No. 22-2918

UNITED STATES COURT OF APPEALS
FOR THE EIGHT CIRCUIT

ARKANSAS UNITED, et al.,
Plaintiffs-Appellees,
v.
JOHN THURSTON, et al.,
Defendants-Appellants.

On Appeal from the United States District Court for the
Western District of Arkansas No. 5:20-CV-5193
The Honorable Timothy L. Brooks

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Response to Appellant's Emergency Motion to Stay Injunction for the 2022 General Election and for a Temporary Administrative Stay by September 16, 2022

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INTRODUCTION

For several years, Arkansas prohibited individuals from providing assistance to more than six voters in an election. The six-voter limit conflicted with the voter assistance provisions of the federal Voting Rights Act, which provide that a voter may receive assistance from an individual of that voter's choice. On August 19, 2022, following its decision that the Arkansas six-voter limit is preempted by the Voting Right Act, the district court ordered the State Defendants and three counties to cease enforcing the six-voter assistance limit and to inform their employees of the court's ruling. Mindful of the General Election in November, the district court *did not* order Defendants to update any trainings, manuals, websites, or any materials given to voters. In response to a motion for clarification by State Defendants, the district court on September 7, 2022 ordered State Defendants to "send a memorandum" notifying county election boards of the district court's ruling, including that the six-voter limit has been declared invalid under federal law. APP47, R. Doc. 178.

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The district court's injunction binds only three counties—all defendants in the case—who must now cease enforcement of the six-voter limit; none of these counties has filed an appeal. The 72 non-party counties in Arkansas have not been ordered to change any election practices. Appellants, who do not administer elections in Arkansas, are required only to instruct their staff not to enforce the six-

voter limit and to send a memorandum to local election officials informing them of the district court's ruling.

Nevertheless, Appellants seek a stay, claiming that "it is impossible" for them to send a memorandum to counties and that such a memorandum will cause "confusion, hardship, and uneven enforcement of the law by poll workers across Arkansas." Appellants' Emergency Motion to Stay Injunction at 2, Entry ID: 5197332 [hereinafter *Mot. to Stay]*. Appellants' arguments are not supported by the record, the Motion to Stay, or this Circuit's precedent.

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I. STATEMENT

Arkansas United is a non-profit membership organization that assists immigrants, including by providing citizenship workshops, education on voter registration and assistance with voting. L. Mireya Reith is the founder and executive director of Arkansas United.[1] The members of Arkansas United rely on the organization's staff and volunteers to provide them assistance in voting at the polls, including language assistance to those voters who are limited English proficient.

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[1] Appellees Arkansas United and L. Mireya Reith are referred to together as "Arkansas United."

A. Procedural History

Plaintiffs filed suit on November 2, 2020 and alleged that §§ 7-5-310(b)(4)(B), 7-5-310(b)(5), 7-1-103(a)(19) and 7-1-103(b)(1) of the Arkansas Election Code violated Section 208 of the federal Voting Rights Act (VRA) by prohibiting voters from choosing an assistor who had already helped six other voters during an election -- a restriction not contained in the Voting Rights Act. *See* APP54, 57 R. Doc. 179 at 3, 6. Defendants are the members of the Arkansas State Board of Election Commissioners, which includes the Secretary of State ("the State Election Board"), and the election officials of Washington, Benton and Sebastian counties ("the three counties"). On November 3, 2020, the district court denied Plaintiffs' motion for a preliminary injunction. APP63 R. Doc. 179 at 12.

On August 19, 2022, following cross motions for summary judgment, the district court concluded that Section 208 of the VRA preempts the Arkansas six-voter limit and its associated criminal provisions. APP89 R. Doc. 179 at 38. The district court concluded that the VRA does not preempt the assistor-tracking requirement of the Arkansas Code. *Id.* On August 30, 2022, the State Election Board filed a motion to clarify and request for expedited consideration, which the district court granted on September 7, 2022. *See* APP47-50 R. Doc. 178 at 1-4. That next day, the State Election Board filed a notice of appeal. *See* SAPP 056 R. Doc. 181. The three counties did not appeal.

