UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

DEMOCRACY NORTH CAROLINA, *et al.*, *Plaintiffs*, v. THE NORTH CAROLINA STATE BOARD OF ELECTIONS, *et al.*, *Defendants*, and PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate, *et al.*, *Defendant-Intervenors.*	Civil Action No. 20-cv-00457 **DEFENDANT-INTERVENORS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION AND MODIFICATION OF PRELIMINARY INJUNCTION**

INTRODUCTION

On August 4, 2020, this Court granted in part and denied in part Plaintiffs' Amended Motion for a Preliminary Injunction. *See* Mem. Op. & Order, Doc. 124 (Aug. 5, 2020) ("Op. & Order"). As relevant here, the Court held that Plaintiffs demonstrated a likelihood of success on their claim that N.C. Gen. Stat. §§ 163-226.3(a)(4)–(6) and 163-231(b)(1) violate Section 208 of the Voting Rights Act. *Id.* at 178. Because Plaintiff Walter Hutchins was the "only Plaintiff with standing to bring a claim under Section 208 of the Voting Rights Act," *id.* at 170, the Court enjoined those provisions of North Carolina law "to the extent they prohibit Plaintiff Hutchins . . . in marking, completing, and returning his absentee ballots," *id.* at 178. Plaintiffs now ask

the Court to extend the preliminary injunction to "afford the same relief provided to Plaintiff Walter Hutchins to *all* residents of facilities subject to N.C. Gen. Stat. §§ 163-226.3(a)(4)–(6) and 163-231(b)(1) who are entitled to voting assistance pursuant to Section 208 of the Voting Rights Act." Pls.' Mot. for Recons. & Modification of Prelim. Inj. at 19, Doc. 130 (Aug. 24, 2020) ("Pls.' Recons. Mot.") (emphasis in original).

Plaintiffs' motion should be denied for two main reasons. First, the Court does not have the authority to extend the preliminary injunction beyond Hutchins. As the Fourth Circuit recently emphasized in reversing a district court judgment for purporting to extend relief to non-parties, "Article III requires that injunctions be tailored to protect only the plaintiffs in a specific case from the defendants to that suit." *CASA de Maryland, Inc. v. Trump*, __ F.3d __, 2020 WL 4664820, at *24 (4th Cir. Aug. 5, 2020). Plaintiffs have not sought, and the Court does not have before it, a class of similarly situated individuals with potential injuries it could redress. And extending relief to other voters will add nothing to the relief Hutchins already has received from this Court's order. Moreover, even if the Court *did* have the authority to extend the preliminary injunction to non-parties, extending relief to an undefined class is particularly inappropriate here when tailoring the remedy involves fact-intensive evaluation——like the Court conducted for Hutchins——of

whether an individual qualifies as a Section 208-voter and what challenges that individual faces in voting. Second, an extension of the preliminary injunction is also improper because Plaintiffs lack standing to challenge the facility ban *even as to Hutchins*. That ban is contained in a criminal statute, and Plaintiffs have not named any officials with enforcement authority as defendants. This fatal flaw in Plaintiffs' case undermines the injunction even as to Hutchins.

ARGUMENT

I. The Court Cannot Extend the Preliminary Injunction Beyond Hutchins.

Try as they might, Plaintiffs cannot escape that they did not bring a class action suit on behalf of Section 208-voters. The inevitable consequence of this strategic decision is that the Court's relief must not be extended beyond Hutchins.

It is foundational that a court's "constitutionally prescribed role is to vindicate the individual rights of the people appearing before it." *Gill v. Whitford*, 138 S. Ct. 1916, 1933 (2018). As the Fourth Circuit has explained, while "specific cases can have general implications," "the sole duty of the federal courts is not to decide general questions for everyone, but rather to settle particular 'cases' or 'controversies' between particular parties." *CASA*, 2020 WL 4664820, at *23. The Court's "power to

grant equitable remedies is commensurate with this duty." *Id.* at *24. As a result,

> Article III requires that injunctions be tailored to protect only the plaintiffs in a specific case from the defendants to that suit. . . . And while it is true that even such plaintiff-protective injunctions may benefit non-parties, these benefits are purely "collateral[]" because the "judicial power exists only to redress or otherwise to protect against injury to the complaining party."

