

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION**

LEAGUE OF WOMEN VOTERS OF
SOUTH DAKOTA and JAYSEN HILL,

Plaintiffs,

v.

MONAE JOHNSON, in her official capacity
as Secretary of State of the State of South
Dakota, and SCOTT D. MCGREGOR,
LINDLEY HOWARD, KENT ALBERTY,
JAMALIA FRANZEN, KRISTIN
MATSUDA, and AUSTIN HOFFMAN, in
their official capacities as members of the
State Board of Elections of South Dakota,

Defendants.

Case No. 4:26-cv-04162-ECS

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Defendants mount no defense on the merits to Plaintiffs' procedural due process claim. They therefore concede that South Dakota's current implementation of the newly enacted documentary proof of citizenship requirement ("DPOC Requirement") is unconstitutional. Defendants' counterarguments that Plaintiffs lack standing or have sued the wrong parties are unpersuasive. The Court is empowered to remedy this constitutional violation before any more South Dakotans are erroneously deprived of their vote because of facially deficient procedures.

I. Plaintiffs have standing.

"To establish Article III standing, a plaintiff must show an injury in fact that is fairly traceable to the defendant's challenged action and is likely redressable by a favorable judicial decision." *Get Loud Ark. v. Jester*, 171 F.4th 1058, 1064 (8th Cir. 2026); *see FDA v. All. for*

Hippocratic Med., 602 U.S. 367, 380 (2024) (“*AHM*”). When multiple plaintiffs seek identical relief, only one plaintiff need satisfy Article III standing requirements. *Horne v. Flores*, 557 U.S. 433, 446-47 (2009); *Fayetteville Pub. Libr. v. Crawford Cnty.*, 183 F.4th 1020, 1030-32 (8th Cir. 2026). At the preliminary injunction stage, a plaintiff need only show that they are likely to have standing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). Here, Plaintiffs Jaysen Hill and the League of Women Voters of South Dakota (“LWVSD” or “the League”) have a strong likelihood of demonstrating their standing. Plaintiffs have suffered an injury-in-fact because they are the object of S.B. 175’s regulation. Jaysen Hill and the League’s members are voters who must comply with the DPOC Requirement when they update their registration or register anew. As the Supreme Court recently clarified, “[w]hen a plaintiff is the ‘object’ of a government regulation, there should ‘ordinarily’ be ‘little question’ that the regulation causes injury to the plaintiff and that invalidating the regulation would redress the plaintiff’s injuries.” *Diamond Alt. Energy, LLC*, 606 U.S. 100, 114 (2025) (quoting *Lujan*, 504 U.S. at 561).

A. Individual Plaintiff Jaysen Hill has standing.

Plaintiff Hill has demonstrated that he suffers an injury-in-fact that is caused by Defendants’ implementation of S.B. 175 and is redressable, such that he has established Article III standing for his procedural due process claim.

i. Jaysen Hill suffers an injury-in-fact because he will be unable to vote in state and local elections.

Plaintiff Hill has standing to press his procedural due process claim. Plaintiff Hill’s injury is straightforward: as a U.S. citizen, South Dakota resident, and eligible full-ballot voter, Plaintiff Hill suffered an actual injury due to Defendants’ failure to provide him notice of why his voter registration application is defective and refusal to inform him how he can remedy his registration defect to vote in state and local elections. Without such notice and an opportunity to cure, Plaintiff

Hill risks being erroneously deprived of his fundamental right to participate in state and local elections. *See* Pls.’ Mem. Supp. Prelim. Inj. at 14-17, ECF No. 11 (“Pls.’ Mem”).

“Injury in fact necessary for standing need not be large; an identifiable trifle will suffice.” *Iowa v. Wright*, 154 F.4th 918, 939 (8th Cir. 2025) (quoting *Sierra Club v. U.S. Army Corps of Eng’rs*, 645 F.3d 978, 988 (8th Cir. 2011)). In the context of a procedural due process claim, deprivation of a fundamental right is an injury-in-fact regardless of how small a deprivation it may be. *Cf. Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 20 (1978) (holding that cessation of essential utility services “for any appreciable time” constitutes a deprivation).

Defendants’ arguments to negate Plaintiff Hill’s due process injury fail. Defendants claim that a May 4 document from the Minnehaha County auditor (“S.B. 175 Overview”) served as a notice “instructing [Plaintiff Hill] how to comply” with S.B. 175’s requirements and that his potential receipt of this document therefore renders him unable “to claim that he has been injured by a lack of adequate notice[.]” Defs.’ Resp. Mot. Prelim. Inj. at 16, ECF No. 32 (“Defs.’ Resp.”). It was not and does not. In fact, the S.B. 175 Overview only serves to bolster Plaintiffs’ claim that Defendants’ implementation of the DPOC Requirement has spawned confusion and—at best—conflicting guidance to voters, including Plaintiff Hill. *Id.*

First, on its face, Minnehaha County’s S.B. 175 Overview does not constitute “adequate notice” sufficient to satisfy procedural due process and deprive Plaintiff Hill of standing. *Blick v. Palmer*, 102 F.3d 1472, 1475 (8th Cir. 1997) (noting it is “settled law” that “[a]dequate notice is integral to the due process right to [be heard]”) (citation omitted). Because the “right to be heard has little reality or worth unless one is informed,” courts have long required adequate notice for procedural due process to be “of such nature as reasonable to convey the required information.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950); *see also Gilbert v. Sullivan*,

No. 93-2309, 1995 WL 91120, at *2 (1st Cir. March 6, 1995) (collecting cases where courts found misleading notice to constitute a due process violation).