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On September 8, 2022, the State Election Board filed a motion to stay in the district court. SAPP 058 R. Doc 182. The district court denied the motion to stay. APP93 R. Doc. 184.

B. The District Court's Injunction

The district court took into consideration the upcoming 2022 General Election and limited its injunctive relief accordingly. The district court ordered the State Election Board and the three counties only to "inform *their staff* to cease enforcement of § 7-5-310(b)(4)(B) in advance of the 2022 General Election[.]" APP89 R. Doc. 179 at 38 (emphasis added).[2] The district court further ordered the State Election Board "to send a memorandum" to the county election boards to let them know of the court's ruling. *Id.* The court recognized that the State Election Board and the three counties may have already produced training materials and conducted trainings for the 2022 General Election and specifically provided that any updating of trainings, manuals, websites, and any materials given to voters or voter assistors should occur after the 2022 General Election. *Id.*

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[2] The record in the case shows that one defendant county uses a voter assistor form that states the six-voter limit. Only that county will have to change its form pursuant to the district court's injunction. APP46 R. Doc. 170-1 at 9.

II. ARGUMENT

A. *Purcell* Does not Apply Here.

What has come to be known as the *Purcell* principle is inapplicable here. The *Purcell* principle is animated by the concern that a change in election practices close to an election is likely to confuse voters and undermine confidence in the election process. *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) ("Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls."); *see also* *Craig v. Simon*, 978 F.3d 1043, 1046 n.1 (8th Cir. 2020) (discussing *Purcell* with respect to what will cause "confusion among voters"). To that end, this Court has emphasized that the *Purcell* principle need not preclude "injunctive relief [that] is limited in scope." *Carson v. Simon*, 978 F.3d 1051, 1061 (8th Cir. 2020) (concluding *Purcell* did not preclude an October 29 order affecting November 3 election).

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Invoking *Purcell*, the district court emphasized that it was important not to disrupt the upcoming election—and thus limited its injunction. APP89-90 R. Doc. 179, at 38-39 n.16. Indeed, the district court's injunction explicitly postpones any changes to "trainings, manuals, websites, and any materials given to voters or voter assistors" until *after* the 2022 General Election, APP89 R. Doc. 179, at 38, and

allows the law's tracking requirement to remain in place, APP90 R. Doc. 179, at 39 n.16.

This Court has concluded that *Purcell* does not preclude judicial relief in cases similar to the one at hand. In *Carson*, which involved a dispute over whether local election officials should count absentee ballots received up to a week after Election Day, this court directed a district court five days before the election "to enter an injunction requiring the Secretary and those under his direction to identify, segregate, and otherwise maintain and preserve all absentee ballots received after" Election Day. 978 F.3d at 1054. The injunction would require the Secretary to "issue guidance to relevant local election officials to comply" with this Court's instructions. *Id.* at 1063. This Court emphasized that such "injunctive relief" was "limited in scope" and therefore did not run afoul of the concerns underlying the *Purcell* principle. *Id.* at 1061.

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The district court's injunction does not "fundamentally alter[] the nature of the election" and thus does not raise concerns under *Purcell*. *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) (per curiam). The State Election Board and three counties must only "inform their staff" to cease enforcement of [the six-voter limit] in advance of the 2022 General Election and the State Election Board must only "send a memorandum" to the county election boards to let them know of the court's ruling. APP89 R. Doc 179 at 38.

The State Election Board concedes that the district court's order does not enjoin the non-party counties:

> [T]he State Defendants understand the Court's order merely to require them to instruct their employees and volunteers not to enforce the six-voter limit for the 2022 General Election. The State Defendants do not read the Court's order to affect the 72 Arkansas counties that are not parties to this suit as to the 2022 General Election.

SAPP 029 R. Doc. 170 at 4 (internal citations omitted).