Id. (citation omitted, alteration in original) (quoting *Warth v. Seldin*, 422 U.S. 490, 499 (1975)).

Because the Court only had one Plaintiff before it who had standing to challenge N.C. Gen. Stat. §§ 163-226.3(a)(4)–(6) and 163-231(b)(1), *see* Op. & Order at 170, its remedial authority was limited to redressing that Plaintiff's injury. And the Court's preliminary injunction did just that——it enjoined the application of these provisions "to the extent they prohibit Plaintiff Hutchins . . . in marking, completing, and returning his absentee ballots." *Id.* at 178.[1] An order enjoining enforcement of these provisions statewide for all Section 208-voters——which Plaintiffs now propose——would be entirely superfluous from Hutchins' perspective and therefore is beyond this Court's authority. This is because "injunctive relief should be no more burdensome to the defendant

[1] As explained below, *see infra* Part II, the absence of a defendant responsible for enforcing the facility assistance ban undermines the injunction even as to Hutchins. But purporting to extend the injunction to additional voters would do nothing to cure this fatal flaw in Plaintiffs' case.

than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki,* 442 U.S. 682, 702 (1979). Indeed, the Fourth Circuit has rejected the notion that an injunction must extend to all enforcement of an unconstitutional statute when an injunction covering the plaintiff alone adequately remedies the injury and an extension to non-parties "does not provide any additional relief" to the plaintiff. *Virginia Soc'y for Human Life, Inc. v. Fed. Election Comm'n*, 263 F.3d 379, 393 (4th Cir. 2001), *abrogation on other grounds recognized in The Real Truth About Abortion, Inc. v. Fed. Election Comm'n*, 681 F.3d 544 (4th Cir. 2012).

A statewide preliminary injunction[2] would also violate other doctrines centered on judicial power, including standing requirements. *See CASA*, 2020 WL 4664820, *25–26. Article III requires that "a plaintiff must show that he is under threat of suffering 'injury in fact' that is concrete and particularized," and that the threat must be "actual and imminent, not conjectural or hypothetical." *Summers v. Earth Island Inst.*, 555 U.S. 488, 493

[2] Although the Fourth Circuit focused on the infirmities of nationwide injunctions in *CASA de Maryland, Inc v. Trump*, 2020 WL 4664820, at *23–26, the opinion's doctrinal points are generally applicable whenever a court expands a remedy to non-parties. Indeed, the court noted that "[a] geographically-limited injunction suffers from the same infirmities as a nationwide injunction, albeit on a smaller scale, *i.e.*, it protects non-parties and purports to decide a general question of law rather than a specific dispute." *Id.* at *24 n.7.

(2009). And every plaintiff "bears the burden of showing that he has standing for each type of relief sought." *Id.* A statewide preliminary injunction covering an undefined class of people——who Plaintiffs assert are similarly situated to Hutchins——would "effectively vitiate this requirement by permitting a single plaintiff to obtain equitable relief on behalf of countless non-parties, wholly without inquiry into whether they have suffered or will imminently suffer any injury-in-fact." *CASA*, 2020 WL 4664820, at *25. Such a preliminary injunction would also be incompatible with third-party standing doctrine, *see id.*, which provides that "even when the plaintiff has alleged injury sufficient to meet the 'case or controversy' requirement, . . . the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties," *Warth v. Seldin*, 422 U.S. 490, 499 (1975). Plaintiffs' request for an extension of the preliminary injunction would "by definition seek[] to vindicate the legal rights of *all* third-parties who may be subject to the challenged [statutes]." *CASA*, 2020 WL 4664820, at *26 (emphasis in original). Likewise, an extension would also suspend the requirements of ripeness and mootness for "non-parties whose claims may very well have been premature or long stale." *Id.*

In addition to the conflicts with these justiciability doctrines, a statewide preliminary injunction of this nature

