

No. 26-11310-C

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

DAVID RISSLING, *et al.*,

Plaintiffs-Appellants,

v.

MAGARIA BOBO, in her official capacity, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Alabama

No. 7:23-CV-01326-RDP

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STATEMENT REGARDING ORAL ARGUMENT

Appellants respectfully request oral argument to aid the Court's decisional process. *See* FRAP 34(a); 11th Cir. R. 28-1(b). This appeal seeks reversal of the lower court's grant of summary judgment based on its erroneous finding that Appellants failed to establish a *prima facie* case of discrimination under Title II of the Americans with Disabilities Act. Oral argument is warranted here because, although the elements of a Title II claim are straightforward, the legal errors below provide an incorrect framework for evaluating Title II claims. The lower court applied several incorrect standards under Title II and erroneously found that Section 208 of the Voting Rights Act displaces Title II's separate and distinct statutory requirements. In light of this, oral argument will afford an opportunity for clarification of the correct Title II standards and their application here.

TABLE OF CONTENTS

STATEMENT REGARDING ORAL ARGUMENT	i
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
JURISDICTIONAL STATEMENT	2
STATEMENT OF ISSUES	3
STATEMENT OF THE CASE.....	3
I. Procedural History	3
II. Statement of Facts.....	5
III. Standard of Review.....	10
SUMMARY OF ARGUMENT	10
ARGUMENT	13
I. Plaintiffs established a prima facie case of discrimination under Title II of the ADA.....	13
II. The district court erroneously held that Title II of the ADA requires nothing more than the ability to vote with assistance, no matter how unequal the experience.	16
A. Title II prohibits Defendants from imposing an inferior voting experience on voters with print disabilities.....	17
i. Title II requires nothing less than equality.	17
ii. The district court misapplied the regulation addressing existing physical facilities.....	22
iii. The district court misinterpreted Title II’s equal opportunity requirement.....	24
iv. The district court misunderstood Title II’s requirements regarding ballot secrecy.	28

B.	Section 208 of the Voting Rights Act and its Alabama counterpart do not displace Title II’s broad mandate of equal opportunity.	30
i.	Section 208’s “minimal requirement” of assistance does not displace Title II’s broader mandate of equality of opportunity, and no court has found otherwise.	31
ii.	The district court erroneously applied the “specific versus general” principle of statutory interpretation, absent any conflict between Section 208 and Title II, to conclude that Section 208’s specific voter assistance requirement displaces Title II’s general mandate.	36
iii.	Alabama law providing for third-party voting assistance similarly does not displace Title II’s broader requirements.....	39
III.	The district court erred in holding that only intentional discrimination qualifies as discrimination because of disability.....	41
A.	Plaintiffs have shown that, but for their print disabilities, they would be able to vote absentee remotely, privately, and independently.	42
B.	Requiring Plaintiffs to prove intentional discrimination undermines Title II’s purpose of remedying all forms of disability discrimination, including discrimination resulting from apathy rather than animus.....	45
IV.	Plaintiffs have standing to pursue both declaratory and injunctive relief.....	46
	CONCLUSION.....	49
	CERTIFICATE OF COMPLIANCE.....	50

TABLE OF AUTHORITIES

Cases

<i>A.J.T. ex rel. A.T. v. Osseo Area Schs., Indep. Sch. Dist. No. 279</i> , 605 U.S. 335 (2025)	40–41
<i>Ability Ctr. of Greater Toledo v. City of Sandusky</i> , 385 F.3d 901 (6th Cir. 2004)	41
<i>Akridge v. Alfa Ins. Cos.</i> , 93 F.4th 1181 (11th Cir. 2024)	43
<i>Ala. State Conf. of the NAACP v. Marshall</i> , 746 F. Supp. 3d at 1215 (N.D. Ala. 2024)	40
<i>Alexander v. Choate</i> , 469 U.S. 287 (1985)	24, 25–26, 46
<i>Am. Ass’n of People with Disabilities v. Harris</i> , 647 F.3d 1093 (11th Cir. 2011)	35
<i>Am. Ass’n of People with Disabilities v. Hood</i> , 278 F. Supp. 2d 1345 (M.D. Fla. 2003)	31, 34, 39
<i>Am. Council of the Blind v. Paulson</i> , 525 F.3d 1256 (D.C. Cir. 2008)	22
<i>Bircoll v. Miami-Dade Cnty.</i> , 480 F.3d 1072 (11th Cir. 2007)	26, 27
<i>Bledsoe v. Palm Beach County Soil and Water Conservation Dist.</i> , 133 F.3d 816 (11th Cir. 1998)	33
<i>Bonner v. City of Prichard, Ala.</i> , 661 F.2d 1206 (11th Cir. 1981)	19
<i>Cal. Council of the Blind v. Cnty. of Alameda</i> , 985 F. Supp. 2d 1229 (N.D. Cal. 2013)	21, 29, 34, 35
<i>Campbell v. Universal City Dev. Partners, Ltd.</i> , 72 F.4th 1245 (11th Cir. 2023)	40

<i>Comcast Corp. v. Nat’l Ass’n. of African American-Owned Media</i> , 589 U.S. 327 (2020)	42
<i>Crane v. Utah Dep’t of Corrections</i> , 15 F.4th 1296 (10th Cir. 2021)	43
<i>Disability Rts. Or. v. Wash. Cnty.</i> , No. 3:24-CV-00235-SB, 2024 WL 4046017 (D. Or. Aug. 30, 2024)	23–24
<i>Disabled in Action v. Bd. of Elections in the City of New York</i> , 752 F.3d 189 (2d Cir. 2014)	25
<i>Doe v. Rhode Island Interscholastic League</i> , 137 F.4th 34 (1st Cir. 2025)	43
<i>Dunn v. Dunn</i> , 318 F.R.D. 652 (M.D. Ala. 2016)	41
<i>Ellison v. U.S. Postal Serv.</i> , 84 F.4th 750 (7th Cir. 2023)	25–26
<i>Epic Sys. Corp. v. Lewis</i> , 584 U.S. 497 (2018)	35
<i>Finley v. Huss</i> , 102 F.4th 789 (6th Cir. 2024)	43
<i>Haberle v. Troxell</i> , 885 F.3d 170 (3d Cir. 2018)	43–44
<i>Hindel v. Husted</i> , No. 2:15-CV-3061, 2016 WL 2735935 (S.D. Ohio May 11, 2016)	21, 21–22, 40
<i>International Paper Co. v. Ouellette</i> , 479 U.S. 481 (1987)	38
<i>Johnson v. Callanen</i> , 610 F. Supp. 3d 907 (W.D. Tex. 2022)	21, 29–30, 34, 40
<i>K.M. ex rel. Bright v. Tustin Unified Sch. Dist.</i> , 725 F.3d 1088 (9th Cir. 2013)	25

<i>Kerrigan v. Philadelphia Bd. of Election</i> , No. 07-687, 2008 WL 3562521 (E.D. Pa. Aug. 14, 2008)	35
<i>Lee v. Flightsafety Servs. Corp.</i> , 20 F.3d 428 (11th Cir. 1994).....	10
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024)	19
<i>Martin v. Metropolitan Atlanta Rapid Transit Authority</i> , 225 F. Supp. 2d 1362 (N.D. Ga. 2002)	46
<i>Mary Jo C. v. New York State & Loc. Ret. Sys.</i> , 707 F.3d 144 (2d Cir. 2013)	28
<i>McNely v. Ocala Star-Banner Corp.</i> , 99 F.3d 1068 (11th Cir. 1996).....	41, 42, 43, 44
<i>Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers</i> , 619 F.3d 1289 (11th Cir. 2010).....	37
<i>Mississippi ex rel. Hood v. AU Optronics Corp.</i> , 571 U.S. 161 (2014)	36
<i>Morales v. Trans World Airlines</i> , 504 U.S. 374 (1992)	38
<i>National Federation of the Blind v. Lamone</i> , 813 F.3d 494 (4th Cir. 2016).....	20–21, 21, 23, 25, 29, 34, 40
<i>Nehme v. Fla. Int’l Bd. of Trs.</i> , 121 F.4th 1379 (11th Cir. 2024).....	14
<i>Nelson v. Experian Info. Solutions Inc.</i> , 144 F.4th 1350 (11th Cir. 2025).....	10
<i>Payan v. Los Angeles Comm. Coll. Dist.</i> , 2019 WL 9047062 (C.D. Cal. 2019)	23
<i>People First of Alabama v. Merrill</i> , 467 F. Supp. 3d 1179 (N.D. Ala. 2020)	44

<i>R.W. v. Bd. of Regents of the Univ. Sys. of Ga.</i> , 114 F. Supp. 3d 1260 (N.D. Ga. 2015)	43
<i>RadLAX Gateway Hotel v. Amalgamated Bank</i> , 566 U.S. 639 (2012)	37–38, 38
<i>S.B. by and through M.B. v. Lee</i> , 566 F. Supp. 3d 835 (E.D. Tenn. 2021)	23
<i>Sailboat Bend Sober Living, LLC v. City of Fort Lauderdale, Florida</i> , 46 F.4th 1268 (11th Cir. 2022)	10
<i>Schwarz v. City of Treasure Island</i> , 544 F.3d 1201 (11th Cir. 2008)	41–42, 42
<i>Segal v. Metro. Council</i> , 29 F.4th 399 (8th Cir. 2022)	26
<i>Shotz v. Cates</i> , 256 F.3d 1077 (11th Cir. 2003)	18–19
<i>Shotz v. City of Plantation, Fla.</i> , 344 F.3d 1161 (11th Cir. 2003)	18, 19, 24
<i>Silberman v. Miami Dade Transit</i> , 927 F.3d 1123 (11th Cir. 2019)	42–43
<i>Stewart v. Happy Herman’s Cheshire Bridge, Inc.</i> , 117 F.3d 1278 (11th Cir. 1997)	27
<i>SunAmerica Corp. v. Sun Life Assur. Co. of Canada</i> , 77 F.3d 1325 (11th Cir. 1996)	10
<i>Trump v. CASA, Inc.</i> , 606 U.S. 831 (2024)	48
<i>Tug Allie-B, Inc. v. U.S.</i> , 273 F.3d 936 (11th Cir. 2001)	37
<i>Turner v. Atlanta Indep. Sch. Sys.</i> , 805 F. Supp. 3d 1277 (N.D. Ga. 2025)	19