The State Election Board does not argue that a stay is warranted because of any confusion of voters or loss of voter confidence in the election. Nor could it. As noted by the district court, "the six-voter limit is not a voter-facing policy and its primary front-end enforcement mechanisms are the tracking requirement—which may stay in place[.]" APP88-90 R. Doc. 180 at n 16 . The State Election Board also does not argue that any confusion or other problems will occur as a result of the State Election Board or the three counties informing their staff to cease enforcement of the six-voter limit. Although it has been a month since the district court's ruling, and the State Election Board admits it has already informed its staff, APP40 R. Doc. 168 at 38), the State Election Board offers no evidence that informing staff of the district court's ruling has caused problems that warrant a stay.

Instead, the State Election Board's entire *Purcell* argument turns on the claim that "send[ing] a memorandum" to non-party counties (and only that) is so

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disruptive to the election process that it must be stayed by this Court. However, the State Election Board routinely sends memoranda to counties informing them of developments in the law. *See* SAPP 034 R. Doc. 176-1 and SAPP 047 R. Doc 176-2. And because the district court's injunction explicitly postpones updated trainings and manuals for counties until after the 2022 General Election, it requires less of the State Election Board than the injunction of this Court in *Carson* to "issue guidance to relevant local election officials to comply" with a court order. 978 F.3d at 1063.

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In denying the motion for stay, the district court observed that State Election Board "misstates the breadth of the Court's injunction and the facts in the record related to enforcement of the six-voter limit." The same is true of the instant motion. APP93 R. Doc. 184.

After conceding that the district court "stated it 'does not expect Defendants to conduct updated trainings or produce an updated training manual before the 2022 General Election,'" the State Election Board argues that the district court's injunction must be stayed because it requires the State Election Board to "compel attendance at additional trainings" before November 8, 2022. *Compare Mot. to Stay*. at 21 *with id*. at 14. The State Election Board further mischaracterizes the district court's injunction by arguing that the injunction requires "communicating with the thousands of voter-facing poll workers and volunteers" and "ensur[ing]

their compliance with any injunction." *Id.* at 14-15. None of those requirements are in the district court's order. The district court emphasized that there is "no reasonable confusion [that] could result from the State Board of Election Commissioners" simply "announcing to county election officials that the court has declared the six-voter limit invalid under federal law." APP93 R. Doc. 184. The district court further emphasized that where a "nonparty county election board chooses to ignore the Court's declaration and the State Board's forthcoming memorandum," the Court's injunction "would not cause the State Defendants to be in contempt." APP50 R. Doc. 178 at 4.[3]

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Because the State Election Board's arguments about "impossib[ility]," "confusion [and] hardship" flow from mischaracterizing the district court's injunction, there is no basis on which to conclude that the district court's injunction should be stayed because of concerns related to *Purcell*.

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[3] The district court further explained:

> For example, if a nonparty county election board chooses to ignore both the Court's declaration and the State Board's forthcoming memorandum and refers a possible violation of the six-voter limit to the State Board for enforcement, the State Board is enjoined from taking any enforcement actions against the subject of that referral. In this example, the county election board's actions would not cause the State Defendants to be in contempt of this Court's injunction.

APP49-50 R. Doc. 178 at 3-4.

The State Election Board's reliance on the upcoming election date as dispositive of the *Purcell* issue is similarly misplaced. This Court has rejected such a *per se* rule, allowing for judicial intervention as close as five days before an election. *See Carson*, 978 F.3d at 1054-55 (allowing judicial intervention on October 29 for November 3 election). Indeed, this Circuit has emphasized that, even in light of *Purcell*, "there is no universal rule that forbids" judicial intervention "after Labor Day." *Brakebill*, 905 F.3d at 560. Rather, "[h]ow close to an election is too close may depend in part on the nature of the election law at issue, and how easily the State could make the change without undue collateral effects." *Merrill v. Milligan*, 142 S. Ct. 879, 881 n.1 (2022) (Kavanaugh, J., concurring). Consistent with the Supreme Court and this Court's precedent, the limited nature of the injunction—and the fact that the State Election Board complains only of the provision requiring them to "send a memorandum" to counties—demonstrate that *Purcell* considerations are not in play here.

The State Election Board's assertion that informing counties of the district court's ruling will create "confusion [and] hardship" is speculative at best. *Mot. to Stay* at 23. Indeed, the three counties that were defendants in this case have neither sought a stay pending appeal nor filed notices of appeal; this suggests they are not concerned about potential confusion resulting from their compliance with the district court's injunction.