"cannot be reconciled with congressional policy regarding the availability of aggregate equitable relief in the federal courts." *Id.* Class certification under Federal Rule of Civil Procedure 23(b)(2) is the proper route for obtaining an injunction covering an entire group of litigations sharing a common interest. *See id.*; *see also Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501 (9th Cir. 1996) (recognizing "injunctive relief generally should be limited to apply only to named plaintiffs where there is no class certification"). That Plaintiffs could essentially obtain class-wide relief without satisfying the "rigorous requirements Congress imposed for class certification" necessary for Rule 23 injunctions "makes no sense." *CASA*, 2020 WL 4664820, at *26. Plaintiffs' belief that "there is no reason to differentiate between nursing home residents who are similarly-situated" to Hutchins or that it would be unfair to do so, *see* Pls.' Recons. Mot. at 3, does not relieve them of their responsibility to seek class-certification or the Court of its duty to adhere to constitutional limitations on its remedial power, *see, e.g.*, *Zepeda v. United States I.N.S.*, 753 F.2d 719, 729 n.1 (9th Cir. 1983) (rejecting the argument that is fundamentally unfair to treat similarly situated non-parties differently, as "our legal system does not automatically grant individual plaintiffs standing to act on behalf of all citizens similarly situated").

None of the cases Plaintiffs cite from the Supreme Court or Fourth Circuit——those binding on this Court——support its position that the Court has the authority to grant their request.

First, none of the cases Plaintiffs cite to argue that the "[e]xisting remedy is far narrower than the legal violation [the Court] found" cast doubt on the rule, as described above, that the Court cannot extend the preliminary injunction to non-parties without certifying a class. *See* Pls.' Recons. Mot. at 9. Rather, these cases stand for the simple proposition that the scope of an injunction must be tailored to the nature and extent of the constitutional violation as demonstrated by the plaintiff's claim. *See Califano*, 442 U.S. at 702; *Ostergren v. Cuccinelli,* 615 F.3d 263, 288-89 (4th Cir. 2010); *Va. Soc'y for Human Life*, 263 F.3d at 393. Indeed, Plaintiffs conveniently omit the Supreme Court's further explanation in *Califano* that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete *relief to the plaintiffs*." 442 U.S. at 702 (emphasis added). Likewise, the Fourth Circuit, citing that portion of *Califano*, rejected a nationwide injunction in *Virginia Society for Human Life* because an injunction covering the plaintiff alone provided the party adequate relief. *See* 263 F.3d at 393. As explained above, these cases support *denying* Plaintiffs' motion because the Court's preliminary injunction need not extend to non-parties to provide relief to Hutchins.

Second, Plaintiffs cite *Thomas v. Washington County School Board*, 915 F.2d 922 (4th Cir. 1990), to argue that "class certification is not required to obtain relief that covers all individuals injured by a challenged law or policy," Pls.' Recons. Mot. at 14. But that is only the case if a broader injunction is necessary to provide complete relief to the plaintiff. *Thomas* involved a Title VII claim alleging racial discrimination in hiring by a school board caused by the board not posting job openings and engaging in nepotism. *See* 915 F.2d at 924. Those practices had to be enjoined completely to provide the plaintiff with "hiring practices that conform to the requirements of Title VII." *Id.* The case therefore exemplifies that the relief necessary for remedying some plaintiffs' injuries will have the collateral effect of benefiting similarly situated non-parties. *See CASA*, 2020 WL 4664820, at *24; *see also Zepeda*, 753 F.2d at 729 n.1 (using the example of bus desegregation to explain that the "essential factor" in finding that class certification is not necessary in some cases is "that identical relief was inevitable to remedy the individual plaintiffs' rights"). That is not true here. The Court need not fashion an expansive remedy enjoining all applications of the relevant statutes to Section 208-voters to provide Hutchins with individual relief.[3]

[3] The Ninth Circuit case Plaintiffs cite to support their argument, *see* Pls.' Recons. Mot. at 14–15, likewise demonstrates

