No. 24-50826

In the United States Court of Appeals for the Fifth Circuit

LA UNIÓN DEL PUEBLO ENTERO, ET AL.,

Plaintiffs-Appellees,

v.

GREGORY W. ABBOTT, ET AL.,

Defendants-Appellants.

Appeal from the United States District Court for the Western District of Texas, San Antonio Division, No. 5:21-cv-00844-XR

PLAINTIFFS-APPELLEES' OPPOSITION TO STATE DEFENDANTS-APPELLANTS' AND INTERVENOR-DEFENDANTS-APPELLANTS' MOTION TO STAY DISTRICT COURT ORDER AND PERMANENT INJUNCTION PENDING APPEAL

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CERTIFICATE OF INTERESTED PERSONS

Appellees certify that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal:

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La Unión del Pueblo Entero
Friendship-West Baptist Church
Southwest Voter Registration Education Project
Texas Impact
Mexican American Bar Association of Texas
Texas Hispanics Organized for Political Action
JOLT Action
William C. Velasquez Institute
James Lewin
FIEL Houston, Inc.
Delta Sigma Theta Sorority, Inc.
The Arc of Texas
League of Women Voters of Texas
OCA-Greater Houston
LULAC Texas
Voto Latino
Texas Alliance for Retired Americans
Texas AFT

2) Appellants:

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Secretary of State Jane Nelson
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Dallas County Republican Party
Harris County Republican Party

Republican National Committee
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National Republican Senatorial Committee

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INTRODUCTION

Section 208 of the Voting Rights Act ("VRA") provides "[a]ny voter who requires assistance to vote" with the right to "assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 52 U.S.C. § 10508. As the text makes clear, "the right to select any assistor of [the voter's] choice" is "subject only to the restrictions expressed in Section 208 of the VRA itself." *OCA-Greater Houston v. Texas* (*OCA I*), 867 F.3d 604, 608 (5th Cir. 2017).

After hearing from nearly 100 witnesses and considering nearly 1,000 exhibits during a six-week trial, the district court correctly found that Section 208 preempts the challenged portions of Texas' Senate Bill 1 ("S.B.1"). S.B.1 impermissibly conflicts with Section 208 by circumscribing assistance available to mail ballot voters and imposing additional oath and disclosure requirements, backed by significant criminal penalties, that deter assistance and burden voters who need assistance. The district court made a series of factual findings, backed by extensive evidence, that these provisions, on their face and in practical operation, restricted the ability of voters to select the assistor of their choice, and accordingly were preempted by Section 208.

Appellants cannot satisfy the demanding standard for a stay pending appeal of that decision. Appellants assert the district court's order "irreparably injure[s] Texas' sovereignty," undermines Texas' interest in "election integrity," and creates confusion for voters and election officials. Br.1. But Texas has no cognizable interest in imposing restrictions on voter assistance beyond those permitted by Section 208. Appellants' arguments are also wholly unsupported—and even contradicted—by the district court's findings of fact. Indeed, the trial record is replete with testimony about the harm and confusion caused ***by*** the enjoined provisions, leading the district court to reject the very arguments State-Appellants raise here. *See* App.A.42,[1] ¶¶144, 193; *see also id.* at 86, 96–97. The district court also made detailed findings that the preempted provisions cause irreparable harm to Appellees and undermine the public interest by impeding the right to vote as set forth in Section 208. Appellants provide no basis to disregard those findings, and indeed do not even argue that the clear error standard is satisfied. It is not. This Court accordingly should deny the request for a stay.

[1] "App." refers to the appendix Appellees submitted along with this brief. "Br." refers to Appellants' Brief.

BACKGROUND

A. Legal Background

Section 208 provides that "[a]ny voter who requires assistance to vote" has the right to "assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 52 U.S.C. § 10508. Congress enacted Section 208 to "limit the risks of discrimination" against voters eligible for assistance by giving them their discretion in who they elect to help them cast their ballots. S. Rep. No. 97-417, at 62 (1982).