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As for the State Election Board's claim of confusion of local election officials, the declaration offered by the State Election Board fails to address the specific relief ordered here—that the State Election Board simply inform local officials of the district court's ruling—and ignores that the non-party counties are not bound by the court's injunction. The declaration is silent on how the State Election Board "send[ing] a memorandum" to counties explaining the district court's ruling would result in inconsistent enforcement. APP44-45 R. Doc. 170-1.

Further evidencing the lack of centrality of the six-voter limit to poll worker training and activities, the form promulgated by the State Election Board for use by counties in keeping track of voter assistors does not mention the six-voter limit[4] and the State Election Board's training manual for poll workers contains only a single slide that provides information about the six-voter limit. SAAP 387 General Poll Worker Training at 51.[5]

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Accordingly the State Election Board has failed to show a risk of either voter or poll worker confusion that would raise concerns under *Purcell*.

B. The State Election Board Does not Meet the Traditional Factors for a Stay.

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[4] The current State Board of Elections form can be found at https://static.ark.org/eeuploads/elections/2022_Poll_Worker_Training_Presentation_Basic.pdf#page=50

[5] Plaintiffs will use "SAPP" to differentiate their Supplemental Appendix from Appellants-Movants' Appendix.

The State Election Board fails to address the four traditional factors that would justify a stay and thus has waived the argument that it is entitled to one. An applicant for a stay pending appeal "must meet a heavy burden of showing not only that the judgment of the lower court was erroneous on the merits, but also that the applicant will suffer irreparable injury if the judgment is not stayed pending his appeal." *Nken v. Holder*, 556 U.S. 418, 439 (2009) (Kennedy, J., concurring) (citations omitted).

Courts traditionally have considered four factors in determining whether to issue a stay pending appeal:

> (1) whether the party seeking the stay has demonstrated a strong likelihood of success on the merits; (2) whether the party seeking the stay will be irreparably injured without a stay; (3) whether a stay would substantially injure other parties; and (4) the public's interest.

Nken, 556 U.S. at 426 (citations and quotations omitted).

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Because the State Election Board does not even address the factors of "irreparable harm," "balance of harm," or the "public interest," it has failed to meet its heavy burden to show that a stay is warranted under the traditional test. *See generally Mot. to Stay.*; *see also Brady v. Nat'l Football League*, 640 F.3d 785, 789 (8th Cir. 2011) ("The movant must show that it will suffer irreparable injury

unless a stay is granted.”). But even if it had not waived arguments as to those three factors, the State Election Board cannot establish that a stay is warranted.[6]

1. The State Election Board has not Demonstrated a Strong Likelihood of Success on the Merits or That the Merits are not Entirely Clear cut in Favor of Appellants.

As explained above, because the State Election Board complains only about the portion of the district court's limited injunction that requires the State Election Board to “send a memorandum,” *Purcell* is not applicable here and thus the “not entirely clear cut” standard potentially associated with *Purcell* is not the correct legal standard under which to consider the motion for stay. Nevertheless, regardless of the standard under which this Court examines likelihood of success, the merits strongly favor Arkansas United.

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Of note, unlike *Purcell* and many of its progeny, this case does not involve a preliminary injunction based on a partial record. The district court reached a final

[6] Under what the State Election Board describes as a “relaxed version” of the *Purcell* principle, the same result would obtain. *See Merrill*, 142 S.Ct. at 881 (Kavanaugh, J., concurring). As discussed below, the merits are entirely clear cut in favor of Plaintiffs, Section II.B.1, and Plaintiffs would suffer irreparable harm absent an injunction, Section II.B.3. And as discussed above, the actions required by the district court’s injunction are more than feasible, impose no significant cost or hardship, and will not lead to confusion among voters or election officials. Section II.A. Finally, the State Election Board cannot argue that Plaintiffs unduly delayed bringing this suit: Plaintiffs filed their complaint nearly two years ago on November 2, 2020, APP54, 57 R. Doc. 179 at 3, 6, and filed their motion for summary judgment nearly a year ago on September 22, 2021,SAPP 003 R. Doc. 137. As such, even under this alternative framework put forth by the State Election Board, a stay is not justified.

judgment after full adjudication of cross motions for summary judgment and its findings of fact will be reviewed under the clearly erroneous standard in this appeal.

a. The Six-Voter Limit Violates Section 208 of the Voting Rights Act.