Finally, Plaintiffs contend that the precedent they cite regarding class certification as immaterial to the remedy "governs the issuance of injunctions in many civil rights, anti-discrimination, and voting rights cases." Pls.' Recons. Mot. at 16. But neither of the cases Plaintiffs cite involve voting rights or an injury similar to this case, i.e., one that could be remedied by an injunction covering the plaintiff only. *Evans v. Harnett County Board of Education*, 684 F.2d 304 (4th Cir. 1982), involved a claim under Title VII similar to *Thomas*, with a plaintiff who had an "application . . . on file" and who would "be considered for every position that opens." *See id.* at 306. Likewise, the court in *Sandford v. R. L. Coleman Realty Co., Inc.*, 573 F.2d 173 (4th Cir. 1978), determined that the certification of a class would not affect the remedy because the injunction necessary to provide plaintiffs relief——enjoining a racially discriminatory housing policy——would also benefit similarly-

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this important contextual point. Indeed, the court explained that "an injunction is not necessarily made overbroad by extending benefit or protection to persons other than prevailing parties in the lawsuit—even if it is not a class action—*if such breadth is necessary to give prevailing parties the relief to which they are entitled*." *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501–02 (9th Cir. 1996) (emphasis in original) (quoting *Bresgal v. Brock*, 843 F.2d 1163, 1170–71 (9th Cir. 1987). Based on this principle, the court found that enjoining the policy statewide was necessary in that specific instance because the named plaintiffs and the plaintiff-organization's members lived throughout the State, making it unlikely that they could obtain relief regarding enforcement of the contested motorcycle helmet policy without statewide application of the injunction. *See id.*

situated individuals. *See id.* at 178–79. But, again, the same cannot be said for remedying the violation the Court found here with regards to the statutes' impact on Hutchins' ability to vote. As such, Plaintiffs have no applicable, binding precedent to support their expansive view of the Court's authority to extend the preliminary injunction beyond Hutchins to include non-parties.[4]

Furthermore, the Court cannot expand its remedial authority to an undefined class by taking judicial notice of certain "facts" in the hopes of identifying and extending the preliminary injunction to similarly situated individuals. Indeed, Plaintiffs cite no binding precedent to support this proposed fix for its failure to identify a class and seek certification. *See* Pls.' Recons. Mot. at 10–14.[5] And even if the Court had the power to do

[4] Plaintiffs fail to explain how the characterization of their challenge to the North Carolina statutes as facial or as-applied have any bearing on the Court's authority to extend the preliminary injunction to non-parties. *See* Pls.' Recons. Mot. at 17–19. Legislative Defendants agree that this label is "immaterial," *id* at 19, as the modification Plaintiffs seek would exceed the Court's remedial power in either instance.

[5] Plaintiffs cite *Roe v. Shanahan*, 359 F. Supp. 3d 382 (E.D. Va. 2019), for the proposition that the Court can take judicial notice of certain facts to support an expansion the scope of the preliminary injunction to similarly situated individuals. *See* Pls.' Recons. Mot. at 11. But this non-binding case is distinguishable. First, the court's imposition of a nationwide injunction is highly suspect in light of the Fourth Circuit's most recent admonition against such remedial orders in *CASA de Maryland, Inc. v. Trump*, 2020 WL 4664820 (4th Cir. Aug. 5, 2020). Second, the court noted in *Roe* that a broader injunction was appropriate because an organizational plaintiff had associational standing to seek relief on behalf of its members, which included individuals

so, it is inappropriate here when the "facts" Plaintiffs propose are not sufficient for tailoring the preliminary injunction to include similarly situated individuals, as that determination involves fact-intensive evaluation of individual circumstances.

The facts Plaintiffs offer for judicial notice, assuming they are appropriate under the high bar established by Federal Rule of Evidence 201(b),[6] would only establish that some nursing home residents might qualify as Section 208-voters and that a portion of that group will not have voting assistance outside of their facility. *See* Pls.' Recons. Mot. at 11. But the assumption that some people will fall into these categories——without more——does not appropriately define a group for extending the preliminary injunction. Indeed, the two characteristics necessary for identifying someone as similarly situated to Hutchins——qualifying as a Section 208-voter and the inability to receive outside assistance——require a fact-intensive inquiry much like the Court's

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who were identically situated to the named plaintiffs. *See Roe*, 359 F. Supp. 3d at 422. That is not true here. Finally, the court's analysis did not involve judicial notice of any relevant facts to identify a group of similarly situated persons for the purposes of defining the scope of the injunction, *see id.*, which drives Plaintiffs' argument here.