Defendants characterize the S.B. 175 Overview as a form letter “explaining S.B. 175” and describing the new DPOC requirements. *See* Defs.’ Resp. at 16; ECF No. 33-4. It is not, however, addressed specifically to Plaintiff Hill, nor does it identify *Plaintiff Hill’s* application as defective or explain what *Plaintiff Hill* must do to fix his registration status. ECF No. 33-4. Rather, it reads as a generic government mailer giving an overview of a new law, without any explanation of why it was sent to him in particular. *See Vail v. Derwinski*, 946 F.2d 589, 593-94 (8th Cir. 1991) (holding procedural process requires *personal* notice). As such, it is unsurprising that Plaintiff Hill has no recollection of receiving such notice—if it reached him at all, as Defendants allege. Such a generalized, impersonal summary is not adequate notice to inform Plaintiff Hill that *he* was registered as a federal-only voter, why *he* was so registered, or how *he* can correct his registration status. *See, e.g., Mullane*, 339 U.S. at 314 (“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”); *Bliek*, 102 F.3d at 1475-76 (same); *Elder v. Gillespie*, 54 F.4th 1055, 1064-65 (8th Cir. 2022) (collecting cases). The S.B. 175 Overview includes nothing specific to his application, does not discuss his submission of insufficient DPOC, and is devoid of any instructions for how to cure the defect. Even if the S.B. 175 Overview could be read to provide him with notice of why his application was defective, it certainly was not “reasonably calculated to inform him of the availability of” a cure process. *Memphis Light, Gas & Water Div.*, 436 U.S. at 14. Absent the adequate notice reasonably calculated to inform Plaintiff Hill of the defects in

his application *and* how he might cure them, he has standing to press his procedural due process claim.

But even assuming *arguendo* that the S.B. 175 Overview did inform Plaintiff Hill of the specific deficiency in his application *and* how to fix it, the contents of that Overview would be all the more inscrutable given that Plaintiff Hill also received a letter autogenerated by the statewide voter registration system TotalVote (“TotalVote letter”) incorrectly ascribing his registration error to the address he used to register to vote. *See* ECF No. 12-1; Decl. of Jaysen Hill ¶ 8, ECF No. 12-6 (“Hill Decl.”) (noting Plaintiff Hill’s confusion from the TotalVote letter given that he lives at a residential address). Defendants wholly neglected to discuss the TotalVote letter in their brief. While the TotalVote letter explains plainly that the recipient has been registered as a federal-only voter because of a commercial mailing address, Minnehaha County’s S.B. 175 Overview leaves it to the recipient to decide (1) to actually read a generic government policy update *and* (2) to glean from it that they are in fact in noncompliance with the DPOC requirement described therein, which has led to their being registered as a federal-only voter. This is what gives rise to Plaintiff Hill’s injury: the state’s continued failure to provide him with clear notice about what is wrong with his application and how he can fix it. Neither the S.B. 175 Overview nor the TotalVote letter do that. Lack of proper notice and opportunity to cure the defect in his application has already prevented Plaintiff Hill from participating in the June 2026 local elections, and now it threatens his right to vote in state and local elections in November.

ii. Plaintiff Hill’s injury is traceable to Defendants’ implementation of S.B. 175.

Defendants further insist that Plaintiff Hill lacks standing because his “prospective injury” is not fairly traceable to the notice deficiency because having filed this suit he is now aware of the registration defect and “all he needs to do [to fix it] is submit a corrected application to the

Minnehaha County Auditor.” Defs.’ Resp. at 16-18. In other words, Defendants believe that Plaintiff Hill lacks standing to bring his procedural due process claim because his federal-only status is now a “self-inflicted harm.” *Id.* at 17. But Defendants misunderstand procedural due process requirements and the “connective tissue” between Defendants’ implementation of the DPOC Requirement and Plaintiff Hill’s injury. *Id.*

Plaintiff Hill’s injury traces clearly to Defendants’ failure to provide him notice of his application defect *and* instructions on how he may cure that defect. Defendants’ argument wrongly suggests that a plaintiff bringing a procedural due process challenge loses standing when they become aware of the violation and have some understanding of how to remedy it. *See id.* This argument must fail for three reasons.

First, an individual must have some awareness of the true nature of their injury to bring a procedural due process claim in the first instance. If a plaintiff lost standing every time they discerned the material facts underlying their claim—*i.e.* that the state had failed to adequately inform them about an issue leading to a constitutional deprivation, what the relevant information was, and how the issue could actually be corrected in the future—procedural due process claims would be functionally non-justiciable. But plaintiffs have routinely been able to raise procedural due process claims alleging that state-issued notice failed to comport with constitutional requirements. *See, e.g., Bliet*, 102 F.3d at 1473, 1475-76 (determining inadequate notice letters that were received by plaintiffs *before* filing their lawsuit contributed to due process injury).