The district court correctly concluded that Section 208 of the VRA preempts the conflicting provisions of the Arkansas six-voter limit. *See* APP82, 89 R. Doc. 179 at 31, 38.

Section 208 of the VRA provides as follows: "Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." APP55-56 R. Doc. 179 at 4-5 (quoting 52 U.S.C. § 10508).

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For voters who are disabled, illiterate and/or limited English proficient, Section 208 ensures meaningful access to the franchise by permitting these voters to use the help of trusted assistors when they vote.

Because Congress considered (and imposed) limitations on who may serve as a voter assistor (excluding employers and union representatives), the Arkansas six-voter limit, which makes it a crime for an individual to assist more than six voters in marking and casting a ballot in an election, conflicts with and is thus preempted by Section 208. APP82-88 R. Doc. 179 at 31-37. The district court's conclusion regarding preemption is supported by the plain language of the statute,

the legislative history of the VRA, and by courts that decided similar preemption challenges to state election laws. *Id.*

The State Election Board nevertheless contends that the merits are not "entirely clearcut" in Plaintiffs' favor because "two other district-court decisions [] part from [the district court's] preemption analysis." *Mot. to Stay* at 25. Besides being non-controlling, and unpublished, neither case supports the argument that the district court here erred in its preemption analysis. The reasoning of the first case, *Ray v. Texas*, 2008 WL 3457021 (E.D. Tex. Aug. 7, 2008), was implicitly rejected by the Fifth Circuit in *OCA-Greater Houston v. Texas*, 867 F.3d 604, 616 (5th Cir. 2017); *see also* APP87 R. Doc. 179 at 36. n15 (*Ray v. Texas "*predates *OCA-Greater Houston*, where the Fifth Circuit adopted a broader view of § 208's protections."). The second case, *Nessel*, is distinguishable on its facts. *Priorities USA v. Nessel*, 487 F. Supp. 3d 599 (E.D. Mich. 2020), *rev'd and remanded*, 860 Fed. Appx. 419 (6th Cir. 2021). In *Nessel*, the plaintiffs had "not come forward with evidence that any voters have been denied the person of their choice to assist them in the absentee ballot application process, let alone voters belonging to the class of individuals identified in § 208 (i.e. those requiring assistance due to blindness, disability, or inability to read or write)." *Id.* at 619. By contrast, in this case Arkansas United showed that voters were affected by the six-voter limit.

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SAPP 007 R. Doc. 139-20 at ¶¶ 5-6, 11, 13 SAPP 015 R. Doc. 139-22 at ¶¶ 12, 18-19, 28; *see also* APP74-75 R. Doc. 179 at 23-24.

The district court also correctly rejected the State Election Board's invitation to "import the undue burden standard from First Amendment jurisprudence into a straightforward conflict preemption analysis." APP102 R. Doc. 35 at 8; *see also* APP86 R. Doc. 179 at 35. There is simply no support for the State Election Board's contention that, in order for plaintiffs to prove that the Voting Rights Act preempts a state election law, plaintiffs must show not only that the state law conflicts with and thwarts the Voting Rights Act, but that the state law also substantially burdens the right to vote in violation of the U.S. Constitution.[7]

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It is entirely clear cut that the merits favor Arkansas United. The State Election Board's insistence that Arkansas law is supreme over federal law, and thus "those who disable themselves by assisting six voters are no longer 'able to assist' [under Section 208] due to the operation of Arkansas's election laws" is entirely misplaced. *Mot. to Stay* at 12.

b. Section 208 Applies to Limited English Proficient Voters.