<i>United States v. Florida</i> , 938 F.3d 1221 (11th Cir. 2019).....	18, 24
<i>United States v. Kaley</i> , 579 F.3d 1246 (11th Cir. 2009).....	19
<i>United States v. Sec’y Florida Agency for Health Care Admin.</i> , 21 F.4th 730 (11th Cir. 2021).....	45
<i>Varity Corp. v. Howe</i> , 516 U.S. 489 (1996)	38, 38–39
<i>Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer</i> , 515 U.S. 528 (1995)	35–36
<i>Wisconsin Cmty. Servs., Inc. v. City of Milwaukee</i> , 465 F.3d 737 (7th Cir. 2006).....	44

Constitutional Provisions

U.S. Const. art. VI, cl. 2	39
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Statutes

28 U.S.C. § 1291	3
28 U.S.C. § 1294.....	3
28 U.S.C. § 1331	2
28 U.S.C. § 1343	2
28 U.S.C. § 2201	2
28 U.S.C. § 2202.....	2
29 U.S.C. § 701	22
42 U.S.C. § 12101	30, 36, 45
42 U.S.C. § 12112.....	27, 43
42 U.S.C. § 12131	2, 14

42 U.S.C. § 12132.....	14, 17, 28, 43
42 U.S.C. § 12134.....	19
42 U.S.C. § 12203.....	43
52 U.S.C. § 10508.....	30
Ala. Code § 17-6-34.....	28
Ala. Code § 17-9-13.....	30, 31, 39
Ala. Code § 17-11-3.....	6, 8, 14

Regulations

28 C.F.R. § 35.130.....	16, 18, 20, 21, 27
28 C.F.R. § 35.150.....	22, 23
28 C.F.R. § 35.160.....	16, 18, 20, 26, 27, 28
29 C.F.R. § 1630.....	27
75 Fed. Reg. 56,164 (Sept. 15, 2010).....	27

Rules

11th Cir. R. 28-1.....	i
11th Cir. R. 28-5.....	3
FRAP 34.....	i

Legislative History

H.R. Rep. No. 101-485 (II).....	33
H.R. Rep. No. 101-485 (III).....	33, 45, 46
S. Rep. No. 97-417.....	31–32, 32, 32–33

Other Authorities

Black’s Law Dictionary (12th ed. 2024)47

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INTRODUCTION

Plaintiffs-Appellants are four Tuscaloosa, Jefferson, and Mobile County voters with vision and manual dexterity disabilities, along with the National Federation of the Blind of Alabama (“NFB-AL”), a membership organization composed primarily of blind Alabamians. Because of their disabilities, the individual plaintiffs and members of the NFB-AL with print disabilities¹ qualify to vote absentee in the three counties where Defendants-Appellees serve as the Absentee Election Managers (AEMs). Yet Defendants only provide Plaintiffs with paper ballots to vote absentee remotely, which Plaintiffs cannot read and/or mark, or return on their own. Because Plaintiffs must rely on someone else to complete and return their absentee ballots for them, Plaintiffs cannot vote absentee remotely without sacrificing the secrecy of their ballot.

By comparison, Alabama voters without disabilities who qualify to vote absentee may do so privately and independently from home or any other convenient location. Although Defendants could afford Plaintiffs the opportunity to do the same—through the accessible, electronic system they currently offer overseas and military voters—Defendants have refused to do so.

¹ Print disabilities are any visual and manual dexterity impairments that interfere with an individual’s ability to read, mark, and/or handle printed paper documents. *See* ECF No. 111, Mem. Op. (Mar. 20, 2026) at 1 n.2.

These facts are undisputed and establish that Defendants violated Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131, *et seq.*, by failing to provide Plaintiffs an equal opportunity to participate in Defendants’ public program of remote absentee voting—privately and independently—as voters without print disabilities are able to do. The district court, ignoring Title II’s mandate of equality, found that requiring Plaintiffs to rely on third-party assistance to vote absentee remotely afforded Plaintiffs lesser but still sufficient “meaningful access” under the law. The district court did so without a single supportive citation or reference to the prevailing body of case law rejecting this same premise. The sum of the district court’s unsupported interpretation of Title II is that giving voters with disabilities *some* opportunity to participate, rather than an *equal* opportunity to do so, is good enough for them. This was legal error and this Court should reverse the decision below.

JURISDICTIONAL STATEMENT

The United States District for the Northern District of Alabama had jurisdiction over Plaintiffs’ claims under the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.*, pursuant to 28 U.S.C. §§ 1331 and 1343, and over their claims for declaratory relief pursuant to 28 U.S.C. §§ 2201–02. The district court entered final judgment against Plaintiffs as to all claims on March 20, 2026. On April 20, 2026, Plaintiffs filed their timely notice of appeal. ECF No. 115, Pls.’

Not. of Appeal. This Court has jurisdiction over the appeal pursuant to 28 U.S.C. §§ 1291 and 1294(1).

STATEMENT OF ISSUES

- I.** Did the district court err in holding that Defendants' refusal to grant qualified voters with disabilities an equal opportunity to vote absentee remotely, privately and independently, as voters without disabilities are able to do, satisfied their obligations under Title II of the Americans with Disabilities Act?
- II.** Did the district court erroneously hold that compliance with Section 208 of the Voting Rights Act absolves public entities from the requirements of Title II of the Americans with Disabilities Act?
- III.** Did the district court erroneously hold that Defendants did not discriminate against Plaintiffs by reason of their disabilities under Title II of the Americans with Disabilities Act simply because there was no evidence of intentional discrimination?
- IV.** Did the district court incorrectly limit Plaintiffs' standing to non-injunctive relief?

STATEMENT OF THE CASE

I. Procedural History

On October 17, 2023, Plaintiffs David Rissling, Gillie Presley, Gail Beverly Clayton, Eric Peebles, and the NFB-AL, brought this lawsuit against Defendants Magaria Bobo, Susan Potts, and Jacqueline Anderson-Smith, in their official capacities as the AEMs for Tuscaloosa, Mobile, and Jefferson counties, respectively. *See* ECF No. 4, Am. Compl.²

² Pursuant to 11th Cir. R. 28-5, Plaintiffs-Appellants' brief cites to the document and page numbers generated by the district court's electronic filing system, with the exception of deposition transcripts. Because these transcripts were filed in their

Plaintiffs sought to enjoin Defendants from violating Title II of the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act (“Section 504”) and requested an order that would afford them an equal opportunity to vote absentee: remotely, privately, and independently through a Remote Accessible Vote-By-Mail System (“RAVBM”). *Id.* at 20–21

Defendants filed a motion to dismiss, *see* ECF No. 18, which the district court granted as to Plaintiffs’ Section 504 claims, but denied as to their Title II claims. *See* ECF No. 32, Mem. Op. at 7 (June 24, 2024) (Coogler, J.). The parties filed motions for summary judgment on May 20, 2025, and June 3, 2025, respectively. *See* ECF No. 58, Pls.’ Mot. Summ. J.; ECF No. 67, Defs.’ Cross Mot. Summ. J.

On March 20, 2026, the district court denied Plaintiffs’ Motion and granted Defendants’ Cross-Motion, dismissing the case with prejudice. *See* ECF No. 112, Order (Mar. 20, 2026) (Proctor, J.). The court first considered Plaintiffs’ standing and, without explanation, limited it to “non-injunctive relief claims.” ECF No. 111, Mem. Op. at 10–15. The court then held that Defendants’ absentee voting programs do not violate Title II because print-disabled voters may seek third-party assistance to vote absentee remotely, thus granting them “meaningful access” to

condensed format, the brief cites to the court-reporter generated transcript page and line numbers.

remote absentee voting. *See id.* at 18–25. The court further concluded that compliance with Section 208 of the Voting Rights Act (which protects voters with disabilities’ right to a voting assistant of their choice) satisfies Title II’s requirement that public entities provide individuals with disabilities equal opportunity to participate in remote absentee voting. *See id.* at 19–20. Finally, the court held that Plaintiffs must provide “evidence of discriminatory intent” in order to establish a Title II claim. *Id.* at 25–26. Plaintiffs timely appealed. ECF No. 31, Pls.’ Not. of Appeal.

II. Statement of Facts

Plaintiffs Gillie Presley and David Rissling are blind residents of Tuscaloosa County. *See* ECF No. 111, Mem. Op. at 1. Plaintiff Gail Beverly Clayton is a blind resident of Jefferson County. *Id.*; ECF No. 4, Am. Compl. at 5. Plaintiff Dr. Eric Peebles resides in Mobile County and has cerebral palsy, which substantially limits his ability to perform manual tasks, including writing and typing. *See* ECF No. 111, Mem. Op. at 1.; ECF No. 56-2, Deposition of Eric Peebles (“Peebles Dep.”) at 8:15–16, 16:1–4. To access documents, all four individual Plaintiffs rely on screen reader technology, which reads aloud, or displays on a refreshable Braille display, the visual information on the electronic page. ECF No. 4, Am. Compl. at 4–6, 9. Ms. Clayton and Mr. Rissling are members of Alabama’s chapter of the National Federation of the Blind (“NFB-AL”), the associational Plaintiff in this case. ECF

No. 111, Mem. Op. at 2. Plaintiff NFB-AL is a non-profit membership-based organization composed primarily of blind Alabamians. ECF No. 58, Pls.’ Mot. Summ. J. at 10.

Defendant Magaria Bobo is the AEM for Tuscaloosa County, Defendant Susan Potts is the AEM for Mobile County, and Defendant Jacqueline Anderson-Smith is the AEM for Jefferson County. *See id.* at 11. Defendants are responsible for administering their counties’ absentee voting programs. *See* ECF No. 111, Mem. Op. at 2–3. Their duties include processing voter applications, distributing absentee ballots by mail and electronically, receiving completed absentee ballots, and overseeing early in-person “absentee” voting. ECF No. 4, Am. Compl. at 8.