In 2021, Texas enacted S.B.1. As relevant, S.B.1 imposed novel burdens on voters who require assistance ("assistance provisions"), backed by felony criminal penalties:

> **Amendments to Oath of Assistance:** Section 6.04 requires voters to explain their need for assistance. Section 6.04 also amends the Oath of Assistance to require assistors to (1) swear "under penalty of perjury" that (2) the voter "represented to [them] they are eligible to receive assistance[,]" and (3) that they did not "pressure or coerce" the voter into choosing them as the assistor. TEC § 64.034.
>
> **Assistor Disclosures:** Sections 6.03, 6.05, and 6.07 impose new disclosure requirements for voter assistors.
>
> - Section 6.03 requires assistors to (1) provide their name and address, (2) swear to their "relationship to the voter[,]" and (3) indicate whether they "received or accepted any form of com-

pensation or other benefit from a candidate, campaign, or political action committee" in exchange for providing assistance. TEC § 64.032.

- Section 6.05 requires assistors who help a mail-in voter to disclose on the mail ballot envelope their "relationship to the voter," TEC § 64.032, and whether they "received or accepted any form of compensation or other benefit from a candidate, campaign, or political action committee in exchange for providing assistance," TEC § 86.010.

- Section 6.07 further requires an assistor "who deposits the carrier envelope in the mail" to provide their relationship to the voter on the envelope. TEC § 86.013(b)(3).

Ban on Compensated Mail Ballot Assistance: Section 6.06 makes it a felony to compensate a mail ballot assistor who is not an attendant or caregiver previously known to the voter, or to offer, solicit, receive, or accept compensation in connection with such assistance. TEC § 86.0052.

Canvassing Restriction: Section 7.04 makes it a felony to knowingly provide, offer, or receive any "compensation or other benefit" in exchange for voter outreach that includes advocating on ballot measures in the presence of a mail ballot. TEC § 276.015.

B. Procedural History

Appellees are "membership-driven, non-partisan civil rights and social advocacy groups in Texas with members who require voting assistance due to a disability, blindness, or an inability to read or write the language in which [the] ballot is written." App.A.14 ¶32. In September 2021, Appellees sued to enjoin State-Appellants from enforcing certain provisions of S.B.1 under Section 208. App.D.

The district court held a bench trial from September 11 through October 20, 2023. App.A.4. On October 11, 2024, the district court issued a 112-page decision concluding that Sections 6.03–6.07 and 7.04 of S.B.1 are preempted, in whole or part, by Section 208. *Id.* at 106–11.

First, the district court found that Section 208 preempted the oath provisions in Section 6.04 because they "deterred voters from requesting assistance and narrowed the universe of willing assistors, thereby 'interfer[ing] with and frustrat[ing] the substantive right Congress created' under Section 208." *Id.* at 85. The district court relied, for example, on evidence that assistors find the penalty of perjury language threatening and find language in the oath vague, and, as a result, voters are forced to vote without their chosen assistors. *Id.* at ¶¶138, 140, 144, 167.

Second, the court found that Section 208 preempted the disclosures required by Sections 6.03, 6.05, and 6.07 because the "requirements that assistors complete an additional form disclosing duplicative information at the polls and disclose their relationships with the voters they assist have deterred voters from requesting assistance and narrowed the universe of willing assistors[.]" *Id.* at 9; ¶164.

Third, the court held that the "prohibitions on compensated assistance set forth in S.B.1 §§ 6.06 and 7.04 conflict with the text of Section 208 … because they facially restrict the class of people who are eligible to provide voting assistance beyond the categories of prohibited individuals identified in the text." App.A.95. Because the "text of Section 208 does not permit" such restrictions, the district court held that Section 208 preempted the outright ban on compensated mail ballot assistance, and preempted application of the canvassing restriction to mail ballot assistance. *Id.* at 97.

On October 15, 2024, State-Appellants moved for a stay pending appeal. App.I. The district court initially denied State-Appellants' motion. App.B.13–20. Relying on *Purcell*, following this Court's decision in *La Union del Pueblo Entero v. Abbott,* No. 24-50783, ECF No. 112-1, the district

court granted a temporary stay until after the 2024 General Election. App.B.20. With *Purcell* concerns now alleviated, State-Appellants cannot satisfy the standard for a stay pending appeal.

ARGUMENT

"A stay pending appeal is 'extraordinary relief' for which [Appellants] bear a 'heavy burden.'" *Plaquemines Par. v. Chevron USA, Inc.*, 84 F.4th 362, 373 (5th Cir. 2023). "A stay is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 433 (2009). Courts consider: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.* at 434.