Moreover, Plaintiff Hill’s injury-in-fact—his pending deprivation of the right to participate in state and local elections in November 2026—is caused by Defendants’ actions because it is *Defendants’* failure to provide him with notice and the opportunity to cure that render him unable to vote a full ballot. Despite Defendants’ suggestion, Plaintiff Hill has not “obtained the

information that he needs to register to vote” from *Defendants*. Defs.’ Resp. at 18. As Plaintiff Hill explains, he is not yet on notice about what specifically deprived him of full-ballot registration status. Hill Decl. ¶ 13. While he believes it is due to his failure to provide the proper DPOC in the proper manner, “this has not been made clear to [Plaintiff Hill] by any state or local officials.” *Id.* ¶ 12. Whatever he has learned about the reason for his registration rejection lacks the authority of state-provided information regarding his voter registration status.

Finally, even if he is correct about what is defective with his voter registration application, he still has yet to receive any guidance *from state or local election officials* about how to fix his registration status. *Id.* ¶ 14. And as Plaintiff Hill has made clear, he does not have unlimited time, energy, and resources to determine the defect plaguing his voter registration application and to figure out the correct path for curing it. *Id.* ¶ 15. Indeed, even state and local elections officials struggle to answer the very questions that Defendants now say Plaintiff Hill can figure out on his own. For example, Christine Lehrkamp, South Dakota’s Director of the Division of Elections incorrectly instructed auditors that *any* South Dakota driver’s license with a REAL ID designation would satisfy proof of citizenship, *see* ECF No. 33-2 at 2, even though certain categories of non-U.S. citizen lawful residents may obtain REAL IDs. *See* S.D. Dep’t of Pub. Safety, *Driver License/ID Card Required Documents*, <https://perma.cc/K7W7-T8RD> (last accessed Sep. 9, 2026) (noting the documents that non-U.S. citizens may provide to obtain a REAL ID in South Dakota). And when asked whether DPOC needed to be provided by the voter registration deadline for a voter to be eligible to vote in state and local elections, Director Lehrkamp stated: “If the voter i[s] NEW and has indicated that they are a US citizen but they have not provided proof of citizenship they should be registered as a Federal voter until they provide the proof.” ECF No. 33-2 at 2. This nonanswer does not clarify whether a registrant who fails to provide DPOC in their initial

application must do so *by* the voter registration deadline or can be cured *after* the deadline passes. If the Director of the Division of Elections cannot provide a clear answer, how is any voter, including Plaintiff Hill, expected to understand the correct cure process? Defendants now suggest that all Plaintiff Hill needs to do is “use[] what he knows” and “submit a corrected application to the Minnehaha County Auditor.” Defs.’ Resp. at 18. If a “corrected application” is the cure process Plaintiff Hill must follow, at no point have Defendants explained that to him. Defs.’ Resp. at 18. Plaintiff Hill’s alleged injury is Defendants’ failure to provide notice and an opportunity to cure, not his own inability to independently discover how to comply with the DPOC Requirement. Plaintiff Hill’s “asserted injuries are not the result of [his] own or some third party’s *independent* action[,]” but the direct result of Defendants’ botched implementation of S.B. 175. *Miller v. Thurston*, 967 F.3d 727, 735 (8th Cir. 2020).

At bottom, notice of a defect is insufficient absent clear information on or access to a viable process to cure that defect. *See, e.g., Bliek*, 102 F.3d at 1476; *Gonzalez v. Sullivan*, 914 F.2d 1197, 1203 (9th Cir. 1990). But given the confusion surrounding the TotalVote letters, lack of specific notice, and lack of clarity about how to cure a defective application, Defendants’ argument amounts to a retort that Plaintiff Hill should “read the minds of election officials” by guessing what exactly is wrong with his application and how he can resolve it to be registered to vote in state and local elections. *Self Advoc. Sols. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1053 (D.N.D. 2020); *see also Gonzalez*, 914 F.2d at 1203 (“[T]he form of the notice used here is sufficiently misleading that it introduces a high risk of error into the disability decisionmaking process.”) Procedural due process guarantees are meant to ensure such mind-reading is unnecessary.

Because reading the minds of election officials “cannot be the process due,” Plaintiff Hill will suffer a legally cognizable injury in the November 2026 election and beyond until Defendants

notify him of the error preventing him from being a fully registered voter and instruct him on how specifically he can resolve that error to exercise his right to vote in state and local elections. *Self Advoc. Sols. N.D.*, 464 F. Supp. 3d at 1053.

B. Plaintiff League of Women Voters of South Dakota has standing.

The League has demonstrated it suffers an injury-in-fact that is traceable to Defendants and redressable, such that it is likely to have Article III standing both on its own and on behalf of its members. Even still, the Court need not reach the League's standing if it finds Plaintiff Hill has standing to proceed. *Horne*, 557 U.S. at 446-47; *Fayetteville Pub. Libr.*, 183 F.4th at 1030-32.

i. The League has organizational standing.