[6] The Rule provides that a court can only take judicial notice of "a fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(1)–(2).

analysis of Hutchins' claim to determine whether an individual is likely to suffer a constitutional injury.

This is especially true in light of the Secretary of the Department of Health and Human Services' most recent order rescinding the total lockdown of skilled nursing facilities and allowing outdoor visitation under certain conditions at these facilities. *See* Secretarial Order No. 3, Visitation for Nursing Homes (Sept. 1, 2020), https://bit.ly/2F9ijRE.[7] Furthermore, guidance regarding Multipartisan Assistance Teams also contemplates providing voting assistance to nursing home residents "in accordance with the visitation policy for each facility." NC Dep't of Health & Human Services, *Guidance on Multipartisan Assistance Teams (MAT) Visitation Procedure for Hospitals, Clinics, Nursing Homes, Assisted Living or Congregate Settings* at 1 (Aug. 1, 2020), https://bit.ly/2FitxTK. Thus, Plaintiffs' contention that the Court can make broad generalizations about similarly situated individuals is wrong. Rather, an evaluation of whether an individual is similarly situated to Hutchins would necessarily involve an examination of a resident's disability, the

[7] In Executive Order 152, the Governor delegated to the Secretary of DHHS the authority to restrict activities and operations at long term care facilities, lifting the lockdown of these facilities upon the issuance of contrary DHHS guidance. *See* Executive Order No. 152, Extending Certain Health and Human Services Provisions in Previous Executive Orders and Delegation of Authority, Section 2 (July 24, 2020), https://bit.ly/33l81GH.

limitations placed on the individual's facility regarding visitation, and whether family or MAT members could provide adequate assistance.

The factual variations also would extend well beyond Hutchins' situation, as Section 208 applies to voters who require assistance in voting not only by reason of blindness but also by reason of disability or inability to read or write. *See* 52 U.S.C. § 10508. Even if Plaintiffs *had* brought this claim as a class action, the individual variations in circumstances necessary to evaluate each claim very well may have precluded certification. That is further reason not to forego the strictures of Rule 23 to grant what effectively is class relief here. Indeed, some disabled voters may be able to get the assistance they need by phone and thus may be able to vote even without the relief requested. For example, a voter who has difficulty walking may be disabled, but has no impediment to using a telephone and filling out a ballot after having received assistance over the phone.

Moreover, it is also inappropriate to extend the remedy the Court provided to Hutchins——based on concrete, particularized facts——to an undefined class because such an expansive suspension of the statutes, without further regulation or guidance regarding assistance from facility staff, presents significant risk of harm to the integrity of the voting process. Early in the pandemic, the State Board of Elections recommended to the legislature

temporarily allowing facility employees to assist residents along with regulations that would address concerns about fraud or coercion: it suggested that "two trained facility employees not of the same political party could be designated to administer voting and could be trained accordingly by the county board prior to serving in this capacity." Letter from Karen Brinson Bell, Executive Director, North Carolina State Board of Elections, to Governor Cooper et al. at 4 (Apr. 22, 2020), https://bit.ly/3k0io9z. The legislature rejected this proposal and instead opted for allowing MATs to assist voters in nursing homes. *See* 2020 N.C. Sess. Laws 2020-17 (H.B. 1169), §2.(b). The Court determined, based on Hutchins concrete facts, that enjoining the ban on assistance from facility employees in his case appropriately remedied his injuries. *See* Op. & Order at 178. But extending the order——especially to an undefined class——without any guidance or restrictions on an unknown number of facility employees multiplies the potential harms animating the ban on such assistance. Thus, even if the Court had the authority to enjoin the provision statewide absent class certification, extending relief beyond a particular plaintiff without concrete facts before the Court is inappropriate given the fact-intensive nature of the claim and the potential harm attendant to an such an extension absent any restrictions on assistance from facility employees.