Review of an order denying a stay pending appeal is for abuse of discretion. *Smith v. Robbins*, 803 F.3d 195, 203 (5th Cir. 2015). "The district court's findings of fact are reviewed for clear error and its legal conclusions *de novo*." *Texas v. United States*, 40 F.4th 205, 215 (5th Cir. 2022). So long as "the district court's account of the evidence is plausible in light of the

record viewed in its entirety, the court of appeals may not reverse it." *United States v. Brown*, 561 F.3d 420, 432 (5th Cir. 2009).

The district court did not abuse its discretion in denying Appellants' initial request for a stay because they cannot satisfy any of the stay factors. *See* App.B.13–20.

I. Appellants Are Unlikely to Succeed on the Merits

A. The District Court Correctly Found Appellees Have Standing.

Appellants' standing challenge is unlikely to succeed because they disregard the district court's factual findings and the robust evidentiary record on standing. Standing is established where a plaintiff "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant[s], and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). When a suit challenges government action and "the plaintiff is himself an object of the action," "there is ordinarily little question" of standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561–62 (1992). Organizations like Appellees satisfy Article III standing by demonstrating (1) that their members have standing or (2) that the organization "meets the same standing test that applies to individuals." *OCA I*, 867 F.3d at 610. An organization has standing

when, among other things, the "defendant's actions perceptibly impair the organization's activities." *Vote.Org v. Callanen*, 89 F.4th 459, 470 (5th Cir. 2023).

State-Appellants do not appear to challenge redressability and instead only address traceability and injury. *See* Br.5–7. The district court correctly found both traceability and injury readily satisfied. App.A.64–77.

1. The district court correctly found traceability.

State-Appellants assert that "[n]either the Secretary of State nor the Attorney General enforces S.B. 1." Br.5 (cleaned up). After considering ample evidence to the contrary, the district court correctly found on the record that State-Appellants *do* have a role in enforcing S.B.1 sufficient to trigger standing. And, in any event, State-Appellants overlook the record evidence of traceability on other grounds.

Secretary. As the district court properly found, it is "the Secretary's duty to obtain and maintain uniformity in the interpretation, application, and operation of the election code and election laws" within Texas. App.A.26, ¶88. These responsibilities include "prescribing official forms" for elections, including "the design and content of the Assistor Disclosure

form and BBM carrier envelopes" challenged in this case. App.A.26 ¶88; *see id.* at 9 ¶¶17, 20.

The district court correctly determined that Appellees suffered injuries traceable to the Secretary's promulgation of forms: it chilled volunteers' "willingness to provide voting assistance," which has a "downstream effect[] on [the plaintiff] organizations' ability to perform voter assistance services[.]" App.A.72; *see id.* at 68 ("Plaintiffs' injuries arising out of S.B.1's amended Oath language are traceable to the Secretary because she has created forms implementing Section 6.04"). State-Appellants entirely overlook the Secretary's role in prescribing forms and the district court's factual findings of traceability to the resulting injury to Appellees.

Attorney General. As the district court found, although the Attorney General does not himself initiate prosecutions under S.B.1, he "has statutory duties for certain aspects of S.B.1's enforcement scheme, including Sections 6.04, 6.05, 6.06, & 7.04." *Id.* at ¶78. These duties include investigating allegations of election-related crimes and coordinating with and referring cases to local prosecutors, such as county and district attorneys. *Id.* ¶¶78, 83, 85. The Attorney General "considers its investigative

duties to be 'statutorily required' or 'mandatory' for election-related allegations." *Id.* The Attorney General "has demonstrated a willingness to enforce, and has actually enforced, the Election Code, including S.B.1," and describes that as "one of his key priorities[.]" *Id.* at ¶79. Indeed, the Attorney General concedes in his brief that his "Election Integrity Division" is "currently pursuing multiple ongoing investigations for potential violations of provisions of S.B.1 covered by the district court's injunction." Br.13.

As the district court properly found, the Attorney General's investigation of potential S.B.1 violations chills Appellees' voter assistance efforts and Appellees' members' voting. App.A.71. The Supreme Court has long recognized that an unlawful statute can cause "self-censorship; a harm that can be realized even without an actual prosecution." *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 393 (1988). Here, that danger is traceable directly to the Attorney General's conduct.