An organizational plaintiff satisfies the injury-in-fact requirement “if a defendant’s actions directly affected and interfered with the organization’s core business activities.” *Get Loud*, 171 F.4th at 1064 (*citing AHM*, 602 U.S. at 395). Here, Defendants’ failure to implement an adequate notice and cure process has upended LWVSD’s core mission of providing voter registration and voter education services to South Dakotans. Decl. of Kathryn Johnson ¶¶ 39-57, ECF No. 12-4 (“Johnson Decl.”). The lack of clarity around the cure process frustrates the League’s ability to provide its core voter education services. *Id.* ¶ 57. The lack of consistent or transparent notice and cure procedures renders the League’s core voter registration activities less effective where federal-only voters registered by the League are substantially less likely to participate in *all* elections. *Id.* ¶¶ 40, 49-53. Defendants’ inaccurate notice letters also seriously jeopardize the League’s hard-earned relationship with prospective voters and the public because federal-only voters whose registrations are rejected for full-ballot status without an accurate explanation are likely to associate that rejection with the League’s assistance. *Id.* ¶¶ 54-56. The League has already had to divert time away from important projects due to its efforts to reach out to and assist misinformed

federal-only voters. *Id.* ¶¶ 65, 70, 73, 74. Defendants’ implementation of DPOC has clearly “impaired [plaintiff’s] ability to provide voter registration services.” *Get Loud*, 171 F.4th at 1064.

Defendants’ attempt to distinguish this case from *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), is unavailing. *See* Defs.’ Resp. at 12. LWVSD, an organization dedicated to providing voter registration and voter education services to the public, is analogous to the *Havens* plaintiff whose mission to provide housing-counseling services was frustrated by a defendant’s unlawful conduct. *Havens Realty Corp.*, 455 U.S. at 378-80. As explained above, Defendants’ failure to implement an adequate notice and cure process has likewise “perceptibly impaired [the League’s] ability to provide [voter registration] services for [eligible South Dakota residents].” *See id.* at 379.

Contrary to Defendants’ assertion, Defs.’ Resp. at 13, the League has also made clear how the post-registration notice and cure problems “directly interfere[] with [the League’s] voter registration activities” and core services. *Get Loud*, 171 F.4th at 1064. In order to continue its frustrated “core business activities,” *id.*, of assisting voters to register to vote in *all* South Dakota elections, “the League has expended time and resources to contact federal voters to assist them with curing their voter registrations so that they can become full-ballot voters.” Johnson Decl. ¶ 70. Even then, without any clarity on *how* voters are supposed to cure their registrations absent reapplying entirely, the League’s efforts to assist these voters are further hampered by Defendants’ inaction. The lack of a notice and cure process means “the League will have to spend more time with voters to submit more voter registration forms until their registrations for state and local elections are accepted.” *Id.* In the League President’s words: “[R]edirecting membership and volunteer time and resources to working on S.B. 175 means we have lessened ability to work on our programs related to other subjects, such as our efforts in voter education and outreach to South

Dakotans,” including the League’s “non-partisan civic education event series with South Dakota News Watch and local universities, get out the vote (“GOTV”) work, and our candidate, legislative, and issue forums.” *Id.* ¶ 73. As a volunteer-run organization, these resources are finite. *Id.* ¶ 74. “Such concrete and demonstrable injury to the organization’s activities—with the consequent drain on the organization’s resources—constitutes far more than simply a setback to the organization’s abstract social interests.” *Havens*, 455 U.S. at 379.

The two cases Defendants rely on, *AHM* and *Holmes v. Bax*, are readily distinguishable. *See* Defs.’ Resp. at 11-12. The League cannot be analogized to the organizational plaintiffs in *AHM* who alone “spen[t] money to gather information and advocate against the defendant’s action” or in *Holmes* whose “model is to spend money opposing [the defendants’] allegedly unlawful practices.” *Holmes v. Bax*, No. 25-1987, 2026 WL 2421803, at *5 (8th Cir. Aug. 19, 2026). The League is primarily a service provider whose preexisting services have been impeded, and its diversion of resources is a consequence of Defendants’ failure to implement an adequate notice and cure process. Moreover, those diversions have been primarily member and volunteer hours that would otherwise have been spent on the League’s other priorities—not money spent to “manufacture its own standing.” *AHM*, 602 U.S. at 394; Johnson Decl. ¶¶ 65, 70, 73, 74. This is unlike Empower Missouri, the organization in *Holmes*, that the Eighth Circuit found “provide[d] no services or [] assistance to [impacted individuals],” and therefore determined could not be analogized to the organizational plaintiff in *Havens*. *Holmes*, 2026 WL 2421803, at *5. In contrast, the League has clearly demonstrated that it does provide both services and assistance to new and already-registered voters affected by Defendants’ failure to implement an adequate notice and cure process. Johnson Decl. ¶¶ 12-20, 70.