Under Alabama’s excuse-required absentee voting program, voters must meet one of eight eligibility criteria to vote absentee. ECF No. 111, Mem. Op. at 2; Ala. Code § 17-11-3. As individuals with permanent disabilities, Plaintiffs meet at least one of these eligibility criteria and are therefore qualified to vote absentee. *See id.* at 2, 17–18. To do so, they must first complete an absentee ballot application on paper or through a fillable PDF that is inaccessible to most screen readers. *See id.* at 2–3.³ Once approved, qualified absentee voters can either vote

³ As a result, Plaintiffs, with the exception of Dr. Peebles, cannot apply to vote absentee independently. *See* ECF No. 111, Mem. Op. at 3.

“absentee” early in-person at the AEM’s office, or by paper ballot from home (remote absentee voting). *See id.* at 3–4.⁴

Because of Plaintiffs’ print disabilities, they cannot read and/or mark, or return a paper absentee ballot independently. *See id.* at 4–5. Yet to vote remotely absentee, they must complete the ballot according to instructions printed on paper; physically mark their selections with a pen by filling in bubbles with black ink; trifold the ballot; place it inside a secrecy envelope; place the secrecy envelope inside an affidavit envelope; read and sign the affidavit envelope, and have a witness do the same⁵; and hand deliver it to the AEM office or affix postage and send it by mail. *Id.* at 4; ECF No. 56-11, Deposition of Magaria Bobo (“Bobo Dep.”) at 67:3–23; ECF No. 56-13, Deposition of Jacqueline Anderson-Smith (“Anderson-Smith Dep.”) at 64:5–65:8; ECF No. 56-12, Deposition of Susan Potts (“Potts Dep.”) at 78:7–22. Because each of these steps is inaccessible to Plaintiffs, in order to vote absentee remotely they must rely on third-party assistance to read,

⁴ For Plaintiffs, the early in-person voting option is no different from voting in-person on election day. It does not afford them the equal opportunity they seek to vote privately and independently from their homes, as non-disabled absentee voters can do. It also presents the same hurdles, discussed below, of finding transportation, *see* ECF No. 111, Mem. Op. at 4, and trusting that the accessible in-person voting machines will be operable and staffed by trained employees.

⁵ In Jefferson County, absentee voters are not required to have their ballots witnessed, *see* ECF No. 111, Mem. Op. at 4, n.4, but the remainder of the vote-by-mail requirements prevent Ms. Clayton from reading, marking, and submitting her absentee ballot privately and independently.

mark, and return their ballots. *See* ECF No. 111, Mem. Op. at 4–5. In light of this, only one Plaintiff (Dr. Peebles) has even attempted to vote absentee remotely, and, in doing so, he was forced to reveal his choices to a sighted assistant. *See* ECF No. 56-2, Peebles Dep., at 86:8–21.

If Plaintiffs want to vote privately and independently, they must do so in person (either early or on election day) using the counties’ ExpressVote machines.⁶ *See* ECF No. 111, Mem. Op. at 4–5. This requires arranging transportation, another potential barrier to their attendance at the polls. *See id.*, at 4, 17. Furthermore, Plaintiffs attempting to vote privately and independently in person, must hope that the ExpressVote machine is working and that the poll workers know how to use it—circumstances that do not always align. ECF No. 56-4, Deposition of David Rissling (“Rissling Dep.”) at 65:7–69:14; ECF No. 56-5, Deposition of Gail Beverly Clayton (“Clayton Dep.”) at 29:19–33:9; ECF No. 56-7, 30(b)(6) Deposition of NFB-AL President, Barbara Manuel (“Manuel Dep.”) at 51:5–22. Voters without disabilities who qualify to vote absentee (perhaps because they will be out of town during the election or work long hours on election day, *see* Ala. Code § 17-11-3(a)(1), (3)), however, can vote privately and independently

⁶ The ExpressVote machines that Defendants use for in-person voting are ballot marking devices that are accessible to blind voters using earphones and a keypad. *See* ECF No. 111, Mem. Op. at 4, 17. Dr. Peebles, however, cannot use the ExpressVote machine privately and independently. *Id.*; ECF No. 56-2, Ex. 2, Peebles Dep., at 87:10–89:21.

regardless of whether they do so early in person, or remotely from home or some other convenient location.

Although in the past there may have been no better option for absentee voters with print disabilities than enlisting assistance, today there is. For the last four years, all Alabama counties, including Defendants' counties, have utilized a third-party software (Democracy Live OmniBallot), an RAVBM system, for all overseas and military voters covered under the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"). *See* ECF No. 111, Mem. Op. at 5. RAVBM systems, including OmniBallot, allow voters to receive, mark, and return their ballots electronically. *Id.* at 6–7. Unlike paper ballots, RAVBM systems are accessible to voters with print disabilities who can use screen reader technology to read text and complete forms on their computer or other mobile devices. *Id.*

Because OmniBallot provides ballots and an electronic return capability that is compatible with screen readers, the system Defendants already use would afford Plaintiffs the opportunity to vote absentee remotely, privately, and independently. *Id.* at 6–7. Plaintiffs brought this lawsuit to gain the option of voting absentee by RAVBM, so that they no longer have to sacrifice their privacy and independence (which voters without disabilities enjoy) when voting absentee remotely. *See* ECF No. 56-4, Rissling Dep. at 78:16–79:16; ECF No. 56-2, Peebles Dep. at 86:7–21, 99:2–100:10; ECF No. 56-5, Clayton Dep. at 79:4–80:7; ECF No. 56-3, Deposition

of Gillie Presley (“Presley Dep.”) at 42:13–43:3; ECF No. 56-7, Manuel Dep., at 68:6–15, 75:2–15, 90:14–91:18.

III. Standard of Review

This Court reviews entry of summary judgment, including both the district court’s legal conclusions and its determination that no genuine issue of material fact exists, *de novo*. *Sailboat Bend Sober Living, LLC v. City of Fort Lauderdale, Fla.*, 46 F.4th 1268, 1274 (11th Cir. 2022). “When the issue on appeal is solely a question of law, the appellate court independently determines proper statutory interpretation,” through *de novo* review. *Lee v. Flightsafety Servs. Corp.*, 20 F.3d 428, 431 (11th Cir. 1994). The “application of [that] law” is then subject to *de novo* review as well. *SunAmerica Corp. v. Sun Life Assur. Co. of Canada*, 77 F.3d 1325, 1333 (11th Cir. 1996). Standing decisions are also reviewed *de novo*. *Nelson v. Experian Info. Solutions Inc.*, 144 F.4th 1350, 1353 (11th Cir. 2025).

SUMMARY OF ARGUMENT

Alabama voters without disabilities who qualify to vote absentee may do so from any location that is convenient for them. Regardless of where they vote, they are always able to read, mark, and return their ballots privately and independently. This assurance of ballot secrecy is fundamental to Defendants’ absentee voting program. It is codified in Alabama law and not merely an incidental part of the voting experience.

Yet for Plaintiffs and other members of the NFB-AL with print disabilities, voting absentee remotely means sacrificing the secrecy of their ballot. Plaintiffs have thus established a Title II violation by demonstrating through undisputed facts that they 1) have disabilities; 2) are qualified to vote absentee; and 3) were subjected to unlawful discrimination—denial of equal opportunity to participate in remote absentee voting—because of their disabilities.

Defendants have an available solution: the electronic, accessible RAVBM system that they already provide to overseas and military voters. But Defendants refuse to offer Plaintiffs this ready solution because they do not think Title II requires them to ensure Plaintiffs have an equal opportunity to participate in remote absentee voting. The district court, ignoring Title II's mandate of equality and the prevailing body of case law, agreed with Defendants and, in doing so, committed four distinct errors.

First, the district court found, without a single supportive citation, that Title II does not require equal opportunity. Instead, it concluded that Title II's mandate is limited to a lesser form of “meaningful” or “ready” access and then held that requiring voters with disabilities to rely on assistance to vote remotely absentee satisfies this lesser standard. Other courts, however, have repeatedly rejected this notion that Title II requires something less than equality. The district court's contrary finding was error.

Second, the district court incorrectly found that Section 208 of the Voting Rights Act displaces any Title II requirement of equality of opportunity in voting. Section 208, which provides that voters with certain disabilities may elect to have a person of their choice assist them while voting, establishes a floor—a “minimal requirement” for helping ensure some voting access for individuals with disabilities. It does not impose a ceiling on the rights of voters with disabilities, nor does it prescribe one exclusive access-to-voting solution for all time. Accordingly, the only court in this Circuit to address whether Section 208 nullifies Title II’s separate and distinct requirements expressly rejected the argument that it does. The district court thus erred in interpreting Section 208 as invalidating Title II’s entire remedial scheme for absentee voting.

Third, the district court imposed a new hurdle for individuals with disabilities seeking injunctive relief under Title II: evidence that the public entity intentionally discriminated against them. Congress enacted Title II to remedy the far-reaching, but often unintentional discrimination individuals with disabilities face in attempting to participate in public life. Requiring evidence of discriminatory intent to vindicate those Title II rights would render much of the discrimination Congress intended to cure unreachable under the law. The district court’s decision also ignores the uniform case law in this Circuit and others finding

that Title II claims for injunctive relief do not require intentional discrimination and was thus error.

These holdings are all inconsistent with the text and purpose of Title II. By failing to provide voters with print disabilities an equal opportunity to vote absentee remotely—without third-party assistance—Defendants have violated Title II. This Court should reverse the district court’s decision granting Defendants summary judgment on Plaintiffs’ *prima facie* case.

Finally, the district court’s limitation of Plaintiffs’ standing to “non-injunctive relief claims,” is without explanation and in direct contravention of the court’s otherwise correct standing analysis. The Court should reverse this holding as well, clarifying that Plaintiffs have standing to pursue their claims for both declaratory and injunctive relief.