Appellants' attempt to disclaim enforcement responsibility, Br.5, disregards the district court's findings, backed by lengthy testimony from representatives of the Attorney General and the Secretary of State, as well as

the Attorney General's admitted intention to investigate and refer prosecution under these provisions. App.A.23–97; Br.13.

2. The district court correctly found that Sections 6.03, 6.04, 6.05, and 6.07 of S.B.1 cause injury in fact.

The district court made ample findings that Sections 6.03, 6.04, 6.05, and 6.07 cause injury in fact. An "injury in fact" must be "concrete and particularized" and "actual or imminent, not 'conjectural' or 'hypothetical.'" *Lujan*, 504 U.S. at 560. But the injury "need not be substantial" or "more than an identifiable trifle." *OCA I*, 867 F.3d at 612.

The district court found, as a factual matter, that (1) filling out disclosure forms caused delays during in-person voting and resulted in voters not receiving assistance from the assistors of their choosing, which in turn harmed voters, App.A.46 ¶159; (2) Appellees actually "turn away voters who ask for their assistance" "[o]ut of fear of prosecution" under Sections 6.04 and 6.05, *id.* at 48 ¶165; and (3) assistors are "no longer willing to provide assistance due to the threat of criminal sanctions under S.B.1." (*id.*). Even the executive director of Appellee FIEL "no longer provides voter assistance due to his concerns about … Assistor Disclosure requirements." *Id.* at ¶167. State-Appellants overlook these findings and nowhere

argue that they are clearly erroneous. The findings readily satisfy Article III.

State-Appellants argue that "an assistor's obligation to provide information on a form does not violate any right to vote" and is therefore "not a cognizable injury[.]" Br.21. Appellants' argument ignores the district court's robust factual findings that the disclosure requirements, as imposed, actually interfered with the right to vote protected by Section 208 and caused Appellees associational and organizational injuries: Indeed, the court found that the burdens of the disclosure and oath requirements actually prevented multiple voters from voting with assistors of their choice. App.A.32 ¶114.

For example, the court found that the disclosure obligations created undue "delays during in-person voting" forcing at least one voter and assistor to wait in separate lines that moved so slowly that, by the time the disclosure forms could be completed, the voter was being assisted by someone other than their chosen assistor. *Id.* at 46, ¶159. Thus, as the district court found, S.B.1's additional disclosure requirements caused injury in fact by deterring voters from obtaining (and assistors from providing) the assistance guaranteed under Section 208.

Moreover, State-Appellants recognize that the district court found that "disclosure requirements caused would-be assistors to fear prosecutions and be less willing to assist," but argue that harm is "speculative" because Appellees "cited *zero* examples of relevant investigations or prosecutions since S.B.1 was passed." Br.6. But Appellants disregard the evidence that the disclosure requirement has already caused a reduction in willingness to assist and continues to chill voter and assistor behavior otherwise protected by Section 208. *See supra* Part I.A.1.

There is accordingly ample support for the district court's finding of a "credible threat of enforcement" and resulting injury. App.B.15.

B. The District Court Correctly Found That Section 208 Preempts the Assistance Provisions.

Appellants are also unlikely to succeed on the merits because the district court correctly found, based on an extensive evidentiary record, that Section 208 preempts the assistance provisions in whole or relevant part. State law is preempted when it conflicts with federal law; or "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 377 (2015). Determining if the statute obstructs Congress' objectives requires "exam-

ining the federal statute as a whole and identifying its purpose and intended effects." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000).

Section 208 grants "[a]ny voter who requires assistance to vote" the right to "assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 52 U.S.C. § 10508. The statute thus provides a clear right: for the voter to select the person "of the voter's choice," subject to two exceptions: the voter cannot select "the voter's employer or agent of that employer or office or agent of the voter's union." *Id.* "That express exception… implies that there are no *other* circumstances under which" the voter's choice can be made subject to additional restrictions or limitations. *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018). Consistent with the statute's plain text, this Court has already held that "the right to select any assistor of [the voter's] choice" is "subject only to the restrictions expressed in Section 208 of the VRA itself." *OCA I*, 867 F.3d at 608; *see also Ala. State Conf. of NAACP v. Marshall*, No. 2:24-cv-00420, 2024 WL 4448841 at *1, *3 (N.D. Ala. Oct. 4, 2024) (similar).

