and Labor Relations, p. 6, <https://smlr.rutgers.edu/sites/default/files/2018disabilityturnout.pdf>.

28. In 2019, recognizing the challenges the Simple Voting Assistance Ban creates for language-minority and disabled Minnesotans, a member of Minnesota’s House of Representatives with Hmong heritage, Samantha Vang, introduced House File No. 94 (“HF 94”) to repeal the Ban. See HF 94, 91st Minn. Leg., Reg. Sess. (Minn. 2019), https://www.revisor.mn.gov/bills/text.php?number=HF94&type=bill&version=0&session=ls91&session_year=2019&session_number=0. At a House Elections Subcommittee meeting, Representative Vang explained that the Simple Voting Assistance Ban disproportionately and significantly burdens the ability of language-minority and disabled Minnesotans from voting. Minn. H., Hearing on H.F. 94 before the H. Comm. on Elections, 91st Minn. Leg., Reg. Sess. (Jan. 30, 2019), <http://ww2.house.leg.state.mn.us/audio/mp3ls91/subelect013019.mp3>. At the same hearing, Defendant, Secretary of State Steve Simon, testified that the Ban is likely unlawful

and that Minnesota is one of only two states in the country with such a law. *Id.* The Minnesota Legislature has not yet voted on this bill.

C. The Voter Assistance Bans severely burden Minnesotans' right to vote.

29. Assistance with completing a ballot and submitting an absentee ballot provide increased access to the ballot box, particularly for voters whose language barriers, health conditions, work schedules, family care responsibilities, or lack of transportation may otherwise make voting difficult or impossible.

30. Some of those same factors—e.g., health conditions and language barriers—can make completing a ballot difficult for some voters. Those and other factors—e.g., work schedules, family care responsibilities, and lack of transportation—can make submitting an absentee ballot difficult for some voters.

31. The Voter Assistance Bans especially affect language minorities like Hmong and Somali Minnesotans. For instance, only someone who speaks Somali can help those Somali Americans who need assistance overcoming language barriers to vote. To find a Somali-speaking person to assist them, a voter will likely look within their community. But because Somali voters facing language barriers will be seeking assistance from the same pool of Somali speakers, and the Simple Voting Assistance Ban prevents a Somali speaker from helping more than three voters, Somali voters facing language barriers can simply run out of Somali speakers who are able to assist them. The same is true for Hmong Americans who require similar assistance to vote.

32. At times, such voters are not even able to choose their own family members to assist them. For example, because of the Voter Assistance Bans, Representative Vang

herself was unable to assist both her Hmong-American parents and grandparents to vote. Minn. H., Hearing on H.F. 94 before the H. Comm. on Elections, 91st Minn. Leg., Reg. Sess. (Jan. 30, 2019), <http://ww2.house.leg.state.mn.us/audio/mp3ls91/subelect013019.mp3>.

33. Voters with disabilities face similar hardships. For example, the Voting Assistance Bans prevent those voters from selecting trusted caregivers to assist them with voting because those caregivers often assist multiple voters with disabilities to vote. *Id.*

34. Though Section 203B.08 allows election judges to assist voters who need assistance in completing their ballot, that “fail-safe” does little for language minorities in particular. Many election judges do not speak multiple languages—let alone the Hmong or Somali language—rendering that assistance, even if well intentioned, of little use at the ballot box to those voters, which was exactly why Thao assisted a Hmong-speaking voter in 2018. And no such assistance is available to absentee voters.

35. By limiting the assistance that Minnesotans, especially language-minority and disabled voters, can receive in completing their ballots and submitting their absentee ballots—help that would otherwise enable more Minnesotans to vote—the Voter Assistance Bans reduce access to voting and political participation, thereby severely burdening Minnesotans’ fundamental right to vote.

D. The Voter Assistance Bans severely burden protected political speech and association rights.

36. Plaintiffs DSCC and DCCC fund and engage in voter turnout efforts including campaigns and drives during which they, their members, and their volunteers assist voters to complete and submit their absentee ballots. Plaintiffs DSCC and DCCC also

fund and provide assistance to voters to complete their ballots during in-person early voting and on election day.

37. These efforts are among the most important means by which Plaintiffs DSCC and DCCC communicate their belief in the power and importance of participating in democratic elections, including for voters who have experienced historically low turnout rates when compared to the rest of the population, or who for various reasons, including language barriers, disability, advanced age, or lack of access to transportation, would have difficulty voting. And these initiatives facilitate the political participation of such voters.