Defendants are further incorrect that the League’s injuries are speculative. *See* Defs.’ Resp. at 10. The case Defendants rely on, *Whitmore v. Arkansas*, 495 U.S. 149 (1990), is inapposite. In *Whitmore*, the Supreme Court found an incarcerated plaintiff did not have a substantial interest in challenging Arkansas’ system of comparative review in death penalty cases based on the hypothetical that he might one day obtain federal habeas relief that would grant a new trial, especially because he had already been convicted of murder and sentenced to death, had already exhausted his direct appellate review, and had been denied state post-conviction relief. 495 U.S. at 156-57. In contrast, the League has identified a strong likelihood that their continued registration of new voters under Defendants’ current implementation of S.B. 175 in violation of procedural due process will harm the League’s relationship with prospective voters and the public. Johnson Decl. ¶¶ 54-56. Indeed, several steps in the so-called “speculative chain of possibilities” Defendants criticize have already happened. *Compare* Defs.’ Resp. at 10, *with* Johnson Decl. ¶¶ 54-56, *and* Hill Decl. ¶¶ 7-9.¹

Finally, the League does not suffer a “generalized grievance.” *See* Defs.’ Resp. at 11. Defendants’ inaccurate notice letters and inconsistent cure guidance have forced the League—an organization uniquely dedicated to voter registration and voter education—to halt its voter registration efforts over the damage it risks to the League’s voter education efforts, public outreach, and reputation. Johnson Decl. ¶¶ 18, 54-56, *see also* *Get Loud*, 171 F.4th at 1064. Indeed, because of Defendants’ actions, the League has been “substantially less effective in registering eligible

¹ Defendants’ invocation of the heightened scrutiny applied in *Clapper v. Amnesty International* is also misplaced. *See* Defs.’ Resp. at 10. Courts only need to “distinguish the ‘predictable’ from the ‘speculative’ effects of government action,” when a plaintiff’s injury depends upon “how regulated third parties not before the court will act in response to the government regulation.” *Diamond Alt. Energy, LLC*, 606 U.S. 100, 112 (2025).

voters” to vote in all South Dakota elections. Johnson Decl. ¶ 72, *see also Get Loud*, 171 F.4th at 1064.

In sum, the League has organizational standing to challenge Defendants’ violation of procedural due process.

ii. The League has associational standing.

An organization has associational standing on behalf of its members if “(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.” *League of Women Voters of S.D. v. Noem*, No. 4:22-CV-04085-RAL, 2022 WL 17581792, at *8 (D.S.D. Dec. 12, 2022) (citing *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977)). The League “need not establish that all of its members would have standing to sue individually so long as it can show that ‘any one of them’ would have standing.” *Iowa League of Cities v. EPA*, 711 F.3d 844, 869 (8th Cir. 2013) (quoting *Warth v. Seldin*, 422 U.S. 490, 511 (1975)). “At the preliminary injunction stage, a plaintiff need only show that they are likely to have standing.” *Get Loud Ark. v. Thurston*, 748 F. Supp. 3d 630, 651 (W.D. Ark. 2024) (citing *Lujan*, 504 U.S. at 561).

The League has established the likelihood it will have new members before the next election and that its new members are likely to be affected by Defendants’ unlawful conduct. Johnson Decl. ¶¶ 58-59. Contrary to Defendants’ assertions, Defs.’ Resp. at 14, the League made plain that these new members are likely to suffer an Article III injury because they “would be required to provide DPOC in order to become a fully registered, full-ballot voter in South Dakota.” Johnson Decl. ¶ 59. The likelihood of new League members failing to submit DPOC is high given the negligible steps Defendants have taken to make the public aware of the new DPOC requirement.

Id. ¶ 47 (noting minimal public education efforts about S.B. 175 and the fact that “the voter registration application still does not inform voters of the DPOC requirement, even though the law has been in effect for nearly five months”). And, as the League’s briefing made clear—which the Secretary does not contest—all new federal voters receive the State’s inadequate notice letter and lack clear guidance on how to fix their registration status. *See, e.g.,* Pls.’ Mem. at 7-11.

Until there is a notice and cure process for DPOC issues, all League members who update their registrations are at risk of an erroneous deprivation of their right to vote in state and local elections, such that “‘any one of them’ would have standing.” *Iowa League of Cities*, 711 F.3d at 869 (citation omitted). This threatened injury is not speculative. Since the passage of S.B. 175, LWVSD is aware of at least one League member who was required by a county auditor’s office to provide DPOC while updating her voter registration in person. Johnson Decl. ¶ 61. “The voter was told that her registration would be moved to federal voter status if she attempted to update it without providing DPOC.” *Id.* This injury is traceable to Defendants’ failure to implement an adequate notice and cure process and is also redressable by the requested relief against them.

Finally, Defendants’ objection that the League has not identified specific impacted members is “premature.” *Am. Ass’n of Nurse Pracs. v. McMahon*, No. 26-cv-1780, 2026 WL 1826176, at *11 (D.D.C. June 24, 2026). Because “this is not the merits stage . . . the question on a motion for a preliminary injunction is whether [the League] is likely to be able to establish standing later in the case.” *Centro de Trabajadores Unidos v. Bessent*, 167 F.4th 1218, 1229 (D.C. Cir. 2026). As explained above, LWVSD has submitted a declaration demonstrating that its current and new members are likely to have standing to challenge Defendants’ failure to implement an adequate notice and cure process, “which is enough at this early juncture.” *Id.*; Johnson Decl. ¶¶

58-63. Accordingly, LWVSD has demonstrated it is likely to have associational standing to challenge Defendants' violation of procedural due process.