That reading accords with the express legislative purpose of Section 208 to protect voters' rights to choose their own assistors. S. Rep. No. 97-417, at 62. The Senate Report underscores "the manner of providing assistance has a significant effect on the free exercise of the right to vote," and many "voters may feel apprehensive about casting a ballot in the presence of, or may be misled by, someone other than a person of their own choice." *Id*. The Senate Judiciary Committee thus "concluded that the only kind of assistance that will make fully 'meaningful' the vote of [voters requiring assistance], is to permit them to bring into the voting booth a person whom the voter trusts and who cannot intimidate him." *Id.*

1. Section 208 unambiguously entitles voters to vote with the assistor of their choice.

Appellants argue that states can further limit assistance because Section 208 allows voters to choose "a" person of their choice, not "the" or "any" person. Br.7–8. But Circuit precedent says otherwise: Section 208 is "unambiguous" and provides voters the "right to select any assistor of their choice, subject only to the restrictions expressed in Section 208 of the VRA itself." *See OCA I*, 867 F.3d at 608.

Other federal courts agree. Just last month, in a case dealing with issues similar to those here, the Eleventh Circuit denied an emergency motion to stay an injunction, leaving undisturbed the district court's holding that "any law that limits a § 208 voter's choice or provides additional exceptions to this right unduly burdens the rights of § 208 voters, and is, as a matter of law, in conflict with § 208." *Marshall*, 2024 WL 4448841 at *1, 3. Appellants also disregard the express statutory exceptions, which implies that no other exceptions exist. *See* p. 15, *supra*.

While Appellants rely on *Priorities USA v. Nessel*, 487 F.Supp.3d 599 (E.D. Mich. 2020), *rev'd and remanded on other grounds*, 860 F. App'x 419 (6th Cir. 2021), that decision has not been followed within its own circuit and has been rejected by other courts. *See Ark. United v. Thurston*, No. 5:20-cv-5193, 2020 WL 6472651, at *3–4 (W.D. Ark. Nov. 3, 2020). Appellants' reliance on *Ray v. Texas*, No. 2:06-cv-385, 2008 WL 3457021 (E.D. Tex. Aug. 7, 2008) is equally misplaced, as *Ray* pre-dates and is abrogated by *OCA I*. *See League of Women Voters of Ohio v. LaRose*, No. 1:23-cv-02414, 2024 WL 3495332, at *14 n.6 (N.D. Ohio July 22, 2024).

State-Appellants assert that States must be able to "ban convicted felons from assisting voters[.]" Br.7. "[A]n incarcerated person," however,

"would not be able [to] assist at the polling place for reasons that are completely unrelated to [Texas'] elections laws." *Ark. United v. Thurston (Ark. II)*, 626 F. Supp. 3d 1064, 1087 (W.D. Ark. 2022). To the extent Appellants contend that it is bad policy to allow a voter to select an assistor who has a criminal history but has been released, that is simply a disagreement with Congress' chosen policy to allow voters to select an assistor of the voter's choice, without an exception based on criminal history.

2. Section 208 preempts S.B.1's ban on compensated assistance.

The district court also correctly found that Section 208 preempts Sections 6.06 and 7.04's ban on compensated assistance for mail ballots because those provisions prevent a voter from choosing an assistor who has been compensated, a restriction Section 208 does not permit. *See OCA I*, 867 F.3d at 608.

Sections 6.06 and 7.04 plainly narrow the pool of eligible assistors. Under Section 6.06, Texas voters who need mail-ballot assistance cannot choose an assistor who solicited or received "compensation" unless the individual is an "attendant" or "caregiver" previously known to the voter.

Section 7.04, the "canvassing restriction," "prohibits compensated interactions in the presence of a mail ballot." App.A.12 n.12. Section 7.04 includes no exception for ballot assistance for voters covered by Section 208.

As the district court found, Sections 6.06 and 7.04 have in fact limited the pool of eligible assistors. *See* App.A.53–57 ¶¶183, 185–188, 195. Individuals who typically assist voters or organize voter assistance events or forums testified that they no longer facilitate such assistance because of uncertainty regarding what constitutes compensation, who qualifies as an "attendant" or "caregiver," and what it means to be in the presence of a mail ballot, coupled with criminal liability for noncompliance. *See* App.A.56 ¶194. Representatives of OCA and LUPE testified at trial that they have stopped assisting with mail ballots because their employees and compensated volunteers normally provide such services. *See, e.g.,* App.F.1722:3–16; App.E.86:9–86:13; 86:14–87:2; 87:3–87:21.