II. An Extension Is Improper When the Court's Order Exceeded Its Authority.

Plaintiffs' motion should also be denied because Plaintiffs failed to establish standing *even with respect to Hutchins*. Indeed, Plaintiffs cannot establish two of the three elements of standing for Hutchins——causation and redressability. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).[8] That is because a violation of the facility assistance ban is a *felony* backed by criminal penalties. Hutchins' harm is therefore caused by the threat of prosecution looming over employees at his nursing home were they to assist him in voting, yet no prosecutors, State or local, are parties to this suit. The Defendants in this case have not *caused* Hutchins' harm, and an injunction against them will not *redress* that harm. *See Jacobson v. Florida Secretary of State*, 957 F.3d 1193, 1207–08 (11th Cir. 2020) (rejecting standing for similar reasons when voters sued the Secretary of State instead of independent local elections officials responsible for administering challenged law).

To be sure, the Court purported to enjoin "state or local law enforcement" from enforcing N.C. Gen. Stat. § 163-226.3(a)(4)–(6). Op. & Order at 188. But a federal court cannot issue an injunction

[8] Legislative Defendants acknowledge that this is the first time they have raised this standing argument, but standing is a jurisdictional requirement that cannot be waived. *See Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019).

against a non-party unless the non-party is shown to be in concert or participation with the defendants in the suit under Federal Rule of Civil Procedure 65(d). *See Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 112 (1969). Indeed, non-parties, absent some narrow, inapplicable exceptions, are not bound by a court's judgment. *See, e.g.*, *Smith v. Bayer Corp.*, 564 U.S. 299, 312–13 (2011); *Arizonans for Official English v. Arizona*, 520 U.S. 43, 66 (1997). Plaintiffs have not made the necessary showing—nor could they—that the Court had the authority to enjoin state or local law enforcement without naming an enforcement official as a defendant. *See Jacobson*, 957 F.3d at 1209 ("The district court exceeded its authority by purporting to enjoin the Supervisors, none of whom have ever been parties to this lawsuit.").

Absent enjoining the criminal enforcement of the provisions preventing facility employees from assisting in voting and submitting ballots, Hutchins can be afforded no relief. Plaintiffs might argue that State and local law enforcement are likely to follow the Court's order regardless. But the belief that non-parties will act in response to an order they are not bound by is entirely speculative and fails the redressability prong. *See Lujan,* 504 U.S. at 561, 568–69 (plurality opinion). Indeed, as Justice Scalia explained,

> If courts may simply assume that everyone (including those who are not proper parties to an action) will honor the legal rationales that underlie their decrees, then

> redressability will *always* exist. Redressability requires that the court be able to afford relief *through the exercise of its power,* not through the persuasive or even awe-inspiring effect of the opinion *explaining* the exercise of its power. It is the Court's *judgment* . . . that must provide [the party] relief — not its accompanying excursus on the meaning of the Constitution.

Franklin v. Massachusetts, 505 U.S. 788, 825 (1992)(Scalia, J., concurring in part and concurring in the judgment)*; see also Mirant Potomac River, LLC v. EPA*, 577 F.3d 223, 226 (4th Cir. 2009) ("An injury sufficient to meet the causation and redressability elements of the standing inquiry must result from the actions of the respondent, not from the actions of a third party beyond the Court's control."); *Jacobson*, 957 F.3d at 1208 ("Any persuasive effect a judicial order might have upon the Supervisors, as absent non-parties who are not under the Secretary's control, cannot suffice to establish redressability."). Without the proper enforcement officials as defendants, the Court's preliminary injunction cannot redress the injury of *any* Section 208-voter.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion for reconsideration and modification of the preliminary injunction should be denied.

Dated: September 8, 2020

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.3(d)(1), the undersigned counsel hereby certifies that the foregoing Response in Opposition to Plaintiffs' Motion for Reconsideration and Modification of Preliminary Injunction, including body, headings, and footnotes, contains 4,211 words as measured by Microsoft Word.

/s/ Nicole J. Moss
Nicole J. Moss

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on the 8th day of September, 2020, she electronically filed the foregoing Response in Opposition to Plaintiffs' Motion for Reconsideration and Modification of Preliminary Injunction with the Clerk of the Court using the CM/ECF system, which will send notification of such to all counsel of record in this matter.

/s/ Nicole J. Moss
Nicole J. Moss