C. Preliminary injunctive relief by this Court will redress Plaintiffs' injuries.

"[T]he two key questions in most standing disputes are injury in fact and causation." *AHM*, 602 U.S. at 381. "The additional redressability requirement generally serves to ensure that there is a sufficient 'relationship between "the judicial relief requested" and the "injury" suffered.'" *Diamond Alt. Energy*, 606 U.S. at 112 (quoting *California v. Texas*, 593 U.S. 659, 671 (2021)). "[C]ausation and redressability[] are usually 'flip sides of the same coin.'" *Id.* at 111 (quoting *AHM*, 602 U.S. at 380). Although Defendants tellingly do not purport to dispute causation in their opposition, they raise two redressability arguments. Neither carries weight.

First, Defendants pluck a few words out of context to suggest that, even if Plaintiffs succeed, their injuries would not be redressed because "neither the Secretary nor the Board 'register[s]' voters" but, rather, county auditors do. Defs.' Resp. at 19; *but see* S.D. Admin. R. 5:02:04:04 (voters may register at either "county auditor's office" or the "secretary of state's office"). That is neither here nor there. Plaintiffs' quarrel is not with the act of registration but with Defendants' failure to "provid[e] affected voters with adequate and meaningful notice and an opportunity to cure their application." *See* Pls.' Mot. Prelim. Inj. at 1-2, ECF No. 10 ("Pls.' Mot.").

Defendants cannot reasonably dispute that they bear the ultimate responsibility for the lack of notice and cure. Currently, whenever an auditor registers a federal-only voter, the statewide voter registration system (TotalVote) requires them to send an "automated letter" offering blatantly incorrect information and providing for no cure procedures. Pls.' Mem. at 3. The Board Defendants are statutorily tasked with developing uniform election procedures, voter registration materials, instructions to voters, and relevant "notices"—including those sent to registrants with deficient applications. SDCL § 12-1-9(1), (3), (4), (9), § 12-4-5.3; *see also* Defs.' Resp. at 3-4. The Secretary

is “the chief state election official” in South Dakota, SDCL § 12-4-33, and is responsible for “[t]he establishment and maintenance of the statewide voter registration file” that currently mandates auditors’ use of the erroneous notice at issue in this case, *id.* § 12-4-39. Put simply, Defendants are the reason county auditors send federal-only voters an inaccurate letter that does not provide for cures, and Defendants alone can remedy that.

Accordingly, Plaintiffs ask for a “simple solution”—that Defendants populate TotalVote with “an updated notice letter” with accurate information and clear cure procedures. Pls.’ Mem. at 16-17. To implement this easy fix, Plaintiffs also request that Defendants “issue guidance” to county auditors instructing them to use that corrected notice and to offer impacted registrants an opportunity to cure. Pls.’ Mot. at 1-2. Defendants do not dispute that state law mandates a 30-day cure window or that they have willfully declined to ensure such cure opportunities are offered to federal-only voters, *see* SDCL § 12-4-5.3; Pls.’ Mem. at 5; *see generally* Defs.’ Resp. (not disputing cure requirements). Yet this relief would remedy Plaintiffs’ harms.

Second, Defendants emphasizes that Plaintiffs’ motion asks for “the Secretary and not the Board” to issue additional guidance to auditors, and they contend that “the Board, not the Secretary, is tasked with issuing guidance and rules governing the contents of notices sent to registrants.” Defs.’ Resp. at 19-20. Their “gotcha” argument is unpersuasive.

To begin, by statute, the Secretary is the *chairperson of the Board* and can be ordered to issue guidance in that *ex officio* capacity. *See* SDCL § 12-1-5; Defs.’ Resp. at 4. That alone defeats this argument. But further, Defendants concede that the Secretary *does* regularly publish “guidance concerning election and voter-registration laws,” including existing guidance to auditors about implementing S.B. 175. *See* Defs.’ Resp. at 3-4; ECF No. 12-2 (guidance addressed to “county auditors” stating that “[a]s the state’s chief elections officer, the Secretary of State is responsible

for the uniform and lawful administration of voter registration,” including implementation of S.B. 175). “[T]o show redressability, the plaintiff must simply ‘show a predictable chain of events’ that would likely result from judicial relief and redress the plaintiff’s injury.” *Diamond Alt. Energy, LLC*, 606 U.S. at 120-21 (quoting *AHM*, 602 U.S. at 385); *see also id.* at 114 (noting how the redressability requirement requires only a minimal showing of redress of “at least some” of Plaintiffs’ injuries). Defendants claim—without citing any authority—that “no one in local government is bound by the statements in these materials,” so “auditors are free to discard that guidance and proceed how they see fit.” Defs.’ Resp. at 4, 20. Even if that were true, auditors’ compliance is a “predictable . . . effect[]” of the state’s chief election official issuing uniform statewide guidance, *Diamond Alt. Energy, LLC*, 606 U.S. at 112—guidance she has previously claimed to be within her official “responsib[ilities],” ECF No. 12-2; *cf. Mo. Prot. & Advoc. Servs., Inc. v. Carnahan*, 499 F.3d 803, 807 (8th Cir. 2007) (holding Secretary of State is a proper defendant even when the authority to administer elections is typically delegated to local authorities because the Secretary “is ‘the chief state election official’ responsible for overseeing of the voter registration process”) (citation omitted).