Although the State Election Board claims in its motion that the district court "misconstrued Section 208 to apply [] to 'limited English proficient' persons'," the

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[7] The State Election Board's version of the undue burden standard does not include an analysis of burdens on the voter but turns exclusively on *ex post facto* arguments about voter fraud. *Mot. to Stay* at 28-29.

district court properly recognized that State Election Board's attempt to exclude limited English proficient voters (who cannot read or write in English) from the larger group of voters with an "inability to read or write" contradicts the plain meaning of the statute and its legislative history, and finds no support in case law. *See* APP65-67 R. Doc. 179 at 14-16. Additionally, the district court observed that the U.S. Department of Justice routinely files litigation on behalf of limited English proficient voters under Section 208. *Id.* at 15-16; *see, e.g. United States v. Salem County*, New Jersey, CV108CV03726JHRAMD, 2008 WL 11513214, at *1 (D.N.J. July 29, 2008). Courts have frequently recognized that Section 208 protects voters who have an "inability to read or write" in English. *See, e.g. OCA-Greater Houston v. Tex.*, 867 F.3d 604, 615 (5th Cir. 2017); *Nick v. Bethel*, 3:07-CV-0098 TMB, 2008 WL 11429309, at *5 (D. Alaska July 23, 2008). The State Election Board continues to fail to identify any authorities to the contrary. *See Mot. to Stay* at 11-12.

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c. Plaintiffs Have Standing.

The district court properly concluded that Plaintiffs have organizational standing.[8] APP72-73 R. Doc. 179 at 21-22. The State Election Board does not

[8] Although the district court did not address associational standing, Arkansas United also established that its members were injured by the six-voter limit. See e.g. SAPP 007 R. Doc. 139-20 at ¶¶ 5-6, 13-14, SAPP 015 R. Doc. 139-22 at ¶¶ 19. *See also* APP74-75 R. Doc. 179 at 23-24.

dispute the district court's conclusion that Arkansas United "suffered a resource diversion injury during the 2020 election" APP70 R. Doc. 179 at 19 or that such an injury would satisfy the injury in fact, causation and redressability requirements to establish standing. *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560–61 (1992). Instead, the State Election Board offers a murky argument best understood as challenging the private right of action under the VRA, *Mot. to Stay* at 26-27, although the State Election Board agreed to the opposite in the trial court. *See* APP73 R. Doc. 179 at 22, n12 ("Defendants agree that Plaintiffs have a cause of action under § 208[.]") .

Nevertheless, the district court properly "presume[d] that a statute ordinarily provides a cause of action only to plaintiffs whose interests fall within the zone of interests protected by the law invoked." *Id*. at 22 (citing *Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 1302 (2017) (quoting *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129 (2014))(internal quotations omitted). Relying on *Bank of America*, in which the Supreme Court recently concluded that the City of Miami was an "aggrieved person" under the federal Fair Housing Act because the statute "reflects a congressional intent to confer standing broadly" APP73 R. Doc. 179 at 22, the district court correctly concluded that "Arkansas United is effectuating the purpose of the VRA to protect minority voters by challenging a law it alleges infringes on the statutory right of its [limited English

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proficient] members, and other [limited English proficient] voters in Arkansas, to an interpreter of their choice." APP74 R. Doc. 179 at 23; *see also OCA-Greater Houston v. Texas* 883 F.2d 617, 624 (8th Cir. 1989); *Arcia v. Fla. Sec'y of State,* 772 F.3d 1335, 1341 (11th Cir. 2014). .

The State Election Board's reliance on *Roberts v. Wamser*, 883 F.2d 617, 624 (8th Cir. 1989) is misplaced because that case held that a defeated candidate lacked standing to bring claims under the VRA; *see also* APP73-74 R. Doc. 179 at 22-23.

d. Unfounded Claims of Voter Fraud Cannot Support the Six-Voter Limitation.