38. Plaintiffs DSCC and DCCC engage in protected political speech and association when they interact with Minnesota voters to persuade them to cast their ballots, help voters to complete their ballots, and assist voters to submit absentee ballots. Encouraging voters to participate in the democratic process through voting and assisting voters in completing and submitting their ballots are forms of political speech and expressive conduct inherently tied to Plaintiffs' missions.

39. The Voter Assistance Bans, and their limits on assisting voters in completing their ballots and submitting absentee ballots on behalf of voters, burden Plaintiffs' speech and associational rights by limiting the reach of the voices communicating Plaintiffs' messages and thus the size of the audience that can be reached, thereby limiting the effectiveness of those messages.

40. The Voter Assistance Bans also restrict expressive conduct that would otherwise be conducted by Plaintiffs' members, volunteers, and canvassers during GOTV campaigns and drives for voting and make it less likely that these activities will result in

increased voting. By limiting the effectiveness of their GOTV efforts, the Voter Assistance Bans make it difficult for Plaintiffs to recruit volunteers and canvassers who do not view such organizing activities as an effective means to increase political participation due to the limit on how many voters individuals may assist to vote. And the threat of criminal penalties for violating the Voter Assistance Bans deters volunteers and canvassers from engaging in Plaintiffs' overall GOTV activities for fear of prosecution.

41. The Voter Assistance Bans likewise burden voters who engage in protected political speech and association when they choose to entrust members of GOTV organizations, like Plaintiffs, with assisting to complete and submit their ballots.

E. The Voter Assistance Bans are not appropriately tailored to any state interest.

42. To the extent the Voter Assistance Bans are intended to prevent people helping voters from influencing voter choices or tampering with ballots, they are unnecessary. Minn. Stat. Section 204C.15 already prohibits an “individual assisting a voter” from “request[ing], persuad[ing], induc[ing], or attempt[ing] to persuade or induce the voter to vote for any particular party or candidate.” *Id.* Section 203B.08 threatens “[a]ny person designated as an agent who tampers with either the return envelope or the voted ballots” with misdemeanor charges. Further, Section 203B.03(a)(5) criminalizes “do[ing] any act . . . for the purpose of casting an illegal vote.” Moreover, Minnesota could employ less restrictive means than the Bans to serve any such interests.

43. Instead of serving compelling state interests, the Voter Assistance Bans unlawfully restrict activities protected by the Voting Rights Act, the Minnesota

Constitution, and the United States Constitution—including Plaintiffs’ efforts to assist voters in completing and submitting their ballots as a means to encourage political participation and increase voter turnout—and burden voters who require assistance to exercise their right to vote.

CLAIMS FOR RELIEF

COUNT I

Violation of Section 208 of the Voting Rights Act of 1965, 52 U.S.C. § 10508 (Preemption)

45. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

46. The Voter Assistance Bans conflict with and violate Section 208 of the Voting Rights Act, 52 U.S.C. § 10508, and are thus preempted and invalid. *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008) (“[S]tate laws that conflict with federal law are without effect.”) (citations omitted). Section 208 of the Voting Rights Act provides that “[a]ny 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.” Section 208’s only limitation on this right is that the person providing assistance may not be connected to the voter’s employer or union.

47. Congress passed the Voting Rights Act to correct “entrenched racial discrimination in voting” that was “an insidious and pervasive evil.” *South Carolina v. Katzenbach*, 383 U.S. 301, 309 (1966). In recommending that Section 208 be added to the Voting Rights Act, the Senate Judiciary Committee recognized that voters who do not speak English and voters with disabilities “run the risk that they will be discriminated against at

the polls and that their right to vote in State and Federal elections will not be protected.” S. Rep. No. 97-417, at 62 (1982). To limit that risk, those voters “must be permitted to have the assistance of a person of their own choice.” *Id.*

48. Section 208 preempts Minnesota’s Simple Voting Assistance Ban because the Ban criminalizes conduct expressly allowed by Section 208. Minnesota’s Simple Voting Assistance Ban unlawfully limits the rights afforded to voters by Section 208 by prohibiting voters who need help from receiving assistance from a person of their choice. *See* Minn. Stat. § 204C.15. Under Minnesota law, a voter is not free to choose anyone to help them who has helped three other voters in the same election. *Id.* Section 208 cannot be interpreted to permit Minnesota’s Simple Voting Assistance Ban. *See OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017) (Section 208 preempted a Texas law restricting who may provide interpretation assistance to English-limited voters); *United States v. Berks Cty., Pennsylvania*, 277 F. Supp. 2d 570, 580 (E.D. Pa. 2003) (county election law restricting who may provide language assistance to Spanish-speaking voters violated Section 208).