In any event, “[c]rafting a preliminary injunction is an exercise of discretion and judgment,” and this Court “may mold its decree to meet the exigencies of the particular case.” *Trump v. Int’l Refugee Assistance Project*, 582 U.S. 571, 579-80 (2017). If Defendants prefer that relief run against the Board, this Court may craft an injunction that addresses guidance-related relief to *all Defendants*, which include the members of the Board. *See Libertarian Party of Ark. v. Thurston*, 962 F.3d 390, 405 (8th Cir. 2020) (reprimanding state defendants for “overly discount[ing] the flexible nature of equitable, injunctive relief” within the court’s discretion); *see also* Compl. at 29, ECF No. 1 (asking for “such other relief as this Court may deem just and proper”).

II. The Court should remedy the constitutional violation conceded by Defendants.

Defendants raise two meritless objections to the scope of Plaintiffs’ requested relief. *See* Defs.’ Resp. at 20-22. First, Defendants stretch the U.S. Supreme Court’s decision in *Trump v. CASA, Inc.* well outside its context and without regard to the standards announced therein. Second, Defendants mischaracterize Plaintiffs’ proposed remedy as necessarily mandatory—even though it functions just as well in prohibitory form—and inexplicably cite several cases recognizing that courts *may* enter mandatory injunctions, while suggesting there is no context where such injunctions fall within their equitable authority. But this case is the exact context where a mandatory injunction is appropriate: South Dakota voters have an *affirmative right* to constitutionally adequate procedures and an order directing Defendants to provide those procedures falls well within the Court’s equitable authority to remedy that constitutional violation.

Trump v. CASA, Inc. addressed a narrow question: whether “Congress has granted federal courts the authority to universally enjoin the enforcement of an executive or legislative policy” under the Judiciary Act of 1789. 606 U.S. 831, 839 (2025); *see also id.* at 841 n.4 (“Our decision rests solely on the statutory authority that federal courts possess under the Judiciary Act of 1789.”). “In *CASA*, the Supreme Court held that because universal injunctions are a relatively modern phenomenon, they fall outside the bounds of a federal court’s equitable authority under the Judiciary Act.” *Welty v. Dunaway*, 791 F. Supp. 3d 818, 843 (M.D. Tenn. 2025). But this case concerns neither enjoining federal policy nor the Court’s authority under the Judiciary Act. *See Sanderson v. Hanaway*, No. 4:23-CV-1242-JAR, 2026 WL 1505958, at *1-2 (E.D. Mo. May 29, 2026) (“Justice Kavanaugh’s concurrence repeatedly confirms that *CASA* proscribes only nationwide injunctions involving federal statutes and executive actions.”). Instead, this case concerns enjoining state policy under 42 U.S.C. § 1983, which expressly authorizes “suit[s] in equity,” “other proper proceeding[s] for redress,” and “injunctive relief.” While the Judiciary Act

of 1789 may reflect limited conceptions of equity “at our country’s inception,” *CASA, Inc.*, 606 U.S. at 841, Section 1983 was enacted nearly 200 years later and expressly incorporates modern legal remedies. This includes things like the broad statewide relief recognized in taxpayer suits in the “mid-19th century,” *id.* at 850, as well as cases like *Ex Parte Young*, which cemented statewide injunctions against state officials as a means of constitutional enforcement, 209 U.S. 123 (1908). Thus, a statewide injunction under Section 1983 is accompanied by precisely the “historical pedigree” that the Court found lacking in *CASA. Welty*, 791 F. Supp. 3d at 843; *see also Sanderson*, 2026 WL 1505958, at *1-2 (“[T]his Court concludes that *CASA* only precludes nationwide injunctions on federal officials; it doesn’t disturb longstanding precedent authorizing statewide injunctions on state and local officials.”); *Titan Logistics Grp. LLC v. Tischler*, No. 3:26-CV-1300, 2026 WL 1719313, at *5 (N.D. Ohio June 15, 2026) (concluding that *CASA* applied only to “whether federal district courts have the equitable authority to issue ‘universal’ injunctions of federal executive orders”).

Even if *CASA* held full force here, it would not prohibit statewide injunctions; it would merely require this court to consider “whether a narrower injunction is appropriate.” 606 U.S. at 854. But a narrower injunction would not be appropriate here because only a statewide injunction would provide “complete relief” to Plaintiffs. *See id.* at 851 (“We agree that the complete-relief principle has deep roots in equity.”). Specifically, the League could not be protected from either its organizational or its associational injuries. For example, the League’s voter education and assistance is primarily directed to non-members and, as a result, the League would still need to shift its resources to respond to Defendants’ implementation of S.B. 175 in the event of partial relief. Johnson Decl. ¶¶ 65-74. Further, limiting relief to the League and its members would not protect the League’s reputation where they assist non-members with registration and Defendants

subsequently misinform those non-members about why they were denied full registration. Johnson Decl. ¶¶ 39-42, 45, 49-56. Finally, limiting relief to the League’s members would not practically protect those members because Defendants cannot identify or differentiate members from non-members when processing voter registration applications. Johnson Decl. ¶¶ 49-56, 63.