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The State Election Board argues that the six-voter limit should be upheld despite its conflict with Section 208 because the six-voter limit furthers important State interests. *Mot. to Stay* at 28-29. According to the State Election Board, "[a]llowing individuals to assist voters without limit would 'increase . . . greatly' the potential for fraud." *Id.* at 9. However, the State Election Board identified no instance of voter fraud related to an assistor providing language assistance to a single voter, not to mention an assistor providing language assistance to more than six voters. *See* APP8 R. Doc. 168 at 6.[9] Of note, the district court upheld the

[9] The district court observed that the State Election Board's suggestion that voters who are members of Arkansas United are not U.S. citizens is "a baseless argument completely contradicted by the record." APP60 R. Doc. 173 at 9.

assistor-tracking provision of the six-voter limit; this enables local and state election officials to track any individuals suspected of fraud or who are the subject of voter complaints. The State Election Board's vague invocations of voter fraud, without proof, and suggestion that naturalized U.S. citizens are illegitimate voters, cannot justify laws that impair voting rights.

2. The State Election Board has not Shown it will be Irreparably Harmed.

The State Election Board has not shown that it will be irreparably injured absent a stay. An irreparable " injury must be both certain and great; it must be actual and not theoretical." *Packard Elevator v. I.C.C.*, 782 F.2d 112, 115 (8th Cir. 1986) (denying a motion to stay because "petitioners' allegations of irreparable harm [were] speculative and unsubstantiated by the record."). The State Election Board must show "[t]he injury complained of [is] of such imminence that there is a 'clear and present' need for equitable relief to prevent irreparable harm." *Id.* (internal quotations omitted).

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The district court took into consideration the upcoming election and limited its injunctive relief for the 2022 General Election. The district court did not order The State Election Board to conduct new, modified trainings or produce an updated training manual until after the 2022 General Election. APP89 R. Doc.179 at 38. The State Election Board has already instructed its staff to cease any further enforcement of the six-voter limit, and the State Election Board has not provided

any evidence that informing the staff has caused any issues or raised any concerns. SAPP 028 R. Doc. 170 at 3. The only thing left for the State Election Board to do is to issue a memorandum to the counties, which is a routine activity. *See* SAPP 034 R. Doc. 176-1 and SAPP 047 R. Doc 176-2.

3. A Stay Would Substantially Injure Arkansas United and its Members.

Arkansas United and its members would be substantially injured by a stay. The right to vote is "of the most fundamental significance under our constitutional structure." *Ill. State. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). As such, "courts routinely deem restrictions on fundamental voting rights irreparable injury. And discriminatory voting procedures in particular are the kind of serious violation of the Constitution and the Voting Rights Act for which courts have granted immediate relief," *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (cleaned up) (collecting cases), as "[t]here can be no do-over and no redress" for the infringement of the right to vote, *id.* *See also Craig v. Simon*, 493 F. Supp. 3d 773, 786 (D. Minn.), *aff'd*, 980 F.3d 614 (8th Cir. 2020). Here, the district court's injunction reduces the risk of disenfranchisement for limited English proficient voters by allowing those voters greater ability to select their assistor of choice. A stay of that injunction therefore would substantially and irreparably injure Arkansas United and its members.

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4. A Stay is Against the Public Interest.

Finally, the public interest weighs against a stay. "[I]t is always in the public interest to protect constitutional rights." *Rodgers v. Bryant*, 942 F.3d 451, 458 (8th Cir. 2019). "Voters have an unparalleled interest in the fair, impartial administration of elections, free from improper restraints or constrictions on the cherished right to vote." *Craig*, 493 F. Supp. 3d at 788. Because "[t]he public has a 'strong interest in exercising the fundamental political right to vote,'" *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (quoting *Purcell*, 549 U.S. at 4), and a stay increases the risk of disenfranchisement of limited English proficient voters, the public interest weighs heavily against a stay.

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III. CONCLUSION

For the foregoing reasons, Arkansas United respectfully requests that the Court vacate the administrative stay and deny the motion to stay.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 27(d) because it contains 5178 words, excluding the parts exempted by Fed. R. App. P. 32(f).

I also certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5)-(6) because it has been prepared in 14-point Times New Roman font, using Microsoft Word.

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CERTIFICATE OF SERVICE

I, Susana Sandoval Vargas hereby certify that on September 20, 2022, I electronically filed the foregoing with the Clerk of the Court for the

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