ARGUMENT

I. Plaintiffs established a *prima facie* case of discrimination under Title II of the ADA.

The individual plaintiffs are Alabama voters who are undisputedly eligible to vote absentee. *See* ECF No. 111, Mem. Op. at 17. Because they have print disabilities, however, they cannot vote absentee remotely, privately, and independently, as voters without print disabilities are able to do. And because Defendants require them to use paper ballots to vote absentee remotely, Plaintiffs must instead rely on a third party to complete their ballots for them. This inferior

voting experience violates Title II of the ADA, which prohibits public entities from denying individuals with disabilities an equal opportunity to participate in and benefit from public programs, including voting.

Title II of the ADA provides that a public entity may not, in the course of administering its services, programs, or activities, discriminate against qualified individuals with disabilities. *See* 42 U.S.C. § 12132. To establish a Title II violation, Plaintiffs must show that they (1) have disabilities, (2) are qualified individuals, and (3) were subjected to unlawful discrimination because of their disabilities. *Nehme v. Fla. Int'l Bd. of Trs.*, 121 F.4th 1379, 1383 (11th Cir. 2024).

The district court correctly found that Plaintiffs established the first two elements through undisputed facts. First, Plaintiffs “have print disabilities that interfere with their ability to read, mark, and/or handle printed paper documents” and thus meet the definition of individuals with disabilities under the statute. ECF No. 111, Mem. Op. at 17; *see also* ECF No. 56-3, Presley Dep. at 12:17–19; ECF No. 56-4, Rissling Dep. at 15:22–16:1; ECF No. 56-5, Clayton Dep. at 12:10; 18:16–17; 19:6–8; ECF No. 56-2, Peebles Dep. at 8:15–16.

Second, as the district court correctly found, because Plaintiffs are individuals with permanent disabilities who cannot drive, they “‘meet the essential eligibility criteria’ to vote by absentee ballot.” ECF No. 111, Mem. Op. at 17–18 (quoting 42 U.S.C. § 12131(2)); *see* Ala. Code § 17-11-3.1 (permitting individuals

to vote by absentee ballot if, *inter alia*, they have “a permanent disability preventing [their] attendance at the polls”). The court’s holding that Plaintiffs are qualified individuals likewise applies to NFB-AL members who are “permanently disabled” and unable “to transport themselves to the polls.” ECF No. 111, Mem. Op. at 17. Plaintiffs thus satisfy the second element of their Title II claim as “qualified individuals.” *Id.*

Third, in depriving Plaintiffs equal opportunity to vote absentee remotely, privately, and independently, as voters without disabilities enjoy, Defendants discriminated against Plaintiffs. That discrimination was because of Plaintiffs’ disabilities, since, but for their print disabilities, Plaintiffs would enjoy the same private and independent means of remote absentee voting available to other voters. *See id.* at 4–5 (describing how Plaintiffs cannot vote absentee remotely, privately, and independently because of their disabilities).

On this third element, however, the district court erred in several ways. As discussed below, in holding that Plaintiffs’ inferior voting experience satisfied Title II, the court mistook the statute’s equality mandate for a lesser standard. It then compounded this error by holding that the Voting Rights Act’s minimum requirement of granting voters with disabilities the *option* of choosing a voting assistant displaced the ADA’s distinct and broader requirement of ensuring equality of opportunity in all aspects of voting. Finally, in analyzing whether

Defendants' discrimination was because of Plaintiffs' disabilities, the district court incorrectly applied an intentional discrimination requirement. As discussed below, courts, including this Circuit, unanimously agree that Title II claims for injunctive relief do not require proof of specific animus or intentional discrimination. Instead, Plaintiffs need only show, as they have here, that but for their disabilities they would have enjoyed the same benefit of remote, private, and independent absentee voting.

II. The district court erroneously held that Title II of the ADA requires nothing more than the ability to vote with assistance, no matter how unequal the experience.

The lower court incorrectly held that Defendants have not violated Title II because Plaintiffs have “meaningful” or “ready” access to absentee voting with assistance. ECF No. 111, Mem. Op. at 18–22. This holding misunderstands Title II’s equality mandate. Title II requires that public entities provide individuals with disabilities an *equal* opportunity to participate in and benefit from a public entity’s programs and activities, and to afford communication that is *equally* as effective as that afforded to those without disabilities. *See* 28 C.F.R. §§ 35.130, 35.160.

In contravention of these requirements, the lower court found that *any* access to remote absentee voting—including with assistance—was sufficient. ECF No. 111, Mem. Op. at 18–22. It did so without reference to the relevant Title II regulations or any of the Title II accessible voting case law rejecting this same

premise. Equally unsupported is the lower court's holding that Section 208 of the Voting Rights Act nullifies Title II's broader mandate for equality of opportunity—simply by protecting the right of individuals with disabilities to vote with assistance *if they so choose*. ECF No. 111, Mem. Op. at 19-20. The lower court's holding here finds no support in the case law and has already been rejected by a court in this Circuit.

A. Title II prohibits Defendants from imposing an inferior voting experience on voters with print disabilities.

Consigning voters with disabilities to a second-class opportunity to vote absentee violates Title II's broad prohibition on public entities discriminating against individuals with disabilities, 42 U.S.C. § 12132; the specific commands of its implementing regulations; and the prevailing body of Title II case law finding that third-party assistance fails the statute's mandate of equality of opportunity.

i. Title II requires nothing less than equality.

The Department of Justice's implementing regulations interpreting Title II make clear that the statute requires equality of opportunity and equally effective communication, not mere access. Specifically, the Title II regulations state that in providing aids, benefits, or services, public entities may not, on the basis of disability:

Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is **not equal** to that afforded others;

Provide a qualified individual with a disability with an aid, benefit, or service that is **not as effective** in affording **equal opportunity** to obtain the same result [or] to gain the **same benefit** . . . as that provided to others;

[Fail to] make **reasonable modifications in policies, practices, or procedures** when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity;

[Fail to] **take appropriate steps** to ensure that **communications** with . . . participants . . . with disabilities are **as effective** as communications with others;

[Fail to] **furnish appropriate auxiliary aids and services** where necessary to afford individuals with disabilities . . . an **equal opportunity** to participate in, and enjoy the benefits of, a service, program, or activity of a public entity; [or]

Rely on an adult accompanying an individual with a disability to interpret or **facilitate communication**.

28 C.F.R. § 35.130(b)(1)(ii)–(iii), (7)(i) (emphases added); 28 C.F.R. § 35.160(a)(1), (b)(1), & (c)(2) (emphases added). The regulations further specify that, “to be effective, auxiliary aids and services must be provided . . . in such a way as to protect the **privacy and independence** of the individual with a disability.” 28 C.F.R. § 35.160(b)(2) (emphasis added).

This Court has held that these Title II regulations carry “the force of law.” *United States v. Florida*, 938 F.3d 1221, 1241 (11th Cir. 2019) (quoting *Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1179 (11th Cir. 2003)); *Shotz v. Cates*, 256

F.3d 1077, 1079 n.2, (11th Cir. 2001) (same).⁷ In short, a public entity is required to provide individuals with disabilities: an equal opportunity to participate in and benefit from public programs and services, as it does for those without disabilities; communications that are equally effective; and auxiliary aids and services that protect the individual's privacy and independence, to ensure equally effective communication.

⁷ While the district court did not directly dispute this, it posited in a footnote that “[t]o the extent *Shotz*, rests on *Chevron* deference” this Circuit “may wish to consider whether that aspect remains good law” after the Supreme Court’s decision in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). See ECF No. 111, Mem. Op. at 18, n.15. But *Shotz* made clear that “Congress expressly authorized the Attorney General to make rules with the force of law interpreting and implementing the ADA provisions.” *Shotz*, 344 F.3d at 1179 (citing 42 U.S.C. § 12134(a)). Thus, the force of the Title II regulations is provided by statutory delegation, not judicial deference to agency interpretations. See *Loper Bright*, 603 U.S. at 413 (“[W]hen a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation.”). Moreover, because *Shotz* applied *Chevron* deference only after “an extensive examination of the plain text, structure, [and] legislative history” of Title II “the notion that the Eleventh Circuit’s opinion [in *Shotz*] was based on blind *Chevron* deference is a fallacy.” *Turner v. Atlanta Indep. Sch. Sys.*, 805 F. Supp. 3d 1277, 1293–94 (N.D. Ga. 2025). Finally, even if *Shotz* had relied on *Chevron* in applying the Title II regulations, *Loper Bright* itself made clear that it did not “call into question prior cases that relied on the *Chevron* framework.” *Loper Bright*, 603 U.S. at 376. The courts of this Circuit are bound by “the absolute rule that a prior decision of the circuit (panel or en banc) [can]not be overruled by a panel but only by the court sitting en banc.” *Bonner v. City of Prichard, Ala.*, 661 F.2d 1206, 1209 (11th Cir. 1981). No such en banc decision has issued and a contrary Supreme Court decision “must be clearly on point” and “actually abrogate or directly conflict with, as opposed to merely weaken, the holding of the prior panel,” *United States v. Kaley*, 579 F.3d 1246, 1255 (11th Cir. 2009) (citations omitted), which *Loper Bright* has not done with respect to *Shotz*.

By forcing Plaintiffs to rely on third-party assistance to vote absentee remotely—something voters without disabilities need not do—Defendants have failed to meet these obligations. They have denied Plaintiffs an equal opportunity to participate in and benefit from their counties’ remote absentee voting programs, including the privacy and independence those programs provide. *See* 28 C.F.R. § 35.130(b)(1)(ii). Defendants have also denied Plaintiffs an available equally effective means of obtaining those benefits—namely, an RAVBM system that would allow them to vote absentee privately and independently. *See id.* §§ 35.130(b)(1)(iii), 35.160(b)(1). And, in denying access to this auxiliary aid, they have denied Plaintiffs equally effective communication in absentee voting. *See id.* § 35.160(a)(1). Finally, Defendants have imposed the very burden Title II’s regulations expressly prohibit by requiring Plaintiffs to recruit another person to “facilitate communication” even though Plaintiffs have not “specifically request[ed]” that assistance. 28 C.F.R. § 35.160(c)(2).