Constitutional and practical considerations further counsel strongly against less than complete relief to either the League or Plaintiff Hill. Affording due process to some but not all voters—such that voters would register under different procedures and standards across the state—would *itself* violate the constitution, *cf. Bush v. Gore*, 531 U.S. 98, 104-05 (2000), as citizens have the “right to participate in elections on an equal basis with other citizens in the jurisdiction,” *N.E. Ohio Coal. for Homeless v. Husted*, 696 F.3d 580, 598 (6th Cir. 2012) (citation omitted). Moreover, Defendants have not even explained if or how South Dakota’s election administrators could feasibly implement notice and cure procedures for some, but not all, voters.

Multiple courts since *CASA* have granted relief that extends beyond the parties to the case because of either the nature of the injury or the impracticality of differentiating parties from the general public in administering relief. *See, e.g., Washington v. Trump*, 145 F.4th 1013, 1038 (9th Cir. 2025), *cert. denied*, No. 25-364, 2026 WL 1871300 (U.S. June 30, 2026) (affirming nationwide injunction because a party-only injunction would still injure Plaintiffs); *League of United Latin Am. Citizens v. Exec. Off. of President*, 808 F. Supp. 3d 29, 85 (D.D.C. 2025), *aff’d*, No. 25-5476, 2026 WL 1991571 (D.C. Cir. July 2, 2026) (granting nationwide injunction where differentiating Plaintiffs’ members was not feasible); *Reps. Comm. for Freedom of the Press v. Rokita*, 147 F.4th 720, 733 (7th Cir. 2025) (affirming broad injunction where injury arose from relationship between plaintiffs and non-plaintiff members of the public).

Finally, Defendants overcomplicate and mischaracterize the nature of the relief Plaintiffs request in their motion for a preliminary injunction. Put simply, and as stated in their Motion, Plaintiffs' request a preliminary injunction that does two things: (1) enjoins Defendants from enforcing the DPOC Requirement "without providing affected voters with adequate and meaningful notice and an opportunity to cure," Pls.' Mot. at 1, and (2) directs Defendant Johnson to issue guidance to county auditors "to provide all voters with adequate and meaningful notice and an opportunity to cure before registering them as federal-only voters," *id.* at 1-2. The first part of the injunction functions entirely as a prohibitive injunction: Defendants are left with the choice of either refraining from enforcing the DPOC Requirement *or* offering an adequate notice and cure process so that they may constitutionally enforce the requirement. The second part merely directs Defendant Johnson to issue guidance extending that prohibitory instruction to county auditors. Importantly, neither part of the requested relief asks the Court to rewrite S.B. 175—this motion only concerns Defendants' duty to *implement* S.B. 175 consistent with the Fourteenth Amendment. Both parts are within the court's equitable jurisdiction and are consistent with how courts deal with the intersection of election rules and the mandate of procedural due process.

Moreover, none of Defendants' cases stand for the proposition that courts *cannot* enter positive injunctions. *See* Defs.' Resp. at 21-22. Indeed, they all say the opposite and merely stand for the proposition that Court's should not intrude further into the details of election administration than necessary to remedy a plaintiff's injuries. What's more, none of the cases cited by Defendants involve the intersection of election laws and procedural due process. First, any state prerogative in the area of election administration must yield to the requirements of the Fourteenth Amendment. *See* U.S. Const. Art. VI, cl. 2. Second, while the U.S. Constitution largely provides *negative* rights that prohibit government action, the procedural due process guarantee is a uniquely positive right

that entitles citizens to affirmative acts by the government. *See* David P. Currie, *Positive and Negative Constitutional Rights*, 53 Univ. of Chi. L. Rev. 864, 886 (1986). And for that reason, courts often affirmatively order government defendants to fix deficient notices to remedy procedural due process claims. *See, e.g., Bliek v. Palmer*, 916 F. Supp. 1475, 1494 (N.D. Iowa 1996), *aff'd*, 102 F.3d 1472 (8th Cir. 1997) (enjoining defendants' conduct until corrective notices agreed to or proposed by the parties are distributed).

Indeed, courts evaluating procedural due process claims in the election context often issue orders similar to Plaintiffs' requested relief here. In *Voto Latino v. Hirsch*, the district court issued a conditionally prohibitory injunction similar to the first part of Plaintiffs' request here. 712 F. Supp. 3d 637, 684 (M.D.N.C. 2024). In *Self Advocacy Solutions N.D. v. Jaeger*, the district court preliminarily enjoined the enforcement of a signature matching law absent adequate notice and cure procedures, and further directed the parties to confer and submit proposed notice and cure procedures to the court. 464 F. Supp. 3d 1039, 1056 (D.N.D. 2020). In *Martin v. Kemp*, the district court ordered the Georgia Secretary of State to issue an instruction to county election officials to provide a notice and cure process and outlined how that notice and cure process would work. 341 F. Supp. 3d 1326, 1341 (N.D. Ga. 2018). Affirmative injunctions are especially common in preliminary injunction cases where the court's intrusion into election rules is temporary and there may not be time for Defendants to design their own notice and cure process.

CONCLUSION

Defendants have conceded the merits of Plaintiffs' procedural due process claim. The Constitution demands a remedy, particularly before the November 3, 2026 election for which voting begins on September 18, 2026.

Respectfully submitted on the 9th day of September, 2026.

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