Testimony also confirmed that witnesses had good reason to fear prosecution: election officials testified that voters "could face jail time under either provision" by providing even minor tokens of appreciation. App.A.97 n.60. Keith Ingram, former Elections Director of the Secretary of State's Office, testified that "a voter who ... offered to buy a friend lunch

... to help him complete his mail-ballot could be liable under Section 6.06." App.A.53 ¶182.

State-Appellants describe Section 7.04 as a "reasonable regulation" to "prevent paid persuaders from advocating while in a ballot's physical presence." Br.12. But under Section 208, it is the voter—not the state legislature—that gets to determine who to trust for assistance. *See* S. Rep. No. 97-417, at 62 (expressing concern that voters "may be misled by, someone other than a person of their own choice"). Furthermore, Appellants failed to "proffer a shred of evidence" demonstrating that the provisions "actually protect voters from undue influence," App.A.97 n.60. To the contrary, the district court found that voters "were not worried that their chosen assistors would influence their vote." App.A.32 ¶115.

3. Section 208 preempts S.B.1's Oath of Assistance.

As the district court correctly held, "[b]ecause a state law can interfere with a voter's substantive rights under Section 208 by regulating assistors just as readily as by regulating voters needing assistance, laws regulating assistors may stand as obstacles to accomplishing Congress' objectives in enacting Section 208." App.A.78; *see also Ark. II*, 626 F. Supp. 3d at 1085. That is the case here.

As discussed above, the district court found that assistors refused to assist because of the obstacles imposed by S.B.1, Appellees were unable to recruit new volunteers or otherwise provide assistance due to the obstacles imposed by S.B.1, and voters were forced to vote without their chosen assistors because of the fear and obstacles S.B.1 created. App.A.32, 34, 35, 37–38, 48 ¶¶ 114, 120–21, 125, 131, 133, 135, 164–66. For example, disabled voters testified that their personal care attendants were the assistors of their choice, but declined to assist them because they were uncomfortable taking the oath under penalty of perjury. App.A.35–37 ¶¶ 123, 125–26, 130–131.

State-Appellants assert that "S.B.1's requirements do not limit the scope of assistance voters may receive" because voters can choose any assistor *as long as they comply with S.B.1's assistor requirements*. Br.9. But that disregards the undue burden that S.B.1 places upon the choice of assistor. *See Oneok, Inc.*, 575 U.S. at 377. Congress' evident purpose was to protect a vulnerable group of voters and to ensure they had access to assistance of their choosing, *see* S. Rep. No. 97-417, at 62. Because S.B.1 adds significant and undue burdens that, in practice, block access to Section

208's protections, S.B.1 *has the impermissible effect* of limiting the scope of assistance voters may receive. It is therefore preempted.

4. S.B.1's voter relationship disclosure requirement targets community organizations.

Sections 6.03, 6.05, and 6.07 of S.B.1 require assistors to disclose their relationship to the voter, among other personal information, on a form for all in-person and mail ballot assistance, and separately on the voter's carrier envelope in the case of assistance with dropping a mail ballot. TEC §§ 64.0322(a), 86.010(e), 86.013(b). The penalty for failing to complete the disclosure depends entirely on the assistor's relationship to the voter: "a close relative of the voter or a person who was physically living with the voter when the assistance was provided" faces no criminal liability—but any other assistor, including a caregiver or personal attendant, faces a state jail felony liability. App.A.8 ¶ 13.

As the district court correctly held, these disclosure provisions and the attendant penalties "encroach on the voter's choice of assistor," *id.* at 82, which "frustrates the substantive right Congress created" under Section 208, *Felder*, 487 U.S. at 151. They forcefully impose the state's value judgment that close relatives and co-habitants are trustworthy, but other individuals are not. App.A.92.

Appellants again disregard key findings of fact that this state-imposed preference, armed by threat of criminal penalty, powerfully undercuts the ability of trusted community organizations like Appellees from offering necessary voter assistance. State-Appellants claim "not a single witness said the disclosures alone" would deter them. Br.6. This is incorrect. *See* App.A.49, ¶ 168. The district court also found credible testimony from community organizers, individual voters, and even state defendants themselves that assistors were chilled in their participation in the electoral process as a direct consequence of Texas' regulating assistors. *See id.* at 10, ¶ 22.