The lower court’s contrary ruling that Plaintiffs’ option of enlisting an assistant satisfies Title II is, at its core, a determination that *any* available method of remote voting—no matter how inferior to that enjoyed by voters without disabilities—is sufficient. But “good enough” is not the standard under Title II, its regulations, or the prevailing body of Title II case law finding that absentee voting programs requiring third-party assistance violate the statute. *See, e.g., National*

Federation of the Blind v. Lamone, 813 F.3d 494, 507 (4th Cir. 2016); *Johnson v. Callanen*, 610 F. Supp. 3d 907, 916 (W.D. Tex. 2022); *Hindel v. Husted*, No. 2:15-CV-3061, 2016 WL 2735935, at *6 (S.D. Ohio May 11, 2016), *rev'd on other grounds*, 875 F.3d 344 (6th Cir. 2017); *see also Cal. Council of the Blind v. Cnty. of Alameda*, 985 F. Supp. 2d 1229, 1239 (N.D. Cal. 2013) (holding that requiring blind voters to obtain assistance to vote in-person violates Title II).

Lamone expressly found Maryland's paper-based absentee voting program violated Title II because voters with print disabilities could not vote absentee privately and independently. 813 F.3d at 506-507. The district courts in *Callanen*, *California Council of the Blind*, and *Hindel* found the defendant county or state's use of exclusively paper ballots, either for absentee or in-person voting, fell short of Title II's equality mandate for the same reason. *Callanen*, 610 F. Supp. 3d at 915-16 (finding the defendant county violated Title II by only providing blind voters paper absentee ballots and forcing them to seek assistance); *Cal. Council of the Blind*, 985 F. Supp. 2d at 1239 (finding paper-based balloting with assistance "at best provides [blind and visually impaired voters] with an inferior voting experience 'not equal to that afforded to others'" and violates Title II) (quoting 28 C.F.R. § 35.130(b)(1)(ii)); *Hindel*, 2016 WL 2735935, at *6 (finding that where "disabled voters requir[ed] assistance" to vote absentee, their "inability" to do so "in a private and independent manner evidences that these voters do not have the

same meaningful access to mail-in absentee voting that non-disabled voters enjoy.”)

These cases—which Plaintiffs raised on summary judgment, but which the district court did not address—uniformly stand for the proposition that requiring voters with print disabilities to obtain third-party assistance to vote absentee (when voters without disabilities can do so independently) falls short of Title II’s equality mandate. *See* 42 U.S.C. § 12101(a)(7)–(8) (stating ADA’s purpose of “assur[ing] equality of opportunity [and] full participation” and eliminating “dependency” for individuals with disabilities); *see also Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1269 (D.C. Cir. 2008) (finding forcing blind individuals to “depend on ‘the kindness of strangers’” contravenes the Rehabilitation Act’s purpose of “‘maximiz[ing]’ their “‘independence, and inclusion and integration into society.’” (quoting 29 U.S.C. § 701(b)(1))).

ii. The district court misapplied the regulation addressing existing physical facilities.

Instead of applying the relevant communication regulations (or the relevant case law discussed above) the district court repeatedly cited an invented “ready access” standard, seemingly derived from an inapplicable regulation regarding physical access to existing facilities. ECF No. 111, Mem. Op. at 18–19, 21–22; *see id.* at 23 (citing the existing facilities regulation, 28 C.F.R. § 35.150). The existing facilities regulation requires that a physical facility be “readily accessible” “when

viewed in its entirety.” 28 C.F.R. § 35.150(a). The district court used this language to conclude that because Plaintiffs could vote absentee remotely with assistance, they were not excluded from the absentee voting program “in its entirety.” ECF No. 111, Mem. Op. at 23 (citing 28 C.F.R. § 35.150(a)). But because the existing facilities regulation “is targeted principally at physical accessibility,” it is not applicable to an absentee voting program untethered to any existing facilities. *Lamone*. 813 F.3d at 504–506, 505 n.7 (rejecting an existing facilities regulation argument and instead applying the effective communication and auxiliary aids regulations to find a Title II violation).⁸ Other courts have likewise clarified that the “entirety” standard in the existing facilities regulation pertains to “physical barriers to program access, rather than deficiencies in the . . . programs or services themselves.” *See Payan v. Los Angeles Comm. Coll. Dist.*, 2019 WL 9047062, at *1 (C.D. Cal. April 23, 2019) (rejecting use of existing facilities regulation in Title II case where blind students challenged inaccessible academic materials); *see also S.B. by and through M.B. v. Lee*, 566 F. Supp. 3d 835, 854 n.13 (E.D. Tenn. 2021) (“Section 35.150 primarily concerns physical, or structural, impediments to public access.”); *Disability Rts. Or. v. Wash. Cnty.*, No. 3:24-CV-00235-SB, 2024 WL

⁸ The existing facilities regulation instructs compliance through “redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities,” among other things. 28 C.F.R. § 35.150(b)(1).

4046017 (D. Or. Aug. 30, 2024) (finding existing facilities regulation was “of limited relevance” in Title II case challenging a discriminatory emergency services response program), report and recommendation adopted, *Disability Rts. Or. v. Wash. Cnty.*, No. 3:24-CV-00235-SB, 2025 WL 926564 (D. Or. Mar. 27, 2025).

Accordingly, the district court incorrectly relied on the existing facilities regulation and a “ready access” standard in finding Defendants’ absentee voting programs complied with the ADA.

iii. The district court misinterpreted Title II’s equal opportunity requirement.

The district court incorrectly rejected the “equal opportunity” framework because “equal opportunity” appears only in the Title II regulations and not the statute’s text.⁹ *See* ECF No. 111, Mem. Op. at 20 n.16. Instead, the court relied on its mistaken interpretation of “meaningful access”—a term that does not appear in the statute’s text or its regulations. *See id.* at 20–22. Unlike “equal opportunity”—the anchor requirement of the Title II regulations—“meaningful access” is a judicially-created term first used in *Alexander v. Choate*, 469 U.S. 287, 301–02 (1985), to create some flexibility for federal grantees sued under Section 504 of the Rehabilitation Act. Because Section 504, unlike Title II, does not provide for either

⁹ As discussed above, the Eleventh Circuit has found the Title II regulations carry “the force of law,” *Florida*, 938 F.3d at 1241 (*quoting Shotz*, 344 F.3d at 1179), a finding that the district court did not directly dispute.

a “fundamental alternation” or “undue burden” defense, *Choate* operates in a distinct legal landscape.

Although some courts discuss Title II’s non-discrimination mandate in terms of “meaningful access,” those courts make clear that this standard is equivalent to the “equal opportunity” expressly required by the Title II regulations. *See, e.g., Lamone*, 813 F.3d at 506–07 (finding defendant state elections officials had not provided voters with disabilities “meaningful access” to Maryland’s absentee voting program where those voters lacked an “equal opportunity” to vote absentee privately and independently); *Disabled in Action v. Bd. of Elections in the City of New York*, 752 F.3d 189, 199 (2d Cir. 2014) (holding that defining meaningful access as “merely the opportunity to vote at some time and in some way [] would render meaningless the mandate that public entities may not afford persons with disabilities services that are not equal to that afforded others”) (citations omitted and modified); *K.M. ex rel. Bright v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1102 (9th Cir. 2013) (“[T]he ‘meaningful access’ standard incorporates rather than supersedes applicable interpretive regulations . . .”); *see also Ellison v. U.S. Postal Serv.*, 84 F.4th 750, 757 (7th Cir. 2023) (“As for what constitutes ‘meaningful access,’ the inquiry is whether people with disabilities have an ‘equal opportunity to ... gain the same benefit’ from the program as people without disabilities.”

(quoting *Choate*, 469 U.S. at 305)); *Segal v. Metro. Council*, 29 F.4th 399, 404 (8th Cir. 2022) (same).

The district court’s misinterpretation of “meaningful access” as mere access, yields another mistaken conclusion: that Plaintiffs are not entitled to a “preferred accommodation,” under Title II. ECF No. 111, Mem. Op. at 21–22.¹⁰ This conclusion again misreads Title II and its regulations which expressly provide that, “[i]n determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities.” 28 C.F.R. § 35.160(b)(2).

The lower court’s only cited authority does not prove any point about Plaintiffs’ entitlement to their requested auxiliary aid (the available RAVBM system) under Title II. ECF No. 111 Mem. Op. at 21. In *Bircoll v. Miami-Dade Cnty.*, although police officers denied a deaf motorist an interpreter after his arrest, they provided him with a written copy of the form at issue, which—combined with his hearing aid, and his ability to lipread, and to read, write, and speak English—satisfied Title II’s effective communication requirement. 480 F.3d 1072, 1087–88 (11th Cir. 2007). Here it is undisputed that Plaintiffs cannot independently achieve

¹⁰ The district court also repeatedly noted that Plaintiffs are not entitled to “identical” access. ECF No. 111, Mem. Op. at 21, 25. Yet Plaintiffs do not seek identical access—they are not looking to use the same paper ballots other absentee voters use. They seek an equal opportunity to enjoy the same benefit of private and independent remote absentee voting, not an identical means of doing so.

any communication using paper ballots because they cannot read and/or mark, or return them due to their disabilities. In other words, unlike *Bircoll*, there are no facts here suggesting paper ballots provide equally effective communication for Plaintiffs. Furthermore, even though *Bircoll* pre-dates the 2011 amendments to the effective communication regulation—requiring that public entities give “primary consideration” to the requests of individuals with disabilities—this Court recognized that considering a hearing-impaired person’s “preferred method of communication” was necessary to establish effective communication. *Id.* at 1087; *see also* 28 C.F.R. § 35.160(b)(2); Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. 56,164, 56,184 (Sept. 15, 2010) (codified as 28 C.F.R. pt. 35). *Bircoll* thus supports the necessity of considering Plaintiffs’ requested auxiliary aid in determining whether Defendants have provided equally effective communication.