49. The Simple Voting Assistance Ban affects voters from language minorities in particular. Those voters have a limited pool of people from which they can seek help. One English-speaking Somali Minnesotan, for example, might wish to help her four non-English speaking grandparents. But the Simple Voting Assistance Ban would prevent her from doing so. The same is true for other language minorities, including Hmong Minnesotans. And because the Hmong language is primarily oral, native Hmong speakers face unique challenges reading and writing in English. For that reason, Hmong Minnesotans in particular rely heavily on assistance to vote.

50. One Minnesota court has already recognized the conflict between Section 208's protections and the Simple Voting Assistance Ban. In 2018, St. Paul City Council member Dai Thao was criminally prosecuted for helping an older Hmong woman who speaks no English vote in an election in which Thao was running for office. *See Findings of Fact, Conclusions of Law, and Order, Thao, 62-CR-18-827*. Like the three-person limit, Minnesota also forbids "a candidate for election" from helping voters cast their ballots in that election. *See Minn. Stat. § 204C.15*. But the Hmong woman chose Thao, who is also Hmong and speaks the language, to help her. *See Findings of Fact, Conclusions of Law, and Order, Thao, 62-CR-18-827*, at 5. In finding that Minnesota's law was preempted by the VRA, the court noted that "the purpose of [Section 208] was to create as few barriers as possible to voting, with the understanding that non-English speakers are fully capable of determining who should serve as their trustworthy assistant" and found "the [state's] prohibition of a candidate as a possible trusted assistant acted as an obstacle to the accomplishment of the full purpose and objective of Congress." *Id.* at 4-5. Minnesota's prohibition of helping more than three voters is the exact same type of barrier to voting as the candidate assistance restriction the court found to be preempted by Section 208 in Thao's case.

51. Section 208 of the VRA also preempts the Absentee Assistance Ban because it too prevents voters from receiving assistance from a person of their choice. *See Minn. Stat. § 203B.08*. Section 208's protections extend beyond activity in the voting booth itself and apply to "all action necessary to make a vote effective." 52 U.S.C. § 10310(c)(1). In fact, in its report recommending that this protection be added to the Voting Rights Act, the

Senate Judiciary Committee noted that state restrictions that “deny the assistance at some stages of the voting process during which the assistance was needed” would violate Section 208. S. Rep. No. 97-417, at 63 (1982). By prohibiting a voter who needs assistance submitting their absentee ballot from being helped by anyone that has helped three other voters in a similar manner, Minnesota’s Absentee Assistance Ban also violates Section 208. *Id.*

52. The Absentee Assistance Ban affects disabled Minnesotans disproportionately. In 2012, “close to one-tenth of people with disabilities who voted by mail reported having difficulties in doing so, saying they needed assistance filling out or sending the ballot.” Lisa Schur et al., *Accessible Democracy: Reducing Voting Obstacles for People with Disabilities*, 14 Election Law J. 60, 63 (2015). The Absentee Assistance Ban makes it harder for those Minnesotans to vote. In fact, Minnesota has the highest gap between disabled and non-disabled voter turnout in the country—nearly 20 percentage points. Minnesota Council on Disability, *Voting Information*, <https://www.disability.state.mn.us/information-and-assistance/voting-information/>.

53. As a result of the Voter Assistance Bans, Minnesota voters with language barriers or disabilities do not receive the voting assistance that Section 208 of the Voting Rights Act guarantees them.

COUNT II
Violation of the Minnesota Constitution, Art. I, § 2, and Art. VII, § 1
(Unconstitutional Burden on the Right to Vote)

54. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

55. Article I, Section 2 of the Minnesota Constitution provides in relevant part: “No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.”

56. Article VII, Section 1 of the Minnesota Constitution also provides in relevant part: “Every person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct.”

57. Together, these provisions guarantee the right to vote to eligible Minnesota residents. And Minnesota courts have long held that the right to vote and the right to participate in the political franchise is a fundamental right. *See Kahn v. Griffin*, 701 N.W.2d 815, 831 (Minn. 2005) (explaining that “the right to vote is a fundamental right under both the U.S. Constitution and the Minnesota Constitution”).