Appellants therefore are unlikely to succeed on the merits of their claims.

II. The District Court Properly Found Appellants Will Not Suffer Irreparable Injury Absent A Stay

Appellants also cannot satisfy the other stay factors. State-Appellants assert that "the State always suffers" irreparable injury "when its law is enjoined." Br.13. But as this Court has held, "neither [the State] nor the public has any interest in enforcing a regulation that violates federal law." *Book People, Inc. v. Wong*, 91 F.4th 318, 341 (5th Cir. 2024) (alterations in original); *see also Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 280

(5th Cir. 1996) (injunction preventing enforcement of unconstitutional statute serves public interest); *Ent. Software Ass'n v. Foti*, 451 F. Supp. 2d 823, 837 (M.D. La. 2006) (no irreparable harm to government "prevented from enforcing an unconstitutional statute"); *accord Scott v. Roberts*, 612 F.3d 1279, 1297 (11th Cir. 2010).

State-Appellants' arguments also fail on the facts. The district court gave them ample opportunity to present evidence of irreparable harm, yet they "failed to offer even hypothetical scenarios in which" the enjoined provisions would "serve the government's interest in ways that are not already accomplished by other criminal provisions of the election code." App.B.19. Notably, nothing in the district court's order prohibits the State from prosecuting election crimes under the un-enjoined provisions of S.B.1.

Appellants assert they will suffer irreparable harm because county-level officials in only some (but not all) Texas counties are enjoined. App.Br. 14–15. But Appellants overlook the district court's decision to enjoin the State-Appellants from enforcing the provisions, which necessarily has statewide effect. *See* App.A.103–04 ("injunctive relief against enforcement of the provisions" prevents "the Attorney General and the State of

Texas (through its local prosecutors) from investigating and prosecuting such violations."). In any event, Appellants' argument is backwards. A federal court's "constitutionally prescribed role" is to "vindicate the individual rights of the people appearing before it." *Gill v. Whitford*, 585 U.S. 48, 72 (2018). Remedies shall "be limited to the inadequacy that produced the injury in fact that the plaintiff has established." *Id.* at 68. Appellees established a state-wide inadequacy as to the Attorney General and Secretary of State, and an "inadequacy that produced … injury in fact" arising from enforcement by each of the defendant county-level officials (but not officials from other counties). The district court in turn correctly issued injunctive relief that corresponds to those proven injuries.

III. The District Court Properly Found a Stay Will Irreparably Injure Appellees and Harm the Public Interest

The remaining injunction factors weigh heavily against a stay. The district court correctly found that enjoining the offending S.B.1 provisions "will serve the public interest by protecting individuals' right to vote with help from their chosen assistors under Section 208 and their fundamental right to vote," App.A.99, and that without the district court's injunctive relief, "Plaintiffs and their members will continue to suffer irreparable injury to their constitutional rights." *See*

App.C.75; *see also* App.B.5–7 (citing "credible testimony" that voters were deterred from requesting—and their assistors from providing—assistance because of S.B.1 Sections 6.03, 6.04, 6.05, and 6.07); *id.* at 8 ("several Plaintiff organizations that provided mail-ballot assistance in their communities have stopped providing such assistance" due to risk of felony prosecution under Sections 6.06 and 7.04).

"Courts routinely deem restrictions on fundamental voting rights irreparable injury." *League of Women Voters of N.C. v. N.C.,* 769 F.3d 224, 247 (4th Cir. 2014) (collecting cases). Indeed, the Supreme Court has long held that "[b]y denying some citizens the right to vote, such laws deprive them of 'a fundamental political right, … preservative of all rights.'" *Dunn v. Blumstein,* 405 U.S. 330, 336 (1972) (quoting *Reynolds* v. *Sims*, 377 U.S. 533, 562 (1964)).

The district court's findings of irreparable injury to Appellees and to the public interest thus far outweigh the State's asserted harms, which are not backed by any factual findings or even record evidence.

CONCLUSION

This Court should deny the motion for a stay pending appeal.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2024, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which will send notification of such filing to all ECF participants.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel of record certifies pursuant to Fed. R. App. P. 32(g) that the Brief complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the Brief exempted by Fed. R. App. P. 32(f), this document contains 5,107 words.

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