The district court’s reliance on *Stewart v. Happy Herman’s Cheshire Bridge, Inc.* 117 F.3d 1278 (11th Cir. 1997) fares no better. *Stewart* was a Title I, not Title II, case balancing an employee’s request for reasonable accommodations with an employer’s claimed hardship. *Id.* at 1285–86. Because Title I of the ADA governs employment, 42 U.S.C. § 12112, whereas Title II governs access to all state and local programs and activities, the analytical frameworks between the two are distinct. Title II places a unique, affirmative duty on public entities to provide

individuals with disabilities equal opportunity and give primary consideration to their requested auxiliary aids and services. *Compare* 28 C.F.R. § 35.130(b)(7)(i), § 35.160(a)(1), (b)(1) –(2), *with* 29 C.F.R. §§ 1630.4, 1630.9; *see also* *Mary Jo C. v. New York State & Loc. Ret. Sys.*, 707 F.3d 144, 170 (2d Cir. 2013) (“Title I also imposes various limitations on suits against an employer which are absent from Title II.”). Accordingly, *Stewart* does not support applying a lesser standard than equal opportunity under Title II.

iv. The district court misunderstood Title II’s requirements regarding ballot secrecy.

Finally, the lower court erred in concluding that because Title II does not expressly require ballot secrecy, Defendants’ failure to provide it for absentee voters with disabilities does not violate the statute. *See* ECF No. 111, Mem. Op. at 22–23. The court is correct that the broad remedial language of Title II does not specifically mandate ballot secrecy.¹¹ But Title II prohibits Defendants from denying Plaintiffs the equal benefits of its absentee voting program that it offers to voters without disabilities. *See* 42 U.S.C. § 12132. And under Alabama law, ballot secrecy is a critical benefit of the voting program, not an incidental detail. *See* Ala.

¹¹ The district court errs, however, by stating that Plaintiffs’ claim to private and independent voting “finds no support in the text of Title II or its implementing regulations.” ECF No. 111, Mem. Op. at 22. In fact, the regulations expressly require that “[i]n order to be effective, auxiliary aids and services must be provided . . . in such a way as to protect the privacy and independence of the individual with a disability.” *See* 28 C.F.R. § 35.160(b)(2).

Code § 17-6-34 (“Every voter in Alabama shall have the right to vote a secret ballot, and that ballot shall be kept secret and inviolate.”). As a result, Defendants provide absentee ballots to eligible absentee voters in Tuscaloosa, Mobile, and Jefferson counties in a manner that protects the secrecy of those absentee voters’ ballots. But they do not do this for voters with print disabilities. This is the exact discrimination that Title II forbids.

As *Lamone* explained in rejecting this same argument in that case, there is no “standalone right to vote privately and independently without assistance” under Title II. *Lamone*, 813 F.3d at 506. Rather, the Title II violation occurs when the public entity “provid[es] such a benefit to non-disabled voters while denying that same benefit to plaintiffs,” which is “precisely the sort of harm the ADA seeks to prevent.” *Id.* Other courts agree. In *California Council of the Blind*, the court explained that “[n]either the ADA nor the Rehabilitation Act provides a set of freestanding rights, such as . . . the right to vote independently. Nor do [they] purport to name the various rights of individuals with disabilities in an exhaustive list.” 985 F. Supp. 2d at 1242. Instead, these statutes “grant individuals with disabilities the right to reasonable modifications to have meaningful access to a covered entity’s services . . . without naming a particular service in the statute.” *Id.*; see also *Callanen*, 608 F. Supp. 3d at 484 (invoking the secret-ballot guarantee

in Texas’s Election Code to conclude that voting by mail privately and independently is a benefit that must be provided equally to blind voters).

The sum of the lower court’s misapplication of the Title II regulations and standards is the erroneous conclusion that *any* access to a public program, no matter how inferior, satisfies Title II. This premise ignores the regulations’ repeated, explicit requirement of equality of opportunity and the case law affirming the same. Requiring third-party assistance violates not only the letter of Title II and its regulations, but also the spirit and purpose of the law: to eliminate “dependency” by individuals with disabilities and “assure [them] equality of opportunity [and] full participation.” 42 U.S.C. § 12101(a)(7)–(8).

B. Section 208 of the Voting Rights Act and its Alabama counterpart do not displace Title II’s broad mandate of equal opportunity.

The district court incorrectly reasoned that because Plaintiffs have the option—under Section 208 of the Voting Rights Act, 52 U.S.C. § 10508, (“Section 208”) and Alabama Code § 17-9-13—to vote absentee with assistance, Defendants have no separate, affirmative obligation under Title II to ensure that Plaintiffs can do so privately and independently, as absentee voters without disabilities are able to do. ECF No. 111 Mem. Op. at 19-20, 23-24. The district court’s holding that requiring Plaintiffs to enlist assistance affords them “meaningful access” misunderstands that judicially-created standard to mean *any* access. It also ignores

Title II's standard of equal opportunity, as discussed above. Finally, it misunderstands the relationship between Title II, Section 208, and state law.

Section 208 establishes a set, minimum accommodation for voters with disabilities, while Title II imposes a flexible, but distinct affirmative obligation on public entities to ensure equality in all aspects of voting. Section 208 and Alabama Code § 17-9-13 are the floor, not the ceiling, for what Defendants must provide voters with disabilities. Title II requires more.

i. Section 208's "minimal requirement" of assistance does not displace Title II's broader mandate of equality of opportunity, and no court has found otherwise.

There is no support in any relevant authority for the court's finding that "[a]pplication of Title II's general accessibility requirements are already met here," by Section 208's protection of Plaintiffs' right to vote with assistance. ECF No. 111, Mem. Op. at 20. Indeed, the only case in this Circuit to consider this issue has found the opposite: that compliance with Section 208 in no way "absolve[s]" a public entity from separately complying with Title II. *Am. Ass'n of People with Disabilities v. Hood*, 278 F. Supp. 2d 1345, 1355–56 (M.D. Fla. 2003).

Congress passed Section 208 in 1982 to "prescrib[e] *minimal requirements* as to the manner in which voters may choose to receive assistance," to ensure that "*at the least*, members of each group [covered by the law] are entitled to assistance

from a person of their own choice.” S. Rep. No. 97-417 at 63 (emphasis added).¹²

In other words, Section 208 was enacted to ensure individuals with disabilities who otherwise could not vote on their own at least had the opportunity to do so with assistance. None of the lower court’s cited legislative history supports its conclusion that third-party assistance under Section 208 provides “meaningful access” (or equal opportunity) under the later-enacted Title II. ECF No. 111, Mem. Op. at 19.

Today there are a variety of accessible technologies that afford voters with disabilities complete privacy and independence in voting (including the RAVBM system Defendants already use for other voters). That was not the case in 1982. At that time, the Senate committee considering Section 208 observed that individuals with disabilities “must be permitted to have the assistance of a person of their own choice” to “avoid denial or infringement of their right to vote.” S. Rep. No. 97-417 at 62. The committee made clear that chosen assistance was the best available option, superior to the then-default of forcing voters with disabilities to rely on an assigned stranger at a polling place. *See* S. Rep. No. 97-417 at 62 (“[M]any such 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...”). Indeed, the

¹² In its discussion of state law preemption, the Senate Report even specifically states that Section 208 would not restrict states’ ability to “authorize different kinds of assistance for the blind.” S. Rep. No. 97-417 at 63.

committee intended that allowing a chosen assistant would achieve something closer to “privacy for the voter,” while also “encourag[ing] greater participation” and avoiding voter “intimidation and manipulation.” *Id.* at 62-63.

When Title II was enacted eight years later, it created a broader, but more flexible remedial scheme, designed to keep pace with technological advances to fulfill its equal opportunity mandate. *See Bledsoe v. Palm Beach Cnty. Soil and Water Conservation Dist.*, 133 F.3d 816, 821 (11th Cir. 1998) (noting Congress intended Title II to “break down barriers to the integrated participation of people with disabilities in all aspects of community life”) (quoting H.R. Rep. No. 101-485(III) at 49-50). In discussing the ADA, the House Committee noted that it:

Wish[es] to make it clear that technological advances can be expected to further enhance options for making meaningful and effective opportunities available to individuals with disabilities. Such advances may require public accommodations to provide auxiliary aids and services in the future which today would not be required because they would be held to impose undue burdens on such entities. Indeed, the Committee intends that the types of accommodation and services provided to individuals with disabilities, under all of the titles of this bill, *should keep pace with the rapidly changing technology of the times*. This is a period of tremendous change and growth involving technology assistance and the Committee wishes to encourage this process.

H.R. Rep. No. 101-485(II) at 108 (emphasis added). Thus, Congress never intended its 1982 voter assistance accommodation requirement to limit the future accommodations and services voters with disabilities might require under the later-enacted ADA.

Moreover, as discussed above, courts across the country have found that forcing voters with print disabilities to rely on third-party assistance to vote creates an inferior voting experience and violates Title II. *See, e.g., Lamone*, 813 F.3d 494; *Callanen*, 608 F. Supp. 3d 476; *Cal. Council of the Blind*, 985 F. Supp. 2d 1229. None of these cases expressly discussed Section 208. But they all unequivocally rejected the idea that the option of third-party assistance satisfies a public entity's obligation under Title II to provide voters with disabilities equal opportunity to participate in voting.