58. Because voting is a fundamental right under both the U.S. Constitution and Minnesota Constitution, Minnesota courts largely follow federal standards in evaluating whether state election laws unconstitutionally infringe on the right to vote. *See id.* at 832-33. Under the federal standard, a court considering a challenge to a state election law must carefully balance the character and magnitude of injury to the First and Fourteenth Amendment rights that the plaintiff seeks to vindicate against the precise justifications put forward by the state for the burdens imposed by the rule. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

59. Similarly, Minnesota courts evaluating whether a state election law violates the right to vote under the Minnesota Constitution “weigh the character and magnitude of

the burden imposed on voters' rights against the interests the state contends justify that burden," "consider[ing] the extent to which the state's concerns make the burden necessary." *Kahn*, 701 N.W.2d at 833 (emphasis added).

60. Under this balancing test, "any potential infringement [on the right to vote] is examined under a strict scrutiny standard of review." *Id.* at 832. Moreover, even election laws that do not severely burden the right to vote must still be "necessary" to support to state's interests in the law. *See id.* at 833; *see also Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191 (2008) (Stevens, J., controlling op.) ("However slight th[e] burden may appear, . . . it must be justified by relevant and legitimate state interests *sufficiently weighty to justify the limitation.*") (internal citation and quotation marks omitted) (emphasis added).

61. The Voter Assistance Bans severely burden the right to vote for many of Minnesota's citizens. The Simple Voting Assistance Ban, in particular, is a severe burden on many language minorities, such as Hmong- and Somali-American voters, and Minnesotans with disabilities.

62. The Simple Voting Assistance Ban thus imposes a severe burden on the right to vote, especially for voters who understandably require assistance to complete their ballot. As a severe burden on the right to vote, the Simple Voting Assistance Ban can survive only if it meets strict scrutiny—that is, if it is narrowly tailored to serve a compelling state interest. *See Kahn*, 701 N.W.2d at 832. The Simple Voting Assistance Ban falls far short of this standard.

63. The Absentee Assistance Ban similarly imposes a severe burden on the right to vote. As the Supreme Court of Minnesota has recognized, absentee voting is crucial to

participation in the franchise: “The purpose of the absentee ballot is to enfranchise those voters who cannot vote in person.” *Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 734 (Minn. 2003).

64. While all voters are permitted to vote by absentee ballot in Minnesota, absentee voting is essential for voters whose work schedules, family care responsibilities, lack of transportation, language barriers, or disabilities make voting in person difficult or impossible. Those same factors, unsurprisingly, can make submitting an absentee ballot difficult. Political organizations, friends, neighbors, and others barred by the Absentee Assistance Ban from helping voters to submit their absentee ballots play an important role in ensuring that these Minnesotans have an opportunity to exercise their right to vote.

65. By unnecessarily limiting the ability of such people to assist voters in returning an absentee ballot, the Absentee Assistance Ban severely burdens the right to vote for those voters who rely on absentee ballots. Like the Simple Voting Assistance Ban, because the Absentee Assistance Ban is not narrowly tailored to serve a compelling state interest, it cannot survive strict scrutiny.

66. Even if this Court determines that either or both of the Voter Assistance Bans impose only minimal burdens on the right to vote, this Court must still consider whether Minnesota’s interests in those laws make those burdens *necessary*. *See Kahn*, 701 N.W.2d at 833. Neither law is necessary to serve a state interest.

COUNT III
Violation of the Minnesota Constitution, Art. I, § 3 and the First and Fourteenth
Amendments to the United States Constitution
(Unconstitutional Infringement on Speech and Associational Rights)

67. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

68. Article I, Section 3 of the Minnesota Constitution provides in relevant part: “all persons may freely speak, write and publish their sentiments on all subjects.” Minnesota’s constitutional right to free speech is coextensive with the First Amendment of the United States Constitution and Minnesota courts “look primarily to federal law for guidance” in evaluating free speech claims. *Tatro v. Univ. of Minn.*, 816 N.W.2d 509, 516 (Minn. 2012).

69. The Supreme Court has applied “exacting scrutiny” to review laws governing election-related speech. *See McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 345 (1995); *see also League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 722 (M.D. Tenn. 2019) (“[L]aws that govern the political process surrounding elections—and, in particular, election-related speech and association—go beyond merely the intersection between voting rights and election administration, veering instead into the area where ‘the First Amendment has its fullest and most urgent application.’”) (quoting *Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989)). The Supreme Court has found restrictions on such speech unconstitutional when they “significantly inhibit” election-related speech and association and are “not warranted by the state interests . . . alleged to justify [the] restrictions.” *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 192 (1999).

70. Voter turnout efforts, including assisting voters to complete and submit ballots, are a means by which Plaintiffs communicate their belief in the power and

importance of participating in democratic elections. Such activity is “the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” *Meyer v. Grant*, 486 U.S. 414, 422-23 (1988); see *League of Women Voters*, 400 F. Supp. 3d at 720 (“Encouraging others to register to vote is pure speech, and, because that speech is political in nature, it is a core First Amendment activity.”) (internal quotation marks and alterations omitted). The act of assisting voters to complete and submit ballots is inherently expressive and an individual or organization that conducts such activities engages in speech by encouraging voting. See *Bernbeck v. Moore*, 126 F.3d 1114, 1115 (8th Cir. 1997) (rejecting the argument that regulating an election “process” raises no First Amendment concerns).

71. Furthermore, under the United States Constitution, First Amendment rights “include the right to band together for the advancement of political beliefs.” *Hadnott v. Amos*, 394 U.S. 358, 364 (1969). “An organization’s attempt to broaden the base of public participation in and support for its activities is conduct ‘undeniably central to the exercise of the right of association.’” *Am. Ass’n of People with Disabilities v. Herrera*, 690 F. Supp. 2d 1183, 1202 (D.N.M. 2010) (citing *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214-15 (1986)). Because Minnesota courts “look primarily to federal law for guidance” in evaluating free speech claims, *Tatro*, 816 N.W.2d at 516, the same associational rights likely exist under the Minnesota Constitution.

72. The conversations and interactions between Plaintiffs, their members, and voters surrounding the completion and submission of ballots are forms of protected political speech and association. See *Williams v. Rhodes*, 393 U.S. 23, 30 (1968) (describing

the “overlapping” rights “of individuals to associate for the advancement of political beliefs” and “of qualified voters . . . to cast their votes effectively”); *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 700 (N.D. Ohio 2006) (explaining that “participation in voter registration implicates a number of both expressive and associational rights which . . . belong to—and may be invoked by—not just the voters seeking to register, but by third parties who encourage participation in the political process through increasing voter registration rolls”). Thus, by limiting most of Plaintiffs’ and others’ ability to assist voters to complete ballots and deliver absentee ballots, the Voter Assistance Bans burden the speech and associational rights of Plaintiffs, their members, their volunteers, and their constituents.

73. Moreover, the threat of criminal penalties for violating these laws deters individuals from participating in Plaintiffs’ GOTV efforts and has a chilling effect on the entirety of Plaintiffs’ GOTV efforts, including on their speech. *See League of Women Voters*, 400 F. Supp. 3d at 721 (noting that the threat of civil penalties “is likely to have a chilling effect on the entirety of [a voter registration] drive, including its communicative aspects.”).

74. These burdens are severe, and the Voter Assistance Bans are not narrowly tailored to advance a compelling state interest. The Voter Assistance Bans thus represent an overbroad restriction on political speech and political organizing that infringes Plaintiffs’ and other Minnesotans’ rights under the constitutions of Minnesota and the United States.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendant, and:

- a. Enter a declaratory judgment pursuant to Minn. Stat. § 555.01 and Minn. R. Civ. P. 57 that the Voter Assistance Bans violate and are preempted by Section 208 of the Voting Rights Act, 52 U.S.C. § 10508;
- b. Enter a declaratory judgment pursuant to Minn. Stat. § 555.01 and Minn. R. Civ. P. 57 that the Voter Assistance Bans are unconstitutional and invalid because they violate the rights of Plaintiffs under the Minnesota Constitution, Art. I, §§ 2, 3, Art. VII, § 1, and the First and Fourteenth Amendments of the United States Constitution;
- c. Enter an order preliminarily and permanently enjoining the Voter Assistance Bans pursuant to Minn. R. Civ. P. 65;
- d. Award to Plaintiffs their costs and disbursements, pursuant to applicable statutory and common law; and
- e. Grant Plaintiffs such other and further relief as the Court deems necessary.

Dated: January 17, 2020

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that pursuant to Minn. Stat. § 549.211, Subd. 3, sanctions may be imposed if, after notice and a reasonable opportunity to respond, the Court determines that the undersigned has violated the provisions of Minn. Stat. § 549.211, Subd. 2.

/s/ Samuel J. Clark
Samuel J. Clark