The district court cites no case law for its contrary finding. Moreover, a court in this Circuit has already rejected this same conclusion. *Hood*, 278 F. Supp. 2d at 1355–56. In *Hood*, the plaintiffs—voters with visual and dexterity disabilities—challenged the defendant state and county elections officials' purchase of inaccessible in-person voting machines that plaintiffs could not use privately and independently. *Id.* at 1350–51. In denying the county's motion for summary judgment, the court rejected its argument that because voters with disabilities could seek assistance under Section 208, the county had no additional obligations under Title II. *Id.* *Hood* was unequivocal that this was not so because “compliance with the VRA would not absolve Defendants from complying with the requirements set forth in [the Title II] regulations.” *Id.*

Other courts, including this one, have similarly concluded that a public entity cannot avoid its obligations under Title II simply by complying with other federal voting laws' more specific accessibility requirements. *See Am. Ass'n of People with Disabilities v. Harris*, 647 F.3d 1093, 1098, n.10 (11th Cir. 2011) (concluding that the Help America Vote Act's ("HAVA's") requirement that every polling location have at least one accessible voting machine did not preempt the requirements of the ADA, nor would compliance with HAVA moot plaintiffs' ADA claims requiring more); *Cal. Council of the Blind*, 985 F. Supp. 2d at 1244-45 (holding that compliance with HAVA's accessible voting machine requirement did not limit Title II claim that polling places must also take affirmative steps to ensure that the machines remain operational); *Kerrigan v. Philadelphia Bd. of Election*, No. 07-687, 2008 WL 3562521, at *25 (E.D. Pa. Aug. 14, 2008) (finding the Voting Accessibility of the Elderly and Handicapped Act's ("VAEH's") requirement that inaccessible polling facilities provide elderly and handicapped voters "alternative means for casting a ballot," as a "last resort," did not limit Title II's broader requirement that polling places be as accessible as possible).

Treating Section 208 as the floor it was intended to be also comports with the cardinal rule that a court cannot use one statute to displace another without "clearly expressed congressional inten[t]" to do so. *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (quoting *Vimar Seguros y Reaseguros, S.A. v. M/V Sky*

Reefer, 515 U.S. 528, 533 (1995)). Congress can be presumed to have known what voting accessibility protections Section 208 provided when it passed Title II of the ADA eight years later. *See Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 169 (2014) (“Congress is aware of existing law when it passes legislation.”) (citation omitted). Yet Congress, aware of Section 208’s minimal accommodation, did not expressly limit Title II’s broader mandate as the lower court urges here. Instead, Congress passed a law with the goal of eradicating disability discrimination in all forms of public services and programs, *see* 42 U.S.C. § 12101, including voting. *See* ECF No. 111, Mem. Op. at 15. Reading Section 208’s minimal requirement as a limitation on Title II impermissibly restricts this clearly articulated purpose.

- ii. **The district court erroneously applied the “specific versus general” principle of statutory interpretation, absent any conflict between Section 208 and Title II, to conclude that Section 208’s specific voter assistance requirement displaces Title II’s general mandate.**

Without case law holding that Section 208 compliance affords sufficient access under Title II, the district court instead misapplied the specific versus general principle of statutory interpretation to conclude that Section 208’s more specific guarantee of third-party assistance “controls” over Title II’s more general mandate of equal opportunity. *See* ECF No. 111, Mem. Op. at 20. But the specific only controls the general where two statutory provisions conflict and a court

cannot harmonize the conflicting provisions. *See e.g., Tug Allie-B, Inc. v. U.S.*, 273 F.3d 936, 941, 949 (11th Cir. 2001) (finding a “positive repugnancy” between two statutory provisions required applying the specific versus general).

Indeed, this Circuit has expressly instructed courts not to apply this principle unless they have first “assiduously attempt[ed]” to interpret the statutory provisions harmoniously and adopted “any interpretation [that] permits both statutes to stand. . . ‘absent a clearly expressed congressional intention to the contrary.’” *Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Eng’rs*, 619 F.3d 1289, 1299 (11th Cir. 2010) (internal citations and quotations omitted).

This principle of interpretation is—as the lower court acknowledged—“not directly analogous” to the relationship between Title II and Section 208, where no such conflict exists and the lower court never identified one. ECF No. 111, Mem. Op. at 20. Instead, the district court reasoned that because Section 208 and Title II “address the same subject” (voting), Section 208’s provision on “the specific issue of how print-disabled voters are to be accommodated” must automatically displace the “broad, general civil rights statute”—Title II. *Id.* There is no principle of statutory construction, including the specific versus the general, that compels this result. The cases the district court cites in support do not compel it either. *See id.* at 20 (citing *RadLAX Gateway Hotel v. Amalgamated Bank*, 566 U.S. 639, 645

(2012); *Morales v. Trans World Airlines*, 504 U.S. 374, 384 (1992); and *Varity Corp. v. Howe*, 516 U.S. 489, 511–12 (1996).

Both *RadLAX* and *Morales* identified conflicting statutory provisions and applied the specific versus general canon to avoid invalidating or limiting the more specific provision. In *RadLAX*, for example, the Supreme Court rejected an interpretation of a broad provision in the Chapter 11 bankruptcy code that would have authorized a bankruptcy plan explicitly prohibited by another, more specific provision of the same code. *RadLAX Gateway Hotel*, 566 U.S. at 643–44, 645. Similarly, in *Morales* the Supreme Court refused to allow “[a] general ‘remedies’ saving clause” in the Federal Aviation Act “to supersede the specific substantive pre-emption provision” in the later enacted Airline Deregulation Act. *Morales*, 504 U.S. at 384–5 (“[W]e do not believe Congress intended to undermine this carefully drawn statute through a general saving clause.” (quoting *International Paper Co. v. Ouellette*, 479 U.S. 481, 494 (1987) (internal quotations omitted))).

The district court’s additional reliance on Justice Thomas’s dissent in *Varity Corp.* is also unavailing. See ECF No. 111, Mem. Op. at 20. It cites the dissent for the same proposition—a general statute cannot expand upon rights where Congress has already “provided a specific solution to a specific problem,” *id.*—that the majority in *Varity* case expressly rejected. 516 U.S. at 511-12 (holding that ERISA’s specifically enumerated fiduciary breach remedies did not conflict with

its broader “catchall remedial section” and thus did not control as Justice Thomas urged.)

As in *Varity*, there is no conflict here between a specific provision that enumerates some rights and a broader statutory provision that secures more. Title II “provide[s] broader rights or remedies” without “limit[ing],” “invalidat[ing],” or “displac[ing]” Section 208. *Hood*, 278 F. Supp. 2d at 1355-56 (“[T]he third-party assistance authorized by [Section 208] will continue to be available.”). Because there is no conflict between a statutory provision setting forth a floor and another setting forth a goal of full equality, the district court erred in finding that Section 208’s provision of voter assistance displaces Title II’s broader mandate under the specific versus general principle.

iii. Alabama law providing for third-party voting assistance similarly does not displace Title II’s broader requirements.

That Alabama law, like Section 208, “permits any voter to ‘receive assistance from any person the voter chooses’” also does not displace Title II here. ECF No. 111, Mem. Op. at 23 (citing Ala. Code § 17-9-13). As addressed above, no conflict exists between being able to choose an assistant when voting absentee and being able to choose to vote absentee privately and independently instead.

Moreover, to the extent any conflict existed between Title II’s federal mandate and state law, Title II (as federal law) would control. U.S. Const. art. VI, cl. 2. As the district court held in denying Defendants’ Motion to Dismiss,

compliance with Alabama law does not shield Defendants from liability under Title II. ECF No. 32, Mem. Op. on Mot. to Dismiss at 8 (quoting *Campbell v. Universal City Dev. Partners, Ltd.*, 72 F.4th 1245, 1258 (11th Cir. 2023) for the proposition that “[i]f compliance with state law were [an accepted defense to an ADA claim] then any state could unilaterally nullify the ADA by enacting a state law requiring discrimination. That can’t be right.”).

Presented with this same question, courts have consistently underscored that the ADA preempts conflicting state laws in voting. *See, e.g., Hindel*, 875 F.3d at 349 (“[A] state procedural requirement may not excuse a substantive ADA violation.”); *Lamone*, 813 F.3d at 508 (“[T]he mere fact of a state statutory requirement” cannot “insulate[] public entities from making otherwise reasonable modifications to prevent disability discrimination” because “requiring public entities to make changes to rules, policies, practices, or services is exactly what the ADA does.”) (cleaned up); *Callanen*, 2023 WL 4374998, at *10 (rejecting defendant county’s argument that implementing an RAVBM system would violate state law “for the simple reason that federal laws preempt state laws and regulations (or lack thereof).”). The district court’s citation to *Ala. State Conf. of the NAACP v. Marshall*, *see* ECF No. 111, Mem. Op. at 22, merely underscores this point: there the court found that Section 208’s federal right to assisted voting preempted a conflicting state law criminalizing some forms of voting assistance.

746 F. Supp. 3d 1203, 1215, 1247-49 (N.D. Ala. 2024). Applying that reasoning here, Title II would control to the extent a conflict existed with Alabama’s statutory protection of assistance for voters with disabilities. Fortunately, however, no such conflict exists.

III. The district court erred in holding that only intentional discrimination qualifies as discrimination because of disability.

Contrary to the district court’s finding that Defendants have not violated Title II absent “evidence of [their] discriminatory intent,” ECF No. 111, Mem. Op. at 26, Title II has no such intentional discrimination requirement. As “[c]ourts have consistently explained . . . ‘Title II [of the ADA] imposes affirmative obligations on public entities and does not merely require them to refrain from intentionally discriminating against the disabled.’” *Dunn v. Dunn*, 318 F.R.D. 652, 665 n.12 (M.D. Ala. 2016) (collecting circuit court cases and quoting *Ability Ctr. of Greater Toledo v. City of Sandusky*, 385 F.3d 901, 910 (6th Cir. 2004)); see also *A.J.T. ex rel. A.T. v. Osseo Area Schs., Indep. Sch. Dist. No. 279*, 605 U.S. 335, 344 (2025) (noting Title II plaintiffs can “establish a statutory violation and obtain injunctive relief under the ADA [] without proving intent to discriminate.”)

Instead, “[t]he ADA imposes a ‘but-for’ liability standard,” under which a plaintiff need only demonstrate that but for her disability, she would not be excluded. See *McNely v. Ocala Star-Banner Corp.*, 99 F.3d 1068, 1077 (11th Cir. 1996); *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1212 n.6 (11th Cir.

2008); accord *Comcast Corp. v. Nat'l Ass'n. of African American-Owned Media*, 589 U.S. 327, 334 (2020) (holding that but-for causation is the default standard under which Congress legislates and “by reason of” generally indicates such a standard).

By requiring a showing of intentional discrimination, the lower court misread Title II’s prohibition against discrimination “by reason of such disability,” as one against discrimination by reason of “discriminatory intent.” ECF No. 111, Mem. Op. at 26. This is contrary to this Court’s and other circuits’ consistent instruction not to impose a discriminatory intent requirement in Title II cases seeking injunctive relief.

A. Plaintiffs have shown that, but for their print disabilities, they would be able to vote absentee remotely, privately, and independently.

This Court, consistent with other circuits, has repeatedly explained that the “by reason of such disability” causation standard in the ADA requires “only the lesser ‘but for’ standard” of causation. *Schwarz*, 544 F.3d at 1212 n.6; *see also McNely*, 99 F.3d at 1077 (“The ADA imposes a ‘but-for’ liability standard.”). As a result, only plaintiffs seeking monetary damages under Title II of the ADA must prove intentional discrimination or deliberate indifference. *See Silberman v. Miami Dade Transit*, 927 F.3d 1123, 1134 (11th Cir. 2019) (finding discriminatory intent is an “additional hurdle” for Title II claims for money damages that does not apply

to claims for injunctive and declaratory relief); *R.W. v. Bd. of Regents of the Univ. Sys. of Ga.*, 114 F. Supp. 3d 1260, 1282 (N.D. Ga. 2015) (same).

In *McNely*, this Court considered the causation language in Titles I, II, and III of the ADA¹³ and concluded that “the relevant causal language in the liability provisions of all three titles” required only “but-for” causation. *McNely*, 99 F.3d at 1074-77. Since *McNely*, this Circuit and others, have reaffirmed this but-for causation for disability discrimination claims under the ADA. See e.g., *Akridge v. Alfa Ins. Cos.*, 93 F.4th 1181, 1192 (11th Cir. 2024) (holding that 2008 amendments to the ADA “did not change or affect its but-for causation standard”); *Doe v. Rhode Island Interscholastic League*, 137 F.4th 34, 41 (1st Cir. 2025) (plaintiff must show that disability is the “but-for cause of [their] exclusion”); *Finley v. Huss*, 102 F.4th 789, 823 (6th Cir. 2024) (“but-for cause” applies to “ADA claims”); *Crane v. Utah Dep’t of Corrs.*, 15 F.4th 1296, 1313 (10th Cir. 2021) (“We resolve this tension today by joining our sibling circuits in holding the ADA merely requires the plaintiff’s disability be a but-for cause [] of the discrimination”); *Haberle v. Troxell*, 885 F.3d 170, 179 (3d Cir. 2018) (exclusion was by reason of disability “if the arrestee’s disability was a ‘but for’

¹³ At that time, in 1996, Title I prohibited discrimination “because of the disability,” 42 U.S.C. § 12112(a); Title II prohibited discrimination “by reason of such disability,” *id.* at § 12132; and Title III prohibited the same where “such individual has made a charge,” *id.* at § 12203.

cause”); *Wisconsin Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 752 (7th Cir. 2006) (“[P]laintiff [must] show that, ‘but for’ his disability, he would have been able to access the services or benefits desired.”).

Under this but-for standard, disability need not be the only reason that Plaintiffs suffered discrimination. *See* ECF No. 111, Mem. Op. at 26 (citing Defendants’ proffered undue burden defenses related to cost and cybersecurity as non-disability-related reasons for denying Plaintiffs private and independent remote absentee voting). Rather, it must only be “a factor that made a difference in the outcome.” *McNely*, 99 F.3d at 1077.

People First of Alabama v. Merrill is instructive on this point. In *Merrill*, voters with disabilities challenged Alabama’s requirement that they submit a copy of their photo identification with their absentee ballot application. 467 F. Supp. 3d 1179, 1195–96 (N.D. Ala. June 15, 2020). They argued that it deprived them an equal opportunity to vote absentee, since doing so required assistance which, at the time, risked exposing them to severe COVID-19 complications because of their disabilities. *Id.* at 1195–96, 1220. Although there was no evidence of Alabama’s discriminatory intent against people with disabilities in enacting this requirement, the court held that plaintiffs had sufficiently alleged a Title II violation because, but for the plaintiffs’ disabilities, the requirement would not have restricted their opportunity to vote. *Id.* at 1220.

Plaintiffs here have similarly established that but for their disabilities—which prevent them from independently reading and/or marking, or returning a paper absentee ballot—they would receive the equal benefit of voting absentee remotely, privately, and independently. Because they are instead denied this benefit, the lower court erred in finding Plaintiffs had not satisfied this element of their Title II claim.

B. Requiring Plaintiffs to prove intentional discrimination undermines Title II’s purpose of remedying all forms of disability discrimination, including discrimination resulting from apathy rather than animus.

In addition to ignoring the clearly established but-for causation standard discussed above, imposing an intentional discrimination hurdle for injunctive relief claims under Title II strikes against the purpose of the ADA: to provide “legal recourse” when “[i]ndividuals with disabilities [are] subjected not only to ‘outright intentional exclusion’ but also to ‘segregation’ and ‘relegation to lesser services, programs, activities, [and] benefits.’” *United States v. Sec’y Florida Agency for Health Care Admin.*, 21 F.4th 730, 734–35 (11th Cir. 2021) (quoting 42 U.S.C. § 12101(a)(5)). The legislative history of Title II confirms this intent as part of a “major shift in public policy relating to disability [that] culminated in the passage of [the] broad anti-discrimination provision, Section 504 of the Rehabilitation Act of 1973.” H.R. Rep. No. 101-485(III) at 26. In carrying forth that same aim, Title II built upon Section 504’s recognition “that discrimination results from actions or

inactions, and that discrimination occurs by effect as well as by intent or design.”

Id.

Requiring proof of intentional discrimination would make such conduct unreachable under Title II, even though “discrimination against the disabled is typically due to ‘apathetic attitudes rather than affirmative animus.’” *Martin v. Metro. Atlanta Rapid Transit Auth.*, 225 F. Supp. 2d 1362, 1376 (N.D. Ga. 2002) (quoting *Choate*, 469 U.S. at 296).

The district court’s finding that Plaintiffs were required to demonstrate that Defendants’ specific animus was the reason they were unable to vote absentee remotely, privately, and independently is incompatible with the scope and ambition of Title II and should be reversed.

IV. Plaintiffs have standing to pursue both declaratory and injunctive relief.

The district court correctly found that the individual plaintiffs¹⁴ and the NFB-AL had standing. ECF No. 111, Mem. Op. at 10–15. But it also held, without explanation, that their standing was limited to “non-injunctive claims for relief.”

Id. Plaintiffs have sought—and have standing to seek—both injunctive and declaratory relief. *See* ECF No. 4, Am. Compl. at 20–21. There is simply no basis

¹⁴ The court did not analyze Dr. Peebles’ standing because Defendants did not challenge it. *See* ECF No. 111, Mem. Op. at 11.

for finding that although the Plaintiffs all have standing, they cannot seek injunctive relief and the lower court provided none.

Instead, the district court listed and rejected each of Defendants' arguments challenging the individual plaintiffs' standing and then held that because the NFB-AL has at least two members, Ms. Clayton and Mr. Rissling, who individually have standing in this case, the organization has associational standing. *See* ECF No. 111, Mem. Op. at 11–15. Although the court declined to address Defendants' arguments about the scope of any injunction as “academic,” because “the scope of an injunction is not an issue the court need address” given its erroneous holding that “Plaintiffs’ ADA claim fails on the merits,” ECF No. 111, Mem. Op. 12–13, it did not explain why Plaintiffs would be foreclosed from seeking any injunctive relief had they prevailed on their ADA claims.¹⁵

¹⁵ In a footnote, the district court discussed how, if the individual plaintiffs had prevailed on their claims on the merits, they could be entitled to a “modest recovery of individual (divisible) declaratory relief, which would entitle them to personally to participate in electronic balloting.” ECF No. 111, Mem. Op. at 13 n.13. It appears from this footnote that the district court may have confused the concepts of injunctive and declaratory relief, deeming the latter a form of individualized injunctive relief. Accordingly, it may be that the court’s holding that Plaintiffs’ standing is limited to non-injunctive relief is based on a misunderstanding of the distinction between these two forms of relief. *Compare* “Relief,” Black’s Law Dictionary (12th ed. 2024) (defining “declaratory relief” as “judicial relief that pronounces upon the legal status or ownership of a thing”), *with* “Injunction,” Black’s Law Dictionary (12th ed. 2024) (defining an injunction as a “court order commanding or preventing an action”). Either way, this Court should clarify that Plaintiffs have standing to pursue injunctive relief and that the scope of any injunction can be determined at a later stage.

Nevertheless, in dicta, the court posited that “the countrywide injunctive relief sought by Plaintiffs” was barred by the Supreme Court’s ruling in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025). See ECF No. 111, Mem. Op. at 13 n.13. This is incorrect. First, Plaintiffs are not seeking a “countrywide” injunction. The individual plaintiffs seek injunctive relief for themselves from the three Defendant county AEMs—access to the RAVBM system. The NFB-AL seeks the same relief for its members with print disabilities who reside in the same three counties.

Second, *Trump v. CASA* does not impact the NFB-AL’s ability, as an associational plaintiff, to seek injunctive relief. The majority decision in *Trump v. CASA* included a single passing reference to “associational respondents,” did not describe or discuss the associational plaintiffs or their members, and simply held that universal injunctions are impermissible—a form of relief, again, that is not at issue here. *Trump v. CASA*, 606 U.S. at 834.

Finally, even if the lower court’s suggested reading of *Trump v. CASA* were correct, that opinion was issued after summary judgment briefing in this case was completed and was thus not addressed below. In the event *Trump v. CASA* did impact Plaintiffs’ entitlement to injunctive relief, Plaintiffs should have the opportunity to fully brief that issue or be granted leave to amend their complaint as a class action. This Court should reverse the district court’s holding that Plaintiffs have standing to pursue only non-injunctive relief.

CONCLUSION

For the reasons set forth above, this Court should reverse the judgment of the district court.

Dated: July 22, 2026

Respectfully submitted,

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